

# A System Out of Control:

Illegal and Abusive Truancy Fines in Lebanon, Pennsylvania

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ILLEGAL AND ABUSIVE TRUANCY FINES IN LEBANON PA.

The Public Interest Law Center of Philadelphia, at the request of the NAACP State Conference and its Lebanon County Authorized Committee, has conducted a detailed examination of truancy fines sought by the Lebanon School District during the last six school years.

This examination reveals a School District and local courts that ignored state policies designed to actually reduce truancy and instead imposed exorbitant and illegal fines on persons completely unable to pay them. During this period the School District took parents and students to court more than 8000 times and was awarded \$1.5 million in fines.<sup>1</sup> Fines and court costs in one school year alone --2008-09-- totaled \$498,000 and were ten times higher than for other comparable districts in the state on a per student basis. The system has enforced those fines with jail terms, including one for 85 days.

Lebanon's use of punishing fines causes acute financial distress in a district with 73 % of its students eligible for free and reduced lunch and where many of the families are headed by single women. It has not, however, reduced truancy. This policy of seeking court fines as a "first step" to end truancy rather than as a "last resort" disregards the policy of the Pennsylvania Department of Education and recommendations of the Pennsylvania Roundtable Truancy Workgroup established by the Pennsylvania Supreme Court. Both call for school districts and courts to work with families and other agencies to reduce truancy *before* turning to the courts.

Finally, the School District which asks for the fines and local District Justices who impose them have been violating the very law they are so aggressively enforcing, by imposing fines, sometimes as high as \$9,000, in excess of the \$300 per citation authorized by state law.<sup>2</sup> The District appears to admit this violation of law. Last year, after the Lebanon NAACP called upon the School District to address this problem, the School District stopped seeking fines in excess of \$300 per citation and it has reduced hundreds of the outstanding fines, amounting to at least \$235,000 or nearly a quarter of a million dollars in outstanding fines.

Although this adjustment of approximately 340 fines rights an injustice to many families, the School District has never disclosed the basis on which it selected some fines for reduction and excluded others. There still are at least another 273 illegal fines that were not reduced and there are 323 fines on which families paid more than \$300 and have not been reimbursed. This arbitrary and capricious creation of a class of favored families whose illegal fines were reduced

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<sup>1</sup> Revised from earlier report of \$1.3 million.

<sup>2</sup> In addition, some of the fines were against students who were 17 years old and not subject to the compulsory school laws. Those fines too are illegal and should be completely vacated or returned to the extent paid.



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to the legal maximum and a class of families whose excessive fines were not reduced or reimbursed violates the Equal Protection clause of the United States and Pennsylvania constitutions. There is no reason for the School District to continue to threaten some parents with jail for failing to pay illegal fines and to hold on to monies paid by parents which the District was never authorized to receive.

The Law Center does not yet have access to the racial identity of the parents and students who have been assessed illegal and excessive fines or jail time. This information would be necessary to determine whether allegations that the fines are levied more heavily against persons of Hispanic and African-American background in a discriminatory manner are true. At the request of the Lebanon NAACP, the U.S. Department of Education's Office of Civil Rights has agreed to investigate this issue. We urge the School District to provide the information necessary to resolve this issue.

### **Fines in 2008-09**

Lebanon is an urban school district of 4,500 students. Its students are predominately minority: 50 percent Hispanic and five percent African-American. During the 2008-2009 school year, district officials obtained 1,489 citations for truancy from the two local District Magistrates. Court records show these citations were issued against more than 700 parents or students.<sup>3</sup> The fines and costs resulting from these citations were extraordinary in sum: they totaled nearly a half million dollars – \$498,556 to be exact.<sup>4</sup> The fines that were imposed, which are paid to the School District, amounted to \$361,000 and the costs, which are paid to the court, totaled \$137,000. When the fines and court costs are added together they amounted to \$10,933 per hundred students.

After complaints from the Lebanon NAACP in 2009, the school district reduced the amount of fines it sought during the 2009-10 school year, obtaining fines of at least \$130,000 according to court records. The Law Center did not receive figures on the court costs imposed.

### **Ten Times Greater Than Fines in Lancaster**

Lebanon's use of court fines, and sometimes jail, to control truancy is markedly different from the use of fines by other districts. In contrast to Lebanon's \$10,933 per hundred students in the 2009 school year, the fines and court costs in the Lancaster School District were \$1,296 per hundred students. The poverty level and minority enrollment in Lancaster is comparable to that in Lebanon. The Williamsport School District, which is about the same size as Lebanon and has

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<sup>3</sup> If one assumes that there are an average of two students per family, nearly a third of the families attending the school district were fined for truancy. This is truly an extraordinary percentage of families to experience trancies, suggesting major changes are necessary in the District's approach.

<sup>4</sup> The School District has failed to turn over information requested on how much money it actually received, as compared to how much was ordered, from truancy fines. According to the court's data, the District received \$178,000 in 2008-09. Such amounts reflect payments on the truancy fines issued that year and payments on fines from previous years, which were still being paid off, as well as a few payments for non-truancy fines.



