

IN THE ELEVENTH JUDICIAL DISTRICT  
STATE OF NEW MEXICO  
COUNTY OF MCKINLEY

DEPARTMENT OF COURTS  
MCKINLEY COUNTY  
N.M.

1999 MAY 26 P 1:48

NO. CV-98-14-II

THE ZUNI PUBLIC SCHOOL DISTRICT;  
SKYLAR MARTINEZ, by and through  
his next friends and parents, MALCOLM  
BOWEKATY and VURLENE BOWEKATY;  
JEFFREY M. JOHNSON, by and through his  
next friends and parents, MARDELL and  
WILBUR JOHNSON; ERIQ HASKIE SANCHEZ,  
by and through his next friends and  
parents, MARISA SANCHEZ; AMBER DEYSEE,  
by and through her next friends and  
parents, CAROLINE and DEWEY DEYSEE, and  
CHARLES BOOQUA, JR., by and through his  
next friends and parents, MARLENE and  
CHARLES BOOQUA, SR.,

Plaintiffs,

THE GALLUP-MCKINLEY SCHOOL DISTRICT  
NO. 1, THE GRANTS CIBOLA SCHOOL DISTRICT;  
CHRISTINE JOHNSTON by and through his/her  
next friends and parent, GLORIA JOHNSTON;  
DORETTA LARGO by and through her next  
friend and parent CHARLES CHIA; TARA LORENZO  
by and through her next friend and parent  
DENNIS LORENZO; TROY SANDOVAL by and through  
his next friends and parents, DION SANDOVAL  
and JOLYNN WASETA; JUSTIN SUAZO by and  
through his next friends and parents RITA  
SUAZO and DALE SUAZO; WILLIAM GARCIA,  
MATTHEW GARCIA and SARAH GARCIA by and their  
next friends and parents, GEORGE GARCIA and  
ISABEL GARCIA; KYLE NELSON and CHELSEA NELSON  
by and through their next friends and parents,  
TOM NELSON AND PAM NELSON; and ERIN LEWIS and  
ERIK LEWIS by and through their next friends  
and parents, MARK LEWIS and MARIE LEWIS,

Plaintiff-Intervenors,

-vs-

THE STATE OF NEW MEXICO, and  
MICHAEL DAVIS.

Defendants.

MOTION FOR PARTIAL SUMMARY JUDGMENT

Come now the Plaintiffs and Plaintiffs in Intervention (Plaintiffs) and move for Partial Summary Judgment which would declare that the Defendants are violating the Plaintiffs' rights under the New Mexico and Federal Constitutions. Not addressed in this Motion is the issue of the sufficiency of the educational opportunities offered by the Defendants, 42 USC § 1988 costs and attorney fees, and the remedy to be fashioned to were any constitutional violations.

UNDISPUTED FACTS

1. The Zuni Public School District is a school district located exclusively within the Pueblo of Zuni, a federally recognized Indian reservation. Zuni's Second Amended Complaint, paragraph 1, admitted.

2. The Gallup-McKinley School District and the Grants-Cibola School District are both New Mexico public school districts located in western New Mexico. Gallup-McKinley is located in McKinley County, New Mexico, and Grants-Cibola is located in Cibola County, New Mexico. (Complaint in Intervention, paragraph 1)

3. Michael Davis is the State Superintendent of Schools, which position's duties include the authorization of distribution of funds from the New Mexico State Treasury to New Mexico school districts. (paragraph 3, Second Amended Complaint, admitted)

4. The Plaintiff districts operate with funds they receive pursuant to the New Mexico equalization formula for operational

funds and from funds from the Federal Government, including Title VIII (Pub.L. '874) funds, Johnson-O'Malley funds, Title I funds, etc. (paragraph 10, First Amended Complaint, admitted)

5. The New Mexico State Constitution, Article XII, Section 1, provides:

A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the State shall be established and maintained.

