

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,
a municipal corporation,
441 Fourth Street, N.W.
Washington, D.C. 20001,

Plaintiff,

v.

SHAWN L. CLARK
449 Tayside Way
Hyattsville, Maryland 20785,

and

DONNISE WORTHAM
6622 Ronald Road
Apt. 103
Capitol Heights, Maryland 20743,

Defendants.

Civil Action No.: _____

JURY TRIAL DEMANDED

FALSE CLAIMS ACT COMPLAINT AND JURY DEMAND

The District of Columbia (District), by its Office of the Attorney General, brings this action against Defendants Shawn Lamonte Clark and Donnise Wortham pursuant to the District's False Claims Act, D.C. Code § 2-381.02(a), seeking treble damages and civil penalties, and the common law. The District alleges as follows:

Jurisdiction

1. This Court has subject matter jurisdiction over this case pursuant to D.C. Code § 11-921 and § 2-381.02.

2. This Court has personal jurisdiction over Defendants pursuant to D.C. Code §§ 13-423(a)(1), (3).

The Parties

3. The District, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District's False Claims Act, pursuant to D.C. Code § 2-381.03(a).

4. Defendant Shawn Lamonte Clark, an employee of the District of Columbia Department of Corrections, is an individual residing at 449 Tayside Way, Hyattsville, Maryland 20607.

5. Defendant Donnise Wortham, formerly known as Donnise Clark, is an employee of the District of Columbia Department of Corrections, and is an individual residing at 6622 Ronald Road, Apartment 103, Capitol Heights, Maryland 20743.

Defendants' Children

6. Defendants Clark and Wortham are the parents of three children. They have two sons, L.C. and G.C., and a daughter, S.C.

7. L.C. was a student at Ballou High School (Ballou), a school in the District of Columbia Public Schools (DCPS) system, from 2010 until he graduated in 2014.

8. G.C. has attended a District public school since 2014. For the 2014-15 school year, G.C. attended Richard Wright Public Charter School for Journalism and Media Arts (Richard Wright), a District of Columbia Public Charter School. G.C. attended Ballou for the 2015-16, 2016-17, and 2017-18 school years, and is a current student there for the 2018-19 school year. Before enrolling in District schools, G.C. had attended Prince George's County Public Schools since 2006.

9. Defendants' daughter S.C. attends Prince George's County Public Schools as a resident of Maryland and has been a student there since the 2005-06 school year.

10. At all times relevant to the actions described in this Complaint, Defendants Clark and Wortham and their children were residents of the State of Maryland.

District of Columbia False Claims Act

11. The District of Columbia Procurement Reform Amendment Act (District's False Claims Act) awards treble damages and civil penalties for, *inter alia*, knowingly making or causing to be made false statements to conceal, avoid, or decrease an obligation to pay money to the District. D.C. Code § 2-381.02(a)(6) (2013).

12. The District's False Claims Act provides that:

(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and shall be liable to the District for a civil penalty of not less than \$5,500, and not more than \$11,000, for each false or fraudulent claims for which the person:

* * *

(6) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the District, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the District;

D.C. Code § 2-381.02.

13. Section 2-381.01(7)(A) of the District's False Claims Act defines "[k]nowing or knowingly" to mean that "a person, with respect to information, does any of the following: (i) Has actual knowledge of the information; (ii) Acts in deliberate ignorance of the truth or falsity of the information; or (iii) Acts in reckless disregard of the truth or falsity of the information." The terms "knowing" and "knowingly" do not require proof of specific intent to defraud. D.C. Code § 2-381.01(7)(B).

14. The District's False Claims Act defines "material" as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." D.C. Code § 2-381.01(8).

15. “Obligation” is defined as “an established duty, whether or not fixed, arising from . . . statute or regulation, or from the retention of any overpayment.” D.C. Code § 2-381.01(9).

