

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

Khadidja Issa; Q.M.H., a minor, individually,
by and through his parent, Faisa Ahmed
Abdalla; **Alembe Dunia; Anyemu Dunia;**
V.N.L., a minor, individually, by and through
her parent Mar Ki; **Sui Hnem Sung; and all**
others similarly situated,

Plaintiffs,

v.

The School District of Lancaster,

Defendant.

Civil Action No. 16-cv-3881

HON. EDWARD G. SMITH

CLASS ACTION

ELECTRONICALLY FILED

**PLAINTIFFS' EMERGENCY MOTION FOR
PROVISIONAL CLASS CERTIFICATION AND ENTRY OF
PRELIMINARY INJUNCTION PROTECTING SIMILARLY-SITUATED STUDENTS**

Plaintiffs, by and through their undersigned attorneys, hereby move this Court pursuant to Fed. R. Civ. P. 23(a) and (b)(2) and 65 for an order provisionally certifying the proposed class, *see* ECF No. 2 at 1, and clarifying and extending the terms of this Court's August 26, 2016, injunction order, ECF No. 36, to Class Members, who are and will continue to be irreparably harmed without this additional court protection. As grounds therefor, Plaintiffs aver as follows:

1. On August 26, 2016, this Court granted in part Plaintiffs' motion for preliminary injunction, holding that "Plaintiffs have been or are being denied a meaningful education through denial or delays in enrollment and by placement at a school (Phoenix Academy) that fails to overcome their language barriers in violation of the EEOA." ECF No. 35 at 13. The Court determined that "plaintiffs' motion presents straightforward legal issues that were ultimately easy to resolve. As to those issues, the law is clear: eligible students must be timely enrolled, and efforts to overcome language barriers must be sound and effective." *Id.* at

14. On the latter point, the Court held that “the ESL program at Phoenix does not sufficiently overcome the plaintiffs’ language barriers, which violates the EEOA.” *Id.* at 8.

2. The Court elected to defer ordering specific “interim relief for [] [Plaintiffs’] proposed class,” reasoning that “any such relief is best addressed as the case progresses to avoid any unintended harm to unnamed class members.” *Id.* at 6 n.3. The Court nonetheless included an expectation that Defendant, “going forward, [] will comply with the legal requirements for enrollment imposed by Pennsylvania Law.” *Id.* at 9. And in the preliminary injunction Order, the Court noted that its legal reasoning “would likely apply” to similarly-situated students and that “prior to the court’s determination on the motion for class certification, the parties are *encouraged* to fairly apply that reasoning to those individuals.” ECF No. 36, n.1 (emphasis added).

3. On September 7, 2016, Dr. Arthur Abrom, Acting Director of Student Services for the School District of Lancaster (“SDOL” or “District”), sent an email to Church World Service (“CWS”), making plain the District’s intentions not to apply the reasoning in this Court’s August 26, 2016 opinion and injunction order in determining the placement of newly arriving immigrant English Language Learners (“ELLs”), ECF No. 36:

“At this point, transfers are being offered to students who were at Phoenix at the time of the [court] order. With all other students, we are proceeding status quo until our appeal is heard.”

4. Since then, the District has refused to transfer from Phoenix to McCaskey at least two recently arrived ELLs who are similarly situated to Named Plaintiffs: an 18-year-old Burmese refugee and a 19-year-old Haitian entrant. Despite this Court’s express expectation in its preliminary injunction order that the District would treat similarly-situated students in accordance with the Court’s decision, ECF No. 36 n.1, the District has refused.

5. Plaintiffs return to this Court seeking specific relief for similarly-situated immigrant ELLs who, without this Court's protection, will continue to suffer irreparable harm caused by the District's refusal to honor this Court's August 26, 2016, preliminary injunction ruling. *See* ECF Nos. 35, 36.

6. Plaintiffs hereby incorporate by reference the Memorandum of Law in support of this Motion filed on this date.

7. A proposed order is attached.

WHEREFORE, Plaintiffs request that this Court modify its August 26 Order¹ to

(a) expressly enjoin the District from continuing its illegal enrollment and placement practices;

(b) provisionally certify the class proposed in Plaintiffs' motion for class certification, ECF No. 2;

(c) expressly extend the injunction order to Class Members;

(d) authorize Plaintiffs to serve additional discovery requests aimed at identifying Class Members and determining their enrollment status; and

(e) order Defendant to respond to Plaintiffs' discovery requests.

¹ Alternatively, instead of modifying the August 26 preliminary injunction order, the Court could enter a separate order provisionally certifying the class, authorizing additional class discovery, and preliminarily enjoining Defendant from continuing its illegal practices with respect to Class Members.

Dated: September 16, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 16, 2016, I filed the foregoing Emergency Motion for Provisional Class Certification and Entry of Preliminary Injunction Protecting Similarly-Situated Students electronically via ECF and served same via ECF on:

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