

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

J.S., C.S., and A.S., minors,
by and through their mother,
S.S.

Plaintiffs,

v.

RED CLAY CONSOLIDATED
SCHOOL DISTRICT,

Defendant.

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C.A. No. _____

VERIFIED COMPLAINT

INTRODUCTION

1. Plaintiffs J.S., C.S. and A.S. are three middle school students who were displaced from their home because their mother, "S.S.", with whom they were residing, had to take medical leave from her job and could not afford housing. The children are temporarily staying in a three-bedroom row home with their biological father, three other adults and a child of one of those adults. The children were enrolled in the Red Clay Consolidated School District ("Red Clay") and attended Skyline Middle School at the beginning of this school year. Their temporary housing is outside Red Clay, in the Christina School District. They

expect to resume permanent residence in Red Clay later this fall when their mother's medical leave concludes. Therefore, in an attempt to provide continuity in their education, S.S. sought to maintain their enrollment in Red Clay. Red Clay officials told her that the children could attend Skyline Middle School, but that Red Clay would not provide transportation. The children need transportation assistance from Red Clay in order to attend school in Red Clay. Red Clay will not provide the assistance even though it is obligated to do so for the entire period of displacement under the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C. §§ 11431-11435 ("McKinney-Vento Act" or "the Act").

2. The Act provides federal funding and places requirements on local school districts to assist children living in temporary shared housing as a result of economic hardship. Not only has Red Clay made clear that it will not provide the transportation assistance required by the Act during the entire period of displacement, but it has also failed to comply with the Act's requirements for temporary assistance during the pendency of a dispute over the Act's application and it has failed to provide the written explanation for its decision that is required by the Act.

3. Plaintiffs seek temporary, preliminary, and permanent injunctive relief requiring Red Clay to comply with the Act and vindicating their rights to continued enrollment in the school at which they were enrolled at the time of their displacement and the transportation assistance they need during the pendency of their temporary housing. They also seek monetary relief for the expenses and injuries incurred as a result of Red Clay's misfeasance.

JURISDICTION AND VENUE

4. This action seeks to vindicate rights protected by federal law under 42 U.S.C. § 11432 and is brought under 42 U.S.C. §1983. The Court has jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1342. This Court also has jurisdiction pursuant to 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

5. Venue is proper pursuant to 28 U.S.C. 1391(a)(1) and (a)(2).

PARTIES

6. J.S. is a twelve-year-old sixth grader. J.S. lacks a permanent residence and is temporarily housed in Wilmington, DE. He is represented herein by his mother, S.S.

7. C.S. is a thirteen-year-old seventh grader. C.S. lacks a permanent residence and is temporarily housed in Wilmington, DE. She is represented by her

mother, S.S.

8. A.S. is a fourteen-year-old eighth grader. A.S. lacks a permanent residence and is temporarily housed in Wilmington, DE. He is represented by his mother, S.S.

9. Defendant Red Clay is a school district of the State of Delaware established pursuant to 14 *Del. C.*, ch. 10 and is a political subdivision of the State of Delaware. Red Clay maintains its administrative office at 1502 Spruce Ave., Wilmington, DE 19805. At all times material hereto it has been acting under color of state law.

FACTS

Plaintiffs' Housing Situation

10. Prior to September 1, 2015 J.S., C.S. and A.S. resided with their mother on Faulkland Road in Wilmington, Delaware. Their mother's rental of that property ended on September 1, 2015, preventing them from residing there, because she was unable to continue paying the rent.

11. In May 2015, S. S. was advised by her doctor to take a leave of absence from her job during her pregnancy because of medical complications. She did so, and made a claim for paid medical leave. Her employer, Comcast, disputed

that claim and the dispute (which is still ongoing) continued. As a result, the last month for which S.S. was able to pay rent was August 2015.

12. Recognizing that she would be unable to pay her September rent, S.S. made arrangements for temporary housing for the children and herself, and sought to keep the children in the school they would have been attending but for her medical disability.

13. As the result of their residing on Faulkland Road, the children attended school in the Red Clay School District. J.S. attended the Brandywine Springs School (an elementary school), and A.S. and C.S. both attended Stanton Middle School.

14. Red Clay implemented feeder pattern changes for the 2015-16 school year. Under the new feeder pattern, Red Clay enrolled J.S., C.S. and A.S. in Skyline Middle School for the 2015-2016 school year. Red Clay would be providing all three children with transportation to Skyline Middle School if they were still living on Faulkland Road.

