

MF 12-15-99 ps

IN THE DISTRICT COURT
OF SHAWNEE COUNTY, KANSAS

FILED BY CLERK
KS. DISTRICT COURT
THIRD JUDICIAL DIST
1999 DEC 14 A 10: 16

JURISDICTION
KANSAS

ERIC and RYAN MONTOY, by and through their)
father and next friend, Reuben Montoy; CHEROKEE,)
LAJUAN and MYTESHA ROBINSON, by and through)
their mother and next friend, Earnestine Robinson;)
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;)
Ezekialand 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 Betinke;)
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.)

Pursuant to K.S.A. Chapter 60

Case No. 9901788
D.06

PETITION

COME NOW the plaintiffs in the above-captioned matter, and for their Petition 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 Cruiz Cedillo is an Hispanic student attending public school in Unified School District No. 443. Cruiz 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 Hispanic 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. U.S.D. No. 443 possesses the power to sue and be sued pursuant to state statute.

17. Plaintiff Unified School District No. 305 is a school district formed pursuant to state law and is located in Salina, Kansas. U.S.D. No. 305 possesses the power to sue and be sued under state statute.

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 by serving the Kansas Attorney General, Carla Stovall, at the Kansas Judicial Center, 2nd Floor, 301 W. 10th Street, Topeka, Kansas 66612-1597.

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 Kansas Constitution, pursuant to K.S.A. 20-301. Venue is proper in this court, pursuant to K.S.A. 60-602(2).

Facts

23. 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.

24. 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.

25. The base rate is adjusted by several factors, including 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 which do not qualify for such weighting.

26. 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 dependent upon the approval of residents of the school 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.

27. Unified School District Nos. 443 and 305 enroll too many students to qualify for low enrollment weighting. They also do not have full LOBs. Under the SDFQPA, these school districts have fewer dollars per pupil to spend than do those districts who receive low enrollment weighting and/or have full LOBs.

28. Due to this lack of funding, the plaintiff school children and others like them in Unified School District Nos. 443 and 305 attend schools with inadequate resources for teaching. These inadequacies include, but are not limited to, inferior curricula, too few qualified teachers and poor availability of books, computers and other learning materials.

29. This lack of funding has resulted in inadequate educational outcomes for the plaintiff school children and other students like them in Unified School District Nos. 443 and 305. Their educational opportunities are diminished with respect to their ability to learn sufficient oral and written communication skills; to obtain adequate knowledge of economic, social and political systems to enable them to make informed choices; to obtain a sufficient understanding of governmental processes; to attain sufficient self-knowledge and knowledge of his or her mental and physical wellness; to acquire a sufficient grounding in the arts to enable them to appreciate their cultural and historical heritage; to attain sufficient training or preparation for advanced training in academic and/or vocational fields so as to enable them to choose and pursue life work intelligently; and to attain sufficient levels of learning and vocational skills to enable them to compete favorably with their counterparts in other states and/or in the job market.

Count I: Suitability of Funding Under the Kansas Constitution

30. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-27 above as though fully set out herein.

31. Article 6 of the Kansas Constitution compels the legislature to provide for the educational interests of the State of Kansas and further commands it to make suitable provision for the financing of said educational interests.

32. As demonstrated in practice over the past four years, the SDFQPA's finance formula 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 underfunded the plaintiff school districts and has deprived the plaintiff school children of a constitutionally adequate education.

33. In particular, the SDFQPA's funding formula has resulted in adverse educational outcomes to the plaintiff school children and other students similarly situated. These students find themselves trapped in a system of education which has too little money to spend on them and which thus adversely affects the quality of education available to them. These students receive a constitutionally inadequate education characterized by adverse educational outcomes, including, but not limited to: poor standardized test scores; high dropout and truancy rates; and victimization from violent crimes at school. These adverse outcomes are directly tied to the unsuitable and inadequate funding provided to the students' school districts by the SDFQPA's school funding formula.

34. Plaintiffs Unified School District Nos. 443 and 305 also have suffered injury due to the SDFQPA's failure to provide suitable funding for those districts. The Kansas Constitution and state statutes impose upon them a duty to develop, maintain and operate the schools within

their districts. Due to lack of funding under the SDFQPA, they face potential legal liability for failing to uphold these duties. Further, the plaintiff school districts have suffered actual injury due to the adverse economic impact the SDFQPA visits upon them. Finally, the plaintiff school districts stand in close relationship to the rights asserted by the plaintiff school children in this action. As such, the plaintiff school districts possess standing to pursue this litigation.

