

**LUCAS COUNTY COMMON PLEAS COURT
CASE DESIGNATION**

EFILED LUCAS COUNTY
09/16/2022 01:55 PM
COMMON PLEAS COURT
BERNIE QUILTER, CLERK

TO: Bernie Quilter, Clerk of Courts

CASE NO

G-4801-CI-0202203761-000

06844

JUDGE

Judge

STACY L. COOK

The following type of case is being filed:

Professional Malpractice

☐

Legal Malpractice (L)

☐

Medical Malpractice (M)

☐

Product Liability (B)

☐

Other Tort (C)

Workers' Compensation

☐

State Funded (D)

☐

Self Insured (K)

☐

Administrative Appeal (F)

☐

Commercial Docket

REFILED COMPLAINT

By submitting the complaint, with the signature of the Attorney, the Attorney affirms that the name of person with settlement authority and his/her direct phone number will be provided upon request to a party or counsel in this matter

Other Civil

☐

Consumer Fraud (N)

☐

Forfeiture

☐

Appropriation (P)

☐

Court Ordered

☒

Other Civil (H)

☐

Certificate of Title

☐

Copyright Infringement (W)

This case was previously dismissed pursuant to CIVIL RULE 41 and is to be assigned to Judge S. Cook, the original Judge at the time of dismissal. The previously filed case number was CI 202203323-000.

This case is a civil forfeiture case related to a criminal case currently pending on the docket of Judge _____. The pending case number is _____.

This case is a Declaratory Judgment case with a personal injury or related case currently pending. The pending case number is _____, assigned to Judge _____.

This case is to be reviewed for consolidation in accordance with Local Rule 5.02 as a companion or related case. This designation sheet will be sent by the Clerk of Courts to the newly assigned Judge for review with the Judge who has the companion or related case with the lowest case number. The Judge who would receive the consolidated case may accept or deny consolidation of the case. Both Judges will sign this designation sheet to indicate the action taken. If the Judge with the lowest case number agrees to accept, the reassignment of the case by the Administration Judge shall be processed. If there is a disagreement between the Judges regarding consolidation, the matter may be referred to the Administrative Judge.

Related/companion case number _____ Assigned Judge _____

Approve/Deny

Date

Approve/Deny

Date

**Attorney
Address**

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REFILED COMPLAINT

LUCAS COUNTY COMMON PLEAS COURT

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COMMON PLEAS COURT
BERNIE QUILTER, CLERK
efile id 106844

JENNIFER A. SWIECH (on behalf of herself)
and as the parent and natural guardian of)
her minor children, H.W.S., A.E.S., and C.R.S.)
and on behalf of all those similarly situated),)
6005 Indian Trl.)
Sylvania, Ohio 43560)

and)

JAMES SCOTT VANDERWEELE, and)
NICOLE RENEE VANDERWEELE (on behalf of)
themselves and as the parents and natural)
guardians of their minor child K.D.V. and)
on behalf of all those similarly situated))
5558 Wood Trace Ct.)
Sylvania, OH 43560)

plaintiffs,)

vs.)

BOARD OF EDUCATION OF SYLVANIA CITY)
SCHOOL DISTRICT,)
4747 North Holland Sylvania Road,)
Sylvania, OH, 43560)

and)

JIM WOLPERT, in his official capacity as)
director of transportation,)
c/o Sylvania City Schools)
4747 North Holland Sylvania Road,)
Sylvania, OH 43560)

defendants.)

Case No.

Judge

G-4801-CI-0202203761-000

**Judge
STACY L. COOK**

**Class-action complaint for
injunctive relief**

Andrew R. Mayle (0075622)
Benjamin G. Padanilam (0101508)
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1. Plaintiffs and those similarly situated are taxpayers and residents living with their minor school-aged children within the territorial boundaries of the defendant board of education's public school district.
2. Plaintiffs' children are entitled to transportation to and from their grammar (K-8) school under R.C. 3327.01 in a manner that is equal to the level of service offered to families whose students attend K-8 public school.
3. Plaintiffs' children are similarly situated to students K-8 public school students in the Sylvania City School District.
4. By Ohio law, federal moneys and then state moneys are used to pay for transportation under R.C. 3327.01, ("The cost of any transportation service authorized by this section shall be paid first out of federal funds, if any, available for the purpose of pupil transportation, and secondly out of state appropriations, in accordance with regulations adopted by the state board of education.")
5. Plaintiffs' children attend school at Sylvania Saint Joseph school ("St. Joe"), which is a religious, Catholic school in Sylvania.
6. St. Joe is a chartered nonpublic school for purposes of R.C. 3327.016.
7. The defendants board of education is reimbursed for transporting nonpublic school students who attend, St. Joe, at approximately twice the rate per pupil as it is reimbursed for transporting public school pupils.