15. S.S. arranged to reside with relatives in Maryland for the final three months of her medical leave. Not wanting to disrupt her children's education, S.S. arranged to have them stay temporarily with her ex-husband in Wilmington so they could attend Skyline, which many of their classmates from the 2014-15 attend. So

that the children would not have to leave Skyline, she plans to resume living in the Skyline feeder pattern once until she resolves the dispute over her paid leave or is able to return to work after her pregnancy and can again pay rent. That should occur this fall, since she has (unpaid) leave from her employer until November 18, 2015, and her physician has told her she will be released to return to work at that time.

16. As the result of being temporarily placed with their father, J.S., C.S. and A.S. were living with four adults and two other children in a three-bedroom home in the Christina School District. One of the other children was told to leave, so there are now eight people living in the home. J.S., C.S. and A.S. share one room. They sleep on two air mattresses and one regular mattress on the floor. Their only immediate family member in the home is their father.

The McKinney-Vento Homeless Education Assistance Improvements Act of 2001

17. Under the McKinney-Vento Act, children are deemed homeless if they “are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason.” 42 U.S.C. § 11434a(2)(A) and (B)(i).

18. Plaintiffs qualify as “homeless children” under 42 U.S.C. § 11434a(2)(B)(i) because of the nature of their temporary housing situation.

19. According to the U.S. Department of Education, among the goals of the Act is to avoid children having to change schools when they are displaced by economic hardship because changing schools significantly impedes a student's academic and social growth. U.S. Department of Education, *Education for Homeless Children and Youth Program: Title VII-B of the McKinney-Vento Homeless Assistance Act, amended by the No Child Left Behind Act of 2001, Non-regulatory guidance*, at 14 (July 2004, available at <http://www2.ed.gov/programs/homeless/guidance.pdf>).

20. To this end, the Act requires the local educational agency, such as a school district, that was serving a homeless child prior to the child's displacement to either facilitate continuing the child's education in the "school of origin" or enroll the child in "any public school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend." The local educational agency must select which action to take based on an assessment of the child's best interests. 42 U.S.C. § 11432(g)(3)(A).

21. The Act requires that in assessing best interests "the local educational agency 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).

22. The Act defines “school of origin” as “the school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled.” 42 U.S.C. § 11432(g)(3)(G).

23. The Act requires that “If a dispute arises over school selection or enrollment in a school the child or youth shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute.” 42 U.S.C. § 11432(g)(3)(E)(i).

24. The school district is also required to “provide a written explanation, including a statement regarding the right to appeal under subparagraph (E), to the homeless child's or youth's parent or guardian, if the local educational agency sends such child or youth to a school other than the school of origin or a school requested by the parent or guardian.” 42 U.S.C. § 11432(g)(3)(B)(ii).

25. The Act provides that the homeless child “shall be provided services comparable to services offered to other students in the school selected [pursuant to the best interests analysis], including . . . Transportation services.” 42 U.S.C. § 11432(g)(4)(A).

26. The Act requires states to promulgate “A description of procedures for the prompt resolution of disputes regarding the educational placement of homeless children and youths.” Delaware did so. 14 Del. Admin. Code § 901 § 4.2 requires

local school districts to provide parents with specific information regarding disputes over enrollment, including the form needed to initiate the dispute resolution process, notice of appeal rights and “[n]otice of the right to enroll immediately in the school of choice pending resolution of the dispute”.

Red Clay’s Denial of Transportation Assistance and Denial that Skyline is the School of Origin

27. The children’s temporary housing is approximately eight miles from Skyline Middle School, and it was not feasible for the children to attend on a regular basis without transportation assistance, so S.S. asked Red Clay to provide that assistance. As detailed below, she repeatedly requested Red Clay’s assistance under the Act, but Red Clay refused to provide it.

28. On August 19, 2015, she contacted Christine Miller, the Homeless Education Liaison for Red Clay, and asked for the transportation assistance her children need to attend Skyline Middle School regularly. During a telephone discussion on that date, Ms. Miller confirmed that the children were enrolled at Skyline, but stated that transportation would not be provided.

29. Ms. Miller told S.S. that Red Clay would not provide assistance for children in “doubled up” housing situations. That was the first of several different justifications for Red Clay’s actions advanced by Red Clay’s representatives that are precluded by the McKinney Vento Act. The applicable U.S. Department of

Education guidance expressly identifies so-called “doubled-up” housing situations as covered by the Act. *See Education for Homeless Children and Youth Program: Title VII-B of the McKinney-Vento Homeless Assistance Act, supra*, at 2.

