

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROSA RIVERA, on behalf of herself :
individually and on behalf of all others :
similarly situated, :

OMARY RODRIGUEZ-FUENTES, on :
behalf of herself individually and on :
behalf of all others similarly situated, :

MADELINE ECHEVARRIA, on behalf :
of herself individually and on behalf of :
all others similarly situated, :

LENORA HUMMEL, on behalf of :
herself individually and on behalf of all :
others similarly situated, :

THE PENNSYLVANIA STATE :
CONFERENCE OF NAACP :
BRANCHES ("PA-NAACP"), :
individually :

Plaintiffs,

vs.

LEBANON SCHOOL DISTRICT, :

Defendant.

CIVIL ACTION NO. _____

CLASS ACTION COMPLAINT

COMPLAINT

Class Action for Declaratory and Injunctive Relief and For Restitution of Illegal Truancy Fines Retained by the Lebanon School District

SUMMARY OF COMPLAINT

Plaintiffs, through their undersigned attorneys, bring this action to vindicate rights under the Equal Protection and Due Process Clauses of the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983, and to redress violations of the Pennsylvania School Code regarding fines for truancy as well as their rights to equal protection and due process under the Pennsylvania Constitution.

Lebanon School District (the “School District” or “District”) has pursued a policy of seeking truancy fines pursuant to Section 1333 of the Pennsylvania Public School Code of 1949, as amended, 24 P.S. §13-1333, that were in excess of the statutory maximum of \$300 plus court costs. Since July 2004, the District has obtained at least 935 such fines and collected thousands of dollars to which it was not legally entitled.

Having been confronted in 2009 by the Lebanon Chapter of the NAACP with the illegality of such fines, the District tacitly admitted the fines were illegal by selectively acting to adjust many of the fines to conform to the \$300 limitation, while leaving other excessive fines unchanged. Last year at least 340 fines, some dating back to 2004, were reduced by an amount more than \$235,000.

At least 273 other illegal fines were not reduced although similar in all relevant respects to those which were reduced. Furthermore, although the District, with the assistance of the magisterial district judges that imposed the illegal fines, has sought to halt collecting some excessive fines, it has done nothing to provide restitution of the funds it has illegally obtained from those who diligently completed paying their fines or who have made partial payments in excess of \$300, thus irrationally treating more harshly persons who have complied with the fines than those who have not. The School District has wrongfully retained payments in excess of \$300 made in connection with at least 323 fines.

This process of arbitrarily and selectively providing relief to some persons who were subjected to the illegal fines, while not providing similar relief to other persons subjected to the identical illegal actions, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the similar guarantee of the Pennsylvania Constitution. The failure to provide any procedure to challenge the decision to exclude a person who received an illegal fine from the class of persons provided relief from the illegal fines is a denial of due process protected by the Fourteenth Amendment to the United States Constitution and the similar guarantee of the Pennsylvania Constitution.

This is a class action seeking declaratory and injunctive relief on behalf of those persons who are being arbitrarily discriminated against by the

School District. The complaint further seeks declaratory and injunctive relief for violations of the Pennsylvania constitution and Public School Code and equitable restitution of the illegal fines paid to the District.

As their complaint Plaintiffs allege as follows:

PARTIES

1. Plaintiff Rosa Rivera is a parent of three Lebanon School District students. She has paid \$1,085 in fines and costs and still owes \$413.90 on account of Docket No. NT-0000218-09 issued at the request of the School District by Magisterial District Court 52-2-01. A single mother supporting her family on cash assistance, she has been diligently paying the fine at the rate of \$50 per month. The School District has made no attempt to cease collecting this amount or to reimburse her for the amount paid in excess of the legal maximum. The fine arose when she took her son Derek Zapate to Puerto Rico expecting to enroll him in school there. When she instead returned to Lebanon after he had missed 20 days of school, the School District sought and obtained this \$1400 fine.

