

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

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C.T., a minor, by his father, K.T.

Plaintiff

v.

NEW CASTLE AREA SCHOOL DISTRICT

Defendant

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C.A. No. 2015 -

**COMPLAINT**

**PRELIMINARY STATEMENT**

This lawsuit is filed on behalf of C.T., an 8<sup>th</sup>-grade honor student in dependent care who qualifies as homeless under the McKinney-Vento Homeless Assistance Act. 42 U.S.C. §§ 11431-11435. Pursuant to this federal law, students like C.T. who are placed in a youth shelter while awaiting foster care placement are entitled to immediate enrollment in the local public school where they are living and equal access to the full range of educational opportunities provided to students who reside in the local school district. Moreover, under state law, students like C.T. who live in a facility for the care of children are entitled to attend the local public school where the facility is located. See 24 P.S. § 13-1306.

In contravention of these federal protections and Pennsylvania state law, New Castle Area School District has denied C.T.—and other similarly situated students—

equal access to its public schools. As a result, C.T. and other children placed at Krause Youth Center are automatically placed in a segregated substandard “shelter school” program within the Krause facility where students receive only three hours of education a day. Upon information and belief, this one-room “shelter school” at Krause serves up to 15 students ranging in age from 10-18 years, is staffed by a single teacher certified in grades K-6<sup>th</sup> only, and is not licensed, monitored or overseen by any state or local education agency. C.T. has languished in this shelter school for over two months and has been unable to complete grade-level assignments provided by his prior school due to the absence of academic instruction,

This is precisely what the McKinney-Vento Act was designed to prevent by ensuring equal access to local public schools, ensuring school stability and prohibiting the segregation of students based on their homelessness status. We file this Complaint today seeking declaratory judgment and injunctive relief directing the New Castle Area School District to revise its policies and practices to fully comply with its obligations under both the McKinney-Vento Act and state law by providing immediate and equal access to New Castle Area School District public schools for C.T. and other similarly-situated students residing at Krause Youth Center. We also request that C.T. receive educational services from New Castle over the summer to make up for the over two months of lost academic instruction to enable C.T. to stay on track to participate in a rigorous 9<sup>th</sup> grade curriculum in the Fall wherever C.T. attends school.

At this time, it appears that C.T.’s placement at Krause may continue indefinitely. Court intervention is needed to address the continuing denial of C.T.’s educational rights as described herein. C.T.’s placement at Krause has also resulted in severe limitations on

his liberty and rights as set forth in an Emergency Petition for Writ of Habeas Corpus filed in a related case before this Court captioned *K.T., on behalf of C.T. v. Lawrence County Children and Youth Services et al.*

### **JURISDICTION AND VENUE**

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 claims set forth herein occurred in the Western District of Pennsylvania, where named Plaintiff resides.
3. There is an actual controversy between the Plaintiff and Defendant within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201.

### **PARTIES**

4. C.T. is a 14-year-old, 8<sup>th</sup> Grade honor student of compulsory school age who currently resides at Krause Youth Center, a/k/a Krause Youth Shelter located at 430 Court St., New Castle, Lawrence County, PA 16101. As long as C.T. remains in the dependency system, he may be placed at Krause again in the future.
5. K.T. is C.T.'s father ("K.T.") and brings this lawsuit on behalf of his son. His parental rights have never been terminated and he maintains partial custody.
6. Defendant New Castle Area School District ("New Castle" or "District") is a Local Educational Agency ("LEA") within the meaning of the McKinney-Vento Act. In compliance with federal and state laws, the District establishes local rules and

practices concerning the enrollment, transportation and education of children within its district, including children experiencing homelessness and those residing in children's institutions.