Nonresident Tuition

16. D.C. Code § 38-302(a)(2) requires payment of nonresident tuition for each child who attends a public school in D.C. and does not have a parent, guardian, custodian, or other primary caregiver who resides in the District. *See also* D.C. Code § 38-1800.02(25); 5-A D.C.M.R. §§ 5001.5, 5099.1. Nonresident tuition rates are set by the District’s Office of the State Superintendent of Education (OSSE) to “cover all expenses” incurred by the District in educating the student. D.C. Code § 38-302(b).

17. Public charter schools in the District are completely funded by the District and are “open to all students who are residents of the District of Columbia, and, if space is available, to nonresident students who meet the tuition requirement . . .” D.C. Code § 38-1802.06(a). Nonresidents are required to pay tuition to enroll their children in District public charter schools because public funds are appropriated to the schools for the sole purpose of educating children and youth who are residents of the District. D.C. Code §§ 38-2902, 38-307. The tuition rate to attend a public charter schools is no different than if the student attended a DCPS school. D.C. Code § 38-1802.06(e).

18. “Nonresident student” means “[a]n individuals under the age of 18 who is enrolled in a District of Columbia public school or public charter school, and does not have a parent, guardian, custodian, or primary care giver . . . residing in the District of Columbia.” D.C. Code § 38-1800.02(25)(A).

19. D.C. Code §38-301(11) defines “parent” as a “natural parent, stepparent, or parent by adoption who has custody or control of a student, including joint custody.”

L.C.’s Enrollment in District Schools

20. L.C. attended Ballou for the four years of his high school education, from the 2007-08 school year through the 2010-11 school year.

21. For the entire time L.C. was enrolled at Ballou, he attended tuition-free, as if he were a District resident. However, during the time L.C. attended Ballou, L.C. and Defendants Clark and Wortham resided in Maryland.

Defendants’ Failure to Pay Nonresident Tuition Owed for L.C.’s Attendance at Ballou

22. Non-resident tuition for L.C. to attend Ballou for the 2007-08, 2008-09, 2009-10, and 2010-11 school years was, respectively, \$9,362.00, \$10,173.00, \$10,173.00, and \$10,584.00, totaling \$40,292.00.

23. To date, Defendants Clark and Wortham have not paid any of the nonresident tuition they owe to the District for L.C.’s attendance at Ballou, nor have any tuition payments been made on their behalf.

G.C.'s Enrollment in District Schools

24. G.C. first entered the District's school system in the 2014-15 school year when he was enrolled as an eighth grader at Richard Wright.

25. G.C. was enrolled at Ballou as a ninth grader in the 2015-16 school year, and has attended that school each subsequent school year through the current 2018-19 school year.

26. For G.C.'s entire enrollment at Richard Wright and Ballou, G.C. and his parents, Defendants Clark and Wortham, were residents of Maryland.

Defendant Clark's False Statements Enrolling G.C. in District Schools

27. On July 9, 2014, Defendant Clark signed and submitted a My School DC Enrollment Form. On the signed Enrollment Form, Defendant Clark listed his address as 14 Quincy Pl., N.E., Washington, DC.

28. On July 10, 2014, Defendant Clark submitted a signed application form to Richard Wright, a District public charter school, to enroll G.C. there for the 2014-15 school. Defendant Clark listed his address on the application as 14 Quincy Pl., N.E., Washington, D.C.

29. On July 14, 2014, Defendant Clark signed and submitted the required Residency Verification Form to OSSE to enroll G.C. in a District school. The Residency Verification Form required documentary proof of District residency. On the Residency Verification Form, Defendant Clark swore under penalty of perjury that he lived at 14 Quincy Place, N.E.

30. Two days before submitting the Residency Verification Form, on July 12, 2014, Defendant Clark obtained a non-driver identification card from the DC Department of Motor Vehicles (DC DMV) that shows his address as 14 Quincy Pl., N.E., Washington, D.C. Defendant Clark continued to maintain his Maryland Driver's License. Defendant Clark has provided this DC DMV non-driver identification card as purported proof of his District residency in almost every subsequent school year.

31. Relying on the enrollment and residency verification forms submitted by Defendant Clark, Richard Wright enrolled G.C. as a student for the 2014-2015 school year. G.C. was enrolled as District resident.

