

ELEVENTH JUDICIAL DISTRICT COURT
COUNTY OF MCKINLEY
STATE OF NEW MEXICO

THE ZUNI PUBLIC SCHOOL DISTRICT and SKYLAR MARTINEZ, by and through his next friends and parents, MALCOLM BOWEKATY and VURLENE BOWEKATY, JEFFREY M. JOHNSTON, by and through his next friends and parents, MADRELL and WILBUR JOHNSTON, 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 BOOQ(JA), JR., by and through his next friends and parents, MARLENE and CHARLES BOOQUA, SR.

Plaintiffs,

THE GALLUP-MCKINLEY SCHOOL DISTRICT NO.1, JIRAIYA WOODY and TATUM PETERSON by and through their next friend and parent MARTINA PETERSON, and FARRAH BARNEY and ISABELLA BARNEY by and through their next friend and parent TAMMY BARNEY.

Plaintiff-Intervenors,

vs.

No. D-1113-CV-98-14-II

THE STATE OF NEW MEXICO and THE PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

Defendants.

FIRST AMENDED COMPLAINT IN INTERVENTION

COMES NOW, GALLUP-McKINLEY COUNTY SCHOOL DISTRICT NO. 1 (“Gallup-McKinley”) (those plaintiffs other than the school district being sometimes referred to as the “Individual Plaintiffs”), by and through its attorney of record, ROBERT F. ROSEBROUGH, The Rosebrough Law Firm, P.C., for their complaint in intervention and state:

1. Gallup-McKinley is a New Mexico public school district located in McKinley County, New Mexico.

2. Jiraiya Woody is a student in Gallup-McKinley. Martina Peterson is Jiraiya Woody’s parent.

3. Tatum Peterson is a student in Gallup-McKinley. Martina Peterson is Tatum Peterson’s parent.

4. Farrah Barney is a student in Gallup-McKinley. Tammy Barney is Farrah Barney’s parent.

5. Isabella Barney is a student in Gallup-McKinley. Tammy Barney is Isabella Barney’s parent.

6. The State of New Mexico (“New Mexico”) is one of the fifty (50) states of the United States of America and Gallup-McKinley is located within New Mexico.

7. The Public School Capital Outlay Council (“PSCOC”) is a department of the State of New Mexico created by Section 22-24-6 NMSA and statutorily charged with investigating all applications for assistance from the Public School Capital Outlay Fund, certifying the approved applications to the secretary of finance, and administrating the distribution of public school outlay funds.

8. Gallup-McKinley and the Individual Plaintiffs have certain rights, opportunities, and protection recognized and granted to them under the New Mexico Constitution, Article XII, Section 1 to wit:

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.

9. Historically, New Mexico has treated funding for operational and capital improvements of public schools separately and differently.

10. Consistent with the constitutional requirement of uniformity and pursuant to NMSA 1978, § 22-8-25, New Mexico has, since the 1970's, attempted to equalize operational funds for public school districts within the state by means of the state equalization guarantee distribution.

11. Like all other New Mexico school districts, Gallup-McKinley then funds its operational activities with funds received from New Mexico under this state equalization guarantee distribution.

12. However, pursuant to NMSA 1978, § 22-8-25, Gallup-McKinley is subject to deduction from its respective share of operational funds received under this state equalization guarantee distribution of 75% of the funds received by them from the federal government under 20 U.S.C. § 236-240 ("874 Funds") as well as 75% of all of the forest reserve funds ("Forest Reserve Funds") received by them from the federal government. 874 Funds and Forest Reserve Funds are intended by federal law to replace lost property tax revenue for school districts wherein there are certain federal lands within the school district which cannot be taxed. Gallup-McKinley has substantial amounts of such lands within its district.

13. Prior to the filing of this action in 1998, funds for non-operational, capital

improvement needs, which are not funded under the state equalization distribution, ("Capital Improvement Needs") were largely derived from local sources, primarily through local bond issues. Gallup-McKinley had an insufficient local tax base (due in part to the presence of federal lands as described above) and had no other means or opportunity from these local sources to raise sufficient funds for its Capital Improvement Needs.

14. Hence, prior to the filing of this action, unlike the attempt to equalize operational funds, New Mexico's statutory method of providing funds for Capital Improvement Needs depended primarily on local bond issues that had not been subjected to any equalization formula.

