

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KATHEY BOISSEAU, Individually and on behalf of her Minor Child J.B.; LAQUAN T. FIELDS, Individually and on behalf of her Minor Child B.F.; and ANGELA MORGAN, Individually and on behalf of her Minor Child J.M., and all others similarly situated;

Plaintiffs,

vs.

CECIL PICARD, in his official capacity as superintendent of the Louisiana Department of Education; ROBIN JARVIS, in her official capacity as Superintendent of the Recovery School District; RECOVERY SCHOOL DISTRICT; PHYLLIS LANDRIEU, in her official capacity as President of the Orleans Parish School Board; ORLEANS PARISH SCHOOL BOARD; and LINDA JOHNSON, in her official capacity as President of the Louisiana Board of Elementary and Secondary Education,

Defendants.

Case No.

**COMPLAINT-CLASS
ACTION FOR INJUNCTIVE
AND DECLARATORY
RELIEF**

I. NATURE AND BACKGROUND OF THE ACTION

1. Since at least January 8, 2007, the Recovery School District (“RSD”) which, upon information and belief, is the only open-enrollment public school system currently operating in the City of New Orleans, has refused to admit students seeking to enroll in public schools, denying them any and all educational services, and placing students seeking to enroll on a “wait

list.” The other-named Defendants have, on information and belief, followed or abetted this practice by either creating “wait lists” themselves or refusing to provide space for wait-listed students in schools that they operate directly or that they govern via a charter authorized under Louisiana law.

2. By January 24, 2007, at least 300 students had been refused enrollment, placed on the wait list, and denied any and all educational services at public schools in Orleans Parish. *See* Press Release, Recovery School District, McDonogh 42 Will Open February 5 (January 24, 2007) *available at* <http://www.louisianaschools.net/lde/comm/pressrelease.aspx?PR=824>. Defendants acknowledge that hundreds of students have been refused enrollment and placed on wait lists, and are aware of the harmful, acute and immediate impact that such denial of any and all educational services has on these students. *Id.*

3. Upon information and belief, since at least January 2006, Defendants have, on more than one occasion, refused to enroll students and then placed them on wait lists. To justify this educationally harmful and unlawful practice, RSD Superintendent Robin Jarvis claims that “according to [RSD] attorneys, there is no law that addresses wait-listing students.” Steve Ritea, “300 Students Turned Away by N.O. Schools,” *Times-Picayune* (Jan. 23, 2007). Quite the contrary, the consistent pattern and practice of denying any and all education services to students eligible for public schooling is a clear violation of federal and state laws.

4. On January 30, 2007, the undersigned counsel sent a “demand letter” to Defendants requesting that they immediately and publicly commit to (i) immediately enroll, or make adequate provisions (specified in writing) for students who have been placed on the wait list or have been refused enrollment to receive educational services commencing at the start of

the second semester of the current school year; and (ii) certify in writing that all additional students eligible for public education in Orleans Parish and who may hereafter seek to enroll in Orleans Parish will not be placed on a wait list, refused enrollment or denied educational services.

5. Yesterday, in response to this demand letter and mounting public pressure, the Recovery School District announced that it will immediately enroll all students who had been placed on the wait list by opening new schools, and by changing enrollment and assignment policies at existing schools to accommodate additional students. See Press Release, Recovery School District, RSD Opening New Schools (January 31, 2007) *available at* <http://www.louisianaschools.net/lde/comm/pressrelease.aspx?PR=824>. Based upon the information available to Plaintiffs, it appears that the RSD's statement, if fully implemented, would partially satisfy the demands made in the aforementioned letter.

6. Upon information and belief, however, many more students will seek to enroll in public schools in Orleans Parish as they and their families return to New Orleans in the coming months. Due to the nature of the circumstances in the city, it is foreseeable that additional schools will need to be opened and plans made to accommodate these students. As Defendants have consistently refused to enroll students eligible for public schooling and placed them on wait lists and have failed to permanently abandon such practices in the future, it is foreseeable, and indeed likely, that these practices will continue.

