

1480-5344

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

J.G., an infant, by her guardian ad litem, LUCIANO GOMEZ; M.G., an infant, by her guardian ad litem, MARIA GOMEZ; Y.G., an infant, by her guardian ad litem, PEDRO GUTIERREZ; A.H., an infant, by her guardian ad litem, ANA REYES; A.J., an infant, by his guardian ad litem, CATALINA FELIZ, and K.C., an infant, by her guardian ad litem, SALVADOR CRUZ, "A.R., an infant, by his guardian ad litem, AIDA BAUTISTA MORALES."

Plaintiffs,

v.

CITY OF CAMDEN BOARD OF EDUCATION; AND JOHN DOES 1-10: FICTITIOUS PERSONS OR ENTITIES; JOINTLY, SEVERALLY AND ALTERNATIVELY,

Defendants.

DOCKET NO.: C.A. NO.: 1:10-cv-01047  
(JEL-KMW)

SECOND AMENDED COMPLAINT AND  
JURY DEMAND

The Plaintiffs, all residing in Camden County, New Jersey, by way of Complaint against the Defendants, states as follows:

THE PARTIES

1. The Plaintiffs all reside in Camden County. The Plaintiffs

were all fifth grade students at the Sumner Elementary School in the Camden Public School District during the 2007-2008 school year. The Plaintiffs are all of Puerto Rican Hispanic national origin.

2. Defendant City of Camden Board of Education administers and operates the Camden City Public Schools. Its administrative offices are located at 201 Front Street, Camden, New Jersey.
3. At all times relevant to this lawsuit, Theresa Brown was employed by the Camden Board of Education as the Vice-Principal of the Sumner Elementary School.
4. At all times relevant to this lawsuit, Alex De Flavis was employed by the Camden Board of Education as the Acting Principal of the Sumner Elementary School.

#### JURISDICTION

5. Jurisdiction is conferred on this Court by virtue of Federal question jurisdiction pursuant to 28 U.S.C. §1331; and supplemental jurisdiction pursuant to 28 U.S.C. §1367.

#### FACTS COMMON TO ALL CAUSES OF ACTION

6. During the 2007-2008 school year, Plaintiffs were part of a fifth grade class of exclusively Hispanic bi-lingual students at the Sumner Elementary School.
7. The Acting Principal of the school, Alex DeFlavis (DeFlavis"), was Caucasian-American, and the Vice Principal

of the school, Theresa Brown ("Brown"), was African-American. Neither administrator was of Hispanic national origin.

8. One day in February 2008, while the Plaintiffs' class was under the direction of a substitute teacher, one of the students in the class unsuccessfully tried to change a jug of water in the water cooler and accidentally spilled some water.
9. Vice Principal Brown decided to punish the entire class for the one student's accident. Without advising the Plaintiffs' teacher, Brown decided that the Hispanic children would have to eat lunch on the floor of the cafeteria without trays, while the African-American and mixed classes sat at lunch tables with trays. The other students would routinely receive their lunch first, even when they had arrived after the bilingual class.
10. Some of the bilingual students were absent on the day of the "water accident," yet were still subject to the punishment.
11. Numerous lunch aides and school coordinators were aware of the punishment and enforced the Vice Principal's demands.
12. Vice Principal Brown had threatened the children with further punishment if the children told anyone about her outrageously demeaning and discriminatory punishment.
13. In or about the end of February 2008, one of the Plaintiffs'

parents came to the Sumner School to complain to the Principal about the Vice-Principal's actions. The Principal would not speak to the parent, but after the parent had explained the situation to the Principal's secretary, she advised the Plaintiffs' teacher of the situation.

14. The Plaintiffs' teacher advised the students to tell their parents what was happening and to have the parents immediately call the Defendant Board of Education.
15. On March 18, 2008, the Plaintiffs' teacher was terminated due to "conduct unbecoming of a board employee". After a public uproar, the Defendants changed the reason for terminating the teacher to "insufficient certification".
16. The Vice-Principal, who had perpetrated the outrageous and discriminatory punishment, and who had threatened further punishment if the children reported it, was not terminated. She was merely transferred to another school in the District.
17. The Principal, Mr. De Flavis, retired soon after the incident was reported.