15. On October 14, 1999 this court, after considering the briefs and oral arguments of the parties, entered a Partial Summary Judgment, determining that, "[T]he current funding of Capital Improvements for New Mexico's school districts violates Article XII, Section 1 of the New Mexico Constitution." The Court also found that the disparity in bonding capacity, and differing taxable land values among the school districts created a lack of uniformity for funding capital improvements."

16. To remedy the constitutional violation and past inequities, the State of New Mexico was given until July 28, 2000 in which to establish and implement a uniform system for future capital improvements as required under Article XII, Section 1 of the Constitution. Finally, the court reserved jurisdiction to review any plan developed by the State, and to impose sanctions for failure to adopt an adequate and constitutional funding system.

17. In 2000, the New Mexico Legislature passed bills providing for the use of supplemental severance tax bonds for the funding of public school projects and the Governor signed those bills.

18. In 2001, the New Mexico Legislature passed a bill that made considerable programmatic changes and added substantial revenues to help service the capital needs of the public schools and the Governor signed that bill.

19. On April 18, 2001, this Court convoked a status conference which resulted in the court determining that a special master “be appointed to delineate and hear the remaining issues and to hold and conduct such evidentiary hearings as are necessary” and on May 8, 2001 the Honorable Dan A. McKinnon was appointed as special master in this action.

20. On October 24, 2001, Special Master McKinnon held a two and one-half day hearing in the federal court house in Albuquerque.

21. Following the hearing, Special Master McKinnon issued a report in which he concluded that “the state is to the extent possible under the circumstances, complying with the court’s order requiring the development and implementation of a uniform system for funding capital improvements for New Mexico school districts.” (emphasis original)

22. Special Master McKinnon added, “However, it is premature to completely judge the adequacy of the state’s response to the Court Order. More time is needed to determine the efficacy of the state’s deficiency corrections program, the adequacy standards for school facilities which must be adopted by September 2002, and the revenue streams for the funding of capital outlay projects.”

23. Special Master McKinnon also reported, “What can be said at this point is that the state is engaging in a good faith attempt to rectify what all parties agree to have been a past failure to provide adequate resources for the funding of capital programs for the education of our children. Related to this failure is the inability of the plaintiffs to raise meaningful capital funds. Additionally, these poor school districts lack the political clout to fund needed capital

projects with money generated by direct appropriations from the legislature, otherwise known as 'pork'. This practice conflicts with the constitutional principle requiring that a uniform system be in place for the education of our children.”

24. Special Master McKinnon issued the following Conclusions of Law in this Report which were approved by order to this Court on May 30, 2002:

(I). “At the time this litigation was commenced, the state’s method of financing the capital needs of the school districts violated Article XII, Section 1 of the Constitution in that it created substantial and impermissible disparities among the districts, thereby perpetuating a non-uniform system for the funding of capital projects in our school districts.

(II). Since 1998 the state has made a substantial effort to rectify the disparities as outlined in the Findings. While many improvements in our school facilities are still in the planning state, I conclude that at this time the state is in good faith and with substantial resources attempting to comply with the requirements of Judge Rich’s previous directions.

(III). Because the use of direct appropriations necessarily removes substantial funds from the capital outlay process where merit and need on a priority basis dictate how funds are to be distributed, the state should take into account in its funding formula these appropriations as an element thereof.

(IV). While the state has shown good faith, it should be required to account to this court in detail about the status of all of its efforts and programs to bring the state in compliance with our constitutional requirement. This should include a mechanism for periodic review of the adequacy Standards to insure that education needs are not judged

by out of date Standards. The timing and frequency of such accountings is left to the court.”

25. After the Special Master’s Report and the Court’s Order on May 30, 2002 were entered, New Mexico established “adequacy standards” for public school construction. The adequacy standards for construction of public schools in New Mexico, as subsequently established and amended by PSCOC, are not currently sufficient for the education of all the children of school age and violate Article XII Section 1 of the New Mexico Constitution. Examples of necessary costs to build a public school which are not included in the current definition of adequacy include, but are not limited to:

- a. Extension of utilities to school construction and building sites,
- b. Teacherages for rural schools located on federal land or tribal land,
- c. Navajo Nation business activities tax,
- d. Security features beyond magnetic locks,
- e. Some furniture, fixtures and equipment, and
- f. Athletic fields beyond multipurpose practice fields.