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a slightly lower poverty rate, imposed fines amounting to only \$3,800 in total, about one hundredth of the rate in Lebanon.

### **Contrary to Pennsylvania Policy**

The School District's use of fines as a truancy tool also ignores Pennsylvania's truancy policy which provides that court citations be used as a last resort. According to the Pennsylvania Department of Education, a school district's first steps should be meeting with parents and developing truancy elimination plans to address the problems of a student's attendance. Parents contacted by the Law Center and the local NAACP chapter, however, said they had not been asked to meet with the District and had not participated in a truancy elimination plan conference.<sup>5</sup> It appears that turning to the courts has been a matter of first resort for Lebanon, with no attempt to develop any truancy elimination plans with parents.

Development of Truancy Elimination Plans with parents and persons identified by the parents is also endorsed by the Truancy Workgroup appointed by the Pennsylvania State Roundtable, part of the court system's Office of Children and Families in the Courts. As the Workgroup's report notes, its recommendations "focus on collaboration, an enhanced school culture and climate ...[and] prevention and early intervention...." None of these words describe Lebanon's "fine first and do nothing else" policy.

### **Fines Exceed Legal Maximum**

The excessive fines also violate Pennsylvania law. Although Pennsylvania law allows a district to seek a fine against parents of truant students, it sets conditions and limits on the use of fines. Parents must receive a written notice after a child has three unexcused absences before a citation can be issued by the school attendance officer for the next unexcused absence. Many Lebanon parents stated they did not receive the required written notice, and the School District has admitted that it did not comply with the Student Handbook sent to high school parents stating that it would send the notice by certified mail.

Under Pennsylvania law, if a district does seek a fine for truantries, it is limited to \$300 (plus court costs) for each citation issued to a parent. In Lebanon the School District sought fines far in excess of the statutory limit. More than 939 of the fines issued in the six years ending in 2009 were in excess of \$300 and at least 179 of those were in excess of \$1,000.<sup>6</sup> Nearly half of the fines imposed by the courts in the school year 2009 – totaling \$150,000 – exceeded the statutory limit.

In an admission that these earlier fines were illegal under state law, the District reduced at least 340 fines to \$300 in 2010. At least \$235,000 owed to the District was wiped off the books, some in fines going back to 2004. But the District continues to try to collect more than 273 other

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<sup>5</sup> Plaintiff Omary Rodriguez-Fuentes reports she did receive a letter in January 2011 for the first time seeking a conference concerning the truancy of one of her children.

<sup>6</sup> It is difficult to know with precision exactly how many excessive fines were issued because if the fine was later reduced, either because of an "adjustment" or because of a jail sentence when the fine was not paid, the original fine is often not listed in subsequent records. The Law Center is aware of numerous excess fines which do not appear on current records because of court action but which were on earlier records.



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finances that exceeded \$300, which are no different from the fines reduced. The remaining fines exceed the legal amount by \$127,000. And while the School District has given up collecting money from some persons who have not fully paid their excessive fines, it has done nothing to reimburse hundreds of persons who diligently paid \$107,000 in excess payments on 323 fines. Perversely, this policy punishes persons who diligently complied with the law.

### **Punitive Use of Fines**

Some of the fines have been issued against students or their parents after the child had passed the age of 17 when they are no longer subject to the mandatory attendance laws. Section 13-1333(a) of the Public School Code authorizes fines only against a parent of a child “of compulsory school age, who shall fail to comply with the provisions of this act regarding compulsory attendance” and subsection (b) authorizes fines against “a child of compulsory school age who . . . fails to comply with the provisions of this act regarding compulsory attendance.” Thus those fines, and the threat of those fines which are being used by the District to drive students into leaving school, are also illegal.

Although the district courts have set payment schedules for some of the larger fines, many appear designed to punish the parent or student rather than actually bringing about compliance. One 11<sup>th</sup> grade girl who had just turned 17 years old and was no longer subject to the compulsory school law was hit with fines and costs totaling \$12,302.40 on two days in June 2009 for trancies throughout the previous spring. With this debt, before even graduating from high school, her chances of success are severely curtailed.<sup>7</sup> And this was not unique: a 15-year-old girl was assessed fines and costs of \$6,294 by the same judge for her trancies, after her mother was assessed \$5,821.

The harshest fines that came to the notice of the Law Center did not take place in 2008-09 but in August 2007, when a woman supporting her family on disability payments was fined a total of \$27,000 because she did not have \$70 to pay to get her children’s home schooling portfolios for part of the school year evaluated. The School District and court refused to grant her an extension, even though she had for several previous years presented acceptable evaluations. She was paying the fines at \$50 per month, which would have taken her until the year 2052 to meet her obligation. She had already paid \$1,520 when the Law Center pointed out that the fines were illegal, at which point the School District had the remainder of the fines cancelled.

Even the steady rain of smaller and legal truancy fines can be highly punitive to a family on a limited budget. Omary Rodriguez-Fuentes, who supports her family of four students on disability payments, has accumulated fines and costs in three years of \$7,138 through 29 fines, of which \$5,800 was within legal limits.