30. S.S. also contacted other Red Clay officials. Approximately a week after first speaking with Ms. Miller, she spoke with the principal of Skyline, who confirmed that the children were enrolled there. He also told S.S. the Skyline Middle School homeroom number for each of the three children and gave her paperwork describing the clothing she was to purchase so that her children would be in compliance with the school dress code, information about extracurricular activities for which the children could sign up, a list of required supplies for each of her children, a Skyline uniform order form, and the like.

31. S.S. also spoke with Michael Simmons, a Red Clay official whom she was told was Ms. Miller’s supervisor. On August 27, 2015 he told her that the children should enroll and attend Skyline Middle School while the conflict was resolved. Mr. Simmons said that no transportation assistance would be provided in the beginning of the year while he worked on the matter, but that any absences while he was doing that would be excused.

32. With transportation provided by S.S. and by DART bus, each of the three children attended Skyline Middle School on at least one occasion between

August 31, 2015 and September 3, 2015. They did not attend any other school during this period.

33. On August 31, 2015, S.S. made a written request for transportation assistance by email to Mr. Simmons. On September 2, 2015, S.S. had a conference call with Ms. Miller and Mr. Simmons. They stated that the children were not entitled to transportation assistance. Changing the explanation from Ms. Simmons' previous statement that children in shared housing are not entitled to transportation assistance, they now said that Skyline Middle was not the "school of origin."

34. The assertion that Skyline Middle was not the "school of origin" under McKinney-Vento was incorrect.

35. At the time of and after S.S.'s request for assistance, each child was enrolled in Red Clay at Skyline, as recognized by both the school's principal and Ms. Simmons, as set forth above, as shown by Red Clay documents given to S.S. by the principal and the District, and as demonstrated conclusively by Red Clay's actions with regard to the children's attendance at Skyline. When the children were able to get there and attend class at the beginning of the school year, their names were read out from the class roll when attendance was taken. When they did not attend during the early days of the school year S.S. received automated calls from Red Clay saying that they had been absent.

36. As a result of the foregoing, Skyline is Plaintiffs' "school of origin" under 42 U.S.C. § 11432(g)(3)(G).

37. Red Clay has refused to provide transportation assistance during the pendency of this dispute as required by 42 U.S.C. § 11432(g)(3)(E)(i).

38. Red Clay never provided the written explanation of its refusal to enroll and transport the children to Skyline Middle School required by 42 U.S.C. § 11432(g)(3)(B)(ii).

39. Red Clay never provided S.S. with the forms needed to initiate the dispute resolution process, notice of her appeal rights and "[n]otice of the right to enroll immediately in the school of choice pending resolution of the dispute," 14 Del. Admin. Code 901 §4.2, as it was required to do by regulations the state adopted in order to comply the Act.

40. On information and belief, Red Clay has never performed a best interests analysis for Plaintiffs under U.S.C. § 11432(g)(3).

41. Because of Red Clay's denial of transportation assistance, the children are attending a middle school in the Christina School District.

42. The children wish to return to Skyline because that is where many of their classmates from the 2014-15 school year attend. They expect to reside in the Skyline feeder pattern and attend the school when S.S. resumes working, so

allowing them to return now, only a few weeks after they last attended Skyline, will end the educational discontinuity to which they have been subjected.

43. The children cannot attend school in Red Clay on a regular basis without transportation assistance from Red Clay.

44. As a result of Red Clay's actions, Plaintiffs have been unable to attend Skyline Middle School.

45. On the day after the September 2, 2015 conference call in which Red Clay again denied transportation, S.S. contacted the ACLU of Delaware for assistance.

46. Since that time, as her representative and counsel for Red Clay have engaged in communication in an effort to resolve this matter without the need for suit, Red Clay advanced additional, different justifications for its refusal to provide transportation. On September 11, 2015 its counsel asserted that the McKinney-Vento Act was not implicated because the children the children were living with their father. (A 2007 Family Court order gives the parents joint custody and directs that primary residency is to be with S.S.) That temporary location at the home their father shares with others does not remove them from the Act's definition of homeless, and, in fact, brings them within it, since it resulted from the loss of their prior home due to economic hardship. On September 21, 2015 Red Clay

reasserted its position, stating the Delaware Division of Family Services has did not consider the children “homeless.” This disregarded that a state agency’s view of homelessness may not overrule the Act’s definition. In addition, it defended its position by asserting that the children’s father had enrolled them in the Christina School District, disregarding both the fact that that was done a week after Red Clay reaffirmed its refusal to provide transportation to Skyline.

