

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

May 21 10 21 AM '99

RALPH L. DELOACH
CLERK

BY _____, DEPUTY
AT WICHITA, KS.

CHEROKEE, LAJUAN and MYTESHA ROBINSON,)
by and through their mother and next friend, Earnestine)
Robinson ERIC and RYAN MONTTOY, by and through)
their father and next friend, Reuben Montoy; SIERRA)
and SETH GWIN, by and through their mother and next)
friend, Kimberly Gwin; RENE BESS, by and through his)
grandfather and next friend, Earl Bess, Jr.; KEELY)
BOYCE by and through her mother and next friend, Kenna)
Boyce; CRUIZ CEDILLO, by and through his mother and)
next friend, Sandra Delgado; LYNETTE DO, by and)
through her mother and next friend, Lieu Do; EZEKIAL)
and EMERALD GARCIA, by and through their mother)
and next friend, Evangelina Garcia; CHRISTOPHER and)
MONIQUE HARDING, by and through their mother and)
next friend, Phyllis Harding; JOSEPH HAWKINSON, by)
and through his mother and next friend, Melody)
Hawkinson; LAURI MAYNES, by and through her father)
and next friend, Robert Maynes; JENNIE NGUYEN, by)
and through her father and next friend, Phillip Nguyen;)
SHASTA OAKS, by and through her mother and next)
friend, Mary Lu Triplitt; SANDY, NICOLE and BRUCE)
THU PHAM, by and through their father and next friend,)
Da Thu Pham; ANDREA BETHKE, by and through her)
mother and next friend, Linda Bethke; UNIFIED)
SCHOOL DISTRICT NO. 443; and UNIFIED SCHOOL)
DISTRICT NO. 305,)

Plaintiffs,)

v.)

THE STATE OF KANSAS; BILL GRAVES, in his)
official capacity as the governor of the State of Kansas;)
LINDA HOLLOWAY, in her official capacity as the)
chairperson of the State Board of Education; and ANDY)
TOMPKINS, in his official capacity as commissioner of)
the State Department of Education,)

Defendants.)

Case No. 99-1173 JTM

COMPLAINT

COME NOW the plaintiffs in the above-captioned matter, and for their Complaint against the above-named defendants, allege and state as follows:

Parties

1. Plaintiffs Cherokee, LaJuan and Mytesha Robinson are African-American students attending public school in Unified School District No. 443. Cherokee, LaJuan and Mytesha Robinson are residents and citizens of the state of Kansas and the United States of America.

2. Plaintiffs Eric and Ryan Montoy are Hispanic students attending public school in Unified School District No. 305. Eric and Ryan Montoy are citizens and residents of the state of Kansas and the United States.

3. Plaintiffs Sierra and Seth Gwin are disabled students as defined by the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* Sierra and Seth Gwin attend public school in Unified School District No. 305 and are citizens and residents of the state of Kansas and the U.S.

4. Plaintiff Rene Bess is an African-American student attending public school in Unified School District No. 305. Rene Bess is a citizen and resident of the state of Kansas and the U.S.

5. Plaintiff Keely Boyce is a disabled student attending public school in Unified School District No. 305. Keely Boyce is a citizen and resident of the state of Kansas and the U.S.

6. Plaintiff Cruz Cedillo is an Hispanic student attending public school in Unified School District No. 443. Cruz Cedillo is a citizen and resident of the state of Kansas and the United States of America.

7. Plaintiff Lynette Do is an Asian-American student attending public school in Unified School District No. 443. Lynette Do is a citizen and resident of the state of Kansas and the U.S.

8. Plaintiffs Ezekial and Emerald Garcia are students attending public school in Unified School District No. 443. Ezekial and Emerald Garcia are citizens and residents of the state of Kansas and the United States.

9. Plaintiffs Christopher and Monique Harding are African-American students attending public school in Unified School District No. 443. Christopher and Monique Harding are residents and citizens of the state of Kansas and the United States.

