



1. N.G. is a 13-year-old boy in 8th grade who has been found eligible for special education services pursuant to the Individuals with Disabilities Education Act, 42 U.S.C §1400 *et seq.* (IDEA). He has an exceptionality of emotional disturbance and has developed a strong social network at his current school.
2. N.C. is an 18-year-old youth in 12th grade and is also a student with a disability pursuant to the IDEA. He attends both the regular high school and the Career Institute of Technology in the Electrical Construction Technology Program and is on track to graduate in June 2014. 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 the International Brotherhood of Electrical Workers (“IBEW”) in order to become a licensed electrician.
3. K.C. and M.C. are parents of the named plaintiffs who bring this lawsuit on behalf of their sons.
4. Plaintiff students have attended schools in Easton Area School District all of their lives.
5. Plaintiffs first became homeless in March 2011, following M.C.’s loss of employment and foreclosure on their family home located at 3998 Glover Road in Easton, Pennsylvania, which is within the Easton Area School District.
6. Because the family had lost their home, car and possessions, and because they could not afford to rent an apartment in the community, they were compelled to live in the family’s camper which they owned and had previously been used for family vacations.

7. 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).
8. 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.
9. 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 now qualified as homeless under the McKinney-Vento Act.
10. In accordance with the requirements of the Act, the District agreed that the children could continue to attend their schools of origin within the District although they lived in a campground located 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.
11. In the Fall of 2011, the family experienced additional setbacks and hardships. Thirteen-year-old C.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 down.

12. Throughout the 2011 school year and continuing until October 2013, the District recognized these students as homeless and eligible to continue their education in the District pursuant to the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C. §§ 11431-11435 (2002) (“McKinney-Vento Act”).
13. The McKinney-Vento Act mandates that a child who is homeless is entitled to remain in the school the child attended when permanently housed, or where the child was last enrolled, for the duration of the child’s homelessness in accordance with his best interest or, should he become permanently housed, for the remainder of the school year. See 42 U.S.C. § 11432(g)(3)(B)(i).
14. The children began this school year enrolled in the District.
15. 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 this letter is attached to Plaintiff’s Complaint as Exhibit A.
16. This letter did not explain the dispute resolution process for non-residents who attend school 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 letter 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 the Pennsylvania’s

McKinney-Vento State Plan and guidance issued by the Pennsylvania Department of Education on this issue. See Basic Education Circular on Education for

Homeless Youth available at

[http://www.education.state.pa.us/portal/server.pt/community/basic\\_education\\_circulars/7497](http://www.education.state.pa.us/portal/server.pt/community/basic_education_circulars/7497).

17. 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.
18. Using this form, the family filed this appeal of the District's decision with the State on October 11, 2013.
19. Thereafter, M.C. received a call from the Regional McKinney Vento Coordinator Russell Valentini who explained that he was aware of their situation and thought that the children fell within the definition of "homeless" under the McKinney Vento Act. He stated that he anticipated the children would be able to continue attending school within the District.
20. 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 concluded that Plaintiff students were no longer eligible to attend their school of origin. He explained that the decision was made by the District and that

his only role was to provide technical assistance and not to make final legal determinations. Therefore, because the District had already determined that these students were not eligible under the Act, he would support that decision.

21. The October 8, 2013, the 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.
22. The family received a second letter dated Nov 21, 2013, which only informed them that the State had agreed with the District's decision and the children would be dis-enrolled on December 9, 2013. A copy of this letter is attached to Plaintiff's Complaint as Exhibit B.
23. In response to this letter, M.C. repeatedly called the District explaining how detrimental it was to dis-enroll his sons in the beginning of December. He specifically requested that the District agree to permit his sons to complete the school year. The District refused these requests.
24. Counsel for plaintiffs only recently became involved in this case but explained our intent to file a lawsuit to counsel representing the District. In light of the continuing dispute, counsel specifically requested that the children be permitted to remain in school as the appeal was being prepared and filed. Opposing counsel refused this request and made clear her client's intent to dis-enroll the students as planned on December 9, 2013.
25. Plaintiffs now seek court intervention in order to immediately re-enroll Plaintiff students in the District due to the existence of an ongoing dispute and as required pursuant to the pendent placement provision of the McKinney-Vento Act. 42 U.S.C.

