

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

VERONICA SALAZAR, et al,	)	
Plaintiffs,	)	
	)	
	)	No. 92 CH 5703
JOHN EDWARDS, ct al.,	)	
Defendants.	)	

**Memorandum Order and Opinion**

This matter comes before the Court on the Motion of defendants to Dismiss plaintiff's

request for inactive and declaratory relief pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619.

**Background**

Plaintiffs, who represent a class of homeless students who attend Chicago Public Schools and their families, filed a Motion for Injunctive and Declaratory Relief to Enforce Settlement Agreement, arguing that defendants, violated the 2000 Consent Decree when it closed certain plaintiffs' schools of origin in 2004. This Court instructed the parties to treat plaintiff's motion as a complaint. In its complaint, plaintiffs request that this Court declare that defendants violated paragraphs 2(c),10(a),10(b),10(c),11(c),11(d),11(e) and 20, the Illinois Education for Homeless Children Act, §§ 45/1-10, the McKinney-Vento Homeless Assistance Act §§ 11432(d)(2), (g)(1)(F), (g)(3)(A)(i), (g)(3)(B)(i), (g)(5)(B), (g)(6)(A)(iv)(g)(7), and Article IX, Section 1 and Article I, Section 2 of the Illinois Constitution, as well as issue an injunction requiring defendants to create an advance plan to coordinate with the Chicago Housing Authority to minimize the educational disruption of homeless students, revise the Renaissance 2010 plan to comport with the Consent Decree, and conduct individualized evaluations and provide all needed services for the homeless children who

were effected by the 2004 school closings. Defendants now move to dismiss the complaint pursuant to Sections 615 and 619.

### Discussion

Defendants first argue that plaintiffs cannot sufficiently allege a claim for injunctive relief. The party seeking a permanent injunction must demonstrate (1) a clear and ascertainable right in need of protection, (2) irreparable harm if injunctive relief is not granted, and (3) no adequate remedy at law. Sparks v. Gray, 334 Ill. App. 3d 390, 395 (2002). Defendants maintain that plaintiffs have not demonstrated a clear and ascertainable right to have schools remain open simply because homeless children attend the school. Defendants further argue that plaintiffs cannot find support for a clear and ascertainable right because the Consent Decree is silent regarding school closings.

Plaintiffs allege in paragraph 4 that homeless families "have a clear legal right to remain at their 'school of origin' when they become homeless and for the full year in which they become housed," as provided for in the Salazar Decree, ¶ 11(c), the Illinois School Code, 105 ILCS 45/1-10, and the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11432(g)(3)(A)(i). Plaintiffs argue that defendants violated the following: paragraph 10(a) of the Consent Decree, which provides that defendants shall ensure that homeless children are provided with equal access to its educational programs; paragraph 10(b) of the Consent Decree, which provides that defendants shall insure that no homeless child is discriminated against in the pursuit of his or her education; paragraph 10(c) of the Consent Decree, which provides that defendants will comply with their own policy, the policy of the Illinois State Board of Education and state and federal laws affecting the rights of homeless children, which include the McKinney-Vento Homeless Assistance Act and the Illinois School Code; paragraph 11(c) of the Consent Decree, which provides homeless students with the choice to return to their school of origin; paragraph 11 (d) of the Consent Decree, which provides that the

defendant will not discourage a homeless child from attending the school of origin; paragraph 11(e) of the Consent Decree, which allows students to stay at their school of origin until the end of the academic year in which they are re-housed and paragraph 29 of the Consent Decree, which provides for enforcement of the Decree. By virtue of the Renaissance 2010 plan and the closing of a number of elementary schools without consideration of the displacement of homeless children, plaintiffs allege that this right is in need of protection. ¶¶ 3-5, 44, 66.

