

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

CATHY MOSES, and PAUL WEINBAUM,

Plaintiffs,

v.

No. D-101-CV-2012-00272

HANNA SKANDERA, SECRETARY OF
EDUCATION, NEW MEXICO PUBLIC
EDUCATION DEPARTMENT,

Defendants,

ALBUQUERQUE ACADEMY, THE NEW MEXICO
ASSOCIATION OF NONPUBLIC SCHOOLS,
REHOBOTH CHRISTIAN SCHOOL, ST. FRANCIS
SCHOOL, SUNSET MESA SCHOOL, ANICA BENIA
and MAYA BENIA,

Intervenors.

**ANSWER OF ALBUQUERQUE ACADEMY, THE NEW MEXICO ASSOCIATION
OF NONPUBLIC SCHOOLS, REHOBOTH CHRISTIAN SCHOOL, ST. FRANCIS
SCHOOL, HOPE CHRISTIAN SCHOOL, SUNSET MESA SCHOOL,
AND ANICA BENIA AND MAYA BENIA**

COMES NOW Albuquerque Academy, a New Mexico nonprofit corporation (hereafter "the Academy"), The New Mexico Association of Nonpublic Schools. (hereafter "NMANS"), Rehoboth Christian School ("Rehoboth"), St. Francis School ("St. Francis"), Hope Christian School ("Hope Christian"), Sunset Mesa School ("Sunset Mesa"), and Anica Benia and Maya Benia (hereafter "Benia"), by and through their counsel, Modrall, Sperling, Roehl, Harris & Sisk, P.A. (R. E. Thompson, Emil J. Kiehne, Sarah M. Stevenson). Benia are qualified students at the Academy and are citizens of the State of New Mexico and the United States. The Academy is a secular nonprofit private school in New Mexico and is approved by the Public Education

Department of the State of New Mexico. NMANS is a nonprofit association of non-public schools in New Mexico. Rehoboth is a private, religious educational institution located in Rehoboth, McKinley County, New Mexico, and is registered with and approved by the New Mexico Public Education Department. St. Francis is a private, Catholic educational institution located in Lumberton, Rio Arriba County, New Mexico, and is registered with and approved by the New Mexico Public Education Department. Hope Christian is a private, religious educational institution located in Albuquerque, New Mexico, and is registered with and approved by the New Mexico Public Education Department. Sunset Mesa is a private, secular educational institution located in Albuquerque, New Mexico, and is registered with and approved by the New Mexico Public Education Department. For their Answer to the Complaint filed by Plaintiffs, state as follows:

1. The Academy, NMANS, Rehoboth, St. Francis, Hope Christian, Sunset Mesa and Benia are without sufficient knowledge or information to form a belief as to the truth of paragraph 1 and therefore deny the same.

2. The Academy, NMANS, Rehoboth, St. Francis, Hope Christian, Sunset Mesa and Benia admit the allegations of paragraph 2.

3. The Academy, NMANS, Rehoboth, St. Francis, Hope Christian, Sunset Mesa and Benia deny the allegations of paragraph 3.

OTHER DEFENSES

Second Defense

The funds provided to the Instructional Material Fund are “Federal Flow Through” funds from the federal Minerals Land Leasing Act (30 U.S.C.A. § 181, et seq.) receipts. They are

federal funds and not subject to any New Mexico Constitutional restrictions. Also, Plaintiffs do not have a right of action as to these funds.

Third Defense

Plaintiffs do not possess standing to bring the instant lawsuit.

Fourth Defense

Section 22-15-7 NMSA provides in part:

22-15-7. Students eligible; distribution.

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the department in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. . . .

B. Instructional material shall be distributed to school districts, state institutions and private schools as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution or private school as agent receiving instructional material pursuant to the Instructional Material Law is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material.

The textbooks are provided for the use of students, not the schools.

Fifth Defense

The Fourteenth Amendment to the United States Constitution and the New Mexico Constitution provide equal protection of the laws to the Academy, NMANS, Rehoboth, St. Francis, Hope Christian, Sunset Mesa and Benia.

Sixth Defense

Plaintiffs have not sustained any injury in fact. There is no actual case or controversy for Plaintiffs to bring the instant lawsuit.

Seventh Defense

Given that the Plaintiffs have not alleged nor can they demonstrate that their children who attend public schools in New Mexico have been denied or otherwise not received free use of instructional material, which is an entitlement under the Instructional Materials Law, Plaintiffs lack standing to bring this action on that issue alone.

Eighth Defense

Given that the Plaintiffs have not alleged nor can they demonstrate that neither they nor their children who attend public schools in New Mexico, were deprived or threatened with deprivation of any personal rights, Plaintiffs lack standing to bring this action on that issue alone.

Ninth Defense

Given that laws of New Mexico are presumed to be Constitutional and Plaintiffs allege to have continually been residents and taxpayers of New Mexico for five or more years, and given they also allege to each have one or more child attending a public school in the state, the validity of the Instructional Material Law does not raise a constitutional question of great public importance.

Tenth Defense

Given that laws of New Mexico are presumed to be Constitutional and Plaintiffs allege to have continually been residents and taxpayers of New Mexico for five or more years, and given they also allege to each have one or more child attending public school in the state, the Plaintiffs are stopped or have waived their right to bring this cause of action and are not actually injured.

Eleventh Defense

Given that laws of New Mexico are presumed to be Constitutional and Plaintiffs allege to have continually been residents and taxpayers of New Mexico for five or more years and they

allege also to each have one or more child attending public school in the state, the Plaintiffs' cause of action is barred by the doctrine of laches.

Twelfth Defense

Plaintiffs cannot, as they have attempted, base their complaint on their taxpayer status, because they do not have a personal stake in the outcome of this matter and there exists no concrete adverseness as required in a taxpayer's suit.

WHEREFORE, Intervenors Albuquerque Academy, The New Mexico Association of Nonpublic Schools, Rehoboth Christian School, St. Francis School, Hope Christian School, Sunset Mesa School and Anica Benia and Maya Benia respectfully request that this Court order:

- a. That the Complaint be dismissed with prejudice and because there is no good ground in law or fact to support it;
- b. That they be awarded their costs and attorney fees; and
- c. Any such further relief as the Court may deem just and proper.

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

Electronically Filed
By /s/ Sarah M. Stevenson
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ATTORNEYS FOR INTERVENORS

WE HEREBY CERTIFY that a true and correct copy of the foregoing was submitted through the Court's Electronic Filing System for filing and service and that a copy of the same was mailed to the following counsel of record on the 16th day of November, 2012:

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By /s/ Sara M. Stevenson
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