IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

G.S., A MINOR, BY HIS PARENTS, J.S. AND E.S., Plaintiff, v. ROSE TREE-MEDIA SCHOOL DISTRICT, Defendant.	:	CIVIL ACTION NO. 16-4782
ROSE TREE MEDIA SCHOOL DISTRICT, Plaintiff, v. E.S. AND J.S., AS PARENTS AND NATURAL GUARDIANS OF G.S., A MINOR, Defendants.	:	CIVIL ACTION NO. 16-4849

O R D E R

AND NOW, this **31st** day of **July, 2017**, upon review of the parties' motions for summary judgment,[1] applicable to both

[1] Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." Am. Eagle Outfitters v. Lyle & Scott Ltd., 584 F.3d 575, 581 (3d Cir. 2009) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)). A fact is "material" if proof of its existence or nonexistence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable

civil action 16-4782 and civil action 16-4849 and filed in the former,[2] the following is hereby **ORDERED:**

(1) As to civil action 16-4849 – the School District's case – E.S. and J.S.'s Motion for Summary Judgment (ECF No. 21 in action 16-4782) is **GRANTED** as to both counts.[3] The School District's Motion for Summary Judgment (ECF No. 20 in action 16-4782) is **DENIED**.[4]

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jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

The Court will view the facts in the light most favorable to the nonmoving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury could find for the nonmoving party." Pignataro v. Port Auth., 593 F.3d 265, 268 (3d Cir. 2010). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the nonmoving party who must "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 250.

Here, because each side filed a motion for summary judgment, the Court has considered each motion "on an individual and separate basis" and determined, "for each side, whether a judgment may be entered in accordance with the Rule 56 standard." Schlegel v. Life Ins. Co. of N. Am., 269 F. Supp. 2d 612, 615 n.1 (E.D. Pa. 2003) (quoting 10A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2720 (1998)).

[2] These cases present the opposite sides of the same coin: whether G.S. should be enrolled at a high school in the Rose Tree Media School District. In civil action 16-4782, G.S. asks the Court to order the School District to enroll him. In civil action 16-4849, the School District asks the Court to declare that the District is not required to enroll G.S. The Court consolidated the two cases on February 27, 2017. ECF No. 18.

[3] The material facts of this case are undisputed. In their motions for summary judgment, the parties largely address the same two legal issues: (1) whether the parties' settlement agreement waives G.S.'s right to seek enrollment in the School District; and, if not, (2) whether the School District was and is required, under the McKinney-Vento Act, to enroll G.S. at Penncrest High School.

First, the Court must determine whether J.S. and E.S., through the parties' Settlement Agreement, waived G.S.'s right to seek enrollment in any RTMSD school.

The Settlement Agreement states, in relevant part: "Parents agree that they will make no claim of homeless status after the 2015-16 school year and that the District will have no further obligations to Student after the 2015-16 school year." Settlement Agreement at 3, Def.'s Mot. Summ. J. Ex. A. The School District argues that the Court should enforce this provision ("the Waiver") as a waiver of G.S.'s rights under McKinney-Vento. The family, in turn, argues that this provision is unenforceable for four reasons: (1) parents cannot waive their children's future legal claims; (2) the Waiver violates public policy by purporting to relieve the School District of its McKinney-Vento obligations; (3) the Waiver is procedurally and substantively unconscionable; and (4) the Settlement Agreement expressly states that E.S. and J.S. were provided with consideration for claims through August 31, 2016 – which does not include claims after the 2015-16 school year.

The fourth argument is dispositive. Pursuant to section 4 of the Agreement, the parties provided consideration through August 31, 2016:

> The Parents specifically acknowledge and agree that the District's agreement to make the above payments is intended to and does provide the Parents with sufficient consideration for a settlement and compromise of any and all outstanding education and discrimination claims that they may now have or have had, whether known or unknown, from the beginning of time through August 31, 2016.