§ 11432(g)(3)(E)(i). This provision specifically states that if a dispute arises regarding enrollment or school selection, a school district must enroll the child in the family’s school of choice pending full resolution of the dispute. Id.

26. Essentially, the Act’s pendency provision functions as an “automatic preliminary injunction” and should be enforced as an absolute rule in place of a court’s discretionary consideration of the standard preliminary injunction factors. See Pardini v. Allegheny Intermediate Unit, 420 F.3d 181, 188 (3rd Cir. 2005) (holding that where the IDEA’s stay put provision set forth in §1415(e)(3) applied, “injunctive relief is available without the traditional showing of irreparable harm”); Ringwood Bd. of Educ. v. K.H.J. ex rel. K.F.J., 469 F. Supp. 2d 267,269 (D.N.J. 2006) (“stay put” provision functions as an automatic preliminary injunction”).
27. Alternatively, applying the traditional preliminary injunction standard leads to the same conclusion, that Plaintiff students should be immediately re-enrolled in the District.
28. A preliminary injunction should be issued where a moving party will suffer irreparable harm, is likely to succeed on the merits and the public interest and balance of hardships favor granting such relief. McNeil Nutritionals, L.L.C. v. Heartland Sweeteners, L.L.C., 511 F.3d 350, 356-57 (3d Cir. 2007).
29. In this case, Plaintiff students have and will continue to suffer irreparable harm if they are denied the right to continue to attend school in the District, particularly in light of the fact that the District has been addressing the special education needs of these children.

30. As Pennsylvania state and federal courts have recognized, deprivation of an education produces “irreparable harm and establishes a need for prompt and immediate relief.” L.R. v. Steelton-Highspire Sch. Dist., No. 1:10-CV-00468, 2010 WL 1433146 at \*3 (M.D. Pa. Apr. 7, 2010) (citing Oravtez v. W. Allegheny Sch. Dist., 74 Pa. D. & C.2d 733, 737-38 (Pa. Ct. Com. Pl. 1975)).
31. Furthermore, “[a]bsence from school cannot be repaired by money damages or even by a subsequent reinstatement at a future period.” Minnicks v. McKeesport Area Sch. Dist., 74 Pa. D. & C.2d 744, 749-50 (1975). Cf. John T., 2008 WL 558582 at \*8 (in the special education context, compensatory education “can never atone for deprivation of a meaningful education in an appropriate manner at the appropriate time.”).
32. Plaintiff can also establish a strong likelihood of success on the merits as Defendants have violated Plaintiffs’ clear rights under the McKinney-Vento Act, 42 U.S.C. §§ 11431 – 11435, as enforced via 42 U.S.C. §1983 by:
- i. Failing to ensure school stability for plaintiff students for the duration of homelessness.
  - ii. 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).
  - iii. 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).
  - iv. 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).



- v. 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).

- 33. Defendant District and the Department will suffer no harm by permitting these students to return to its schools. Notably, the District does not pay for transportation for these students, nor do they incur other additional expenses relating to the provision of services.
- 34. The balance of hardships and public interest factors also strongly favor granting Plaintiffs' Emergency Motion for Preliminary Injunction.
- 35. Accordingly, in view of the forgoing and for the reasons set forth in the accompanying Memorandum of Law incorporated herein, Plaintiffs respectfully request that the Court issue an order directing Defendant District to:
  - a. immediately re-enroll Plaintiff students and maintain their enrollment in the District pending full resolution of this dispute in accordance with the pendency provision of the McKinney-Vento Act and Federal Rule of Civil Procedure 65; and
  - b. provide Plaintiff students a free appropriate public education in the least restrictive environment in accordance with in Plaintiffs' rights and entitlements under the IDEA, 20 U.S.C. § 1415(i)(2)(C)(iii).
- 36. A form of Order is attached hereto.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Rhonda Brownstein, hereby certify that on this 10<sup>th</sup> day of December 2013, I served or caused to be served a copy of Plaintiff's Complaint, Emergency Motion for Preliminary Injunction, and supporting memorandum of law to the following counsel via email and first-class mail:

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Rhonda Brownstein