2. Plaintiff Omary Rodriguez-Fuentes is a parent of three current students and one former student in the Lebanon School District. In the last three years, at the request of the School District, she has received 29 truancy citations pursuant to 24 P.S. §13-1333; has paid \$1064 in truancy fines and costs; and has unpaid truancy fines and costs totaling \$5,927, which she is paying at the rate of

\$150 month. The outstanding unpaid fines include Docket No. NT-0000227-09 in the amount of \$1,000 plus \$59.50 in costs, NT-0000226-09 for \$500 plus \$59.50 in costs, and NT-0000163-09 for \$400 plus costs, all imposed March 2, 2009, by Magisterial District Court 52-1-01. Ms. Rodriguez-Fuentes is paying her fines at \$150 per month from her disability income, which is her family's sole source of financial support. No adjustment or reduction has been made to those of her fines in excess of \$300.

3. Plaintiff Madeline Echevarria is a parent of two former Lebanon School District students charged with truancy who diligently has paid \$3,378.71 in truancy fines and costs for 15 truancy citations and has fully paid up all amounts owed. Her payments included \$984.52 for Docket No. NT-000852-06, which was a fine for \$900, and \$482.19 on Docket No. NT-0000931-06 which lists the total original amount due as \$659.38. She supports her family and her sister on disability payments. The District has made no attempt to reimburse her for the \$700 it received in excess of the legal maximum.

4. Plaintiff Lenora Hummel is a parent of two students who were attending the Lebanon School District. To date, Ms. Hummel has paid at least \$3,315 in fines and costs, and the School District has received \$2,593.95 on account of 20 truancy fines imposed on this single mother living on disability payments. Between 2007 and 2008, at the request of the School District, Ms.

Hummel was assessed 8 fines for truancy by Magisterial District Court 52-1-01 in excess of the \$300 plus costs. The docket numbers, fine amounts imposed, and fine amounts outstanding of the eight fines are:

<u>Docket No.</u>	<u>Fine</u>	<u>Balance Due on Fine</u>
NT-0000196-07	\$2,300	\$1,335
NT-0000248-07	\$ 400	\$ 0
NT-0000302-07	\$ 500	\$ 457
NT-0000486-07	\$ 350	\$ 350
NT-0000133-08	\$ 850	\$ 850
NT-0000346-08	\$ 900	\$ 900
NT-0000654-08	\$1,100	\$1,100
NT-0001079-08	\$1,700	\$1,700

These fines totaled \$8,100 and the court costs \$535.50. Ms. Hummel has paid \$1,501.50, of which \$1,365 was disbursed to the School District on account of these fines. \$6,735 remains outstanding on the fines plus \$399 in costs. None of Ms. Hummel's excessive fines with outstanding balances were adjusted to \$300. The District has retained all of the \$965 it obtained on account of NT-000196-07 and the \$400 it obtained on account of NT-0000248-07, even though \$765 of those payments is in excess of any amount the District was legally entitled to receive.

5. Plaintiff Pennsylvania State Conference of NAACP Branches ("PA-NAACP") is a non-partisan organization operating in Pennsylvania and is affiliated with the National Association for the Advancement of Colored People operating across the United States. PA-NAACP has 15,000 members in 46

branches across the state, including a chapter organized in Lebanon, Pennsylvania. Among other things, PA-NAACP is dedicated to ensuring that all students in Pennsylvania have an equal opportunity to obtain a high-quality public education. It has worked tirelessly to remove barriers erected by school officials to the participation of minority students on a fully equal basis and to ensure all students receive the services they need to succeed, both through litigation and public advocacy. In furtherance of these purposes, the PA-NAACP and its branches conduct programs on educational matters to inform its members, school officials and citizens on effective practices as well as on working with diverse populations. The PA-NAACP and its members are aggrieved by the District's actions and omissions described in this Complaint because they substantially impede PA-NAACP's ability to further its goals and institutional purpose of improving educational opportunities for students by imposing deterrents to parents and students from registering students in the School District out of fear of exorbitant fines and by diverting resources of its chapters and members to addressing the actions and failures to act of the School District. Some of the members of PA-NAACP and its Lebanon chapter also have been specifically aggrieved by the District's actions as class members or as persons called upon to assist class members assert their rights. The claims of the PA-NAACP are not brought as a class representative.