Settlement Agreement at 4. By the plain language of the Agreement, then, consideration was not provided for claims brought after August 31, 2016, making the waiver of such claims unenforceable for lack of consideration. See, e.g., Fortwangler v. Workers' Compensation Appeal Bd., 113 A.3d 28, 35 (Pa. Commw. Ct. 2015 ("All essential elements, including consideration, must be present for a valid contract to exist.").

The question, then, is whether the unenforceable Waiver is severable from the remainder of the Settlement Agreement – which contains no severability provision. Here, "[t]he central task is to ascertain the intent of the parties. That intent may be apparent from the explicit language of the contract, . . . or it may be obvious from a 'construction' of the agreement, including the nature of the consideration . . . ." Jacobs v. CNG Transmission Corp., 772 A.2d 445, 452 (Pa. 2001).

In this case, while the Settlement Agreement contains no explicit language about the severability of any particular provision,

it does contain explicit language about the parties' temporally limited intent to be bound:

> Intending to be legally bound, the Parents and District . . . declare that, in settlement of any and all outstanding or potential education and discrimination claims of any kind arising from the beginning of time through August 31, 2016, whether known or not known . . . and in order to avoid continued disputes and litigation which have arisen or may arise between the Parties, the Parties agree to the following . . . .

Settlement Agreement at 1. That is, the Agreement clearly states that the parties intended to settle claims through August 31, 2016, which does not include the claims contemplated by the Waiver. Moreover, similar language is repeated in sections 2 and 3 of the Agreement (parents release the District from all claims "arising from the beginning of time through August 31, 2016," and the Agreement settles all disputed issues of fact and law "from the beginning of time through August 31, 2016," respectively), in addition to the consideration provision of section 4, discussed above. Under these circumstances, the Agreement clearly reveals the parties' intent to be bound through August 31, 2016. Accordingly, the Court will sever the Waiver provision, which falls outside the scope of this intent, from the remainder of the Settlement Agreement, which remains valid.

The next question, then, is statutory. The McKinney-Vento Act requires each state educational agency to "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). Under the Act, a local education agency ("LEA") is required either to continue to educate a child in his "school of origin" for the duration of the child's homelessness, or to "enroll the child or youth 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." § 11432(g)(3)(A). The LEA is instructed to make that determination "according to the child's or youth's best interest," and in particular is to keep the child in his school of origin "to the extent feasible." § 11432(g)(3)(B).

Here, the primary question is whether G.S. is "homeless" under the meaning of the statute. The School District concedes that G.S. was, at some point, homeless under McKinney-Vento, but argues that he has since lost that status – and, accordingly, that the statute no longer requires the School District to educate G.S..

Under the McKinney-Vento Act, the term "homeless children and youths"

> (A) means individuals who lack a fixed, regular, and adequate nighttime residence . . .; and
>
> (B) includes –
>
> (i) children and youths who are sharing the housing of other persons due to loss of housing economic hardship, or a similar reason . . . .

42 U.S.C. § 11434a(2). There is no dispute that G.S.'s living situation fell into this definition in November 2014, when G.S.'s family first moved into E.S.'s mother's home. Indeed, at that time, the School District itself affirmatively determined that G.S. was homeless under McKinney-Vento. However, because the family's living arrangement has persisted for more than two years, the School District argues that G.S.'s housing has now become "fixed, regular and adequate," such that he is no longer homeless.

This argument is defeated by the School District's own reasoning. Specifically, the School District urges the Court to "infer the meanings" of the words "fixed," "regular," and "adequate" from the examples of homeless children provided in the statute. Def.'s Mem. Law at 12. But the Court need not infer anything, because G.S.'s situation is already plainly covered by one of the examples given. In other words, the School District argues that the Court can determine whether G.S.'s residence is fixed, regular, and adequate by reviewing the statutory examples – which is correct, because G.S.'s situation undisputedly falls into the first statutory example of a residence that is not fixed, regular, and adequate. The School District asks the Court to ignore this plain language and read a different meaning into the terms at issue. They offer no legal justification for this proposition, which the Court rejects. See Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 251 (2010) ("We must enforce plain and unambiguous statutory language according to its terms.").