7. Plaintiffs are parents and their children who are eligible for enrollment in public schools operated by the RSD and/or the Orleans Parish School Board ("OPSB"), or charter schools sponsored by the Board of Elementary and Secondary Education ("BESE"), who have

been or will be wait-listed or otherwise denied educational services in Orleans Parish. Plaintiffs and their families were displaced due to the devastating impact of Hurricanes Katrina and Rita and their aftermath, and have returned to New Orleans seeking to regain some stability in, and to rebuild, their lives.

8. Keeping children out of school has a devastating impact on their educational progress and development, exacerbates the problems of juvenile truancy, delinquency and homelessness, and has a demonstrated long-term impact on student drop-out and graduation rates. In addition, children who want nothing more than to attend school are being placed in danger of being stopped by New Orleans police officers, who may stop juveniles whom they reasonably believe are in violation of the truancy law. *See* La. Ch.C. Art. 733.1. Moreover, the public safety situation that the city is presently facing could compromise the physical well-being of unenrolled students.

9. Moreover, a failure by Defendants to permanently and resolutely renounce practices that unlawfully deprive eligible students of public schooling could itself hinder New Orleans' recovery effort by creating a powerful disincentive for prudent families with school age children not to return to the city.

10. Plaintiffs' children, and indeed, many of the families returning to New Orleans, continue to lack a fixed, adequate and regular residence, and thereby qualify as homeless and are entitled to protections pursuant to the McKinney-Vento Homeless Assistance Act. The McKinney-Vento Act provides, in pertinent part, that homeless students and youth be immediately enrolled in the school at which they seek to be admitted, and that any dispute as to

their placement at that school be addressed in a dispute resolution process, during which time the student must be allowed to continue to attend that school.

11. The pattern and practice of refusing to enroll students, denying students any and all educational services, and placing students on indefinite wait lists, is not only in direct contravention of the dictates of the McKinney-Vento Act and applicable Louisiana laws, it is a textbook violation of federal and state equal protection principles. As the U.S. Supreme Court has long recognized, depriving a discrete and isolated group of children of any and all educational services is a clear violation of the Equal Protection Clause of the Fourteenth Amendment.

12. Defendants have, under color of state law, either executed or abetted this pattern and practice by refusing to enroll and placing on wait lists students in schools that they operate directly or via a charter authorized pursuant to Louisiana state law.

II. JURISDICTION AND VENUE

13. This Court has jurisdiction over Plaintiffs' federal civil rights claims under 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States. This Court has jurisdiction over the pendent state law claims pursuant to 28 U.S.C. §1367. Declaratory relief is authorized under 28 U.S.C. §§ 2201 and 2202.

14. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the incidents, events, and occurrences giving rise to this action occurred in the Eastern District of Louisiana.

III. PARTIES

A. Plaintiffs

15. Plaintiff Laquan T. Fields, brings this case individually and on behalf of her daughter and next friend Brionne Fields, a minor. Laquan Fields and her daughter currently reside in New Orleans, Louisiana, after being displaced by Hurricanes Katrina and Rita. Brionne recently returned to New Orleans to live with her mother in their temporary trailer home, and qualifies as homeless within the meaning of the McKinney Vento Act. Laquan immediately sought to enroll her daughter in a public school so that Brionne could continue her education and complete the 7th grade. Laquan contacted a number of schools, but each school informed her that there was no space for her daughter. On January 18, 2007, she visited the Recovery School District office, where they informed her that Brionne would be placed on a waiting list, and that they would contact her when they were able to enroll and accommodate Brionne. Laquan has not yet heard from school authorities. She is not able to afford private or parochial schools, and she and her daughter are deeply concerned as each day goes by about the harmful impact that the exclusion of Brionne from any Orleans Parish school has already had, and will continue to have, on Brionne's educational well-being.