**COUNT ONE -VIOLATIONS OF THE NEW JERSEY LAW AGAINST  
DISCRIMINATION, N.J.S.A 10:5-1, et. seq. : DISCRIMINATION ON THE  
BASIS OF NATIONAL ORIGIN, INCLUDING RETALIATION, N.J.S.A.10:5-  
12(d)**

18. The actions of the Vice-Principal in forcing the Hispanic, bi-lingual students to eat on the floor without trays while the American and English speaking students ate at tables on

lunch trays were egregiously discriminatory and in violation of the New Jersey Law Against Discrimination.

19. The Defendants' actions were totally unnecessary as there were plenty of available tables and chairs for all the students. There was no basis to require any student to eat lunch in the gymnasium, especially on the floor without food trays. Only the Hispanic bi-lingual students were subject to this punishment.
20. The Plaintiffs and others had previously made complaints about the blatantly discriminatory behavior of Vice-Principal Brown. For example, Plaintiffs and others had complained when Brown previously arranged for all of the students to go on a field trip to the City Library, except for the bi-lingual students. On that occasion Brown untruthfully stated that there just was not enough room for the bi-lingual students.
21. When confronted about making the Plaintiffs eat on the floor, Ms. Brown untruthfully stated that there just were not enough tables, chairs and/or trays for the bi-lingual students.
22. The alleged actions were outrageous and beyond all bounds of human decency, justifying the imposition of punitive damages against the Defendants.
23. The willful indifference and actual participation of upper

management of the Board of Education created liability against the Defendant.

24. As a result of Defendants' intentional outrageous actions toward the Plaintiffs, as detailed in the previous paragraphs of this Complaint, the Plaintiffs have suffered, and continues to suffer, extreme emotional distress, anxiety, embarrassment, humiliation, emotional, reputational, and other person injuries.

WHEREFORE, the Plaintiffs demand judgment against the Defendants for compensatory damages, including damages for emotional distress, physical injury, loss of reputation and other person injury, consequential damages, punitive damages, statutory damages, enhancement for tax liability, pre-and post-judgment interest, reasonable attorneys' fees enhanced under the New Jersey's fee shifting policies, cost of suit and any other relief that Court deems just.

**COUNT TWO - INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS**

25. The Plaintiffs repeat and incorporate by reference each and every allegation contained in the previous paragraphs and Counts of this Complaint as if fully set forth herein.
26. During February 2008, all of the Plaintiffs were forced to eat their lunch on the dirty gymnasium floor. The Plaintiffs were not permitted to have a chair or a table, and were not permitted to use a tray or plate. The

Plaintiffs were given only a piece of paper to place their food on. The Plaintiffs were not permitted to have milk during their lunch period.

27. During this time, Plaintiffs were continually taunted, mocked and teased by the other English speaking students.
28. As detailed more fully above, and incorporated herein by reference, the Defendants engaged in a continuous and systematic course of extreme and outrageous behavior designed to inflict severe mental, physical, and emotional distress upon the Plaintiffs.
29. In engaging in the aforementioned course of conduct against Plaintiffs, the Defendants' behavior was so extreme as to cause the Plaintiffs to believe that they were acting intentionally and/or recklessly to cause the Plaintiffs mental, physical and emotional distress.
30. The Defendants' course of action against Plaintiffs was so outrageous and severe that it would be completely unreasonable for a reasonable person to be expected to endure said course of action.
31. The alleged actions were outrageous and beyond all bounds of human decency, justifying the imposition of punitive damages against the Defendants.
32. As a result of the Defendants' intentional outrageous actions toward Plaintiffs, as detailed in the previous

paragraphs, Plaintiffs have suffered, and continues to suffer, extreme emotional distress, physical injury, anxiety, embarrassment, humiliation, emotional, reputational, and other personal injuries.

**WHEREFORE**, Plaintiffs demand judgment against the Defendants, jointly, severally, and alternatively, for compensatory damages, including damages for emotional distress, loss of reputation and other physical and personal injury, consequential damages, punitive damages, adjustment for negative tax consequences, pre- and post- judgment interest, attorneys' fees, costs of suit, and any other relief the Court deems equitable and just.