8. Defendant school board and its superintendent have been aware of St. Joe's start and end time for this 2022-2023 school year since before April 1, 2022.
9. In fact, St. Joe's start and end times have remained substantially identical for many years.
10. Plaintiff Mrs. Swiech is the mother of three St. Joe students: H.W.S., A.E.S. and C.R.S., who are respectively in 5th grade, 3rd grade, and kindergarten this school year. H.W.S. is diagnosed with ADHD and requires an individualized educational plan and appropriately-timed doses of medication, which will be highly impractical, if not impossible, under defendants' announced bussing plan.
11. Plaintiffs Mr. and Mrs. Vanderweele are the parents of K.D.V., who is a new kindergartner.
12. Plaintiffs bring this action for their own benefit, for the benefit of their children, and for the benefit of similarly situated families whose K-8 children attend Catholic schools.
13. Defendant board of education, through its school district, is required to provide plaintiffs' children transportation to and from their schools under R.C. 3327.01.
14. Defendant Wolpert is the district's director of transportation and is sued in his official capacity.

15. Once the State, through legislation, decides to provide transportation for students to attend religious schools, then it must, under the Ohio constitution, treat religious-school students substantially equally to non-religious students.
16. The State of Ohio, through enactment of R.C. 3327.01 has made the choice, subject to exceptions not applicable here, to provide transportation to kindergarten through eighth students, including religious students, which includes plaintiffs' children, to attend their respective schools, whether public, nonsectarian private, or religious.
17. Defendants have an obligation under state law to transport all similarly situated children equally. For instance, the Ohio Department of Education Transportation manual for Chartered Nonpublic Schools, Chapter 2, page 5, states in part: "The public school district must transport eligible students to school in a manner that allows them to arrive at school on time and subsequently picks them up in a timely manner, after a full day of school, even if the time schedule does not coincide with that of the public school district..."
18. Defendants must treat plaintiffs' children and those similarly situated equally to similarly situated public-school students.
19. However, for this school year (and thus potentially in future, successive school years), defendants have announced an intent to provide *lesser* service to students who attend religious schools. And since the school year has commenced,

defendants have in fact provided lesser service to area Catholic school students—including plaintiffs' children.

20. The lesser-treated students predominately attend area Catholic grade schools—St. Joe Sylvania, Christ the King, and St. Benedict, with most of the affect children, including plaintiffs' children, attending St. Joe Sylvania. Like St. Joe's, Christ the King and St. Benedict are chartered nonpublic schools.
21. At the same time, defendants have decided to prioritize transportation for public high school students even though such students, unlike plaintiffs' children, are *not* entitled to transportation under Ohio law, which, under R.C. 3327.01 makes the transportation of high school students wholly discretionary.
22. Similarly, defendants also bus preschool children. But providing transportation for preschool children is also discretionary. *See e.g.*, R.C. 3327.013.
23. Defendants plan is to bus all public school students to and from their schools in what might be considered a "Cadillac" plan, while forcing students who attend religious schools, including plaintiffs' young children, to ride buses with older, high school students, travel to local public high schools, exit the first bus at a high school, wait at that high school, and then transfer onto a second bus that will then eventually deliver the children to their Catholic grade schools.
24. This will cause earlier boarding times and longer ride times for students who attend religious schools.

25. The same practice would occur after school, however, some of the “transfers” occur at schools other than a high school.
26. The transfer process is lengthy, causing long wait times and therefore long delays before children are returned home after school.
27. The operator of the bus that returns plaintiffs’ and similarly situated children to their respective homes is *not* available within thirty minutes of the daily closing bell, in violation of the portion of R.C. 3327.01 stating that, “The operator of every school bus or motor van owned and operated by any school district or educational service center or privately owned and operated under contract with any school district or service center in this state shall deliver students enrolled in preschool through twelfth grades to their respective public and nonpublic schools not sooner than thirty minutes prior to the beginning of school and to be available to pick them up not later than thirty minutes after the close of their respective schools each day.”
28. For students like plaintiffs’ children, this all has the effect to increase ride times, decrease safety, cause confusion, and otherwise provide lesser service to religious-school students in comparison to all others.
29. If Sylvania St. Joe were a public school, then its students in attendance would get direct to-and-from transportation service.