### **FACTUAL BACKGROUND**

7. C.T. first entered the dependency system on April 3, 2015 and was immediately placed at Krause Youth Center, a/k/a Krause Youth Shelter, by Lawrence County Children & Youth Services pursuant to an emergency ex parte order.
8. On April 6, 2015, Judge Dominic Motto issued a Shelter Care order placing C.T. at Krause Youth Shelter. A copy of the court's April 6<sup>th</sup> order is attached hereto as Exhibit "A".
9. The Court's Order did not direct that C.T. be educated at the Krause facility and did not address C.T.'s educational needs in any way.
10. Prior to this placement, C.T. resided with his father for the preceding 17 months from November 2013 to April 3, 2015.
11. Prior to this placement, C.T. attended Wendover Middle School in Hempfield Area School District, which is located approximately one and a half hours away from Krause.

#### ***Krause Youth Center***

12. On its website, Krause Youth Center is described in this manner: "*a shelter and residential program, Krause houses youth who have been removed from their home due to abuse, neglect or out of control behaviors.*"



13. Krause has a maximum capacity for 15 dependent or delinquent children and youth. The facility is contracted to hold four spaces for delinquent youth and the number of dependent children and youth placed there fluctuates, as does the average length of stay.
14. Upon information and belief, all children and youth placed at Krause, whether dependent or delinquent, are housed in the same area, two to a room. The facility is completely locked and alarmed for all residents and youth are prohibited from moving within the building or having personal items, including books.
15. Upon information and belief, youth in the shelter at Krause may “earn Krause dollars” each week that may be used to earn extra shower time or extra food.

***Krause’s Shelter School***

16. When C.T.’s father visited his son at Krause on Tuesday April 7<sup>th</sup>, C.T. had not yet been placed in any school or educational program.
17. On that same date, C.T. was disenrolled from his prior school in Hempfield Area School District.
18. C.T. was disenrolled because he was now living one and a half hours from his prior school and continuing to be attend that school was not feasible.
19. C.T. was first placed in Krause’s shelter school on or about April 7<sup>th</sup>.
20. Upon information and belief, Krause personnel did not test or assess C.T. or otherwise identify his educational needs to develop an appropriate educational program.

21. C.T.'s placement in this shelter school was made by Krause Youth Center staff and appeared to be undertaken as a matter of common practice applicable to all children placed in the Krause shelter.
22. At the time of his placement in the shelter school, there was no acknowledgement of C.T.'s status as homeless under the McKinney-Vento Act.
23. At that time of his placement in the shelter school, there was no discussion of C.T.'s rights as a student experiencing homelessness to immediately enroll in the local public schools of New Castle Area School District and the issue was not raised by Krause Youth Center, Lawrence County Children & Youth Services, the Guardian Ad Litem for C.T., other attorneys, or by the court.
24. Upon information and belief, New Castle Area School District has a practice of refusing or failing to enroll students experiencing homelessness and other students placed in the Krause Youth Center who are eligible to attend the local schools of the District.
25. K.T. had no knowledge of the McKinney-Vento Act when his son was placed at Krause and he did not know that his son qualified for immediate enrollment in New Castle Area School District.
26. There was no discussion by the Krause Youth Center, Lawrence County Children & Youth Services, the Guardian Ad Litem for C.T., other family court attorneys, or the Court regarding C.T.'s right to attend the local public schools of New Castle Area School District based on C.T.'s status as a child residing in a children's institution pursuant to 24 P.S. 13-1306 of the Pennsylvania School Code.

27. K.T. and other family members were not apprised of this option and K.T. assumed that C.T. must be educated at Krause since C.T.'s prior school was located an hour and a half away.
28. While attending his prior middle school in Hempfield Area School District, C.T. had been an honor student enrolled in the following classes: Honors Math (Algebra I); Advanced Science (Biology); Honors English; Spanish I; Art; and Band.
29. All of C.T.'s teachers at Wendover Middle School in Hempfield were appropriately certified and his middle school offered up-to-date technology, including smart boards, 3-D printers, new laboratories and a library. The school maintained a full sports program and offered a range of extra-curricular activities.
30. C.T. received high grades in all subjects and participated in band, playing both trumpet and tuba. He also served as the school's mascot.
31. At Wendover, C.T. received 7.5 hours of instruction per day or the equivalent of a minimum of 180 days of instruction and a minimum of 990 hours of instruction for students in grades 7-12 in accordance with applicable state law requirements. See 22 Pa. Code § 11.3.
32. In contrast to the Wendover Middle School in Hempfield Area School District, the shelter school consists of one classroom for all students in multiple grade levels where students can range in age from 10-18 years.
33. The shelter school program offers only three hours of "instruction" per day.
34. Upon information and belief, there is no structured curriculum aligned with a student's grade level, no gym, no labs, no foreign language, etc.