16. Plaintiff Kathey Bousseau, brings this case individually and on behalf of her son and next friend Benjamin, a minor. Ms. Bousseau and her son currently reside in New Orleans, Louisiana after being displaced by Hurricanes Katrina and Rita. They moved back to Orleans Parish in September 2006. Since that time, they have had difficulty finding safe and decent housing and have lived with relatives and in homeless shelters. They moved into Orleans Parish at the beginning of January, and may qualify as homeless under the McKinney-Vento Act. Ms.

Boisseau sought to enroll her son in the ninth grade in Orleans Parish. She contacted a number of schools, but none of them would enroll her son due to apparent lack of space. On January 23, 2007, she visited the Recovery School District office. The Recovery School District refused to enroll her son. She was informed that her son would be placed on a wait list, but no promises could be made that he would be enrolled by the start of the new semester, and that the wait could be “weeks or months.” She has been regularly visiting the Recovery School District office, but they have yet to enroll her son. Her son’s education is very important to her, and she thinks it is critical that Benjamin be enrolled in school immediately so that he is able to interact and bond with students of his own age.

17. Plaintiff Angela Morgan, brings this case individually and on behalf of her son and next friend Joseph Morgan, a minor. Ms. Morgan and her family currently reside in New Orleans, Louisiana after being displaced by Hurricanes Katrina and Rita. In November 2006, she enrolled Joseph in the eighth grade at Wicker Elementary School where she was informed that bus service would be provided for her son. The bus service was critical because Joseph is a special education student and Ms. Morgan does not have any other means to transport him to school. In mid-January 2007, the bus service was finally provided, at which point, the principal of Wicker Elementary informed Joseph and then Ms. Morgan that space was no longer available at the school. Ms. Morgan immediately visited the Recovery School District, which refused to enroll her son, despite his special education needs, and placed him on the wait list. No one has contacted her since that time.

B. Defendants

18. Defendant Cecil Picard, in his official capacity as Superintendent of the Louisiana Department of Education, is legally and politically charged with administering the State of Louisiana's education policy and practices.

19. Defendant Robin Jarvis, in her official capacity as Superintendent of the Recovery School District, is legally and politically charged with administering RSD schools and administering the RSD's education policy and practices.

20. Defendant Recovery School District, is a local education agency in Orleans Parish, which directly operates schools, and governs those schools classified as Type 5 chartered schools.

21. Defendant Phyllis Landrieu, in her official capacity as President of the Orleans Parish School Board, is legally and politically charged with administering OPSB schools and OPSB's education policy and practices.

22. Defendant Orleans Parish School Board, incorporated under Louisiana Revised Statute 17:51, is a local education agency in Orleans Parish which directly operates schools, and governs those schools classified as Type 3 chartered schools.

23. Defendant Linda Johnson, in her official capacity as President of the Louisiana Board of Elementary and Secondary Education ("BESE"), is legally and politically charged with administering BESE- sponsored charter schools, and establishing state education policy and practice.

IV. CLASS ACTION

24. This action is maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

25. Plaintiffs represent a class of all parents and children of school age eligible for enrollment in schools operated by RSD, OPSB, or schools that have been granted charters by RSD, OPSB or BESE, who have been or will be wait-listed or otherwise denied educational services in Orleans Parish. Plaintiffs and class members were all displaced from New Orleans due to Hurricane Katrina and have subsequently returned to New Orleans. They seek to enroll their children in RSD, OPSB, or BESE-sponsored charter schools. However, due to the Defendant's refusal to enroll their children, denial of any and all educational services to their children, and/or placement of their children on a "wait list" Plaintiffs are unable to attain for their children the free and appropriate public education to which their children are entitled by federal and state law.

26. This case raises questions of law and fact that are common to the entire class. Common questions, applicable to all members of the class, include whether Defendants have violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, by utterly depriving children of any and all educational services for an indeterminate period of time.

