

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CONCERNED CITIZENS AND PARENTS OF)	CASE NO. 1:10 CV 497
THE CLEVELAND METROPOLITAN SCHOOL)	
DISTRICT, et al.,)	JUDGE JAMES S. GWIN
)	
Plaintiffs,)	
)	<u>MEMORANDUM OF OPINION</u>
v.)	<u>AND ORDER</u>
)	
CLEVELAND METROPOLITAN SCHOOL)	
DISTRICT, et al.,)	
)	
Defendants.)	

On March 8, 2010, plaintiffs *pro se* Eric Johnson, Bonita Carter, and Sam Cooke filed this *in forma pauperis* action, and a Motion for Temporary Injunction, against the Cleveland Metropolitan School District, Dr. Eugene Sanders, the Cleveland Board of Education, and Cleveland Mayor Frank Jackson. Plaintiffs seek relief under the No Child Left Behind Act (NCLBA), and specifically ask this court to prevent implementation of a proposed "Transformation Plan" developed for the Cleveland Metropolitan School District.

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the district court is required to dismiss an action under 28 U.S.C. § 1915(e) if it fails to state a

claim upon which relief can be granted, or if it lacks an arguable basis in law or fact.¹ *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996).

Even liberally construed, the complaint does not contain allegations reasonably suggesting plaintiffs might have a valid claim. This is because there is simply no legal basis for a private cause of action under NCLBA. *Newark Parents Association v. Newark Public Schools*, 547 F.3d 199, 212 (3rd Cir. 2008); *Fresh Start Academy v. Toledo Board of Education*, 363 F.Supp.2d 910, 916 (N.D. Ohio 2005).

Accordingly, the requests to proceed *in forma pauperis* are granted and this action is dismissed under section 1915(e). Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Dated: March 9, 2010

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

¹ A claim may be dismissed *sua sponte*, without prior notice to the plaintiff and without service of process on the defendant, if the court explicitly states that it is invoking section 1915(e) [formerly 28 U.S.C. § 1915(d)] and is dismissing the claim for one of the reasons set forth in the statute. *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997); *Spruytte v. Walters*, 753 F.2d 498, 500 (6th Cir. 1985), cert. denied, 474 U.S. 1054 (1986); *Harris v. Johnson*, 784 F.2d 222, 224 (6th Cir. 1986); *Brooks v. Seiter*, 779 F.2d 1177, 1179 (6th Cir. 1985).