35. Upon information and belief, the program relies predominantly on worksheets and the work presented to students is far below grade level.
36. Upon information and belief, the shelter school program does not conform to the rigorous requirements of academic standards set forth in Chapter 4, nor does it conform with the Pennsylvania Common Core Standards, which were adopted in March 2014 by the Pennsylvania State Board of Education, with approval from the General Assembly. See 22 Pa. Code § 4.12.
37. Upon information and belief, the sole teacher in the classroom is certified to teach K-6<sup>th</sup> grade only, although the majority of students in the shelter school are in 7<sup>th</sup> grade and above.
38. Upon information and belief, other children in the Krause shelter are similarly assigned to this one-size-fits-all shelter school program, which is widely acknowledged to be wholly inadequate to meet the educational needs of children and youth placed at Krause.
39. C.T.'s educational needs as an 8<sup>th</sup> grade honor student have been unmet in the shelter school at Krause.
40. C.T. has been deprived of a host of educational opportunities suitable for a student of his age and ability.
41. The lessons and course materials provided to C.T. in the Krause shelter school were wholly inadequate and below C.T.'s age and academic achievements to date.
42. On one occasion, Krause staff attempted to have K.T. sign an agreement by which K.T. would agree to a lesser standard of education for C.T., or no education at all for his son.



***K.T. Raises Concerns Regarding His Son's Inadequate Education At Krause***

43. On or about April 15, in response to concerns pressed by K.T. regarding his son's failure to receive an education, C.T.'s *Guardian Ad Litem* Larry Puntureri contacted Hempfield Area School District requesting that C.T.'s prior teachers send C.T. schoolwork and tests. He suggested that assignments could be sent on a weekly basis and administered by Krause Youth Center staff.
44. On April 17, a representative of Hempfield School District explained to K.T. that C.T. had been disenrolled from that District on April 7<sup>th</sup> and while the school staff was very supportive of C.T., they were no longer responsible for his education since he was placed so far away from his prior school.
45. From mid-April and continuing until May 1, 2015, teachers at Hempfield Area School District were instructed by Hempfield school administrators not to provide homework assignments to C.T. because he was no longer a student in the District.
46. On or about May 1, 2015, K.T. met with Jeff Wolfe, Clinical Director of Cray, Youth and Families, the private provider which oversees the programs at Krause. K.T. also met with Sean Scott, the on-site manager of the program at Krause to discuss his son's needs and educational program. At that time, he was told that C.T. would go to school every day for three hours and while the program would not challenge him academically, it would be "adequate enough" by state standards.
47. On or about May 1, 2015, in response to inquiries from K.T., Darci Markovic of Hempfield School District informed K.T. that beginning on that date, C.T.'s teachers could provide homework assignments for C.T. which would be sent through C.T.'s friends and transported from Hempfield to Krause Youth Center by

K.T. She confirmed that the Krause facility would be responsible for providing teachers for C.T. as this was not Hempfield's responsibility.

48. On May 13, 2015, in response to concerns raised about C.T.'s lack of education, Judge Dominick Motto issued an order finding that C.T. was eligible for the protections of the McKinney-Vento Act as a homeless student. The Court directed Hempfield Area School District to "insure the timely delivery of the child's educational assignments" but expressly mandated that "representatives of Krause Youth Shelter shall provide individualized instruction for and on behalf of the child." A copy of the Court's Order is attached hereto as Exhibit "B."
49. In response to the Court's Order, C.T. was then re-enrolled in Hempfield Area School District on May 15, 2015 and received homework assignments and tests from Hempfield Area School District which were delivered to Krause by his C.T.'s father, K.T.
50. However, Krause Youth Shelter did not provide individualized instruction for C.T. or arrange for additional instructors or tutors to address C.T.'s needs. Essentially, C.T. was expected to teach himself the substance of the underlying coursework. Because C.T. has never received instruction, C.T. struggled to complete assigned homework and tests in Science, Math and Spanish.