**COUNT THREE - VIOLATION OF 42 U.S.C. §1983 AND N.J.S.A. 10:6-2-  
CIVIL RIGHTS VIOLATIONS - FIRST AMENDMENT - FREE SPEECH, EQUAL  
PROTECTION, SUBSTANTIVE AND PROCEDURAL DUE PROCESS**

33. The Plaintiffs repeat and reiterate all of the prior paragraphs and allegations as if fully stated herein.
34. The Defendants deprived the Plaintiffs of their rights under the First and Fourteenth Amendments to the United States Constitution, and Article I of the New Jersey State Constitution.
35. Plaintiffs were forced, against their will and without due process, to eat their lunch on a dirty gymnasium floor while other English speaking students played around them. Contrary to school policy, the Plaintiffs' parents were

never informed that their children were serving "lunch detention."

36. Plaintiffs have been deprived of their due process rights, privilege or immunities secured by the Constitution or laws of the United States and Constitution or laws of the State.
37. The outrageous conduct of the upper management of the Defendants in the scope of their employment has been so extreme as to go beyond all possible bounds of decency, thus warranting the imposition of punitive damages.
38. The actual participation and willful indifference of the upper management, of the Defendant creates liability against the Defendants for punitive damages.

WHEREFORE, the Plaintiffs demand judgment against the Defendants for Compensatory damages, including damages for pain and suffering, humiliation and emotional distress, consequential damages, statutory damages, punitive damages, pre- and post-judgment interest, enhancement for tax consequences, reasonable attorney fees multiplies under New Jersey's fee-shifting laws, costs of suit and for such other relief as the court may deem reasonable and just.

**COURT FOUR - JOHN DOES**

39. The Plaintiffs repeat, reiterate, and incorporate by reference each and every allegation contained in the previous paragraphs and Counts, as if fully set forth

herein.

40. Although the Plaintiffs believe that the acts complained of were performed or caused by the named Defendants, the Plaintiffs cannot be certain that the named Defendants are the only person(s) or entity(ies) liable for the acts complained of as set forth herein. Therefore, the Plaintiffs have named John Does 1-10, fictitious persons or legal entities as Defendant(s) to this action.
41. As such, the terms "Defendant" as used in all of the above Counts and paragraphs should therefore be defined and read as "Defendant(s) and/or John Doe(s)".

WHEREFORE, the Plaintiffs demand Judgment against the Defendants and any subsequently named John Does 1-10, jointly, severally, and alternatively; for such sums as would reasonably and properly compensate the Plaintiff in accordance with the laws of the State of New Jersey, together with interest and costs of suit.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury as to all of the triable issues of this complaint, pursuant to Fed. R. Civ. P. 38(b) (1) & L. Civ. R. 38.1.

**DESIGNATION OF TRIAL COUNSEL**

The Court is advised that Alan H. Schorr, Esquire, is hereby designated as trial counsel.

**CERTIFICATION OF NO OTHER ACTIONS**

Pursuant to L. Civ. R. 11.2 it is stated that the matter in controversy is not subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief. Also, to the best of our belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, we know of no other parties that should be joined in the above action. In addition, we recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

**NOTICE REGARDING NON-DESTRUCTION OF EVIDENCE**

Please be advised and noticed that the Defendant(s) should refrain from destroying, disposing or altering any potential evidence in its possession which would related in any way to this matter.

Please also be advised and noticed that this includes any and all electronic records, including but not limited to the hard drives on any and all computers and/or servers. To that end:

- A. The Defendant(s) should not initiate any procedures which would alter any active, deleted, or fragmented files. Such procedures may include, but are not limited to: storing (saving) newly created files to existing drives and

diskettes; loading new software, such as application programs; running data compression and disk defragmentation (optimization) routines; or the use of utility programs to permanently wipe files, disks or drives.

- B. The Defendant(s) should stop any rotation, alteration, and/or destruction of electronic media that may result in the alteration or loss of any electronic data. Backup tapes and disks should be pulled from their rotation queues and be replaced with new tapes.
- C. The Defendant(s) should not alter and/or erase active files, deleted files, or file fragments, on any electronic media storage devices replaced due to failure, upgrade, and/or lease expiration that may contain electronic data having any relation to this matter.