10. Plaintiff Joseph Hawkinson is a disabled student attending public school in Unified School District No. 305. Joseph Hawkinson is a resident and citizen of the state of Kansas and the United States.

11. Plaintiff Lauri Maynes is an Hispanic student attending public school in Unified School District No. 305. Lauri Maynes is a citizen and resident of the state of Kansas and the United States.

12. Plaintiff Jennie Nguyen is an Asian-American student attending public school in Unified School District No. 443. Jennie Nguyen is a citizen and resident of the state of Kansas and the United States.

13. Plaintiff Shasta Oaks is an African-American student attending public school in Unified School District No. 305. Shasta Oaks is a citizen and resident of the state of Kansas and the United States.

14. Plaintiffs Sandy, Nicole and Bruce Thu Pham are Vietnamese students attending public school in Unified School District No. 305. Sandy, Nicole and Bruce Thu Pham are legal residents of the state of Kansas and the United States.

15. Plaintiff Andrea Bethke is a disabled student as defined by the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.* Andrea Bethke attends public school in Unified School District No. 443 and is a citizen and resident of the state of Kansas and the United States.

16. Plaintiff Unified School District No. 443 is a school district formed pursuant to state law and is located in Dodge City, Kansas.

17. Plaintiff Unified School District No. 305 is a school district formed pursuant to state law and is located in Salina, Kansas.

18. Defendant State of Kansas is a state governmental entity and may be served with process by serving the Kansas Attorney General, Carla Stovall, at the Kansas Judicial Center, 2nd Floor, 301 W. 10th Street, Topeka, Kansas 66612-1597.

19. Defendant Bill Graves is the governor of the State of Kansas and may be served with process at his official office at the State Capitol, 2nd Floor, Topeka, Kansas 66612-1590.

20. Defendant Linda Holloway is the chairperson of the Kansas State Board of Education. Defendant Holloway may be served with process at 120 S.E. 10th Street, Topeka, Kansas 66612.

21. Defendant Andy Tompkins is the commissioner of the Kansas State Department of Education. Defendant Tompkins may be served with process at 120 S.E. 10th Street, Topeka, Kansas 66612.

Jurisdiction and Venue

22. This court possesses original jurisdiction over plaintiffs' claims arising under the U.S. Constitution and federal law, pursuant to 28 U.S.C. § 1331. This court has supplemental jurisdiction over plaintiffs' state law claims, pursuant to 28 U.S.C. § 1367(a).

23. Venue in this court is proper, pursuant to 28 U.S.C. § 1391(b).

Facts

24. The State of Kansas funds its public schools, grades K-12, through the School District Finance and Quality Performance Act (SDFQPA), K.S.A. 72-6405 *et seq.* Pursuant to this Act, all public school districts in the state are allotted funds to operate their educational programs according to the statutory funding formula.

25. The State of Kansas receives monies from education programs administered by the federal government of the United States. The State uses these monies to fund public school districts. Such monies are distributed, along with State funds, pursuant to the SDFQPA funding formula.

26. Under the SDFQPA funding formula, each public school district receives a set amount of money per student enrolled in the district. This base rate effective July 1, 1999 is \$3770 per student.

27. The base rate is adjusted by several factors, the most significant of which is low enrollment weighting. Public school districts with fewer than 1725 students receive additional funds per student pursuant to low enrollment weighting. In many cases, public school districts qualifying for low enrollment weighting receive more than twice as many dollars per student as those districts that do not qualify for such weighting.

28. Hispanic, African-American and Asian-American students are disproportionately enrolled in mid-size and large school districts which do not qualify for low enrollment weighting and which receive comparatively little funding per pupil from the State of Kansas under the current school finance law. As a group throughout the state, Hispanic, African-American and Asian-American students receive less funding per pupil from the State than do white students.

This disparity adversely affects the educational opportunities and outcomes for Hispanic, African-American and Asian-American students in comparison with white students.