30. This has the collective effect of discouraging nonpublic school students from either (a) riding the bus or (b) attending a nonpublic school (because of the need for proper transportation).
31. Aware of the lesser service provided to students who attend Catholic schools, defendant Wolpert sent an email, uncovered as part of the public-records request, to colleagues within the Sylvania schools, including superintendent Dr. Veronica Motley, advising on how to “spin” an announcement about the new policy so “**public parents**” wouldn’t think that their children would be affected by the new policy.
32. Dr. Motley, fully aware of the lesser service that would be offered to the religious-school students, replied, “**Yes, I agree.**” *See attached.*
33. In the meantime—as of this month of September, 2022—the district has drivers with empty routes. *See attached.*
34. Yet still the students who attend religious schools are given lesser service.
35. As a practical matter due to their children’s ages and needs, plaintiffs will be forced to forgo using Sylvania morning, and potentially afternoon, bussing this year absent an injunction from this court despite being residents, electors, and taxpayers of the local school district. This will negatively affect plaintiffs’ lives.
36. Attending a religious school is a key element of each plaintiffs’ and their children’s (and their families’) sincerely held religious beliefs. Catholic social

teaching is interwoven into many secular subjects. Parents are primarily responsible for their children's education and enjoy a right under the Ohio constitution to send their children in public or nonpublic schools, whether independent, secular, or religious.

37. Defendants' anticipated transportation plan is a change from last school year and past practice in Sylvania.

38. Last year, plaintiffs' children were given, or would have been given, equal treatment and taken to and from their Catholic schools without layovers or transfers at area high schools. And their children were not assigned buses with high school students on board—just as the public school students were not. In sum, they were treated similarly to public school children.

39. Previously, the defendants did not treat one group as "Catholic" or "religious" children and the others as "public" children; rather, they were just all treated as equal children.

40. Defendants' new plan is unlawful in at least three respects:

a. Defendants have a statutory obligation under R.C. 3327.01 to transport students "to and from" their school, which implies no transfers or layovers at school where the students do not attend class and defendants' are directly and indirectly violating the statutory thirty-minute rule.

b. Defendants have a constitutional obligation to afford equal treatment in providing transportation. The dissimilar treatment violates the guarantee of equal protection under Art. I, Sec. 2 of the Ohio constitution, which states that, "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly."

c. Defendants' plan violates the Free Exercise Clause of Art. I, Sec. 7 of the Ohio constitution, which states that, "Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction." Plus, intertwined with this religious protection is right to assembly under Art. I, Sec. 3 and the guarantee of Free Speech under Art. I, Sec. 11, which states in relevant part that, "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech..."

41. Conditioning (or otherwise withholding) the safest, most direct, and most efficient transportation service on attending public school over a religious school is hence blatantly violative of the Ohio state constitution.
42. Therefore, this court should issue (a) a declaratory judgment declaring the current bussing plan invalid and (b)(i) a prohibitory injunction barring unequal or lesser transportation for students who attend religious schools and (ii) a mandatory injunction requiring equality and compliance with the thirty-minute rule.
43. Plaintiffs have no other adequate remedy at law.
44. Finally, this court should certify a case and appoint the named plaintiffs as class representatives.
45. Civil Rule 23(A) and (B) is satisfied in all respects.
46. The class is ascertainable and identifiable, consisting of the parents and guardians of Sylvania Saint Joseph, Christ the King, and Saint Benedict students who live within the territorial boundaries of the defendants' school district.
47. Well over 100 Sylvania-area Catholic school students regularly otherwise would ride the bus and are negatively affected by the challenged transportation plan.
48. The class is so numerous that joinder of all members is impractical.

49. Further, individual parents, guardians, and families lack the resources to adequately protect their interests on an individualized basis to the nature of the legal challenges and appropriate injunctive relief.
50. There are questions of law or fact common to the class.
51. The claims of the named plaintiffs are typical of the class members.
52. The defendants have uniformly negatively affected the named plaintiffs and the class members. The named plaintiffs and their counsel will adequately protect the class members' interests.
53. Moreover, individual adjudications could produce inconsistent results and negatively impede the interests of absent class members. Further, the party opposing the class (defendants) has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Also, common questions predominate and individual parents or guardians have an interests in class-wide adjudication under Ohio law in this forum.
54. *Wherefore*, plaintiffs demand judgment in their favor and in favor of the class plus any other available relief available—including an award of fees and costs due to defendants' deliberate misconduct.

