

COLUMBIA LEGAL
SERVICES

09 JUL 15 PM 1:24

SEATTLE OFFICE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

J.W., a minor, through his guardian ad litem,
SALVADOR MUNGIA; S.R., a minor, by
and through his parents, SAMUEL
REUPENA and TAFAGA REUPENA,

Plaintiffs,

vs.

PIERCE COUNTY, a political sub-division
in the State of Washington; TACOMA
PUBLIC SCHOOLS, a.k.a. Tacoma School
District No. 10; and RANDY DORN,
Superintendent of Public Instruction, in his
official capacity,

Defendants.

No.

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant Tacoma Public Schools (a.k.a. Tacoma School District No. 10, hereinafter "District"), by and through its undersigned counsel, hereby remove the above-captioned case from the Superior Court of the State of Washington for Pierce County to the United States District Court for the Western District of Washington in Tacoma pursuant to 28 U.S.C. § 1446, and respectfully state:

NOTICE OF REMOVAL-1

PAATIPSI DE LINDA
FORE LITIGANT

Seattle WA 98101

1 1. The above action was filed on June 17, 2009, and served on the Defendant
2 District on June 17, 2009. The action is currently pending in the Superior Court of the State of
3 Washington for Pierce County, under Cause No. 09-2-10156-1.

4 2. This law firm represents the Defendant District in this action. As required by 28
5 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on the Defendant District
6 are attached hereto as Exhibit 1.

7 3. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being
8 served upon counsel for the Plaintiffs J.W., a minor, through his guardian ad litem, Salvador
9 Mungia; and S.R., a minor, by and through his parents, Samuelu Reupena and Tafaoga
10 Reupena, and Defendant Pierce County and Defendant Randy Dorn, Superintendent of Public
11 Instruction, in his official capacity by and through their respective counsel. Additionally, a
12 copy of this Notice of Removal is being filed with the clerk of the Pierce County Superior
13 Court.

14 4. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty
15 (30) days after the receipt of the Complaint by the Defendant District.

16 5. Plaintiffs' Complaint alleges, among other things that the District violated
17 Plaintiffs' civil rights under 42 U.S.C. § 1983. Plaintiffs allege that all Defendants violated the
18 Plaintiffs' due process rights, under the Fourteenth Amendment of the United States
19 Constitution and violated Plaintiffs' equal protection rights, under the Fourteenth Amendment
20 of the United States Constitution. (See Exhibit 1 at ¶¶ 34-36, 38-40 at pp. 7-8.)

21 6. This Court has jurisdiction over the subject matter of this action pursuant to 28
22 U.S.C. § 1443, as this is a civil rights case. This Court also has subject matter jurisdiction in
23 the case under 28 U.S.C. § 1331, as the District Courts have original jurisdiction over all civil
24 actions arising under the laws of the United States.

25 7. The above-captioned action may be removed to this Court pursuant to 28 U.S.C.
§ 1446(b). This Court is a district court of the United States for the district and division

NOTICE OF REMOVAL

THE OFFICE OF THE CLERK OF COURT
Pierce County Superior Court

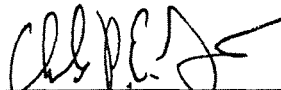
1000 Third Avenue, Suite 2000
Seattle, WA 98101-3100 Tel: 206.462.6700

1 embracing the place where the state court action is pending and is, therefore, the appropriate
2 Court for removal purposes pursuant to 28 U.S.C. § 1441.

3 8. Pursuant to Local Rule W.D. Wash. CR 5(e)(1), removal from Pierce County
4 Superior Court to the United States District Court, Western District of Washington in Tacoma
5 is proper.

6 DATED this 14 day of July, 2009.

7 PATTERSON BUCHANAN
8 FOBES LEITCH & KALZER, INC., P.S.

9 By: 
10 Charles P.E. Leitch, WSBA 25443
11 cpl@pattersonbuchanan.com
12 2112 Third Avenue, Suite 500
13 Seattle, WA 98121
14 Phone: (206)462-6700
15 Fax: (206)462-6701
16 Attorney for Defendant Tacoma School
17 District No. 10
18
19
20
21
22
23
24
25

1 **CERTIFICATE OF SERVICE**

2
3 The undersigned certifies under penalty of perjury under the laws of the State of Washington that
4 on the below date I caused to be served upon counsel listed below in the manner indicated a true
5 and correct copy or the original of the foregoing and attached document.

