

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

F.R., as parent and next	§	
friend of B.C, a minor,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Case Number:
	§	
Dr. Craig Pouncey, in his	§	CV - 19 - _____
official capacity and	§	
as representative of	§	
Jefferson County Board of	§	
Education, and Jefferson	§	
County Board of Education,	§	
	§	
Defendant.	§	

COMPLAINT

COMES NOW the Plaintiff in the above-styled cause, by and through the undersigned counsel of record, and files this Complaint against the Defendants, Dr. Craig Pouncy, in his official capacity as representative of Jefferson County Board of Education and Jefferson County Board of Education, and says as follows:

PRELIMINARY STATEMENT

The federal McKinney-Vento Homeless Assistance Act ("McKinney Vento" or the "Act") was enacted to ensure school stability for children like the Plaintiff who are

living in transient circumstances due to economic hardship. 42 U.S.C. § 11431-11435. This lawsuit is filed on behalf of a student experiencing homelessness who has been **denied enrollment** at McAdory High School within in the Jefferson County Board of Education (the "Board" or "District" or "JCBE") in violation of the McKinney-Vento Act and *Alabama Administrative Code* § 290-3-1-.02, *et. seq.*

Plaintiff, B.C., is a senior in high school who is on track to graduate in May 2020. The Plaintiff completed his freshman, sophomore, and first semester (quarters 1-2) of his junior year as a full-time student enrolled at McAdory High School. However, in September 2018, the beginning of his junior year, due to financial hardship and damage to the family residence, the Plaintiff, his three siblings (ages 16, 10 and 6), mother, and father (collectively referred to hereinafter as "the family") had to vacate the family home in Bessemer. At that time, the family began shuffling between hotels, motels, their vehicles, and on the floors in homes of relatives and friends for brief periods of time ranging from 1-2 days to 2 weeks at length. The family's goal was to keep the children in the same school district despite their living disruption in order to

ensure a measure of stability in their lives and support school success in the midst of this difficult period. However, due to the family's dire finances and homelessness, this was not possible. Thus, in January 2019, the Plaintiff transferred to Bessemer High School for the second semester (quarters 3-4) of his junior year.

Currently, the family resides in temporary housing at InTown Suites, an extended-stay motel located at 1840 Southpark Drive, at the border of Jefferson and Shelby Counties. Upon presenting for enrollment on August 27, 2019, the first day of this school year, two of Plaintiff's siblings were re-enrolled at McAdory Elementary School and the other sibling at McAdory High School. All three were also approved for additional assistance in the form of transportation to and from school and their temporary housing. However, the Plaintiff was denied enrollment.

This lawsuit seeks the immediate re-enrollment of B.C. on several grounds. First, the Act expressly provides,

"If a dispute arises over school selection or enrollment in a school - (i) 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)(C) and (E). Second, the Act

expressly entitles the student to remain in their chosen school until the full resolution of this dispute. 42 U.S.C. § 11432(g)(3)(A). Third, denying the Plaintiff immediate enrollment and continue attendance at his chosen school is contrary to the best interests of the Plaintiff and the express language of the Act. 42 U.S.C. § 11432(g)(3)(B). Fourth, the Act requires the school to provide "a **written explanation** of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision." 42 U.S.C. § 11432(g)(3)(E)(ii). However, the mother of Plaintiff, F.R., was notified of the Board's decision to deny enrollment to the Plaintiff, B.C., via telephone and not provided any written or verbal notice of their rights to appeal. Rather, F.R. was directed to enroll B.C. at another school in close proximity to the location of their temporary housing. Fifth, under the provisions of the Act and the time when the Plaintiff initially became homeless, his school of origin is McAdory High School. 42 U.S.C. § 11432(g)(3)(G). Thus, denying the Plaintiff enrollment and continued attendance at McAdory High School is contrary to the express provisions of the Act regarding a child being

enrolled and attending his school of origin. 42 U.S.C. § 11432(g)(3).

The McKinney-Vento Act was created to ensure school stability for children like the Plaintiff who are living in transient circumstances due to economic hardship. The facts surrounding this particular Plaintiff and his family's circumstances are particularly compelling. By filing this case today, it is clear that this dispute is ongoing. Further, the contemporaneous filing of a Motion for Preliminary Injunction along with this Complaint, we ask this Court to ensure that the Plaintiff and his family receive the important protections of the McKinney-Vento Act. Accordingly, we ask this Court to direct the Board to immediately enroll the Plaintiff at McAdory High School. Further, under the Act's "pendency" mandate, we ask this Court for an order to ensure the Plaintiff will be able to remain in attendance there until his graduation in May 2020 in light of the family's continuing homelessness status.

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 Northern District of Alabama, where the 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. B.C. is a seventeen (17) year old boy in the 12th grade who is currently homeless and required to attend school under the Compulsory Attendance Act. Code of Alabama (1975) § 16-28-1, *et.seq.*

5. F.R. is the mother and legal parent of the named Plaintiff who brings this lawsuit on behalf of her son, B.C.

6. Defendant JCBE is a Local Education Agency ("LEA") within the meaning of the McKinney-Vento Act. The District is a recipient of federal funds under the Act, and by accepting those funds, the District is required to comply

with all provision of the Act including practices concerning the enrollment, transportation, and education of children within its district and homeless children. 42 U.S.C. § 11431.

7. Defendant Dr. Craig Pouncy is Superintendent of the Jefferson County Board of Education. He is sued only in his official capacity and as representative of the District.

8. At all relevant time, Defendants were acting or purporting to act under the color of state law.

KEY PROVISIONS OF THE MCKINNEY-VENTO ACT AND

THE ALABAMA ADMINISTRATIVE CODE

9. 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.