6. The Lebanon School District is a public body corporate with the powers and duties set forth in the Public School Code, 24 PS § 1-101, et seq. Its offices are located at 1000 South 8th Street, Lebanon, Pennsylvania.

JURISDICTION AND VENUE

7. This Court has jurisdiction for the claims arising from violations of the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983, pursuant to 28 U.S.C. §§ 1331, 1343(a) (3) and (4), and over declaratory judgments pursuant to 28 U.S.C. § 2201. It has jurisdiction over the claims of violations of Pennsylvania's Constitution and laws pursuant to 28 U.S.C. § 1367.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as the defendant resides in the Middle District of Pennsylvania and all of the events giving rise to the complaint occurred in the Middle District.

LEBANON'S TRUANCY ACTIONS

9. The District has filed more than 1,200 citations for violations of Pennsylvania's compulsory school attendance law, 24 P.S. § 13-1327, every year for more than six years. For the school year that ran from July 1, 2008 to June 30, 2009, the School District issued at least 1,489 citations resulting in fines against more than 700 parents or students. The fines and costs assessed against those parents and students totaled more than \$498,000.

10. On information and belief, the School District began the campaign of intensive use of court citations and excessive fines for truancy in the 2004-05 school year with the appointment of Robert Bowman as attendance officer, with the fines increasing each school year through 2008-09.

11. Although the Pennsylvania Department of Education recommends that school districts develop Truancy Elimination Plans for each truant student with the participation of the students' parents before initiating court proceedings for truancy, defendant School District has never done so. *See* PDE Basic Education Circular: Compulsory Attendance and Truancy Elimination Plan, available at http://www.portal.state.pa.us/portal/server.pt/community/purdon's_statutes/7503/compulsory_attendance_and_truancy_elimination_plan.

12. The District files its truancy citations in Magisterial District Courts 52-1-01 and 52-2-01 (hereinafter the "District Courts"). District officials serve the summonses, prosecute the truancies, provide the court with information on the students' attendance, and make recommendations on punishment.

THE SCHOOL DISTRICT'S ACTIONS IN VIOLATION OF LAW

13. Although the governing Pennsylvania statute, 24 P.S. §13-1333, limits fines to \$300 plus costs for a citation, the District sought and obtained fines in excess of such amounts, including fines as high as \$9,000 plus costs per citation.

14. Pursuant to the state statute, the School District receives all of the fines collected by the District Courts for truancy, including the fines in excess of the maximum which the School District is authorized to receive.

15. Many of the citations issued by the School District requested fines in excess of \$300. For the period July 1, 2004, through June 30, 2009, the School District was awarded at least 935 fines in excess of \$300, at least 178 of which were in excess of \$1,000. For school year 2008-09 alone, 250 of those fines were in excess of the statutory maximum, and 75 of the fines were in excess of \$1,000.

16. The School District accepted and has retained payment of amounts in excess of \$300 on at least 323 fines, totaling at least \$107,000.

17. Many of the parents with excessive fines are on limited or fixed incomes and are paying the fines to the District Courts pursuant to monthly payment plans. Many of the excessive fines assessed in the last six years are still being collected by the District Courts and turned over to the School District.

18. On information and belief, in 2010 the District sought and obtained from the District Courts the adjustment of at least 340 fines that had been in excess of the statutory maximum. Most were adjusted down to the statutory maximum. Some of these fines dated back to 2004. These actions reduced outstanding balances being collected for distribution to the District by at least

\$235,000. The School District has never disclosed the criteria by which the recipients of these reductions were selected, but at least 273 fines which still have outstanding balances due were excluded from the adjustments. On information and belief, no rational basis exists for the distinction between the fines which were reduced and those that were not. The intentional exclusion of plaintiff class members with outstanding balances from those selected for adjustment was arbitrary and capricious.

19. Some fines with outstanding balances on which parents had made partial payments in excess of \$300 were adjusted downward and some, but not all, of the excess payment credited to other fines previously assessed against the same individual. Other fines with outstanding balances on which parents had made partial payments in excess of \$300 were not adjusted all. The intentional selection of some fines for adjustment and the exclusion of others similarly situated was arbitrary and capricious and without basis in law.