6 Ms. Beth Colgan Via:
7 Columbia Legal Services [] U.S. Mail
8 101 Yesler Way, Suite 300 [] Facsimile
Seattle, WA 98104 [X] Legal Messenger

9 Mr. Dierk Jon Meierbachtol Via:
10 1125 Washington St. SE [] U.S. Mail
11 P.O. Box 40100 [] Facsimile
Olympia, WA 98504-0100 [X] Legal Messenger

12 Michelle Luna-Green Via:
13 Deputy Prosecuting Attorney [] U.S. Mail
14 955 Tacoma Avenue S., Suite 301 [] Facsimile
Tacoma, WA 98402 [X] Legal Messenger

15 Pierce County Superior Court Via:
16 County-City Bldg., #334 [] U.S. Mail
17 930 Tacoma Avenue South [] Facsimile
Tacoma, WA 98402 [X] Legal Messenger

18 Dated at Seattle, Washington, this 15th day of July, 2009.

19
20 
21 Valerie M. Allen, Legal Assistant
22 2112 Third Avenue, Suite 500
23 Seattle, WA 98121
24 Phone: (206) 462-6700
25 Fax: (206) 462-6701
vma@pattersonbuchanan.com

EXHIBIT 1

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN 17 2009 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

JUN 17 2009

*Hand delivered &
Served to Supt Jarvis
by Kathy of Legal Messengers*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

J.W., a minor, through his guardian ad litem,
SALVADOR MUNGIA; S.R., a minor, by and
through his parents, SAMUELU REUPENA
and TAFAGO REUPENA,

CLASS ACTION

09 2 10156 1

No.

SUMMONS

Plaintiffs,

vs.

PIERCE COUNTY, a political sub-division in
the State of Washington; TACOMA PUBLIC
SCHOOLS, a.k.a Tacoma School District No.
10; and RANDY DORN, Superintendent of
Public Instruction, in his official capacity,

Defendant.

TO THE DEFENDANTS:

A lawsuit has been started against you in the above entitled court by J.W., a minor, through his guardian ad litem, Salvador Mungia, and by S.R., a minor, by and through his parents, Samuelu Reupena and Tafaoga Reupena, Plaintiffs. Plaintiffs' claims are stated in the written complaint, a copy of which is served upon you with this summons.

SUMMONS - 1

Submitted by: Jennifer
Date: 6/17/09
Checked by: Kevin Stock
Booked: 36, 164
(20) 404-0008

1 In order to defend against this lawsuit, you must respond to the complaint by stating your
2 defense in writing, and by serving a copy upon the persons signing this summons within **20 days**
3 after the service of this summons, excluding the day of service, or a default judgment may be
4 entered against you without notice. A default judgment is one where plaintiffs are entitled to what
5 they ask for because you have not responded. If you serve a notice of appearance on the
6 undersigned persons, you are entitled to notice before a default judgment may be entered.

7 You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand
8 must be in writing and must be served upon the persons signing the summons. Within **14 days** after
9 you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this
10 summons and complaint will be void.

11 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
12 that your written response, if any, may be served on time.

13 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of
14 Washington.

15 DATED this 17th day of June, 2009.

16 COLUMBIA LEGAL SERVICES
17 Institutions Project

18
19 By 

Gavin Thornton, WSBA #32996
Beth A. Colgan, WSBA #30520

20 Attorneys for Plaintiffs
21
22
23

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN 17 2009 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

J.W., a minor, through his guardian ad litem,
SALVADOR MUNGIA; S.R., a minor, by and
through his parents, SAMUEL REUPENA
and TAFAGA REUPENA,

Plaintiffs,

vs.

PIERCE COUNTY, a political sub-division in
the State of Washington; TACOMA PUBLIC
SCHOOLS, a.k.a Tacoma School District No.
10; and RANDY DORN, Superintendent of
Public Instruction, in his official capacity,

Defendants.

CLASS ACTION

09 2 10156 1

No.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiffs by and through their respective undersigned counsel, upon knowledge with respect to their own acts and circumstances, and on information and belief as to other matters, allege as follows:

I. INTRODUCTION

1. The Plaintiffs in this case are youth who are confined in Pierce County jails and

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Page 1

Drummond Legal Services
1100 West 5th, Suite 300
Seattle WA 98104
(206) 464-5933

1 have been denied their rights to an education, and their parents.

2 2. Plaintiffs ask the court to grant declaratory and injunctive relief mandating that
3 the Defendants provide the Plaintiffs confined to the jail and the class they seek to represent with
4 the education required by state and federal law. Plaintiffs also seek an award of reasonable
5 attorneys' fees and costs associated with bringing this action.

6 **II. JURISDICTION & VENUE**

7 3. The Court has jurisdiction over this action pursuant to Article IV, Section 6 of the
8 Washington State Constitution and RCW 2.08.010 in that this is a case in equity and exclusive
9 jurisdiction over this matter has not been vested in some other court.

10 4. The Court has jurisdiction over this action pursuant to 42 U.S.C. § 1983 in that
11 this is an action for deprivation of rights, privileges, and immunities secured by the United States
12 Constitution.