**Alan H. Schorr & Associates, P.C.**  
Attorney for the Plaintiff

By   
Alan H. Schorr, Esquire

DATED: May 1, 2012

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

J.G., an infant, by her  
guardian ad litem, LUCIANO  
GOMEZ, et al.,

Plaintiffs,

v.

CITY OF CAMDEN BOARD OF  
EDUCATION, THERESA BROWN, ALEX  
DE FLAVIS, and JOHN DOES 1-10,

Defendants.

HONORABLE JOSEPH E. IRENAS

CIVIL ACTION NO. 10-1047  
(JEI)

ORDER APPROVING SETTLEMENT

**APPEARANCES:**

ALAN H. SCHORR & ASSOCIATES, PC

By: Alan H. Schorr  
5 Split Rock Drive  
Cherry Hill, NJ 08003  
Counsel for Plaintiffs

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, PA

By: Richard L. Goldstein  
Woodland Falls Corporate Park  
200 Lake Drive East  
Suite 300  
Cherry Hill, NJ 08002  
Counsel for Defendant City of Camden Board of Education

RICHARDSON & GALELLA

By: Allan E. Richardson  
142 Emerson Street  
Suite B  
Woodbury, NJ 08096  
Counsel for Defendant Theresa Brown

BIANCAMANO & DI STEFANO, PC

By: George Karousatos  
10 Parsonage Road  
Suite 112  
Edison, NJ 08837  
Counsel for Defendant Alex de Flavis

**IRENAS**, Senior District Judge:

This matter having appeared before the Court upon Plaintiffs' Motion to Approve the Settlement (Dkt. No. 71); the Court having considered the parties' submissions; for the reasons set forth in a Friendly hearing on even date herewith; and for good cause appearing;

**IT IS** on this 30th day of July, 2012,

**ORDERED THAT:**

- (1) The total settlement amount of \$500,000 is hereby approved on behalf of the seven minor children J.G., M.G., Y.G., A.H., A.J., K.C., and A.R.
- (2) Defendants are hereby directed to deposit the \$500,000 with the Court Registry Investment Service to be held in trust for the injured minor children.
- (3) Plaintiffs will not receive distributions until they obtain a social security number.
- (4) A Plaintiff may receive up to \$2,500 immediately provided the money is spent for the benefit of the injured minor child.
- (5) Prior to turning eighteen years of age, Plaintiffs may submit an application to the Court for additional distributions upon showing cause. Such distributions shall be made solely for the benefit of the injured minor children.

(6) Upon turning eighteen years of age, each injured minor child shall receive the balance of their respective trusts.

(7) Plaintiff's attorney shall submit his lodestar calculation and fee invoices for the Court's review within seven days.

(8) Upon review of the above submission, the Court will determine the reasonable attorney's fee and divide the remaining funds into individual trusts for each minor child.

/s/ Joseph E. Irenas

JOSEPH E. IRENAS, S.U.S.D.J.

**RESOLUTION**  
**#298-SY '11**  
**CAMDEN BOARD OF EDUCATION**  
**APPROVING SETTLEMENT OF J.G., ET AL. V. CAMDEN BOARD OF**  
**EDUCATION IN THE AMOUNT OF \$500,000.00**

**WHEREAS**, the Camden City Board of Education (hereinafter "Board") is a party to a lawsuit entitled J.G. v. City of Camden Board of Education, Docket No.: 10-1047; and

**WHEREAS**, the parties wish to settle the claims in dispute, as it relates to the present matter.

**NOW, THEREFORE, BE IT RESOLVED**, that the Camden City Board of Education hereby approve the settlement in this matter of \$71,428.57, per plaintiff in this matter; and

**BE IT FURTHER RESOLVED**, the Board President, Vice President, Superintendent and/or Business Administrator may execute any and all documents to effectuate the within settlement.

Moved: Mr. Lamboy

Seconded: Ms. Ribay

Yes: 8

No: 1

**CERTIFICATION**

I hereby certify that the foregoing is a true, full and correct copy of Resolution #298-SY '11 adopted by Camden City Board of Education at its meeting on May 22, 2012.

BY: \_\_\_\_\_

*Celeste Ricketts*

Celeste Ricketts, School Business Administrator/Board Secretary