29. Likewise, students of non-U.S. origin are disproportionately enrolled in mid-size and large school districts which do not qualify for low enrollment weighting and which receive comparatively little funding per pupil from the State of Kansas under the current school finance law. As a group throughout the state, they receive less funding per pupil than do students of U.S. origin, and this disparity in spending adversely affects their educational opportunities and outcomes in comparison with students of U.S. origin.

30. Disabled students also are disproportionately enrolled in mid-size and large school districts which do not qualify for low enrollment weighting and which receive comparatively little funding per pupil from the State. As a result of this funding disparity, disabled students as a group throughout the state receive fewer educational opportunities and suffer more unfavorable outcomes than do non-disabled students.

31. Unified School District Nos. 443 and 305 enroll too many students to qualify for low enrollment weighting. These districts also enroll disproportionately more African-American, Asian-American, Hispanic, non-U.S. origin and disabled students than do school districts which qualify for low enrollment weighting and which receive more funding per student.

32. A direct correlation exists between the State's inequitable school funding formula and unsatisfactory education outcomes experienced by Hispanic, African-American and Asian-American students throughout the state in comparison to the outcomes experienced by white students. The same correlation exists between the State's school funding formula and unsatisfactory outcomes experienced by disabled students in comparison to the outcomes experienced by non-disabled students. Likewise, a correlation exists between the State's funding

formula and unsatisfactory outcomes experienced by students of non-U.S. origin in comparison to outcomes experienced by students who are of U.S. origin.

33. The SDFQPA permits individual school districts to pass local option budgets (LOBs) which supplement State funding. An LOB requires the levying of additional taxes and is sometimes dependant on the approval of residents of the district. A direct correlation exists between the median income and property values in a school district and that district's ability to raise funds through an LOB. School districts with comparatively high median incomes and property values raise more funds through LOBs than those with comparatively low incomes and property values.

34. African-American, Hispanic and Asian students are disproportionately enrolled in school districts with comparatively low incomes and property values. These districts collect fewer funds through LOBs than districts which are enroll disproportionate numbers of white students. This disparity results in fewer educational opportunities and less satisfactory outcomes for minority students than for white students.

35. Similarly, students of non-U.S. descent are disproportionately enrolled in school districts which have low or non-existent LOBs. This disparity results in fewer educational opportunities and less satisfactory outcomes for non-U.S. origin students than for students who were born in the United States.

36. Likewise, disabled students are disproportionately enrolled in school districts with low or non-existent LOBs. This disparity results in fewer educational opportunities and less satisfactory outcomes for disabled students than for non-disabled students.

37. School districts with low median incomes and property values and corresponding low LOBs have fewer dollars per pupil to spend than do those districts with high LOBs. A direct

correlation exists between the fewer amount of dollars collected through LOBs in these districts and unsatisfactory education outcomes experienced by minority students, students of non-U.S. origin and disabled students.

Count I: Title VI Disparate Impact – Race

38. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-37 above as though fully set out herein.

39. Defendants' current school funding law violates the rights of plaintiffs Cherokee, LaJuan and Mytesha Robinson Eric and Ryan Montoy, Rene Bess, Cruz Cedillo, Lynette Do, Ezekial and Emerald Garcia, Christopher and Monique Harding, Lauri Maynes, Jennie Nguyen, Shasta Oaks and Sandy, Nicole and Bruce Thu Pham not to be discriminated against on the basis of race. The SDFQPA has a disparate negative impact on students who are African-American, Hispanic and Asian, in violation of the implementing regulations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*

40. The SDFQPA, although facially neutral, has a racially disproportionate adverse effect on African-American, Hispanic and Asian students. The SDFQPA perpetuates a dual system of education in Kansas, primarily, though not entirely, through the devices of low enrollment weighting and LOBs. African-American, Hispanic and Asian students are disproportionately enrolled in school districts which have low LOBs and which receive fewer funds per pupil from the State. These students find themselves trapped in a system of which has less money to spend on them and thus adversely affects the quality of education available to them. Such students, in comparison to white students in the state, have disproportionately high dropout rates, are disproportionately the victims of violent acts at school, and their pass rates and standardized test scores are disproportionately low. They also have inferior access to education

programs which would improve the quality of their education and which are disproportionately more available to white students.

