

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

PENNY DOE, a minor, by her next friend,
Karen McConnell, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

ED RICHARDSON, Alabama State
Superintendent of Education; DOROTHY
RIGGINS, Alabama Coordinator of
Education of Homeless Children and
Youth; GUNTERVILLE CITY BOARD OF
EDUCATION; MARSHALL COUNTY
BOARD OF EDUCATION; JACKIE D.
THROWER, Superintendent, Marshall
County Board of Education; MARGARET
MASTIN, Liaison for Marshall County
Board of Education's Program for the
Education of Homeless Children and Youth,

Defendants.

1998 OCT 13 P 4: 34
THOMAS D. GAVIN, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

COMPLAINT

Case No. 98-CV-1165

NATURE OF THE CASE

1. This is a civil action brought to enforce the Plaintiffs' rights under the United States Constitution and federal law. Plaintiff Penny Doe is an African-American child residing in a homeless shelter who has been denied the opportunity to attend the public schools that white children who are not homeless are eligible to attend. As a result of these denials, Penny is attending a vocational school that lacks the mainstream academic and social environment provided at the two regular schools. Plaintiffs seek declaratory and injunctive relief to stop the Defendants' unlawful practices and to require them to enroll homeless children in the high schools that white children who are not homeless are eligible to attend.

JURISDICTION

2. This action arises under the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1983, 42 U.S.C. § 2000d, and 42 U.S.C. § 11431 et seq. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.

3. This Court has jurisdiction over Plaintiffs' request for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-02.

PARTIES

4. Plaintiff Penny Doe is a child in the custody of the Alabama Department of Human Resources. She resides in a homeless shelter in Marshall County, Alabama. She brings this action by her next friend, Karen McConnell, the director of the shelter in which she resides. She uses a fictitious name to protect her privacy and personal safety.

5. Defendant Ed Richardson is the Alabama State Superintendent of Education. He runs the Alabama State Department of Education, which exercises general control and supervision over the public schools of Alabama. The Alabama State Department of Education receives federal financial assistance for the administration of its programs and activities, and it distributes these federal funds to public schools throughout Alabama. Mr. Richardson is responsible for ensuring that the Department complies with its obligations under the United States Constitution and federal law. He is sued in his official capacity.

6. Defendant Dorothy Riggins is the Coordinator of Education of Homeless Children and Youth for the Alabama Department of Education. She is responsible for administering the McKinney Act program for the education of homeless children and ensuring that the state program operates in accordance with federal law. She is sued in her official capacity.

7. Defendant Guntersville City Board of Education is a local educational agency that provides public education services to children in Marshall County, Alabama.

8. Defendant Marshall County Board of Education is a local educational agency that provides public education services to children in Marshall County, Alabama. It receives federal financial assistance for the administration of its programs and activities.

9. Defendant Jackie D. Thrower is the Superintendent of the Marshall County Board of Education. He is responsible for ensuring that the Marshall County school system operates in accordance with federal law. He is sued in his official capacity.

10. Defendant Margaret Mastin is the Liaison for the Marshall County Board of Education's Program for the Education of Homeless Children and Youth. She is responsible for administering the McKinney Act program for the education of homeless children in the Marshall County schools and ensuring that this program operates in accordance with federal law. She is sued in her official capacity.

CLASS ACTION

11. Plaintiff Penny Doe brings this suit on her own behalf and on behalf of all homeless children in Marshall County, Alabama, who may in the future be denied the opportunity to attend public schools that white children who are not homeless are eligible to attend.

12. The prerequisites of Rule 23(a) and Rule 23(b)(2) of the Federal Rules of Civil Procedure are satisfied.

STATEMENT OF FACTS

A. The McKinney Program in Alabama

13. The Stewart B. McKinney Homeless Assistance Act created a cooperative federal-state program to aid homeless persons. Certain provisions of the Act address the education of homeless children and youth. See 42 U.S.C §§ 11431-35. The purpose of these provisions is to ensure that homeless children have equal access to

the same public education as provided to other children and to guarantee that homelessness alone does not separate homeless students from the mainstream school environment.