Defendants mischaracterize these allegations stating that plaintiffs are attempting to limit defendants' authority to close schools in which homeless children attend. However, it is clear from these allegations and plaintiffs' arguments that they simply request this Court to order defendants to consider the impact upon homeless students when deciding on which schools it will close and implement a plan to account for the harmful effects on homeless children. Although school closings are not specifically addressed in the Consent Decree, the closing of schools directly impacts upon the mandates in the Consent Decree regarding defendants' treatment of homeless students. As such, this Court finds that plaintiffs sufficiently allege a clear and ascertainable right.

Plaintiffs further set forth the harmful effects that school mobility has on children, as recognized by defendants, as the irreparable harm. ¶ 17. In addition, there is no dispute that there is no adequate remedy at law. Accordingly, this Court finds that plaintiff sufficiently alleged a claim for injunctive relief, which is all it must do at this stage of the proceedings, and denies defendants' motion to dismiss on that basis.

Defendants next argue that plaintiffs have not alleged that the decision to close certain schools was arbitrary and capricious. According to defendants, the decision to open and close a school is a quasi-legislative act such that this Court's review of such act is limited to whether the articulated reason for the decision was palpably arbitrary, unreasonable or capricious. Tyska v. Bd. Of Ed., 117 Ill. App. 3d 917, 922 (1st Dist. 1983). Defendants further argue that plaintiffs are attempting to impose a limitation upon

defendants in making such discretionary decisions by requiring defendants to keep open any school that is the school of origin to a homeless child. Finally, defendants argue that the requirements of the Consent Decree are preempted by the McKinney-Vento Act which explicitly provides that homeless children need not be kept in their school of origin, if it is not feasible. 42 U.S.C. § 11432(g)(3)(B)(i).

Defendants again mischaracterize plaintiffs' claim. Plaintiffs recognize defendants' discretion, but argue that in making decisions pertaining to school closings, defendants must consider the effect of displacing homeless students and create a plan to minimize those harmful effects. Further, defendants agreed to provide the parents of homeless children greater rights than that provided by the McKinney-Vento Act such that the Consent Decree is not preempted by that Act. Moreover, requiring defendants to consider homeless children in making school closing decisions does not contradict the discretion provided to defendants in making such decisions.

Plaintiffs allege that defendants' closing of 10 elementary schools in 2004 was "unreasonable," ¶ 3. Plaintiffs assert that by disregarding the mandates of the Consent Decree and the McKinney-Vento Act and failing to consider the effect of displacing homeless children and coordinate with the CHA in its demolition of certain housing, defendants actually maximized the educational disruption of homeless children, ¶¶ 5, 69. To support this claim, plaintiffs cite to the harmful effects that school mobility has on the ability of a child to learn, as recognized by defendants. ¶17. In addition, plaintiffs note how the demolition of certain housing disrupts an already homeless child's life such that the closing of their school compounds the emotional and financial trauma of the homeless children. ¶¶ 68-69. Finally, plaintiffs state that the defendants' lack of consideration and planning for homeless children has resulted in the closing of the alternate schools of origin assigned to the homeless children leading to the further mobility of the homeless

children. ¶¶ 52-54. Plaintiffs argue that this conduct is arbitrary, unreasonable, and capricious. This Court finds that those allegations together are sufficient to support plaintiffs' claim.

Accordingly, this Court denies defendants' motion in its entirety. This Court further notes that any trial in this matter will deal with whether specific injunctive relief can be granted to enforce the Consent Decree and whether the Court can find that the defendants' failure to adhere to the Consent Decree necessitates a finding or declaration that decisions on school closings were arbitrary and capricious. This Court, at this time, does not see any serious endeavor by plaintiffs to ask for an injunction enjoining the closure of any schools. Rather, it appears as though the emphasis of plaintiffs' complaint is their pursuit of an order requiring defendants to comply with the Consent Decree in its future school closing decisions by considering and planning for the harmful effects the school closings have on homeless children. Defendants are given 28 days, or until March 1, 2006 to amend the answer to the complaint.

At a date to be set in the future, the Court will conduct a hearing pursuant to Supreme Court Rule 218 in order to delineate the issues to be litigated in the trial on this matter.

Julia M. Nowicki  
Circuit Judge  
Dated: February 1, 2006