(paragraph 12, Second Amended Complaint, admitted)

6. NMSA 1978, § 22-8-25, codifies the equalization formula for the funding of school districts. (paragraph 13, Second Amended Complaint, admitted)

7. The statutory method for raising funds for non-operational costs, e.g., for infrastructure and other capital improvements has not been subjected to any equalization formula. (paragraph 17, Second Amended Complaint, admitted)

8. NMSA 1978, § 22-18-1 allows for general obligation bonds for up to 6% of the assessed valuation of taxable property within a school district. (paragraph 18, Second Amended Complaint, admitted)

9. NMSA 1978, § 22-25-1, et. seq. (the Public School Capital Improvement Act) provides for a method of funding building, construction, maintenance, furnishings, physical equipment, vehicles and computer equipment. This method allows for a district election which would produce a 2 mil levy on taxable property within a district, which bonds must be paid off in four years. (paragraph 19, Second Amended Complaint, admitted)

10. If a bond election is successful, the State may add matching funds in most circumstances. (paragraph 20, Second Amended Complaint, admitted)

11. Such matching funds come from the school capital improvement fund, which is funded by the State through its general fund. (paragraph 21, Second Amended Complaint, admitted)

12. NMSA 1978, § 22-26-1, et. seq. is the Public School Buildings Act. This allows districts to conduct elections for up to a 10 mil levy on taxable property within the district, with the requirement that the bonds be retired within five years. The funds are to be used primarily for capital improvements. (paragraph 23, Second Amended Complaint, admitted)

13. 20 U.S.C. 7709 authorizes states to take into account "874" funds in computing their equalization formula. (paragraph 26, Second Amended Complaint, admitted)

14. Federal Impact Aid or "874 Funds) are paid to school districts by the Federal Government in an attempt to compensate for the fact that reservation lands are not subject to property taxes. (Affidavit of Al Clemmons)

15. Ninety-five per cent of these Impact Aid Funds as well as 95% of Forest Service Funds, that are paid by the Federal Government to compensate for the inability to tax Forest Service land within a school district, are transferred to the State general fund. (Affidavit of Al Clemmons)

16. There are three basic ways to raise money for capital improvements and maintenance. The first is through bonds and mil

levies, the effectiveness of which depends in part upon the assessed value of taxable property within a school district. The second is through application to the State for an appropriation from critical capital outlay. The third is by obtaining special appropriations from the legislature. (Affidavit of Al Clemmons)

17. There is no formula or system which seeks to equalize the availability of funds between school districts for capital improvement and maintenance. As a result of this absence of a system, the ability to obtain funds within a district may differ widely from one district to the next. (Affidavit of Al Clemmons)

18. Districts such as Zuni have virtually no assessable taxable property from which to raise capital improvement funds. Zuni may tax some transmission and utility lines and some mobile homes owned by non-Indians, but that is about the extent of Zuni's capacity for capital improvement funding from this source. (Affidavit of Al Clemmons)

19. The inability to raise funds for capital improvements can also exist where districts are small in size, contain National Forest land or contain military bases. (Affidavit of Al Clemmons)

20. Some districts have oil and gas production which adds considerably to the taxable value, which value is a resource which can be taxed for capital improvements. (Affidavit of Al Clemmons)

21. Districts with high assessed property values and commercial property also enjoy a greater ability to raise capital improvement funds. (Affidavit of Al Clemmons)

22. The critical capital outlay fund is not a significant source for capital improvements. It is limited by statute to construction and maintenance of classrooms. To qualify, a district must be bonded to a minimum of 75% capacity (which poses a problem for poorer districts as voters might be tired of their school district's constant efforts to raise revenues at residents' expense). Also the funding level for capital outlay and the wide competition for these funds results in a usual disbursement between several hundred thousand dollars and \$1.5 million. (Affidavit of Al Clemmons)

23. When Dr. Clemmons was the Director of Public School Finance, a study was made in an attempt to discover the extent of facilities needs and inequities between school districts. This study confirmed what was known for years by the State Department of Education and others--namely, that facilities in many districts are woefully inadequate and a basic inequity exists between school districts and their ability to raise funds for capital improvements. (Affidavit of Al Clemmons)

24. There is in fact a wide disparity between districts' abilities to raise funds and provide for capital improvements (Affidavit of Al Clemmons and attachments of State Department of Education statistics).