***Role of New Castle Area School District***

51. Upon information and belief, it is common knowledge among child welfare professionals and others that New Castle Area School District does not allow children from the Krause Youth Center to attend their local public schools upon their placement at Krause. Although there may be some students who remain at

Krause for longer than one-year who may be permitted to attend school in the District.

52. On May 1<sup>st</sup>, C.T.'s grandfather, D.T. ("D.T.") contacted New Castle Area School District Superintendent John Sarandrea regarding his grandson's lack of education while at the Krause facility.
53. Through a phone call and subsequent email confirmation, Superintendent Sarandrea informed C.T.'s grandfather D.T. that the New Castle Area School District has no involvement with the education process for students at Krause Youth Center unless a student has disabilities and is eligible for special education services.
54. At the time of this inquiry, the Superintendent did not inform D.T. of C.T.'s right to immediate enrollment under the McKinney-Vento Act, nor did he apprise him of C.T.'s right to be educated in New Castle under Pennsylvania state law, 24 P.S. 13-1306, by virtue of C.T.'s placement in a children's institution.
55. Instead, the Superintendent informed C.T.'s grandfather that the Krause Youth Center has its own "school system" which, according to Superintendent Sarandrea was licensed by the Pennsylvania Department of Education and therefore residents of the Krause Youth Center are not sent to the New Castle Area School District to be educated.
56. Superintendent Sarandrea also told C.T.'s grandfather that the New Castle Area School District 8<sup>th</sup> grade Honors curriculum consisted of 7 hours and 15 minutes of class time daily, including Algebra I, Biology I, Honors English, Honors Science and Foreign Language -- none of which is offered in the shelter program at the Krause Youth Shelter.

57. On May 4, 2015, in response to an email inquiry from D.T., David Volkman, Executive Assistant to the Deputy Secretary of the Pennsylvania Department of Education initiated an email exchange with D.T. regarding D.T.'s verbal exchanges with the New Castle Area School District. D.T. underscored the deficiencies in the shelter school program and asked that Mr. Volkman consider the significant difference between the instruction hours offered at C.T.'s prior school and the three hours of instruction time offered at the Krause shelter school.
58. On May 9, 2015, D.T. sent an email to Mr. Volkman confirming D.T.'s understanding, based on their May 8, 2015 conversation, that: (1) Krause Youth Center is operating a shelter school program without a license from the Pennsylvania Department of Education, and that the shelter program receives no education funding from the Pennsylvania Department of Education; (2) Krause Youth Center is not a Local Education Agency; and (3) the private provider that operates Krause also operates a separate Alternative Education for Disruptive Youth (AEDY) program for which it receives separate education funding.
59. Through a subsequent conversation with D.T. on May 12, 2015, Mr. Volkman confirmed that Krause Youth Center is not licensed by PDE, but that it is licensed as a shelter. At that time, Mr. Volkman specifically explained that the New Castle Area School District had an obligation to provide education for C.T. and that he was eligible to attend the local public schools of the District under 24 P.S. § 13-1306.
60. On May 21<sup>st</sup>, Mr. Volkman recommended that D.T. contact Dr. Barbara Marin, the Hempfield Area School District's Superintendent to ask her to send instructors to



the Krause Youth Center located one and half hours away. Dr. Marin subsequently informed D.T. that the district had sent a teacher and a counselor to Krause Youth Center on one occasion in order for C.T. to take the Keystone Math examination. She also informed D.T. that while C.T.'s father had already brought homework assignments and books to C.T. at Krause, Dr. Marin did not know how the District would get those assignments back.

61. On May 22, 2015, in response to D.T.'s inquiry regarding C.T.'s grade-level promotion status, Mr. Volkman sent an email stating that promotions to the next grade level are a matter of local policy and would have to be addressed by the local school district.

