

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

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 filling 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"):

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  
4 **COUNT THREE**  
**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**  
**VIOLATION OF THE DUE PROCESS CLAUSE OF THE WASHINGTON STATE CONSTITUTION**

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

19  
20 **COUNT FIVE**  
**VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE US CONSTITUTION**

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

1 to youth in the Pierce County jail, have, without justification, intentionally discriminated against  
2 Plaintiffs based on their status as inmates of the jail, and have acted with deliberate indifference  
3 to the known or obvious consequences of such treatment in violation of the Equal Protection  
4 Clause of the Fourteenth Amendment of the United States Constitution.

5 39. Such violations are actionable pursuant to 42 U.S.C. § 1983.

6 40. This claim is asserted only by the Parent Class.

7  
8 **COUNT SIX**  
9 **VIOLATION OF THE PRIVILEGES AND IMMUNITIES CLAUSE**  
10 **OF THE WASHINGTON STATE CONSTITUTION**

11 41. Defendants Pierce County, Tacoma Public Schools, and Superintendent of Public  
12 Instruction Randy Dorn, acting under color of state law, by failing to provide education services  
13 to youth in the Pierce County jail, have, without justification, intentionally discriminated against  
14 Plaintiffs based on their status as inmates of the jail, and have acted with deliberate indifference  
15 to the known or obvious consequences of such treatment in violation of the Privileges and  
16 Immunities Clause of the Washington State Constitution, Article I, Section 12.

17 **VII. PRAYER FOR RELIEF**

18 WHEREFORE, the Plaintiffs, on behalf of themselves and all other similarly situated  
19 individuals, pray for relief as follows:

20 A. For certification of the classes as defined above;

21 B. For a declaratory judgment, declaring that by failing to provide education services  
22 to youth incarcerated in the Pierce County jail, Defendants have violated rights secured to  
23 Plaintiffs and members of the putative classes under Article IX of the Washington State  
Constitution, Chapter 28A.150 RCW, the Due Process and Equal Protection Clauses of the



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 7<sup>th</sup> day of June, 2009.

15 **COLUMBIA LEGAL SERVICES**  
16 Institutions Project

17 By 

Gavin Thornton, WSBA #32996

Beth A. Colgan, WSBA #30520

18 Attorneys for Plaintiffs  
19  
20  
21  
22  
23