20. The 340 fines adjusted to eliminate illegal fines in excess of \$300 were solely fines with outstanding balances. No adjustments were made to illegal fines that had already been paid in full and the receipts of which had already been obtained by the School District. This intentional exclusion of illegal fines which have been fully paid from any adjustment favors those who failed to pay

their judgments over those who diligently completed paying their fines and costs. That distinction is arbitrary and capricious and without basis in law.

21. The action of the School District in seeking the elimination of at least \$235,000 in outstanding fines is an admission that it was not entitled to the proceeds of fines in excess of \$300 per citation, and it is inconsistent with the School District's retaining the payments of excess fines that it has received, which on information and belief totaled at least \$107,000 since July 1, 2004.

22. The District has never given notice to plaintiff class members of any procedure to seek "adjustment" of their unpaid fines or restitution of any excessive amounts already paid, denying them any process to establish that they are eligible or entitled to adjustment like those that were given to others based on secret criteria.

23. All actions of the District complained of herein were done under color of law.

CLASS ACTION ALLEGATIONS

24. This class action is brought pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), being an action solely for injunctive and equitable relief.

25. The proposed class consists of all persons who had fines in excess of \$300 per citation for truancy violations in the District imposed by Magisterial District Courts 52-01-01 or 52-01-01 since July 1, 2004 and who (a)

have an outstanding balance due greater than \$300 plus costs on a citation, or (b) have paid an amount in excess of \$300 plus costs on a citation.

26. The proposed class contains an unknown number of individuals, in excess of one hundred persons, who have in total received approximately 500 fines exceeding the statutory maximum, and whose fines the District either has not sought to have adjusted to legal levels or to reimburse for payments made in excess of the maximum authorized by law. The class is so numerous that joinder of all members is not practicable.

27. There are questions of law common to the class, including whether the District has denied class members equal protection when it failed to act to reduce their outstanding fines or to repay fines already collected while reducing the excessive fines of other hundreds of other persons similarly situated, whether the failure to provide a procedure for persons excluded from the fine adjustments provided to others to challenge that exclusion is a denial of due process, whether the District can continue to attempt to collect truancy fines exceeding amounts authorized by law, and whether the District has any defense to an action for restitution for fines received and retained by it which exceed amounts it is authorized by law to seek and receive.

28. The proposed representative parties have claims that are typical of the claims of the class, for they are parents of truant school children who either

paid fines in excess of the statutory maximum or have outstanding balances owed based on fines in excess of the statutory maximum.

29. The proposed representative parties will fairly and adequately assert and protect the interests of the class, they have no conflict with any interests of the class, they have obtained counsel experienced in the conduct of class actions, and they will be able to effectively pursue the claims on behalf of class members.

30. A class action is a fair and efficient method of adjudicating the controversy presented by this lawsuit. The size of the class is manageable, as it consists of fewer than 500 members, and available court records will allow the identification of all class members.

31. Equitable and declaratory relief is appropriate with respect to the class because the District has acted on grounds generally applicable to the class in collecting and retaining fines in excess of the amount authorized by statute, in refusing to seek reduction of the excess fines outstanding, and in refusing to provide restitution of amounts wrongfully obtained.

CLAIMS

Count I—Violations of Federal Law

32. The actions of the District in selectively seeking reduction of statutorily excessive fines for only a third of the illegal truancy fines imposed at

the request of the School District and not for the remainder is arbitrary and capricious, and intentionally denies plaintiffs and plaintiff class members the equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

33. The actions of the District in using undisclosed criteria to determine which excessive fines imposed would be selected for adjustment, and in failing to provide plaintiffs and plaintiff class members with any opportunity to establish whether fines imposed on them met the criteria, intentionally deprived plaintiffs and plaintiff class members due process in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

34. The violations by the District of the Constitution set forth herein violate the rights of plaintiffs and plaintiff class members under 42 U.S.C. § 1983.