***Harm to C.T.***

62. The Court's May 13<sup>th</sup> order directing Hempfield to provide assignments and Krause personnel to provide individualized instruction did not confer any significant educational benefit. In fact, since the beginning of his placement at Krause to the present, C.T. has received a total of one hour of instruction from a qualified teacher, in the form of a Spanish language teacher who arrived at Krause late in the afternoon of May 27<sup>th</sup>, 2015, the deadline set by Hempfield Area School district for the timely completion of C.T.'s assignments. This teacher was not from the New Castle School District, but rather came from New Wilmington School District (a neighboring school district). She did not offer instruction, but rather met with C.T. to answer his questions relating to his Spanish homework.
63. C.T. has missed many hours of academic instruction over the last two months while in the shelter school at Krause. He has also missed multiple class projects and

- exams – all of which may affect his final grades and possibly preclude his graduation from 8<sup>th</sup> grade or participation in a rigorous 9<sup>th</sup> grade curriculum.
64. By May 27<sup>th</sup>, the last day for C.T. to finish assignments for Hempfield, he completed what he could. He never completed the Science exam because he did not have the materials he needed. He did not complete the math assignments.
65. While he participated in Keystone testing in math while at the shelter, it is unclear whether he completed the required test. K.T. fears that he may have failed this high-stakes exam, which would require him to obtain remediation and possibly preclude him from taking advanced courses in the 9<sup>th</sup> grade and beyond.
66. C.T.'s dearth of foreign language instruction may have the consequence of precluding C.T. from taking certain programs in high school. This will certainly impact his ability to complete such programs.

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

67. 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 Act 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.

68. The Act states that children and youth who “lack a fixed, regular, and adequate nighttime residence” shall be considered homeless and are entitled to the Act’s protections. 42 U.S.C. § 11434a(2)(A).
69. This definition expressly includes children and youth who are living in “shelters” and those who are “awaiting foster care placement” is 42 U.S.C.A § 11434a (2) (B)(i).
70. The phrase “awaiting foster care placement” has been defined by the Pennsylvania Department of Education as “children who are placed in shelters, emergency foster care, transitional foster care or respite care.” See “Education for Homeless Youth” Basic Education Circular (hereinafter “BEC” or “Guidance”).<sup>1</sup>
71. 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).
72. 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).

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<sup>1</sup> This BEC is 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)

73. The Act provides in part that a school district shall, according to the child's "best interest," continue the child's or youth's education in the school of origin or immediately enroll the child in a new school 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).
74. In determining "best interest," the 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). For example, if the school of origin is located far away from a child's foster care placement, requiring the child to remain in the same school would not be feasible or in the child's best interest.
75. 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).
76. 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).
77. 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).
78. 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.

79. 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).

80. States like Pennsylvania that receive McKinney-Vento Act assistance are expressly prohibited from segregating homeless students in separate schools, separate programs within schools, or separate settings within schools, with limited exceptions that do not apply here. See 42 U.S.C. § 11432 (e)(3)<sup>2</sup>

81. The Act also provides that LEAs "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).

82. In addition, state and local educational agencies are specifically required to proactively adopt policies and practices to ensure that homeless children and youth are not segregated on the basis of their status as homeless or stigmatized. See 42 U.S.C. § 11432 (g)(1)(J)(i). Notably, the 2001 reauthorization replaced the term "isolated" in the previous statute with the term "segregated on the basis of their status as homeless."

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2 States that have a separate school operated in FY 2000 in a "covered county" are excluded from the prohibition, and are eligible to receive McKinney funds provided that the schools, and the LEAs that the homeless children enrolled in the separate schools are entitled to attend, meet the requirements set forth in this section (Covered counties are Orange County, CA; San Diego County, CA; San Joaquin County, CA; and Maricopa County, AZ).