14. In states receiving McKinney federal funds, the Act requires all local educational agencies within the state to enroll homeless children in either their school of origin or in any school that nonhomeless students who live in the attendance area in which the homeless child is actually living are eligible to attend depending on a "best interests" test and the preference of the parent or guardian. The State has a separate and independent obligation under the Act to ensure that all local educational agencies within the State comply with these requirements. Both the State and local educational agencies are required to develop policies to remove barriers to the enrollment and retention of homeless children and to adopt policies and practices to ensure that homeless children are not isolated or stigmatized.

15. In fiscal year 1998, Alabama received \$490,798 in federal McKinney Act funds for its Education of Homeless Children and Youth program. For the 1998-99 academic year, Defendant Marshall County Board of Education received a \$30,000 subgrant from the State in federal McKinney Act funds.

B. Applicable High School Admissions Policies

16. Tennessee Valley Family Services, Inc. is a shelter that provides temporary housing to homeless children. The shelter is located just outside the Guntersville city limits. For the past eighteen years, Guntersville High School in the Guntersville City School System has admitted children, including the shelter children, who reside in the area where the shelter is located.

17. In June 1998, the Guntersville City Board of Education adopted a new policy requiring children who reside outside the Guntersville city limits to register within the first ten days of the first semester or on the first day of the second semester to qualify for admission. Shelter children attempting to enroll at any other

time must obtain the permission of a special enrollment committee at the high school.

18. The other school attended by nonhomeless children who reside in the same area as the shelter children is the Kate Duncan Smith Daughters of the American Revolution ("DAR") High School in the Marshall County School System. The DAR High School has a preference against the enrollment of African-American children that the Superintendent, Defendant Jackie D. Thrower, has acquiesced in.

C. Factual Allegations as to the Named Plaintiff

19. Plaintiff Penny Doe is a child residing in the homeless shelter operated by Tennessee Valley Family Services, Inc. in Marshall County, Alabama. She is in the ninth grade. Her former school is more than two hours away from the shelter.

20. On September 10, 1998 -- over ten days after the first day of the school semester -- Karen McConnell, the director of the shelter where Penny resides, attempted to enroll her at Guntersville High School. Penny would have been eligible to attend the school had she enrolled within the first ten days of the semester. Later that day, the school enrollment committee refused to enroll Penny.

21. On September 11, 1998, Ms. McConnell called Defendant Thrower, the Superintendent of the Marshall County Board of Education, and informed him of Penny's situation. Defendant Thrower told Ms. McConnell to enroll Penny in the DAR High School. Because of Defendant Thrower's previous acquiescence in the DAR High School's discriminatory policy, Ms. McConnell responded, "but Jackie, she's black." Defendant Thrower then instructed Ms. McConnell to enroll Penny at Boaz High School.

22. Because it can take as long as an hour to drive from the shelter to Boaz High School in morning traffic, Ms. McConnell declined to have Penny attend Boaz High School. Instead, Ms. McConnell is having Penny attend the only remaining

alternative – Marshall County Technical School, a vocational educational program that is close to the shelter. Officially, Penny is enrolled at Boaz High School, because all children attending the technical school must be enrolled elsewhere.

23. The refusal of Defendants to enroll Penny has caused serious hardships for her. As a student at the Marshall County Technical School, Penny is stigmatized and isolated from children in regular school programs. She is denied access to regular, non-vocational schools and the attendant college preparatory academic and social environment that they would provide. Penny is also denied access to regular classes like English and Physical Education and does not have the opportunity to participate in mainstream school activities like drama club or track team.

24. Attorneys for Defendant Ed Richardson, the Alabama State Superintendent of Education, and Defendant Dorothy Riggins, Coordinator of Education of Homeless Children and Youth for the Alabama Department of Education, are aware of the refusal of the Guntersville and DAR schools to admit Penny, but have refused to take action to correct the situation.

25. Because Penny is only permitted to reside in the shelter for a maximum of ninety days, her claims are inherently transitory and capable of repetition, yet evading review.

26. Defendants have acted and continue to act under color of state law.

27. Plaintiffs do not have an adequate remedy at law.

CLAIMS FOR RELIEF

Claims Against Defendants Richardson and Riggins

28. The failure of Defendants Richardson and Riggins to ensure that local educational agencies allow homeless children to attend the same school that nonhomeless students who live in their attendance area are eligible to attend has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(2)-(3).