41. Defendants do not have a substantial legitimate justification for the SDFQPA as it currently reads. Among other provisions of the SDFQPA, no legitimate justification exists for low enrollment weighting or the LOB as they are currently defined in that Act.

42. Equally effective alternative provisions are available which would eliminate the disparate negative impact currently suffered by African-American, Hispanic and Asian students. Such alternatives include, but are not limited to: eliminating low enrollment weighting where not supported by economies of scale or low population densities and more equitably distributing State funds to school districts which do not qualify for such weighting; eliminating the LOB and replacing it with uniform adequate statewide funding; and consolidation of low enrollment school districts (or funding such districts as though they were not low enrollment) where population density makes the same logistically possible.

43. As a result of defendants' violation of Title VI, the plaintiffs named in paragraph 39 above have suffered and continue to suffer injury.

Count II: Title VI Disparate Impact – National Origin

44. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-43 above as though fully set out herein.

45. Defendants' current school funding law violates the rights of plaintiffs Sandy, Nicole and Bruce Thu Pham not to be discriminated against on the basis of national origin. The SDFQPA has a disparate adverse impact on students who are of non-U.S. origin, in violation of the implementing regulations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*

46. The SDFQPA, although facially neutral, has a disproportionate adverse impact on students of non-U.S. national origin. The SDFQPA perpetuates a dual system of education in Kansas, primarily, though not entirely, through the devices of low enrollment weighting and LOBs. Students of non-U.S. origin are disproportionately enrolled in school districts which have low LOBs and which receive fewer dollars per pupil from the State. These students are trapped in a system which has less money to spend on them and thus adversely affects the quality of education available to them. Compared to students of U.S. origin, such students have disproportionately high dropout rates, they are disproportionately the victims of violent crimes at school and their pass rates and standardized test scores are disproportionately low. They also have inferior access to education programs which would improve the quality of their education and which are disproportionately available to students of U.S. origin

47. Defendants lack any substantial legitimate justification for the two-tier system of education created by the SDFQPA, including, but not limited to, the Act's low enrollment weighting and LOB provisions.

48. Equally effective alternative provisions are available which would eliminate the disparate adverse impact currently suffered by students of non-U.S. national origin. Such alternatives include, but are not limited to: eliminating low enrollment weighting where not supported by economies of scale or low population densities and more equitably distributing State funds to school districts that do not qualify for such weighting; eliminating the LOB and replacing it with uniform adequate statewide funding; and consolidation of low enrollment school districts (or funding such districts as though they were not low enrollment) where population density makes the same logistically possible.

49. As a result of defendants' violation of Title VI, the plaintiffs named in paragraph 45 above have suffered and continue to suffer injury.

Count III: Rehabilitation Act Disparate Impact

50. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-49 above as though fully set out herein.

51. Defendants' current school funding law violates the rights of plaintiffs Sierra and Seth Gwin, Keely Boyce, Joseph Hawkinson and Andrea Bethke not to be discriminated against on the basis of disability. The SDFQPA has a disparate negative impact on students who are disabled, in violation of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*

52. The SDFQPA, although facially neutral, has a disproportionate adverse impact on disabled students. Disabled students are disproportionately enrolled in school districts which have low LOBs and which receive fewer funds per pupil from the State. Because of funding inequities created by the SDFQPA, disabled students have inferior access to education programs, facilities and transportation, all of which would improve the quality of their education and which are disproportionately available to non-disabled students.

53. Defendants do not have a substantial legitimate justification for the SDFQPA as it currently reads, including those provisions of the Act relating to low enrollment weighting and the LOB.