10. 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 alternate adequate accommodations. 42 U.S.C. §11434a(2)(B)(i).

11. 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. §11434a(2)(B)(i).

12. 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).

13. 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(e)(3)(A)(ii).

14. 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).

15. 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).

16. 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.

17. 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) .

18. 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) .

19. 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."

20. The Act also provides that a homeless child shall receive services comparable to services offered to other students in the school selected including transportation, among other services. U.S.C. § 11432 (g) (4) (A) and (B) .

21. 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).

22. Pursuant to the requirements of the McKinney-Vento Act, Alabama has developed a 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. 42 U.S.C. § 11432(g)(2)(A). See also, the Alabama "Revised State Homeless Template for Training."

23. The State of Alabama has codified the McKinney-Vento Act. *Alabama Administrative Code* § 290-3-1-.02, *et. seq.*

24. JCBE has adopted policies and procedures consistent with the McKinney-Vento Act and the State Plan. See "Policy Manual" for Jefferson County Board of

Education.

25. Pursuant to the Act and the AAC, 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.C. § 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.C. § 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.C. § 11432(g)(3)(iv).

26. 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 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.

27. 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. § 11432(g) (3) (E) (iii).

28. 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).

d.o.b - November 6, 2001.

FACTUAL ALLEGATIONS

29. The Plaintiff completed his freshman (2016-'17), sophomore (2017-'18), and first semester (quarters 1-2) of his junior year (2018-'19) as a full-time student enrolled and attending McAdory High School.

30. Beginning in September 2018, shortly after the beginning of Plaintiff's junior year, the Plaintiff has

lacked "a fixed, regular, and adequate nighttime residence" and qualified as homeless within the Act.

31. It was at this time that the Plaintiff, his three siblings (ages 16, 10 and 6), mother, and father (collectively referred to hereinafter as "the family") had to vacate the family home in Bessemer due to financial hardship and damage to the home.

32. The family began shuffling between hotels, motels, their vehicles, and on the floors in homes of relatives and friends for brief periods of time ranging from 1-2 days to 2 weeks at length. Pursuant to the Act, a "living in motels, hotels, trailer parks, or camping grounds due to the lack of alternate adequate accommodations." 42 U.S.C. §11434a(2)(B)(i).

33. In January 2019, a relative offered to temporarily allow the Plaintiff, B.C., to share housing¹ due to the continued financial despair and uncertainty of the family's housing situation. In order to take advantage of this temporary opportunity, the Plaintiff transferred to Bessemer High School where he completed his junior year.

¹ "The terms homeless includes - children and youths who are **sharing** housing of other persons due to loss of housing, economic hardship, or a similar reason." 42 U.S.C. §11434a(2)(B)(i).

34. By the end of May 2019, the emotional toll on the Plaintiff was too much. He rejoined his family despite the family's lack of permanent housing in order to receive the emotional and physical support needed, and that can only be provided from, his family.

35. Currently, the family resides in temporary housing at InTown Suites, an extended-stay motel located at 1840 Southpark Drive, at the border of Jefferson and Shelby Counties.

36. Therefore, B.C.'s homeless status has persisted since September 2018 when he was a student enrolled at McAdory High School and continues to this day. Accordingly, his school of origin is McAdory High School.

37. Upon F.R. presenting all four (4) of her children for enrollment on August 27, 2019, the first day of this school year, three were enrolled at their respective schools, but Plaintiff, B.C. was denied enrollment. Keeping within the provisions of the Act, the three children enrolled were also approved for additional assistance in the form of transportation to and from school and their temporary housing.

38. On August 27, 2019, at 4:16 p.m. CST, Ms. McClellan, a District employee, phoned F.R. and informed her that JCBE denied to enroll B.C. at McAdory High School. However, no written explanation of this decision was provided. Further, the District did not provide any verbal or written notice of the Plaintiff's rights to appeal.

39. On August 29, 2019, at 12:19 p.m. CST, Ms. McClellan phoned F.R. to inform her that the District is requiring F.C. to provide weekly receipts from the motel as long as her children are enrolled under the Act.

40. Such a requirement is not imposed by the Act or AAC. By doing implementing their own requirement amounts to unequal treatment of Plaintiff by the District due to the family's homelessness. Further, this requirement stigmatizes the family and their homelessness in violation of the Act and AAC.

COUNT 1

VIOLATIONS OF THE MCKINNEY-VENTO ACT BY DEFENDANTS

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

42. 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 failing to:

a. immediately enroll Plaintiff. 42 U.S.C. § 11432 (g) (3) (B) (i).

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

c. consider the best interests of the Plaintiff in denying him enrollment and continued attendance at his chosen school in accordance with the express provisions of the Act. 42 U.S.C. § 11432 (g) (3) (B).

d. 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).

e. 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) .

f. 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) .

g. 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) .

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- A. Issue a declaratory judgment against Defendants declaring that they have violated the rights of Plaintiff student B.C. as set out in this Complaint.
- B. Issue a preliminary injunction directing the District to immediately enroll Plaintiff student B.C. in McAdory High School due to this ongoing

dispute in accordance with the pendency of the Act. 42 U.S.C. § 11432(e)(3)(E).

C. 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. 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).
- iv. 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.

v. 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.

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

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

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

Respectfully Submitted

LADORES LAW FIRM, LLC



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CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day August 2019, I served upon, Dr. Craig Pouncey, Superintendent of Instruction for the Jefferson County Board of Education by U.S. Mail, postage prepaid, a copy of this complaint at the address below:

Jefferson County Board of Education
ATTN: Dr. Craig Pouncey, Superintendent
2100 18th Street South
Birmingham, AL 35209



OF COUNSEL