13 5. Venue is proper in this Court pursuant to: (1) RCW 4.12.020 in that the cause of
14 this action arose in Tacoma, Pierce County, Washington; (2) RCW 4.12.025 as some of the
15 defendants reside in Pierce County; and (3) RCW 36.01.050 as this is an action against
16 Defendant Pierce County.

17 **III. PARTIES**

18 6. Plaintiff J.W. is an inmate at the Pierce County jail in Tacoma, Washington. He
19 is 17-years old as of the date of filing this complaint. He is scheduled to be released from the jail
20 on June 20, 2009. This action is brought on J.W.'s behalf through his Guardian ad Litem,
21 Salvador Mungia.
22
23

1 7. Plaintiff S.R. is an inmate at the Pierce County jail. He is 17-years old as of the
2 date of filing this complaint. On information and belief, as of the filing of this complaint, S.R.
3 does not have a set release date.

4 8. Plaintiffs Samuelu Reupena and Tafaoga Reupena are the parents of Plaintiff S.R.
5 They currently reside in Tacoma, Washington.

6 9. Defendant Pierce County is a political subdivision in the State of Washington. It
7 is responsible for the operation of the Pierce County jail and is responsible for ensuring that its
8 inmates receive the education to which they are entitled under state and federal law.

9 10. Defendant Tacoma Public Schools, a.k.a. Tacoma School District No. 10, is
10 responsible for ensuring that all youth residing within the geographical boundaries of the
11 Tacoma School District, which includes youth at the Pierce County jail, receive the education to
12 which they are entitled under state and federal law.

13 11. Defendant Randy Dorn is the Superintendent of Public Instruction for the State of
14 Washington. Mr. Dorn supervises all matters pertaining to public education in the state and is
15 responsible for ensuring that inmates in the Pierce County jail receive the education to which
16 they are entitled under state and federal law. He is sued in his official capacity.

17
18 **IV. CLASS ACTION ALLEGATIONS**

19 12. Plaintiffs bring this action pursuant to Civil Rule 23(a) and (b)(2) on behalf of
20 themselves and all others similarly situated.

21 13. Plaintiffs seek certification of a class of similarly situated individuals as members
22 of the following proposed plaintiff class (the "Youth Class"):
23

1 All individuals under the age of 18 who are now, or in the future will be, placed in
2 a jail under the jurisdiction of Pierce County.

3 14. Plaintiffs seek certification of a class of similarly situated individuals as members
4 of the following proposed plaintiff class (the "Parent Class"):

5 The parents or guardians of all individuals under the age of 18 who are now, or in
6 the future will be, placed in a jail under the jurisdiction of Pierce County.

7 15. The classes are so numerous that the individual joinder of all members is
8 impracticable. Joinder is impracticable in this case because the jail population is constantly
9 fluctuating. The exact number of members of each class is presently unknown, but may be
10 determinable from Defendants' records.

11 16. There are questions of law and fact common to the classes.

12 17. The questions of law and fact common to all members of the Youth Class and
13 Parent Class include, but are not limited to: (a) whether Defendants failed to provide education
14 programming to the Youth Class; (b) whether Defendants breached their duty to provide the
15 education required by Article IX of the Washington Constitution; (c) whether Defendants
16 breached their duty to provide the basic education required by Chapter 28A.150 RCW; and (d)
17 whether Defendants' failure to provide education services violated the due process and equal
18 protection clauses of the U.S. and Washington State constitutions.

19 18. The Plaintiffs' claims are typical of the claims of the classes.

20 19. Plaintiffs will fairly and adequately protect the interests of the classes and will
21 vigorously prosecute this action on behalf of the classes.

22 20. The Plaintiffs are represented by competent counsel. Those counsel collectively
23 have experience in civil rights, prisoners' rights, civil and class action litigation. They will

1 vigorously prosecute the case on behalf of the classes.

2 21. The Defendants have acted and/or refused to act on grounds generally applicable
3 to the entire Youth Class and Parent Class.

4 22. The claims asserted herein are capable of repetition, yet evading review. There is
5 a continuing and substantial public interest in these matters.

6 **V. FACTUAL ALLEGATIONS**

7 23. Plaintiffs and the classes they seek to represent are youth under the age of 18
8 incarcerated at the Pierce County jail and their parents or guardians.

9 24. In early 2009 and during previous years, Plaintiffs and members of the putative
10 classes repeatedly requested educational services from Pierce County officials at the jail.
11 Defendant Pierce County repeatedly denied the requests.

12 25. On information and belief, Defendants had not provided any of the youth at the
13 jail with teachers, classes, books, or any other form of instruction or education services for a
14 number of years until Plaintiffs' counsel made a May 27, 2009 demand that Defendants provide
15 education services to youth at the jail.

