

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,
a municipal corporation,
441 4th Street, N.W.
Washington, D.C. 20001,

Plaintiff,

v.

APRIL FENNELL
6459 Livingston Road
Oxon Hill, MD 20745,

and

NICHOLAS FENNELL
6459 Livingston Road
Oxon Hill, MD 20745,

Defendants.

Civil Action No.: _____

JURY TRIAL DEMANDED

FALSE CLAIMS ACT COMPLAINT AND JURY DEMAND

The District of Columbia (the District), by its Office of the Attorney General, brings this action against Defendants April Fennell and Nicholas Fennell pursuant to the common law and the District's False Claims Act, D.C. Code § 2-381.02(a), seeking treble damages and civil penalties. 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. Plaintiff the District of Columbia, 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 April Fennell is an individual residing at 3832 Regency Parkway, Apartment #203, Suitland, Maryland 20746.

5. Defendant Nicholas Fennell is a former Behavior Technician at Phelps ACE High School (Phelps), a school in the District of Columbia Public Schools (DCPS) system, and is an individual residing at 3832 Regency Parkway, Apartment #203, Suitland, Maryland 20746.

Defendants' Children

6. Defendants Fennell are the parents of three children. They have two sons, C.S. and N.F., and a daughter, K.F.

7. C.S. was a student at Phelps for the 2014-15 school year and a portion of the 2015-16 school year. C.S. attended Phelps during the time period that Defendant Nicholas Fennell was employed at the school.

8. N.F. was a student at Potomac Preparatory Public Charter School (Potomac Prep), a District of Columbia Public Charter School, for the 2014-15 and 2015-16 school years.

9. K.F. was a student at Potomac Prep, a District of Columbia Public Charter School, for the 2014-15 and 2015-16 school years.

10. During these school years, C.S., N.F. and K.F. were enrolled at these District schools and attended tuition-free as if they were District residents.

11. During these school years, and at all times relevant to the actions described in this Complaint, Defendants and their children were residents of the State of Maryland.

District of Columbia False Claims Act

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 (2013).

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.”

N.F.'s Attendance at a District School in the 2014-2015 School Year

20. During the 2014-15 school year, N.F. was enrolled at Potomac Prep as a Sixth Grader and attended tuition-free as if he were a District resident. In fact, during this time N.F. was residing with his parents, the Defendants, in Suitland, Maryland.

21. Non-resident tuition for N.F. to attend Potomac Prep for the 2014-15 school year was \$10,251.00.

Defendant April Fennell's False Statements Enrolling C.S. in a District School in the 2014-15 and 2015-16 School Years

22. C.S. attended Phelps for the entirety of the 2014-15 school year and a portion of the 2015-16 school year through December 8, 2015, respectively, as a Ninth Grader and Tenth Grader.

23. On September 3, 2014, Defendant April Fennell signed and submitted an Annual Student Enrollment Form. On the Annual Student Enrollment Form, Defendant April Fennell stated that she and C.S. lived at 1111 Columbia Road, N.W., Apartment #B-103, Washington, D.C. 20009. Defendant April Fennell signed and submitted the enrollment form, certifying that information on the form was accurate, and that she understood that "providing false information for purposes of defrauding the government is punishable by law."

24. Defendant April Fennell also signed and submitted a DC Residency Verification form to OSSE on September 3, 2014. On that form, Defendant April Fennell affirmed that she resided at 1111 Columbia Road,

N.W., Apartment #B-103, Washington, D.C. 20009, and signed a sworn statement of D.C. Residency, and certified that she understood the penalties for submitting false statements. The Residency Verification Form stated “Any person... who knowingly supplies false information to a public official in connection with student residency verification shall be subject to charges of tuition retroactively...”

25. Phelps relied on the information Defendant April Fennell submitted, and enrolled C.S. as a student for the 2014-15 school year. C.S. was enrolled as a District resident.

26. On April 28, 2015, Defendant April Fennell signed and submitted an Annual Student Enrollment Form. On the Annual Student Enrollment Form, Defendant April Fennell stated that she and C.S. lived at 1111 Columbia Road, N.W., Apartment #B-103, Washington, D.C. 20009. Defendant April Fennell signed and submitted the enrollment form, certifying that information on the form was accurate, and that she understood that “providing false information for purposes of defrauding the government is punishable by law.”