29. The failure of Defendants Richardson and Riggins to ensure that local educational agencies develop policies to remove barriers to the enrollment and retention of homeless children in school has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(1)(G).

30. The failure of Defendants Richardson and Riggins to ensure that local educational agencies adopt policies and practices to ensure that homeless children are not isolated or stigmatized has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(1)(H).

31. The refusal of Defendant Richardson to require the DAR High School to admit African-American children has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the Fourteenth Amendment to the United States Constitution.

32. The refusal of Defendant Richardson to require the DAR High School to admit African-American children subjects the Plaintiff and other persons similarly situated to discrimination on the basis of race in a program or activity receiving federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

Claims Against Defendant Guntersville City Board of Education

33. The refusal of Defendant Guntersville City Board of Education to allow homeless children to attend Guntersville High School, a school that nonhomeless students who live in their attendance area are eligible to attend, has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(3).

34. The refusal of Defendant Guntersville City Board of Education to develop policies to remove barriers to the enrollment and retention of homeless children in

school has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(1)(G).

35. The refusal of Defendant Guntersville City Board of Education to adopt policies and practices to ensure that homeless children are not isolated or stigmatized has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(1)(H).

**Claims Against Defendants Marshall County Board of Education,
Thrower, and Mastin**

36. The refusal of Defendants Marshall County Board of Education, Thrower, and Mastin to allow homeless children to attend the DAR High School, a school that nonhomeless students who live in their attendance area are eligible to attend, has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(3).

37. The refusal of Defendants Marshall County Board of Education, Thrower, and Mastin to develop policies to remove barriers to the enrollment and retention of homeless children in school has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(1)(G).

38. The refusal of Defendants Marshall County Board of Education, Thrower, and Mastin to adopt policies and practices to ensure that homeless children are not isolated or stigmatized has violated and will continue to violate the rights of the Plaintiff and other persons similarly situated under the McKinney Act, 42 U.S.C. § 11432(g)(1)(H).

39. The refusal of Defendants Marshall County Board of Education and Thrower to require the DAR High School to admit African-American children has violated and will continue to violate the rights of the Plaintiff and other persons

similarly situated under the Fourteenth Amendment to the United States Constitution.

40. The refusal of Defendants Marshall County Board of Education and Thrower to require the DAR High School to admit African-American children subjects the Plaintiff and other persons similarly situated to discrimination on the basis of race by an agency receiving federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

41. The above claims may be remedied pursuant to 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

1. Certify the Plaintiff class in this action;
2. Declare that the Defendants' refusal to allow homeless to enroll in and attend either Guntersville High School or the DAR High School violates the rights of the Plaintiff and other persons similarly situated guaranteed by 42 U.S.C. § 11432(g)(2)-(3) and § 1983;
3. Declare that the Defendants' failure to develop policies to remove barriers to the enrollment and retention of homeless children in school violates the rights of the Plaintiff and other persons similarly situated guaranteed by 42 U.S.C. § 11432(g)(1)(G) and § 1983;
4. Declare that the Defendants' failure to adopt policies and practices to ensure that homeless children are not isolated or stigmatized violates the rights of the Plaintiff and other persons similarly situated guaranteed by 42 U.S.C. § 11432(g)(1)(G) and § 1983;
5. Declare unconstitutional and unlawful the refusal of Defendants Richardson, Riggins, Marshall County Board of Education, Thrower, and Mastin to

allow the Plaintiff and other persons similarly situated to enroll in and attend the DAR High School because of their race;

6. Order the Defendants to allow the Plaintiff and other persons similarly situated to enroll in and attend either Guntersville High School or the DAR High School;

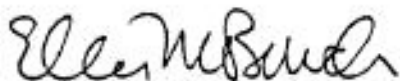
7. Order the Defendants to develop policies to remove barriers to the enrollment and retention of homeless children in school;

8. Order the Defendants to adopt policies and practices to ensure that homeless children are not isolated or stigmatized;

9. Award Plaintiffs reasonable costs and attorneys' fees and

10. Grant Plaintiffs such other relief as the Court deems necessary and just.

Respectfully submitted,



Ellen M. Bowden
Ellen M. Bowden
J. Richard Cohen
Rhonda Brownstein
Southern Poverty Law Center
400 Washington Avenue
P.O. Box 2087
Montgomery, AL 36102-2087
(334) 264-0286