Count II – Violations of State Law

35. The actions set forth above deny plaintiffs and plaintiff class members equal protection of the law and due process of the law in violation of the Pennsylvania Constitution.

36. Truancy fines in excess of the statutory maximum authorized by 24 P.S. § 13-1333 are illegal and void.

37. School districts are creations of the state and have only such powers as are explicitly granted by the General Assembly. The District is not entitled to retain funds it wrongfully received from the Magisterial District Courts pursuant to void and illegal judgments in excess of authorized statutory amounts. The District initiated such fines by filing the citations, attended all proceedings, and received the proceeds from the excessive fines, in spite of the statute limiting fines to no more than \$300 plus costs for each citation. Restitution is the appropriate equitable action under Pennsylvania law when a body has received funds to which it was not entitled.

38. There is no statutory procedure to identify and notify all persons affected by the excessive fines. There is no statutory procedure for informing them that they are entitled to stop paying the excessive fines. There is no statutory procedure for persons to obtain restitution for the payments for the illegal fines they have made previously.

39. There is no other adequate remedy for the harm and injury caused to plaintiffs and plaintiff class members who have been injured by the District by these fines in excess of the maximum set by law.

WHEREFORE, Plaintiffs pray that this Court:

1. Certify a class of plaintiffs of all persons who had fines in excess of \$300 per citation for truancy violations in Lebanon City School District

imposed by Magisterial District Courts 52-01-01 or 52-01-01 since July 1, 2004 and who (a) have an outstanding balance due greater than \$300 plus costs on a citation, or (b) have paid an amount in excess of \$300 plus costs on a citation.

2. Declare that the actions of the District in arbitrarily seeking the reduction of some but not all excessive fines violates the Equal Protection Clause of the United States Constitution, the similar guarantee of the Pennsylvania Constitution, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

3. Declare that the failure to provide any opportunity to challenge the District's refusal to seek adjustment of class members' excessive fines to the statutory maximum or refusal to reimburse excessive fines received by the District violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the similar guarantee of the Pennsylvania Constitution, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

4. Alternatively, declare that the District is not entitled to collect or retain fines for truancy violations in excess of \$300 plus cost per citation, and declare that truancy fines imposed in favor of the District since July 1, 2004 that exceed the maximum authorized to be imposed by statute are null and void.

5. Enjoin the District to take all steps necessary to seek the reduction to \$300 of all fines which continue to have an outstanding balance in

excess of \$300 and to notify each plaintiff and plaintiff class member whose fines are thereby reduced.

6. Enjoin the District to take all steps necessary to reimburse plaintiffs and plaintiff class members who have paid amounts in excess of \$300 on account of truancy fines, including to:

i. compile a record identifying each person assessed excessive fines, and how much in excess of \$300 plus costs each person has paid;

ii. create a fund in the amount of the excessive fines identified in Paragraph 6(i) which have been paid by plaintiffs and plaintiff class members, which fund is to be held and administered by an Administrator appointed by the Court in trust for the class members identified in Paragraph 6(i) as having paid such amounts.

iii. Engage in at least six months' reasonable effort at locating the plaintiff class members entitled to such payments, including by mail, publication and Internet search.

iv. Use any amounts remaining in the fund solely to assist parents to participate in school events or for funding truancy-elimination programs that are consistent with the Pennsylvania Department of Education's Basic Education Circular and approved by this Court.

7. Order the District to pay reasonable attorneys fees and costs.

8. Order such other relief as may be just and proper to remedy the violations of the District.

By:

Michael Churchill (PA 04661)
Benjamin Geffen (PA 310134)
Public Interest Law Center of Philadelphia
1709 Benjamin Franklin Parkway
Second Floor
Philadelphia, PA 19103
Phone: 215.627.7100
Fax: 215.627.3183
Email: mchurchill@pilcop.org

Thomas B. Schmidt III (PA 19196)
Pepper Hamilton LLP
100 Market Street, Suite 200
P.O. Box 1181
Harrisburg, PA 17108
Phone: 717.255.1164
Fax: 717.238.0575
Email: schmidtt@pepperlaw.com

Dated: January 20, 2011