32. On July 15, 2015, Defendant Clark signed and submitted an Annual Student Enrollment Form to enroll G.C. in ninth grade at Ballou for the 2015-16 school year. On the form, Defendant Clark wrote that he lived at 14 Quincy Pl., N.E., Washington D.C. 20002. The Annual Student Enrollment Form he signed included the following statement: "I understand that providing false information for the purposes of defrauding the government is punishable by law."

33. Relying on the Annual Student Enrollment form, Ballou enrolled G.C. as a student for the 2015-2016 school year. G.C. was enrolled as District resident.

34. On September 16, 2016 Defendant Clark signed and submitted an Annual Student Enrollment Form and a DC Residency Verification Form

to enroll GC at Ballou as a tenth grader for the 2016-2017 school year. As in the years before, he stated he lived at 14 Quincy Pl., N.E., Washington, D.C. 20002.

35. Relying on the Annual Student Enrollment and DC Residency Verification forms, Ballou enrolled G.C. as a student for the 2016-2017 school year. G.C. was enrolled as District resident.

36. On May 16, 2017, Defendant Clark signed and submitted an Annual Student Enrollment Form and a DC Residency Verification Form to enroll G.C. as an eleventh grader at Ballou. On these forms Defendant Clark stated he lived at 14 Quincy Pl., N.E. Washington, D.C. 20002.

37. Relying on the Annual Student Enrollment and DC Residency Verification forms, Ballou enrolled G.C. as a student for the 2017-2018 school year. G.C. was enrolled as District resident.

38. On April 13, 2018, Defendant Clark signed and submitted an Annual Student Enrollment Form and a DC Residency Verification Form to enroll G.C. in twelfth grade at Ballou for the 2018-19 school year. On both forms Defendant Clark stated he lived at 14 Quincy Pl., N.E. Washington, D.C. 20002.

39. Relying on the Annual Student Enrollment and DC Residency Verification forms, Ballou enrolled G.C. as a student for the 2018-2019 school year. G.C. was enrolled as District resident.

40. Defendant Clark signed and submitted a total of five enrollment or application forms and at least four residency verification forms, for each school year from the 2014-15 school year through the current 2018-19 school year, to enroll G.C. in District schools. On each Residency Verification Form he signed, Defendant Clark provided his signature just below the following language: “I understand that enrollment of the above named student in District of Columbia public schools or public charter schools, or other schools providing education services funded by the District of Columbia, is based on my representation of DC residency, including this sworn statement of DC residency and my presentation of residency verification documentation.”

41. Defendant Clark knew that the information he provided on all of the application, enrollment and DC Residency Verification forms he submitted for G.C.’s enrollment in District schools for the 2014-2015, 2015-2016, 2016-2017, 2017-2018, and 2018-2019 school years was false because when he signed and submitted the forms, he knew that G.C. was living with either Defendant Clark or G.C.’s mother, Defendant Wortham, in Maryland and not at the District address he wrote on the forms. Defendants Clark and Wortham continue to be residents of Maryland.

**Defendant Wortham’s Knowing Avoidance of an
Obligation to Pay District Nonresident Tuition**

42. Defendant Wortham, a resident of Maryland and a current employee of the District of Columbia Government, knew that she was obligated to pay nonresident tuition for G.C. to attend a District public

charter school and a DCPS school because she knew that she, her children, and Defendant Clark resided in Maryland, and not in the District.

43. Defendant Wortham also knew that by failing to notify Richard Wright, Ballou, OSSE, or DCPS that she, her husband, and her son were Maryland residents, she improperly avoided an obligation to pay tuition to the District.

Defendants' Failure to Pay Nonresident Tuition Owed for G.C.'s Attendance at District Schools

44. Nonresident tuition for G.C. to attend Richard Wright and then Ballou for eighth grade through eleventh grade in the 2014-15, 2015-16, 2016-17, and 2017-18 school years was, respectively, \$10,251.00, \$11,580.00, \$11,812.00, and \$12,166.00, totaling \$45,809.00. The pro-rated tuition for G.C. to attend Ballou for the 2018-19 school year through December 7, 2018 is approximately \$5,071.00, bringing the total unpaid tuition amount to at least \$50,880.00.