27. The Plaintiff class, which includes the hundreds, if not thousands, of students who have returned or are returning to New Orleans and seek to enroll in public schools, is so numerous that joinder of all members is impracticable.

28. Each Plaintiff has claims that are typical of the claims of the class and its members. All named Plaintiffs are members of the class they seek to represent and will benefit from the relief this action seeks.

29. The named Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are represented by experienced counsel who will adequately represent the interests of the class.

30. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final relief with respect to the class as a whole.

V. FACTUAL ALLEGATIONS

31. In the aftermath of Hurricanes Katrina and Rita, the State of Louisiana established multiple operating structures and agencies for the delivery of educational services to students of public school age in Orleans Parish.

32. Upon information and belief, since at least January 2006, the schools and educational agencies in Orleans Parish, including OPSD, RSD and BESE-sponsored charter schools have refused to enroll eligible students who were displaced from and have returned to New Orleans. The Recovery School District has repeatedly assured parents that “we will accommodate all students who return to public schools in Orleans Parish. We will ensure that all schools have the staff and resources to serve children with all learning needs (especially children who require special education).” *See* Frequently Asked Questions about the Recovery School District, <http://www.louisianaschools.net/lde/uploads/8947.pdf>.

33. Defendants' assurances to the parents and children of New Orleans have not been honored, and according to Recovery School District Superintendent Robin Jarvis, in January 2007 alone, at least 300 students had been wait-listed for enrollment.

34. According to state and federal law, the State of Louisiana is required to open schools and educate students and to do so on an equal basis. *See* Louisiana Constitution of 1974, Article VIII, Section 1 ("The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system."); Louisiana Revised Statutes 17:10.7.A.(1) ("The Recovery School District . . . shall provide all educational services required of any city, parish, or other local public school system in order to meet the educational needs of all students...") La. Rev. Stat.. 17:151-153, (mandating kindergarten instruction as a prerequisite to entering first grade).

35. According to Louisiana's compulsory school attendance law, R.S. 17:221, a child between the ages of seven to seventeen must attend school unless the child has sooner graduated from high school or a sixteen year old has his parent's written permission to withdraw from school prior to graduation. By refusing to enroll eligible, school-aged children in school, Defendants are not only severely harming these children's education, they are rendering Plaintiffs and their children, among others, unable to comply with the law, and thereby placing them in jeopardy of being charged criminally.

36. Furthermore, the Equal Protection Clause of the U.S. Constitution mandates that education, when provided, must be provided to all on an equal basis. The decision to place 300 students on a "wait list," especially for an indeterminate period of time, clearly violates both federal and state law because, and to the extent that, it creates two classes of students: those who

have been enrolled in school and those who have been excluded entirely from school. The latter group, of course, is utterly deprived of the critical access afforded the former.

37. The McKinney-Vento Act was first enacted in 1987, Pub. L. No. 100-77, 102(b)(2), 100 Stat. 482, 485 (codified as amended at 42 U.S.C. 11301 et seq.), to provide a broad range of assistance to homeless individuals and families. Under the McKinney-Vento Act, “state educational agencies” such as the LSDE receive funds from the federal government and may make subgrants to “local educational agencies” such as RSD and OPSB. Upon information and belief, the Recovery School District and the Orleans Parish School Board receive federal funds from LSDE pursuant to the McKinney-Vento Act.

38. As local educational agencies receiving McKinney-Vento Act funds, the RSD and the OPSB are required to comply with the provisions of the McKinney-Vento Act, including that (i) students must be immediately enrolled in the school requested by the parent, guardian or unaccompanied youth, and if and when there is an enrollment dispute concerning a homeless child or youth, the school district must provide a written explanation of the reason the school district disagrees with the choice of the parent, guardian or unaccompanied youth and written notice of the right to appeal; (ii) homeless children and youth and their parents or guardians of their should be informed of their rights under the McKinney-Vento Act, including the availability and provision of a dispute resolution process for homeless children; and (iii) any barriers to the enrollment, retention and success in school of homeless children and youth, including unaccompanied youth, must be removed, and policies and practices revised accordingly.