35. 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. The quality of education provided to the plaintiff school children and all public school students in U.S.D. Nos. 443 and 305 have not been suitably provided for under the SDFQPA.

Count II: Equal Protection

36. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-33 above as though fully set out herein.

37. The SDFQPA violates the rights of plaintiffs in this action to equal protection of the laws guaranteed by Sections 1-2 of the Bill of Rights to the Kansas Constitution.

38. As demonstrated in practice over the past four years, the SDFQPA results in invidious discrimination detrimental to plaintiffs. The SDFQPA treats similarly situated students differently, depending on the number of students enrolled in their school districts and the relative wealth and political advantage of those districts.

39. The SDFQPA's funding formula, including but not limited to its low enrollment weighting and LOB provisions, lacks any reasonable basis and bears no rational relationship to legitimate legislative objectives. In particular, as demonstrated in practice over the past four years, the low enrollment weighting threshold is so wide of the mark as to be arbitrary and

unreasonable. Practice has shown that through the LOB, the State has abdicated its constitutional duty to provide suitable funding for all public schools and has arbitrarily and unreasonably favored students enrolled in wealthy and politically advantaged school districts over those less fortunate.

40. The plaintiff school children in this action have been adversely affected as a result of defendants' unequal application of the law. The SDFQPA's funding formula has resulted in adverse educational outcomes to the plaintiff school children, as discussed in paragraph 31 above. In addition, the plaintiff school children receive fewer educational opportunities in terms of facilities and programs offered in comparison to similarly situated public school students in other districts which receive more money under the SDFQPA's funding formula.

41. Plaintiffs Unified School District Nos. 443 and 305 also have suffered injury due to defendants' violation of equal protection rights guaranteed by the Kansas Constitution. These injuries include, but are not limited to, those described in paragraph 32 above.

42. 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 equal protection clause of the Kansas Constitution.

Count III: Due Process

43. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-40 above as through fully set out herein.

44. The SDFQPA violates the rights of plaintiffs in this action to substantive due process, guaranteed by Sections 1-2 and 18 of the Bill of Rights to the Kansas Constitution.

45. As demonstrated in practice over the past four years, the SDFQPA's funding formula bears no real and substantial relation to the objectives sought in its passage. The

funding formula, including but not limited to the low enrollment weighting and LOB provisions, distributes monies to public school districts in an arbitrary and capricious manner.

46. The plaintiff school children in this action have been adversely affected as a result of this deprivation of their due process rights. The SDFQPA's funding formula has resulted in adverse educational outcomes to the plaintiff school children, as discussed in paragraphs 31 and 38 above.

47. Plaintiffs Unified School District Nos. 443 and 305 likewise have suffered injury due to the SDFQPA's violation of due process rights guaranteed by the Kansas Constitution. These injuries include, but are not limited to, those described in paragraph 32 above.

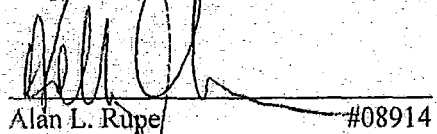
48. The plaintiffs named in this lawsuit, as well as all students enrolled in Unified School District Nos. 443 and 305, have suffered and continue to suffer injury as a result of defendants' violation of their due process rights guaranteed by the Kansas Constitution.

Relief Request

WHEREFORE, plaintiffs respectfully request the following relief:

- a. a judgment declaring the SDFQPA to be in violation of the Kansas Constitution;
- b. a permanent injunction prohibiting defendants from administering, enforcing and/or funding those provisions of the SDFQPA which are unconstitutional;
- c. their reasonable attorney fees incurred in litigating this action;
- d. the costs of this action; and
- e. such other and further relief as the court deems just and equitable.

Respectfully submitted,



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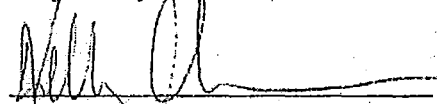
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Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

COME NOW the plaintiffs, by and through counsel, and respectfully request a trial by jury of all issues in this action.

Respectfully submitted,



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