FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

LOUISE MARTINEZ, individually and as next friend of her minor children AN. MARTINEZ, AA. MARTINEZ, AR. MARTINEZ and AD. MARTINEZ, *et al.*,

Plaintiffs,

vs. No. D-101-CV-2014-00793

THE STATE OF NEW MEXICO; HANNA SKANDERA, in her official capacity as Secretary Designate of the New Mexico Public Education Department; and THE NEW MEXICO PUBLIC EDUCATION DEPARTMENT,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AND SECOND AMENDED COMPLAINT

On October 10 and October 23, 2014, the Court heard arguments on Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint. Plaintiffs filed a Second Amended Complaint on October 10, 2014, while Defendants' motion was pending. At the close of the hearing on October 23, 2014, Defendants' counsel represented that Defendants' arguments in support of their Motion to Dismiss Plaintiffs' First Amended Complaint equally applied to Plaintiffs' Second Amended Complaint. Accordingly, Defendants' Motion to Dismiss is deemed to address the Second Amended Complaint as well as the First Amended Complaint. After reviewing the motion and the parties' briefing on the motion, and hearing the arguments of counsel, the motion is DENIED in all respects. The Court makes the following findings and conclusions in support of its order.

Plaintiffs' Basic Contentions

In this case of first impression, fifty-one Plaintiff parents and children in school districts across the state challenge the constitutionality of New Mexico's public school system. *See* Am. Compl. ¶ 1. The Plaintiffs allege that the public system denies their rights under article XII, section 1 (the "Education Clause") and article II, section 18 (the "Equal Protection" and "Due Process" Clauses) of the New Mexico Constitution. *Id*. ¶¶ 189-204.

Standard of Review

For purposes of a motion to dismiss filed pursuant to New Mexico Rule of Civil Procedure 1-012(B)(6), the Court looks at whether the well-pleaded facts, which are assumed to be true, state a sufficient action that the Plaintiffs could recover under the law. *See Madrid v. Village of Chama,* 2012–NMCA–071, ¶ 18, 283 P.3d 871. The motion tests the law, not the facts. *See id*.

Article XII, Section 1 Claims

The Defendants argue that the Court should dismiss some or all[1] of Plaintiffs' claims because the Plaintiffs lack standing and their claims are nonjusticiable.

In the Court's opinion, and as confirmed by the parties, there are no New Mexico cases that deal directly with justiciability and standing as pertaining to the interpretation of Article XII, Section 1 of the New Mexico Constitution. The Court has reviewed a representative sampling of decisions from foreign jurisdictions in cases of this type. The Court is of the opinion—as also confirmed by the parties—that the majority of those cases have at least allowed the suit to proceed. The courts in those cases that ultimately found against the plaintiffs on the merits of the claims, rejected arguments based on justiciability and standing.

[1] The Court and Plaintiffs read Defendants challenge to standing and justiciability as applying to the Article XII, Section 1 claim. Defendants believe that the standing and justiciability claims were raised as to all claims. While the Court focused its analysis of this defense on the Article XII, Section 1 claim, the Court believes the same result would apply as to all claims.

The Defendants rely, in part, on the holding in *Forest Guardians v. Powell*, 2001–NMCA–028, 130 N.M. 368. Although the Court is of the opinion that *Forest Guardians* provides lessons on standing, that case is not on point here and does not compel the dismissal of this case. Under that case and others, to have standing the plaintiff must show an injury-in-fact, and that the plaintiff is within the zone of people protected by the provision at issue. *See id.*, ¶ 16 (citing *John Does I Through III v. Roman Catholic Church of the Archdiocese, Inc.*, 1996-NMCA-094, ¶ 28, 122 N.M. 307; *De Vargas Sav. & Loan Ass'n v. Campbell*, 87 N.M. 469, 472 (1975)). Here, for pleading purposes, the Plaintiffs have satisfied these elements of standing.

The issue that was most hotly contested by the parties is the causal relationship between the injury and the challenged conduct, or more specifically, the likelihood that a favorable decision would redress the injury. In the Court's opinion, the claims in this case are not comparable to those in the *Forest Guardians* case because here, Plaintiffs are advocating for discrete rights under the New Mexico Constitution, which, in fact, could be redressed by a decision in Plaintiffs' favor. The Defendants seemingly argue that the only relief possible as a result of this lawsuit would be to shut down the entire school system. And since such action would be improper, the Court cannot redress Plaintiffs' harm.

First, the Court rejects the notion that shutting down the entire school system is the only relief that could result in this lawsuit if there is a favorable decision on the Plaintiffs' behalf. It is only one of the possible forms of relief that could result; there are other forms of relief that could result. Therefore, the Court is of the opinion that the Plaintiffs have met the standing requirement set forth in *Forest Guardians* and other cases.

The Court is further of the opinion that the courts do have a duty to interpret the Constitution, and that nothing exempts the courts from applying that duty to Article XII, Section 1. There may be limitations on what remedy could be imposed, but there is no authority that

says the Court should not interpret the meaning of that provision in the New Mexico Constitution.

This is particularly true in a case where the standards by which the Court may judge the State's conduct may well be gleaned from statutes or legislative enactments or pronouncements that the State has already made, so that the Court is not inserting itself into educational policy as much as it is looking at what the Legislature has already established as educational policy. Therefore, there may be ways to afford relief in this case without usurping the Legislature's appropriation function. Accordingly, the Court rejects the defense claims on justiciability and standing. Under this ruling, the Plaintiffs will have the opportunity to present proof of their claims and the opportunity to address whether the schoolchildren are receiving what the Constitution says they should receive.