27. Defendant April Fennell also signed and submitted a DC Residency Verification form to OSSE on April 30, 2015. On that form, Defendant April Fennell affirmed that she resided at 1111 Columbia Road, N.W., Apartment #B-103, Washington, D.C. 20009, and signed a sworn statement of D.C. Residency, and certified that she understood the penalties

for submitting false statements.” The Residency Verification Form stated “Any person... who knowingly supplies false information to a public official in connection with student residency verification shall be subject to charges of tuition retroactively...”

28. Phelps relied on the information Defendant April Fennell submitted, and enrolled C.S. as a student for the 2015-16 school year. C.S. was enrolled as a District resident.

29. Defendant April Fennell knew the information she provided on the Annual Student Enrollment Forms and the DC Residency Verification Forms was false because when she signed and submitted the forms, and during the entirety of the 2014-15 school year and a portion of the 2015-16 school year through December 8, 2015, she knew that C.S. was living with her in Suitland, Maryland and not at the District address she stated on the forms. Defendant April Fennell continues to be a resident of Maryland.

Defendant April Fennell’s False Statements Enrolling N.F. in a District School in the 2015-16 School Year

30. N.F. attended Potomac Prep for the 2015-16 school year as a Seventh Grader.

31. Defendant April Fennell signed and submitted a DC Residency Verification form to OSSE on April 30, 2015. On that form, Defendant April Fennell affirmed that she resided at 1111 Columbia Road, N.W., Apartment #B-103, Washington, D.C. 20009, and signed a sworn statement of D.C. Residency, and certified that she understood the penalties for submitting

false statements.” The Residency Verification Form stated “Any person... who knowingly supplies false information to a public official in connection with student residency verification shall be subject to charges of tuition retroactively...”

32. Potomac Prep relied on the information Defendant April Fennell submitted, and enrolled N.F. as a student for the 2015-16 school year. N.F. was enrolled as a District resident.

33. Defendant April Fennell knew the information she provided on the DC Residency Verification Form was false because when she signed and submitted the forms, and during the entire period of N.F.’s enrollment at Potomac Prep for the 2015-16 school year, she knew that N.F. was living with her in Suitland, Maryland and not at the District address she stated on the forms. Defendant April Fennell continues to be a resident of Maryland.

Defendant April Fennell’s False Statements Enrolling K.F. in a District School in the 2014-15 and 2015-16 School Years

34. K.F. attended Potomac Prep for the 2014-15 and 2015-16 school years, respectively, as a Second Grader and Third Grader.

35. On August 18, 2014, Defendant April Fennell signed and submitted a My School DC Enrollment Form. On the Annual Student Enrollment Form, Defendant April Fennell stated that she and K.F. lived at 3308 6th Street, S.E., Apartment #204, Washington, D.C. 20032.

36. On August 18, 2014, Defendant April Fennell signed and submitted an Annual Student Enrollment Form. On the Annual Student

Enrollment Form, Defendant April Fennell stated that she and K.F. lived at 3308 6th Street, S.E., Apartment #204, Washington, D.C. 20032. Defendant April Fennell signed and submitted the enrollment form, certifying that information on the form was accurate, and that she understood that “providing false information for purposes of defrauding the government is punishable by law.”

37. Potomac Prep relied on the information Defendant April Fennell submitted, and enrolled K.F. as a student for the 2014-15 school year. K.F. was enrolled as a District resident.

38. Defendant April Fennell signed and submitted a DC Residency Verification form to OSSE on April 30, 2015. On that form, Defendant April Fennell affirmed that she resided at 1111 Columbia Road, N.W., Apartment #B-103, Washington, D.C. 20009, and signed a sworn statement of D.C. Residency, and certified that she understood the penalties for submitting false statements.” The Residency Verification Form stated “Any person... who knowingly supplies false information to a public official in connection with student residency verification shall be subject to charges of tuition retroactively...”

39. Potomac Prep relied on the information Defendant April Fennell submitted, and enrolled K.F. as a student for the 2015-16 school year. K.F. was enrolled as a District resident.