39. Plaintiffs derive substantial benefits from attending school and are irrevocably harmed by Defendants' refusal to enroll them and place them on a wait list, and Defendants' attendant denial of any and all educational services.

VI. CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983; Equal Protection Under U.S. Constitution Amend. XIV, Louisiana State Constitution and Applicable Louisiana Laws)

[All Plaintiffs against all Defendants]

1. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

2. Plaintiffs seek a declaratory judgment that children of school age residing in Orleans Parish may not, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Constitution and laws of the State of Louisiana, be refused enrollment, denied any and all educational services, and/or placed on wait lists for public schools. Plaintiffs seek preliminary and permanent injunctive relief requiring Defendants to enroll immediately additional students eligible for public schooling as they and their families return or relocate to Orleans Parish and seek school placements.

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983; McKinney-Vento Act)

[All Plaintiffs against all Defendants]

3. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

4. Plaintiffs seek a declaratory judgment that children of school age residing in Orleans Parish who qualify as homeless under the McKinney-Vento Act must be immediately enrolled in the school they seek to attend and may not be denied any and all educational services and/or placed on wait lists for public schools. Plaintiffs seek preliminary and permanent injunctive relief requiring Defendants to enroll immediately homeless students eligible for public schooling as they and their families return or relocate to Orleans Parish.

THIRD CLAIM FOR RELIEF

(42 U.S.C. § 1983; Equal Protection Under U.S. Const. Amend. XIV, McKinney-Vento Act, Louisiana State Constitution and Applicable Louisiana Laws)

[All Plaintiffs Against All Defendants]

5. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

6. Plaintiffs seek an order requiring that Defendants prepare and submit to the Court, for its approval after consideration of any objections that may be submitted by Plaintiffs, a plan that assures that additional students whose families return to Orleans Parish or relocate to Orleans Parish in the future are not refused enrollment, placed on wait lists and denied any and all educational services.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as stated below:

1. Issue a judgment declaring that children may not be refused enrollment, denied any and all educational services, and/or placed on wait lists for public schools, under applicable Louisiana laws, and under federal and state constitutional provisions; and that children who

qualify as homeless under the McKinney-Vento Act must be immediately enrolled in school and may not be denied any and all educational services and/or placed on wait lists for public schools;

2. For preliminary and permanent injunctive relief to ensure compliance with the United States Constitution, the McKinney-Vento Act, Louisiana state constitution and applicable federal and Louisiana state laws;

3. Issue an order requiring the preparation of a plan, with Court approval and consideration of any objections by Plaintiffs, to avoid the refusal of enrollment, placement on wait lists and the denial of any and all educational services to additional students as they and their families return to Orleans Parish, or to additional students whose families may relocate to Orleans Parish;

4. For costs of suit and attorneys' fees; and

5. For such other and further relief as the Court may deem just, proper and appropriate.

Respectfully submitted,

THEODORE M. SHAW
DAMON HEWITT – T.A.
ANURIMA BHARGAVA
MARC BATTLE
NAACP Legal Defense & Educational Fund
99 Hudson Street, 16th Floor
New York, NY 10013
(212) 965-2200
dhewitt@naacpldf.org

IKE SPEARS, LSBA #17811
PEDRO F. GALEAS, LSBA #28580
SPEARS & SPEARS
1631 ELYSIAN FIELDS AVE.
NEW ORLEANS, LA 70117
(504) 593-9500
ike@spearslaw.com

Attorneys for Plaintiffs
*Motions to Appear Pro Hac Vice filed
contemporaneously with this Complaint*

Dated: February 1, 2007

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been duly served on all counsel by depositing same into the U. S. Mail, postage prepaid, this 1st day of February, 2007, by any other means authorized by law.

IKE SPEARS