45. To date, Defendants Clark and Wortham have not paid any of the nonresident tuition they owe to the District for G.C.'s attendance at Ballou or Richard Wright, nor have any tuition payments been made on their behalf.

COUNT I
False Claims Act
Knowingly Making a False Record or Statement
Material to Avoid an Obligation to Pay the District
(D.C. Code § 2-381.02(a)(6) (2013))

46. The District realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

47. Defendant Clark knowingly made, used, and caused to be made or used, false records or statements to conceal, avoid, or decrease a material obligation to pay the District. Defendant Clark knowingly signed and submitted false enrollment documents for G.C. to attend District schools, causing a District public charter school and a DCPS school to decline to charge nonresident tuition for G.C.'s attendance during the 2014-15, 2015-16, 2016-17, and 2017-18 school years and the current 2018-19 school year in violation of D.C. Code § 2-381.02(a)(6).

COUNT II
False Claims Act
Knowingly Concealing and Knowingly and Improperly Avoiding or
Decreasing an Obligation to Pay the District
(D.C. Code § 2-381.02(a)(6) (2013))

48. The District realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

49. Defendant Wortham knowingly concealed and knowingly and improperly avoided or decreased an obligation to pay the District. Defendant Wortham knew that she had an obligation to pay nonresident tuition for her son G.C. to attend District schools, because she, Defendant Clark, and G.C.

did not reside in the District. Defendant Wortham failed to notify the District of her and her child's correct address, causing a District public charter school and a DCPS school to decline to charge nonresident tuition for G.C.'s attendance during the 2014-15, 2015-16, 2016-17, 2017-18 school years and the current 2018-19 school year in violation of D.C. Code § 2-381.02(a)(6).

COUNT III
Unjust Enrichment

50. The District realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

51. By having L.C. attend Ballou for the 2007-08, 2008-09, 2009-10, and 2010-11 school years, and by avoiding their obligation to pay nonresident tuition to the District for those years, Defendants Clark and Wortham have been unjustly enriched to the detriment of the District.

52. By having G.C. attend Richard Wright and Ballou from the beginning of the 2014-15 school year up until the filing of this Complaint, and by avoiding their obligation to pay nonresident tuition to the District for those years, Defendants Clark and Wortham have been unjustly enriched to the detriment of the District.

Prayer for Relief

WHEREFORE, the District respectfully requests that judgment be entered in its favor and against Defendants on its claims, and impose damages and penalties as follows:

(1) On Count I against Defendant Clark, awarding the District treble statutory damages in an amount to be determined at trial, but not less than \$152,640.00 (three times \$50,880.00); civil penalties of not less than \$5,500.00 and not more than \$11,000.00, payable to the District for each violation of the District's False Claims Act;

(2) On Count II against Defendant Wortham, awarding the District treble statutory damages in an amount to be determined at trial, but not less than \$152,640.00 (three times \$50,880.00); civil penalties of not less than \$5,500.00 and not more than \$11,000.00, payable to the District for each violation of the District's False Claims Act;

(3) On Count III against Defendants Clark and Wortham, awarding the District actual damages in an amount to be determined at trial, but not less than \$91,172.00;

(4) Awarding the District interest, costs, and other recoverable expenses permitted by law; and

(5) Awarding the District such further and additional relief as the Court may deem just and proper.

Jury Demand

The District of Columbia hereby demands a trial by jury by the maximum number of jurors permitted by law.

Dated: December 11, 2018

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of
Columbia

ROBYN R. BENDER
Deputy Attorney General
Public Advocacy Division

/s/ Catherine A. Jackson
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¹ Mr. Durst is licensed to practice law before the Supreme Court of Virginia and is practicing in the District of Columbia under the direct supervision of a member of the D.C Bar, pursuant to D.C. App. R. 49(c)(4).