26. The adequacy standards for construction of public schools in New Mexico, as subsequently established and amended by PSCOC, are not sufficient to comply with public education standards and specifications established by the State of New Mexico and by the federal government for public education and violate Article XII, Section 1 of the New Mexico Constitution. Examples of costs which are required by New Mexico or Federal educational standards and specifications include, but are not limited to:

- a. Navajo language and culture classes required by the State of New Mexico Indian Education Act (These classes are permitted, but reduce the square footage available for other essential functions),
- b. Title IX athletic facilities,
- c. Pre-K related parent educational rooms,
- d. Response of intervention classrooms for “At Risk” students, and
- e. Computers and computer stations for mandated computer based tests.

27. The adequacy standards for construction of public schools in New Mexico, as subsequently established and amended by PSCOC, do not currently establish an “acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for technological infrastructure” as required by Section 22-24-5 NMSA.

28. With the passage of time it has become evident that PSCOC process, the adequacy standards and the state statute, Section 22-24-5 NMSA, that calculates the state share for public school capital outlay projects are skewed to benefit property tax rich school districts. Under the current system, property tax rich school districts are able to regularly exceed adequacy standards when property tax poor districts do not have the same ability.

29. Some school districts can and do build bigger, more specialized, more amenity-filled facilities while other less wealthy districts cannot. Some school districts have the ability to rely exclusively on local taxation to build public schools which significantly exceed the statewide adequacy standards without having to request any money from PSCOC. Large population schools have a scale advantage that reduces local funding need that has been used to

build over adequacy. By way of example, the following public schools have been built significantly over adequacy:

District	Project Name	Above Adequacy
Albuquerque Public Schools	Volcano Vista High School	\$18,421,489
Albuquerque Public Schools	Atrisco Heritage High School	\$14,633,365
Clovis Municipal Schools	New Middle School	\$8,448,346
Eunice Municipal Schools	Mettie Jordan Elementary	\$7,941,595
Hobbs Municipal Schools	Hobbs High School	\$21,160,344
Ruidoso Municipal Schools	Ruidoso Middle School	\$7,432,458

30. The State of New Mexico has established a waiver process by which the State can adjust the local match necessary to complete a public school construction project or grant assistance through additional funding, emergency funds or advance funds, but the waiver approval process as it has been applied by PSCOC is non-uniform, arbitrary and prone to political influences that favor districts with politically powerful legislative delegations and, therefore, violates Article XII, Section 1 of the New Mexico Constitution.

31. While additional funds have been designated to fund capital improvement needs of school districts, the needs significantly exceed the amount of available funds. While funding from PSCOC takes into account school district's tax wealth, nevertheless with the change in legislation, all 89 public school districts are entitled to have their projects ranked and funded in whole or in part by PSCOC which increases the competition for PSCOC funding. The funding of capital improvements for State Charter Schools has also increased competition for PSCOC

funding. With this constant competition for PSCOC funds the project needs of tax poor school districts can remain unmet for years, requiring students in those districts to contend with inadequate educational facilities. By way of contrast, school districts with a healthy property tax base or political influence can bypass the PSCOC funding process and build their own schools when needed, without delay, and above adequacy.

32. While the funding process for construction of public schools changed significantly in response to the filing of this action in 1998, the funding process for repair and maintenance of public school buildings is essentially the same process that pre-existed the filing of this action and is skewed to favor property tax rich districts. The funding process results in property tax poor districts having inadequate funds to repair and maintain their schools and is not uniform or sufficient to provide for the education of the children in districts with limited property tax revenues. Only twenty two percent (22%) of the Gallup-McKinley School District is taxable which reduces the amount of money for repairs and maintenance that can be raised by the current funding process.

33. Some school districts with politically influential legislative delegations continue to receive direct legislative appropriations for public school capital outlay projects. In the 1st Special Session of the 52nd Legislature in 2015, \$13,114,642 in direct legislative appropriations were passed by the legislature for public school capital outlay projects. Neither Gallup-McKinley nor Zuni received any direct legislative appropriations for public school capital outlay projects in 2015.