Respectfully submitted,

/s/ Andy Mayle

Transportation Bullet points

vmotley@sylvaniaschools.org Veronica Motley
 To: **aaddington@sylvaniaschools.org Amy Addington**
 Cc: **jwolpert@sylvaniaschools.org James Wolpert**

Tuesday, June 14, 2022 at 7:34:43 PM Eastern Daylight Time

Hi Amy,
 As promised I am sending the bullet points for communication for our non-public schools.
 Let's chat in the morning...

- non public school students will be transported on Sylvania Schools buses.
- non public school students will be transported to a Sylvania School and then ride a transfer bus to their private school
- public and non public school students will be picked up/dropped off together at a designated bus stop(s)
- Elementary students will have priority seating in the front of the bus in order to implement age appropriate XXX
- Please note, K-12 transportation on one bus is not uncommon in the State of Ohio. In fact, many school districts, including Sylvania Schools already have this transportation model in place. We will expand this model in order to provide consistent and reliable transportation for all students in our Sylvania residential area

Let's try and send this communication to non publics tomorrow.
 Thanks team!

Dr. Veronica Motley
Superintendent

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 Sylvania, Ohio, 43560

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 F: (419) 824-8600
 vmotley@sylvaniaschools.org
 Twitter@SuptSylvania



jwolpert@sylvaniaschools.org James Wolpert
 To: **vmotley@sylvaniaschools.org Veronica Motley**
 Cc: **aaddington@sylvaniaschools.org Amy Addington**

Wednesday, June 15, 2022 at 7:53:31 AM Eastern Daylight Time

I would suggest adding to the last bullet point after k-12 transportation : including the mix of non-public and public kids.
 We don't want the public parents to think all of our buses will be going k-12.. Just a suggestion.

Thanks
 Jim

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6/29/22, 1:51 PM

Google Vault - Transportation Bullet points

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Jim Wolpert
Director of Transportation
Sylvania Schools

vmotley@sylvaniaschools.org Veronica Motley Wednesday, June 15, 2022 at 9:33:33 AM Eastern Daylight Time
To: jwolpert@sylvaniaschools.org James Wolpert, aaddington@sylvaniaschools.org Amy Addington

Yes, I agree. I've added my two cents.... Would you all take a look?
Amy, Can you reach out to Jim? I have a 10:00 over at Lourdes. I will take another peek around 10:45 or so.
Thanks team,
Veronica

On Wed, Jun 15, 2022 at 7:54 AM James Wolpert <jwolpert@sylvaniaschools.org> wrote:
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Google Vault - Transportation Bullet points

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9/1/22

1. Start of the year: Thank you.. Thank you... I know things have been a little crazy, but thank you for hanging in there for the start of the year. It has been a perfect storm with the new routing system, routing changes, and legal issues. As you hopefully know, our main goal is to be able to safely transport kids consistently. Some things are working and some not so much.
2. **Please hang in there....**: Some drivers were displaced with the changes in routing or adding/deleting students. Please know, it was not personal. While it is always best to keep the same kids year after year, sometimes we have to make changes. **We have some drivers with empty routes, we will find something for you to do. While** we expect everyone to work their time, we will not be cutting hours. IE: the changes were not based on financial cuts.
3. **September 2, 2022: Inservice. 10:15-11:45** There will be an in-service at Southview Auditorium. This is not mandatory but is paid in-service.
 - a. **We also need drivers for routes running September 2 (am & pm). Please sign up.**
 - b. All drivers willing to come in will be paid your contracted time (as long as you are willing to stay). When you aren't driving, you can work on your route, clean your bus, play with learning the tablet, and maybe collaborate to help with bus safety (Buster).
4. **Buster the Bus**: Most of you have seen our new bus. This bus is "ours." Our team, our department, our school, and our community. Obviously, the main goal for Buster is to help teach and encourage bus safety. My dream is to use Buster to promote bus safety and many other aspects of the bussing profession. We will be advertising help amongst the department. Please consider helping. Everyone has their own experience and perceptions, so everyone can be involved even if its just a little. Most of all, this will be a fun activity... It is good to laugh sometimes....

Again, Thank you for everything you do and enjoy your weekend...