Under the School District's theory of McKinney-Vento, an unchanged living situation can transform from homelessness into non-homelessness, simply because it persists for long enough. This argument was rejected by the only other federal court that appears, so far, to have considered it. In L.R. ex rel. G.R. v. Steelton-Highspire School District, No. 10-468, 2010 WL 1433146 (M.D. Pa. 2010), a court in the Middle District of Pennsylvania granted a preliminary injunction in favor of a student who was "sharing the housing of other persons due to loss of housing," finding that the student was likely to succeed on the merits. Id. at *4. The court noted that "[t]he District recognized him as a homeless student from January 2009 through June 2009," but then "arbitrarily decided that he was no longer homeless despite no change in his circumstances." Id. This result, the court concluded, violated the McKinney-Vento Act, which "makes [] clear that there is no maximum duration of homelessness."

(2) As to civil action 16-4782 – G.S.'s case – the School District's Motion for Summary Judgment (ECF No. 20) is again **DENIED**. G.S.'s Motion for Summary Judgment (ECF No. 20) is **GRANTED** as to Count One, for the same

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Id. "Instead," the court said, a school district "must accommodate a homeless child for the entire time that they are homeless." Id.

The School District attempts to distinguish L.R. by explaining that the L.R. child had been homeless for a shorter period of time than G.S. has been homeless. This argument is strange, at best, considering the L.R. conclusion that there is no expiration date on McKinney-Vento homelessness – which the School District concedes to be correct. See Def.'s Resp. at 3 ("[T]here is no set duration to homelessness under the Act."). If homelessness does not end after a certain period of time, with no change in circumstances, then it makes no difference whether the child has been homeless for a year, as in L.R., or two and a half years, as in the present case. And while it is true that L.R. was in a different procedural posture than the current case, the School District fails to explain why the underlying legal conclusions must also differ as a result. Moreover, the School District offers no legal authority for its own position – which, notably, is contrary to the position of the Pennsylvania Department of Education, which determined in September 2016 that G.S. remained homeless under McKinney-Vento.

Accordingly, the Court concludes that G.S. was and is homeless under the McKinney-Vento Act. Accordingly, he is entitled to enroll in his "school of origin," which is defined as the school that he "attended when permanently housed" – or, since he has moved from middle school to high school since he was last permanently housed, "the designated receiving school at the next grade level for all feeder schools." There is no dispute that G.S. attended an RTMSD middle school when last permanently housed. There is also no dispute that Penncrest High School is the designated receiving school. Accordingly, G.S. is entitled to enroll at Penncrest High School for the remainder of his homelessness.

[4] For the same reasons that G.S. is entitled to judgment as a matter of law, the School District is not entitled to judgment as a matter of law.

reasons discussed in footnote 3. Counts Two and Three are moot.[5]

(3) The Clerk of Court shall mark both actions **CLOSED.**

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

[5] As to Count Two, G.S. contends that the School District violated Pennsylvania's Local Agency Law by refusing to enroll G.S. "without offering him an opportunity to be heard or any way of challenging the determination." Compl. ¶ 61. But G.S. requests no remedy for this alleged past statutory violation, other than a declaratory judgment stating that the School District violated the law. Because a declaratory judgment is not a viable form of relief for such a claim, the Court need not address the claim further. See Step-Saver Data Sys., Inc. v. Wyse Tech., 912 F.2d 643, 647 (3d Cir. 1990) ("[D]eclaratory judgments are issued before 'accomplished' injury can be established." (emphasis added)).

As to Count Three, G.S. requests a declaratory judgment, under 42 Pa. Cons. Stat. Ann. § 7533 – which allows parties to request a court to determine "any question of construction or validity" as to a contract – stating that the Settlement Agreement's Waiver is unenforceable. The Court has already determined that the Waiver is unenforceable, see supra n.3, and will decline to enter a distinct declaratory judgment to this effect.