83. In fact, LEA applications for McKinney-Vento Act funds must include a description of policies and procedures, consistent with the prohibition on segregation that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and youth 42 U.S.C. § 11432, Sec. 723(b)(5).
84. Services provided with McKinney-Vento act funds must not replace the regular academic program and must be designed to expand upon or improve services provided as part of the school's regular academic program Sec. 723(a)(3).
85. These requirements are reflected in federal non-regulatory guidance issued by the U.S. Department of Education in 2004 which states in part:

***E-1. May States or districts segregate homeless children and youth in separate schools or in separate programs within a school?***

*No. Homelessness alone is not sufficient reason to separate students from the mainstream school environment. SEAs and LEAs must adopt policies and practices to ensure that students are not segregated or stigmatized on the basis of their status as homeless. Services provided with McKinney-Vento Act funds must not replace the regular academic program and must be designed to expand upon or improve services provided as part of the school's regular academic program.*

- If a State receives funds under the McKinney-Vento program, every district in that State – whether or not it receives a McKinney-Vento subgrant from its SEA – is prohibited from segregating homeless students in separate schools or in separate programs within schools, based on the child's or youth's status as homeless.*

- Schools may not provide services with McKinney-Vento funds on school grounds in settings that segregate homeless children and youth from other children and youth [except as necessary for short periods of time for health and safety emergencies or to provide temporary, special, and supplementary services to meet the unique needs of homeless children and youth].*

**E-2. May a district educate homeless children at an off-site facility, such as a shelter?**

*No. Homeless children and youth must be educated as part of a school's regular academic program. Services must be provided to homeless children and youth through programs and mechanisms that integrate homeless children and youth with their non-homeless counterparts. Services provided with McKinney-Vento funds must expand upon or improve services provided as part of the regular school program.*

*See EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM  
TITLE VII-B OF THE MCKINNEY-VENTO HOMELESS ASSISTANCE ACT, July  
2004 available at  
<https://www2.ed.gov/programs/homeless/guidance.pdf>*

86. 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 LEAs must 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).
87. 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.<sup>3</sup>
88. 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 advise families of student rights and ensure immediate enrollment. In accordance with the

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<sup>3</sup> 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](http://www.portal.state.pa.us/portal/server.pt/community/homeless_children's_initiative_projects/7491/overview/508546)



express provisions of the Act and state guidance, 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).

89. In this case, C.T. and his father K.T. were never apprised of their rights under the McKinney-Vento Act by either the District or the State.
90. As a result of Defendant District's and the State's policies and practices, Plaintiff C.T., and others like him, have been denied the protections and entitlements of the McKinney-Vento Act, including: the right to be immediately enrolled in and educated by New Castle Area School District for the duration of homelessness and for the remainder of the academic year if C.T. is permanently housed outside the District; and the right to equal access to public schools and to be treated in the same manner as residents of the District.
91. Plaintiff has no adequate remedy at law.

## **COUNT I**

### **VIOLATIONS OF THE MCKINNEY-VENTO ACT**

92. Plaintiffs hereby repeat and incorporate by reference each of the allegations in the paragraphs set forth above.
93. 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. Refusing to educate and immediately enroll C.T. in New Castle Area School District;



- b. Failing to apprise the family of their rights under the McKinney-Vento Act, 42 U.S.C. § 11432(g)(3)(B)(ii) and 42 U.S.C. § 11432(e)(3)(E);
- c. 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, including ensuring 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).
- d. Failing to ensure the enrollment and attendance of homeless children and youths who are not currently attending local public schools in accordance with the Act. 42 U.S.C. § 11432(g)(7)(C).

## **COUNT II:**

### **VIOLATION OF 24 P.S. § 13-1306**

- 94. The preceding paragraphs are incorporated as if fully set forth herein.
- 95. The Krause Youth Center is a children's institution within the meaning of 24 P.S. § 13-1306, inasmuch as it is a home or institution for the care of children.
- 96. As a resident of Krause Youth Center, C.T. is entitled to attend public school in the district where the residence is located in accordance with 24 P.S. § 13-1306 which states in relevant part:

*The board of school directors of any school district in which there is located any orphan asylum, home for the friendless, children's home, or other institution for the care or training of orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district....*

24 P.S. § 13-1306(a).

97. Regulations promulgated to implement 24 P.S. § 13-1306 require nonresident children living in facilities to be treated in the same manner as resident students with respect to enrollment. 22 PA CODE §§ 11.11(c), 11.18(d).
98. By preventing Plaintiff from attending public school in the district, New Castle Area School District violated Plaintiffs' rights under §13-1306 and its implementing regulations, 22 PA. CODE §§ 11.11(c) and 11.18(d).