Although the Law Center only had limited access to detailed information, the School District has reported an increasing number of citations filed every year since 2005 when it appointed Robert Bowman, a retired police officer and husband of a school board member, as the

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<sup>7</sup> The eleven fines totaling \$9,900 were reduced this year to the maximum allowable \$3,300 plus costs.



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truancy officer. That year he filed 1200 citations. It is apparent therefore that this attempt to intimidate parents and students by the use of court fines has been in place for a long time.

### **Long Jail Terms for Failure to Pay**

The hardship caused by the school district is not limited to financial hardship. State law provides “in default of the payment of such fine and costs . . . [a person] shall be sentenced to the county jail for a period not exceeding five (5) days.” The statute ties the five-day jail term to the unpaid fine for each conviction, no matter the size of the fine. Nevertheless, several parents were committed to jail by District Judges Dissinger and Capello on the basis of 5 days for each \$300 of unpaid fines. One (J.D.) served 85 days, another (E.U.) 60 days, (W.M.) 58 days, and another (S.C.) 17 days. At least 6 other parents also served jail terms in 2008-09 (the only year for which the Law Center has those records) for failing to pay truancy debts.

### **Filing Law Suit to Halt Collection and for Restitution of Illegal Fines**

Because of the arbitrary and irrational basis used by the District in selecting and excluding which excessive fines it would reduce to the legal maximum and its refusal to repay persons who fully paid their illegal fines, the Law Center today is filing a class action lawsuit in federal court to declare that the School District (and the magisterial district courts acting with it) denied families Equal Protection and Due Process under the United States Constitution. We are also asking the court to set aside the excessive fines in violation of Pennsylvania state law, cancel the amounts not yet paid, and order repayment of amounts illegally collected by the School District pursuant to the illegal fines.

This case is unprecedented and we expect the District’s insurance company to attempt to resist the need to treat the remaining victims of the District’s policy with the same sense of justice that the District has granted to a favored one third of the excessive truancy fines. Public bodies like a school district should not be permitted to retain illegally collected monies that they were never entitled to receive. It is elemental justice, and a feature of basic equity jurisdiction, for courts to make victims whole and provide restitution by the body that has received funds it is not entitled to under the law. Based on our review of court records, we believe the amounts at stake here involve close to another quarter of a million dollars, between amounts still to be collected and amounts already paid by parents in connection with illegal fines.

### **Investigation of Racial Discrimination by Federal Authorities Requested**

The race of students was not among the information obtainable by the Law Center from the School District. Because it appears that the vast majority of fines are against parents of Hispanic and African-American students or students of mixed race, the Lebanon chapter of the NAACP asked the Office of Civil Rights of the U.S. Department of Education to conduct an investigation to determine whether the truancy laws are being applied in a disproportionate manner against minority children, in violation of federal (and Pennsylvania) law. The Civil Rights office, in response, has begun that investigation. Although 55 percent of the students in the District are members of a minority, there is not a single minority person on the nine-member Lebanon School Board and the number of minority teachers is miniscule.



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### **A Serious Problem Requiring a Serious Solution Involving All Stakeholders**

The continuing existence of a substantial truancy problem is clear evidence that the policy of intimidating fines has not worked to reduce the amount of truancy in the district. It is time for the School District to comply with the state's Basic Education Circular, bring its use of court fines and debtors' imprisonment in line with the majority of districts in the state, and work to reduce the number of students failing to attend school. Chronic truancy leads inevitably to dropping out, and heavy fines push students to drop out in order to stop the fines. The Law Center has seen many cases where students turning 17 decide not to continue in school because of what they believed were the risk of continued fines. The cost to the rest of the Lebanon community from high drop out rates has been well documented in terms of joblessness, low income, and high prison rates. Companies with high paying jobs do not locate in areas with low educational performance and high rates of persons who have not completed high school.

Programs in other school districts have successfully reduced truancy using best practices, but this has required a school district working with families to overcome barriers and ensure that students feel that the school is not hostile to their success. Given the Lebanon City School District's reliance on intimidating fines and the refusal even to invite minority parents and outside agencies to discuss truancy elimination plans, it is not surprising that many students and parents regard the district's schools as a hostile environment. There will need to be a lot of work done before truancy can be reduced in such a situation.

Involvement of other stakeholders and community partners, from business and the non-profit community, serving as mentors for youth at risk of dropping out from truancy and working with the district to show the importance of daily attendance has had some success in other districts. As the Pennsylvania Roundtable Truancy Workgroup stated, it will be important to involve collaboration among all the stakeholders, working to adopt a collective strategy with a combination of best practices. ("Truancy: A Call to Action" Recommendations 1-1 through 1-4). That report also identified "Lack of a healthy, productive and safe educational culture/climate at school often contributes to truancy and high dropout rates" as a major concern. It recommended, "Create an environment where students and their families feel safe, welcome, wanted and connected to their educational environment." (Recommendation 2-1)

It is time the Lebanon community demand that its school district take these recommendations seriously. Turning to the courts as the very first step in reaction to truancy and then pushing the students out the door with constant fines have merely made the situation worse. A serious response to a serious problem is necessary.