54. Equally effective alternative provisions are available which would eliminate the disparate adverse impact currently suffered by disabled students. Such alternatives include, but are not limited to: eliminating low enrolment weighting where not supported by economies of scale or low population densities and more equitably distributing State funds to school districts who do not qualify for such weighting; eliminating the LOB and replacing it with uniform

adequate statewide funding; and consolidation of low enrollment school districts (or funding such districts as though they were not low enrollment) where population density makes the same logistically possible.

55. As a result of defendants' violation of the Rehabilitation Act, the plaintiffs named in paragraph 51 above have suffered and continue to suffer injury.

Count IV: Equal Protection

56. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-55 above as though fully set out herein.

57. Kansas' current school finance law violates the rights of all plaintiffs in this action to equal protection of the laws, guaranteed by the United States and Kansas Constitutions. The SDFQPA treats similarly situated students differently, depending on the number of students enrolled in their school districts and the relative wealth of those school districts. Plaintiffs have been adversely affected as a result of defendants' unequal application of the law.

58. A minimally adequate education is a fundamental right under the United States and Kansas Constitutions. Defendants cannot demonstrate that low enrollment weighting or the LOB are necessary to serve a compelling state interest. Nor can defendants demonstrate that these provisions, as they now read, substantially further a legitimate legislative purpose.

59. Defendants lack a rational basis for low enrollment weighting and the LOB. The low enrollment weighting threshold, currently set at 1725 students, as demonstrated in practice over the past four years, is so wide of the mark as to be unreasonable. No rational basis exists for setting the threshold at 1725 students per school district. Through the LOB, the State has abdicated its constitutional duty to provide suitable funding for public schools.

60. Defendants are, under color of state law, depriving plaintiffs of their right to equal protection, in violation of the Fourteenth Amendment to the U.S. Constitution and § 1 of the Kansas Constitution Bill of Rights. As a result of the unlawful acts of defendants, plaintiffs have suffered and continue to suffer injury.

Count V: Due Process

61. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-60 above as though fully set out herein.

62. Defendants, under color of state law, have deprived and continue to deprive all plaintiffs to this action of the substantive due process rights guaranteed them by the U.S. and Kansas Constitutions.

63. Defendants established Kansas' school finance formula, including, but not limited to, its low enrollment weighting and LOB provisions, in an arbitrary and capricious manner. No rational justification exists for the school finance formula set forth in the SDFQPA as it now reads.

64. As a result of defendants' unlawful acts, plaintiffs have suffered and continue to suffer injury.

Count VI: Suitability of Funding Under the Kansas Constitution

65. Plaintiffs incorporate the allegations contained in paragraphs 1-64 above as though fully set out herein.

66. As demonstrated in practice over the past four years, the SDFQPA, including its low enrollment weighting and LOB provisions, fails to make suitable provision for financing the education of public school students, in violation of the Kansas Constitution, Article 6, § 6. In

practice, the SDFQPA has led to underfunding of plaintiffs' school districts and an inequitable distribution of finances.

67. These inadequacies of the SDFQPA, demonstrated by data reflecting how it has operated in practice over the past four years, have caused the State to fail to provide a suitable education for all public school students, these plaintiffs included. In particular, the LOB provision is a complete abdication by the State of its constitutional obligation to provide for a suitable statewide system of school finance.

68. The plaintiffs named in this lawsuit, as well as all students enrolled in Unified School District Nos. 443 and 305, have suffered and continue to suffer injury as a result of defendants' violation of the Kansas Constitution, Article 6, § 6.

Relief Requested

WHEREFORE, plaintiffs respectfully request the following relief:

- a. prospective injunctive relief against these defendants requiring them to revise Kansas' school finance law to comply with all applicable state and federal law;
- b. their reasonable attorney fees incurred in litigating this action;
- c. the costs of this action; and
- d. such other and further relief as the court deems just and equitable.

Respectfully submitted,



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Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

COME NOW the plaintiffs and demand a trial by jury on all causes of action.

Respectfully submitted,



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DESIGNATION OF PLACE OF TRIAL

COME NOW the plaintiffs and designate Wichita, Kansas, as the place for trial of this matter.

Respectfully submitted,



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