**COUNT III: VIOLATION OF LOCAL AGENCY LAW**  
**2 Pa. Cons. Stat. §§ 551-55**

99. The preceding paragraphs are incorporated as if fully set forth herein.
100. Under Local Agency Law a "final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities, or obligations of any or all of the parties to the proceeding" is an adjudication. An adjudication is valid only if the parties have been afforded reasonable notice, a hearing, and an opportunity to be heard. An adjudication must be in writing, contain findings, and be served on all parties. 2 PA. CONS. STAT. ANN. §§ 101, 553, 555.
101. By depriving Plaintiff of his statutorily protected property right to enroll in public school under 24 P.S. §1306 in the absence of providing any written decision or way of challenging the determination, the District violated 2 PA. CONS. STAT. ANN. §§

551-55 by rendering an adjudicatory decision without affording reasonable notice, a hearing and an opportunity to be heard.

**RELIEF REQUESTED**

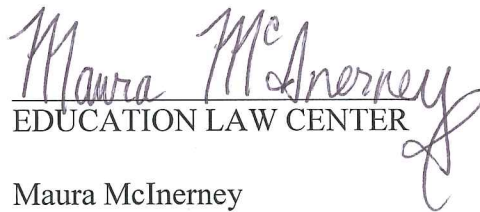
**WHEREFORE**, C.T. requests the following relief:

- a. Issuance of a declaratory judgment against Defendant declaring that the District violated the rights of Plaintiff as set forth in this Complaint.
- b. Issuance of an injunction directing New Castle Area School District to:
  - a. immediately enroll C.T. in the District's regular public schools in accordance with the provisions of the McKinney-Vento Act. 42 U.S.C. § 11432(e)(3)(E), including ensuring full access to the range of educational programs and opportunities to which he is legally entitled in accordance with applicable law;
  - b. maintain enrollment of Plaintiff C.T. in the District for the duration of homelessness, and in a manner consistent with the terms of the McKinney-Vento Act. See 42 U.S.C. § 11432(g)(3)(B)(i).
  - c. provide Plaintiff C.T. with all other procedural and substantive protections of the Act.
  - d. provide educational services to C.T. over the summer to make up for lost instruction time and prepare C.T. for a rigorous 9<sup>th</sup> grade curriculum as a equitable remedy;
  - e. cease and desist from illegal enrollment policies and practices and issue new District policies to ensure that all students residing in

Krause Youth Center have equal opportunities to participate in public schools of the District.

- f. develop policies and procedures to ensure that homeless students and their families, including C.T., receive required notice of their rights under the Act, including a written explanation of the basis of any decision to refuse to enroll a student, notice of the right to appeal and appeal process, and assistance in filing an appeal.
- g. Award to Plaintiffs attorneys' fees and costs; and
- h. Award further relief as the Court may deem appropriate

Attorneys for Plaintiff

  
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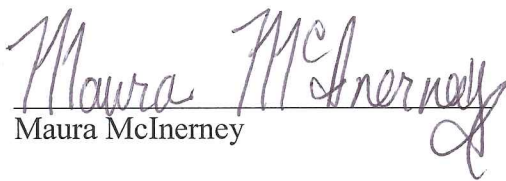


**CERTIFICATE OF SERVICE**

I, Maura McInerney hereby certify that on this 4<sup>th</sup> day of June 2015, I served or caused to be served a copy of Plaintiff's Complaint to the following counsel via email and first-class mail:

Charles P. Sapienza  
2625 Wilmington Road  
New Castle, PA 16105

*Counsel for Defendant New Castle Area School District*

  
Maura McInerney