40. Defendant April Fennell knew the information she provided on the My School DC Enrollment Form, Annual Student Enrollment Form, and the DC Residency Verification Form was false because when she signed and submitted the forms, and during the entire period of K.F.'s enrollment at Potomac Prep for the 2014-15 and 2015-16 school years, she knew that K.F. was living with her in Suitland, Maryland and not at the District address she stated on the forms. Defendant April Fennell continues to be a resident of Maryland.

**Defendant Nicholas Fennell's Knowing Avoidance of an
Obligation to Pay District Nonresident Tuition**

41. Defendant Nicholas Fennell knew that he was obligated to pay nonresident tuition for his sons and daughter to attend District schools during the 2014-15 and 2015-16 school years because he knew that he, Defendant April Fennell, C.S., N.F., and K.F. resided in Maryland, and not in the District in that time period. At all times relevant to the acts alleged in this Complaint, Defendant Nicholas Fennell and his sons and daughter resided in Maryland.

42. Defendant Nicholas Fennell also knew that by failing to notify the District, Phelps, Potomac Prep, DCPS or OSSE that he, Defendant April Fennell, his sons, and daughter were Maryland residents, he improperly avoided an obligation to pay tuition to the District.

**Defendants' Failure to Pay Nonresident Tuition Owed for their Children's
Attendance in District Schools**

43. Non-resident tuition for C.S. to attend Phelps for the 2014-15 school year was \$11,850.00. The pro-rated tuition for the 2015-16 school year through December 8, 2015 is approximately \$4,416.00, bringing the total unpaid tuition amount to at least \$15,966.00.

44. Non-resident tuition for N.F. to attend Potomac Preparatory Public Charter School for the 2014-15 and 2015-16 school years was, respectively, \$10,251.00 and \$10,251.00, totaling \$20,502.00.

45. Non-resident tuition for K.F. to attend Potomac Preparatory Public Charter School for the 2014-15 and 2015-16 school years was, respectively, \$9,492.00 and \$9,492.00, totaling \$18,984.00.

46. To date, Defendants have not paid any of the nonresident tuition they owe to the District for C.S.'s attendance at Phelps and N.F.'s and K.F.'s attendance at Potomac Prep, 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))**

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

48. Defendant April Fennell 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 April Fennell knowingly signed and submitted false enrollment documents for C.S., N.F., and K.F. to attend District schools, causing a District public charter school and a DCPS school to decline to charge nonresident tuition for C.S.'s and K.F.'s attendance during the 2014-15 and 2015-16 school years and N.F.'s attendance during the 2015-2016 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))

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

50. Defendant Nicholas Fennell knowingly concealed and knowingly and improperly avoided or decreased an obligation to pay the District. Defendant Nicholas Fennell knew that he had an obligation to pay nonresident tuition for his children C.S., N.F., and K.F. to attend District schools, because he, Defendant April Fennell, C.S., N.F., and K.F. did not reside in the District. Defendant Nicholas Fennell failed to notify the District of his and his children's correct address, causing a District public charter school and a DCPS school to decline to charge nonresident tuition for C.S.'s, N.F.'s, and K.F.'s attendance during the 2014-15 and 2015-16 school years in violation of D.C. Code § 2-381.02(a)(6).

COUNT III
Unjust Enrichment

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

52. By having their children C.S., N.F., and K.F. attend a District public charter school and a DCPS school for the 2014-15 and 2015-16 school years and by avoiding their obligation to pay nonresident tuition to the District for those years, Defendants Fennell 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 April Fennell, awarding the District treble statutory damages in an amount to be determined at trial, but not less than \$135,693.00 (three times \$45,231.00); 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 Nicholas Fennell, awarding the District treble statutory damages in an amount to be determined at trial, but not less than \$135,693.00 (three times \$45,231.00); 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 April Fennell and Nicholas Fennell, awarding the District actual damages in an amount to be determined at trial, but not less than \$55,482.00;

(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: March 5, 2019

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
CATHERINE A. JACKSON
[D.C. Bar No. 1005415]
Chief, Public Integrity Section

/s/ John Lui

JOHN LUI

[D.C. Bar No. 1021222)

Assistant Attorney General

Office of the Attorney General

441 4th Street, N.W., Suite 630 South

Washington, D.C. 20001

(202) 724-6526 (phone)

(202) 730-1474 (e-fax)

Email: John.Lui@dc.gov

Attorneys for the District of Columbia