16 26. On information and belief, Defendant Pierce County failed to provide education
17 services to youth in the jail in spite of its knowledge that such services were mandated by state
18 and federal law.

19 27. Since Plaintiffs' demand for education services and subsequent negotiations
20 between Plaintiffs' and Defendants' counsel, Defendant Pierce County has represented that it has
21 provided youth under age 18 with General Educational Development books and Defendant
22 Tacoma Public Schools has made significant efforts to implement education services at the jail.
23

1 However, on information and belief, as of the date of filing this complaint Defendants have
2 provided no actual instruction to members of the Youth Class, and Defendants have not
3 implemented a program that will provide members of the Youth Class with the opportunity to
4 graduate or to earn core requirements for graduation that will later transfer to the youth' schools
5 of residence when they are released.

6 28. All of the actions of Defendants described herein constitute state action and were
7 actions taken under color of state law.

8 **VI. CAUSES OF ACTION**

9 The representative Plaintiffs make the following claims for relief on behalf of themselves
10 and on behalf of the proposed Plaintiff classes as a whole, based upon the facts alleged above.

11 **COUNT ONE**
12 **VIOLATION OF ARTICLE IX OF THE WASHINGTON STATE CONSTITUTION**

13 29. Article IX of the Washington State Constitution provides all individuals under 18
14 with the right to a free public education.

15 30. Defendants Pierce County and Superintendent of Public Instruction Randy Dorn
16 have violated the Plaintiff classes' constitutional right to education of the Plaintiff classes.

17 31. Unless enjoined by the Court, the defendants will continue to violate and cause
18 the violation of the Plaintiff classes' constitutional rights.

19 **COUNT TWO**
20 **VIOLATION OF CHAPTER 28A.150 RCW**

21 32. Defendants Pierce County, Tacoma Public Schools, and Superintendent of Public
22 Instruction Randy Dorn have failed to provide education services that fulfill the requirements of
23 Chapter 28A.150 RCW, to which the Plaintiff classes are entitled.

1 33. Unless enjoined by the Court, Defendants will continue to violate and cause the
2 violation of the rights of the Plaintiff classes.

3 **COUNT THREE**
4 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE US CONSTITUTION**

5 34. Defendants Pierce County, Tacoma Public Schools, and Superintendent of Public
6 Instruction Randy Dorn, acting under color of state law and without providing due process,
7 deprived the members of the Parent Class of their rights to a public education for their children
8 secured by the Due Process Clause of the Fourteenth Amendment to the United States
9 Constitution in violation of the Parent Class's procedural and substantive due process rights.

10 35. Such violations are actionable pursuant to 42 U.S.C. § 1983.

11 36. This claim is asserted only by the Parent Class.

12 **COUNT FOUR**
13 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE WASHINGTON STATE CONSTITUTION**

14 37. Defendants Pierce County, Tacoma Public Schools, and Superintendent of Public
15 Instruction Randy Dorn, acting under color of state law and without providing due process,
16 deprived the members of the Plaintiff classes of their rights to a public education for themselves
17 or their children secured by the Due Process Clause of the Washington State Constitution,
18 Article I, Section 3, in violation of the Plaintiff classes' procedural and substantive due process
19 rights.

20 **COUNT FIVE**
21 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE US CONSTITUTION**

22 38. Defendants Pierce County, Tacoma Public Schools, and Superintendent of Public
23 Instruction Randy Dorn, acting under color of state law, by failing to provide education services
24
25

1 Fourteenth Amendment to the United States Constitution, the Due Process Clause of the
2 Washington State Constitution, Article I, Section 3, and the Privileges and Immunities Clause of
3 the Washington State Constitution, Article I, Section 12.

4 C. For the issuance of preliminary and permanent injunctions requiring Defendants
5 to provide education services to youth in the Pierce County jail as required by Article IX of the
6 Washington State Constitution, Chapter 28A.150 RCW, the Due Process and Equal Protection
7 Clauses of the Fourteenth Amendment to the United States Constitution, the Due Process Clause
8 of the Washington State Constitution, Article I, Section 3, and the Privileges and Immunities
9 Clause of the Washington State Constitution, Article I, Section 12.

10 D. For an award of the Plaintiffs' reasonable attorneys' fees incurred in litigating this
11 matter and all of their costs of suit pursuant to 42 U.S.C. § 1988 and any other applicable statute,
12 contract, or rule of court; and

13 E. For such other and further relief as the Court may deem just and proper.

14 DATED this 17th day of June, 2009.

15 **COLUMBIA LEGAL SERVICES**
16 Institutions Project

17 By 

18 Gavin Thornton, WSBA #32996

Beth A. Colgan, WSBA #30520

19 Attorneys for Plaintiffs