47. Red Clay has made clear that it is unwilling to provide the children with transportation to Skyline Middle School, notwithstanding the Act’s requirement that the children remain in the subject school pending resolution of the dispute. Its actions are producing ongoing irreparable harm for which there is no adequate remedy at law.

48. On September 24, 2015, S.S., who had given birth several days earlier, met with counsel and decided to see judicial relief.

COUNT I

42 U.S.C. 1983 (refusal to transport under 42 U.S.C. § 11432)

49. Plaintiffs incorporate herein by reference paragraphs 1 - 48 hereof as if set forth at length.

50. Plaintiffs are homeless as that term is defined under 42 U.S.C. §

11432.

51. Skyline Middle School is Plaintiffs' school of origin as that term is defined under 42 U.S.C. § 11432.

52. Plaintiffs and their mother wish for them to attend Skyline Middle School, and it is in their best interests that they do so.

53. Defendant's refusal to provide Plaintiffs with transportation assistance to Skyline Middle School violates 42 U.S.C. § 11432.

54. Acting under color of state law, Defendant has violated Plaintiffs' federal rights.

Count II

42 U.S.C. 1983, failure to follow dispute rules under 42 U.S.C. § 11432

55. Plaintiffs incorporate herein by reference paragraphs 1 through 48 hereof as if set forth at length.

56. Plaintiffs requested transportation assistance to Skyline Middle School in Red Clay School District.

57. Red Clay refused to provide this assistance, justifying its refusal based in part on its conclusion that Skyline Middle School was not the appropriate school for enrollment.

58. Red Clay has not provided the detailed written explanation of denial,

the notice of rights or the explanation of challenge procedures as required under 42 U.S.C. § 11432 and 14 Del. Admin. Code 901.

59. Red Clay has not provided assistance during the pendency of the dispute over the proper school for enrollment as required under 42 U.S.C. § 11432 and has indicated that it will not do so.

60. Defendant's failures to provide the information and to provide enrollment and transportation assistance during the pendency of the dispute violate 42 U.S.C. § 11432.

61. Acting under color of state law, Defendant has violated Plaintiffs' federal rights.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully request that this Court grant the following relief:

(a) In the alternative, either

A declaration that Plaintiffs are legally entitled to enrollment and transportation assistance to Skyline Middle school for the duration of their homelessness, pursuant to 42 U.S.C. 11432(g)(3)(A)(i), and an injunction that Defendant provide those services required by 42 U.S.C. 11432(g)(4)(A) including transportation assistance to Skyline Middle School; or

An injunction that Defendant comply with 42 U.S.C. 11432(g)(3)(E)(ii) and 14 Del. Admin. Code 901 and (1) provide a written explanation of its decision to refuse transportation assistance to Plaintiffs, (2) engage fully in the statutorily required dispute resolution process, as set forth in 14 Del. Admin. Code 901, and (3) provide enrollment and transportation to Skyline Middle School during the pendency of the dispute resolution process, pursuant to 42 U.S.C. 11432(g)(3)(E)(i) and 42 U.S.C. 11432(g)(1)(C).

(b) Enjoin the Defendant from continuing any violation of Plaintiffs' federal statutory rights under 42 U.S.C. § 11432, including:

- (i) enjoin Defendant from refusing to enroll Plaintiffs in Skyline Middle School;
- (ii) enjoin Defendant from refusing to provide transportation to Skyline Middle School;

(c) Award Plaintiffs compensatory damages;

(d) Award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

(e) Grant such other relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Richard H. Morse
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Attorney for Plaintiffs

Dated September 29, 2015

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

J.S., C.S., and A.S., minors,
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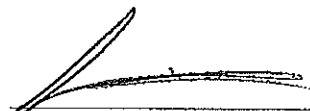
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VERIFICATION

I am the mother of J.S., C.S., and A.S. I have reviewed the Verified Complaint in this matter and state that the matter contained therein insofar as it concerns my act and deed is true, and insofar as it relates to the act and deed of other persons is believed by me to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 27, 2015



S.S.