34. The continued practice of direct legislative appropriations to school districts permit those same districts to construct public schools in a manner that significantly exceed the adequacy standards established by PSCOC and renders the entire system of funding construction

of public schools arbitrary and non-uniform thus violating Article XII, Section 1 of the New Mexico Constitution.

35. For all reasons stated above, it has been necessary for Gallup-McKinley to use operational funds and repair and maintenance funds to construct school buildings because the amount of money that is generated by general obligations bonds and money received from the State of New Mexico through the PSCOC process is not sufficient to construct all the school buildings necessary to educate the students of Gallup-McKinley.

36. By way of contrast, property tax rich districts, who also receive direct legislative appropriations, regularly build school buildings that exceed the adequacy standards without having to use operational funds for construction and without taxing their citizens to the same level that the citizens of Gallup-McKinley have chosen to tax themselves.

37. Gallup-McKinley and the Individual Plaintiffs are the victims of discrimination and are being denied the uniform and sufficient educational rights, opportunities, and protection mandated by Article XII Section 1 of the New Mexico Constitution.

COUNT I DECLARATORY JUDGMENT

38. Gallup-McKinley incorporates by reference paragraphs 1-37 as though set forth in particular.

39. An actual controversy exists between the parties as to whether level of funding of capital improvement for public schools and the process for approving, designing, and constructing public schools by the NEW MEXICO and PSCOC violates Article XII, Section 1 of the New Mexico Constitution.

40. This Court should enter a declaratory judgment which declares that current level of funding of capital improvements for public school and the process for approving, designing, and

construction public schools in New Mexico violates Article XII, Section 1 of the New Mexico Constitution and orders such further and supplemental relief as the court deems proper to rectify the constitutional violation.

COUNT II
INJUNCTIVE RELIEF

41. Gallup-McKinley incorporates by reference paragraph 1-40 as though set forth in particular.

42. Article XII, Section 1, of the New Mexico Constitution requires that the State of New Mexico provide a free and "uniform system" of education "sufficient for the education of... all the children of school age in the state" The current statutory scheme of New Mexico for funding Capital Improvement Needs violates this Constitutional provision by failing to provide for a uniform and adequate system of funding Capital Improvement Needs which failure imposes upon the students of Gallup-McKinley as well Gallup-McKinley itself a distinct educational disadvantage.

43. This Court should enjoin the Defendant from continuing such methods and affirmatively order the Defendant to present to this Court forthwith a proposed plan:

(a) To provide funding to Gallup-McKinley which would substantially equalize, and thereby make uniform, funds to these districts for its Capital Improvement Needs.

(b) To provide funding to Gallup-McKinley to erase the existing disparity in the quality of educational facilities which has developed over the years as a result of the New Mexico's non-uniform and unequal and, hence, illegal and discriminatory funding method for Capital Improvement Needs.

(c) To provide funding to Gallup-McKinley to insure that an adequate and

sufficient level of facilities and other such resources heretofore funded by non-operational funds are now made available to Gallup-McKinley.

(d) To assure to this Court that the future capital outlay and repairs and maintenance funding allocation system of New Mexico will provide for a uniform and sufficient level of funds for Gallup-McKinley for their Capital Improvement Needs and for their other non-operational facilities, equipment and services.

COUNT III
MONETARY RELIEF

44. Gallup-McKinley incorporates by reference paragraph 1-43 as though set forth in particular.

45. The Defendant has failed to provide the uniform education system mandated by Article XII, Section 1 of the New Mexico State Constitution.

46. The Defendant has failed to provide a sufficient educational system as mandated by Article XII, Section 1 of the New Mexico Constitution.

47. The Defendant should be ordered to provide such monetary relief to Gallup-McKinley as would be necessary to fulfill the Defendant's constitutional mandate.

WHEREFORE, Gallup-McKinley prays for a declaratory judgment and injunctive relief as set forth herein, for their damages, for their attorney's fees, costs and for such further relief as this Court deems appropriate.

THE ROSEBROUGH LAW FIRM, P.C.



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CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2015, a true and correct copy of this *First Amended Complaint In Intervention* was e-filed through the Court's e-filing system and served by mail upon counsel of record.



ROBERT F. ROSEBROUGH