25. The Gallup-McKinley County School District encompasses over 5,000 square miles, nearly 83% of which is comprised of non-assessable Federal or Indian lands. The district, nevertheless, is obligated to provide school services and fill capital

improvement needs in these Federal and/or Indian areas.

(Affidavit of Robert Gomez)

26. The Gallup-McKinley County School District is unable to meet the needs of its students for an adequate physical plant in which to conduct educational services. (Affidavit of Robert Gomez)

27. Since 1992, the Gallup-McKinley County School District has been bonded to its legal capacity of 6% of assessed valuation, which funds have gone toward the building of school facilities. These funds are woefully inadequate to meet present needs, much less those needs readily identifiable for the future. (Affidavit of Robert Gomez)

28. The Gallup-McKinley County School District is at a serious disadvantage for raising funds for capital improvements when compared with other school districts. (Affidavit of Robert Gomez)

29. Many districts, such as Albuquerque and Santa Fe, bond at less than 20% capacity, while other districts bond close to full capacity and still cannot reach a level of even minimal construction and maintenance needs. (Affidavit of Robert Gomez)

30. The public school capital critical outlay fund is insufficient to address the problems relating to the disparities and the ability to construct and maintain capital improvements. (Affidavit of Robert Gomez)

31. Legislative appropriations have been insufficient to significantly reduce any disparity in the ability of districts to

provide for the construction and maintenance of capital improvements. (Affidavit of Robert Gomez)

32. Over the years, local property tax contributions from districts to the general fund for operational funding have decreased while contributions from impact aid revenues have either stayed the same or increased. Impact aid contributions now comprise approximately 80% of the contributions made by local districts to their operational funding. (Affidavit of Robert Gomez)

33. The real property within the Zuni School District cannot be assessed or taxed by the State of New Mexico or any of its political subdivisions, as the Zuni School District is located within the confines of the Zuni Reservation. (Affidavit of David Cockerham)

34. Zuni loses 95% of its impact aid funds to the State general fund and, after this loss, Zuni has little remaining capacity to generate funds for capital improvements. Zuni's need is so dire that it spends operational funds on capital expenses, thus detracting from the operational program. (Affidavit of David Cockerham)

35. Zuni's facilities are substandard and in need of repair. (Affidavit of David Cockerham)

36. As of May 15, 1998, Zuni has been bonded at 100% capacity. Most school districts in New Mexico can raise more than 41.5 times the amount of money for capital construction than can Zuni. Zuni comes in last in the amount of money that can be

raised for capital construction. (Affidavit of David Cockerham  
attachments to Affidavit of Robert Gomez)

37. The Grants Cibola School District facilities are  
substandard and in need of repair. (Affidavit of Tom Jackson)

38. The Grants Cibola School District is bonded in excess of  
90% capacity. (Affidavit of Tom Jackson)

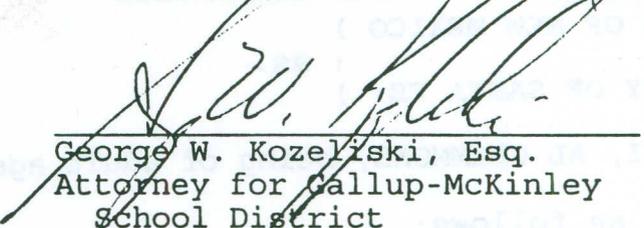
Pursuant to local rule 11-104D, concurrence of opposing  
counsel was not sought given the nature of the motion. Further,  
pursuant to local rule 11-104C, a brief is being filed  
simultaneously with this motion.

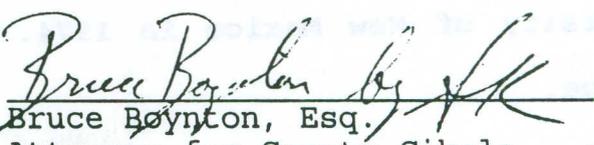
Respectfully submitted:

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