Equal Protection and Due Process Claims

For purposes of the Rule 1-012(B)(6) motion to dismiss, the Court is of the opinion that the equal protection fundamental rights analysis is the same as the substantive due process analysis. Therefore, what the Court says for one applies to the other.

The first issue that the Court considers is whether the statements made in cases like *State v. Edgington*[2] and *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*[3]are binding authority that would preclude the Court from holding that education in New Mexico is a fundamental right. The Court is very familiar with cases like *Alexander v. Delgado*[4]and *City of Las Vegas v. Oman*[5], which ultimately held that both the Court of Appeals and the trial courts are bound by the

[2] 1983-NMCA-036, 99 N.M. 715.
[3]1986-NMCA-003, 104 N.M. 302, *abrogated on other grounds as recognized by Ramah Navajo Sch. Bd., Inc. v. N.M. Taxation & Revenue Dep't*, 1999-NMCA-050, 127 N.M. 101.
[4] 1973-NMSC-030, ¶ 9, 84 N.M. 717; *see also Delgado v. Phelps Dodge Chino, Inc.*, 2001-NMSC-03, ¶ 11, 84 N.M. 717.
[5] 1990-NMCA-069, ¶¶ 4, 46, 110 N.M. 425, *subsequent appeals at State ex rel. Martinez v. City of Las Vegas*, 2001-NMSC-034, 131 N.M. 272; 2004-NMSC-009, 135 N.M. 375.

decisions of a higher appellate court, even if the lower courts think the higher courts wrongly decided the matter or would decide the matter differently today.

The Court makes two observations. In *Oman*, then Judge Minzer observed that the fact that a trial court is bound by precedent does not mean that a party should not be given the opportunity to present evidence which would justify the overturning of the old precedent.[6] So even if the Court were to assume that the language in *Edgington* and *Ramah* was binding authority, the Court would still provide the Plaintiffs an opportunity to prove that there is a fundamental right to education under the New Mexico Constitution, Article XII, Section 1.

Here, however, the Court is of the opinion that *Edgington* and *Ramah* are not binding on the Court in this case, because neither case decided the issue of whether Article XII, Section 1 gives a child in New Mexico a fundamental right to a uniform and sufficient education.[7]

The Court concludes that there is a fundamental right to education under the New Mexico Constitution, as set forth in Article XII, Section 1. This is evidenced by the fact every New Mexico Constitution, some of which predate the Enabling Act, has contained a comparable education clause. The Court further notes that there are many legislative pronouncements, including those cited by the Plaintiffs, which indicate the importance of education. There are also cases from other states, which have determined education is a fundamental right under similar constitutional provisions.

Frankly, it is difficult to conceive of a service that the State provides its citizens that is more fundamental than the right to education. Nothing really promotes the ability to be a good citizen or to be a productive member of society more than having an education. An educated populace is not only something that is fundamental to our current well-being, it is fundamental to

[6] 1990-NMCA-069, ¶ 46, 110 N.M. 425, 428.

[7] Under cases such as *John Does I Through III v. Roman Catholic Church of the Archdiocese, Inc.*, 1996-NMCA-094, ¶ 21, 122 N.M. 307, which is cited in *Forest Guardians*, courts "should not rely on a decision as authority with regard to matters not addressed in the opinion." While the Defendants argue that the courts have addressed whether education is a fundamental right, the Court concludes that they have not addressed whether Section 1 of Article XII provides a fundamental right to education.

our future well-being. The Court is of the opinion that if directly confronted with this issue, the appellate courts of New Mexico would find that there is a fundamental state constitutionally-based right to an education.

Although the Court does not need to address the treatment of the various classes alleged by the Plaintiffs because of its holding on the fundamental right issue, the Court nevertheless offers its opinion in case the Court is incorrect on that issue.

For equal protection and due process, the classifications are economically disadvantaged students and English Language Learner students. For due process, the classification is students with disabilities. The Court primarily relies on Breen v. *Carlsbad Mun. Schs.*[8] when determining the level of protection afforded to the members of these classes.

For equal protection purposes, under Breen, the Plaintiffs must first prove they are similarly situated to another group but are treated differently.[9] The Court is of the opinion that the Plaintiffs have satisfied that pleading requirement with respect to the economically disadvantaged children, in particular, by pleading that the Legislature has appropriated funds for people who have difficulty learning, but has decided to exclude the economically disadvantaged group from that classification of students who are eligible for such assistance.

Students who have limited English proficiency also are, if the Plaintiffs' allegations are correct, treated differently. There is a history in New Mexico of case law which shows that, at a minimum, Spanish-speaking people have been treated differently in the schools. And then finally, the class of people with disabilities seems to fall squarely within the kinds of dissimilar treatment mentioned in Breen.

The second matter that must be addressed is the type of scrutiny that must be applied to the classification.[10] The Plaintiffs argue that they should be given the strictest scrutiny. The Defendants argue that the Court should apply rational basis review. The Court is inclined to

[8] *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, 138 N.M. 331.
[9] *Id.* ¶ 8.
[10] *Id.* ¶¶ 8, 15.

apply intermediate scrutiny, but the Court is willing to allow each party to prove their point at trial.

Under the tests set out in Breen, the classifications alleged by Plaintiffs in this case most closely resemble the types of classifications given intermediate scrutiny.[11] Therefore, because the classification involves a burden-shifting degree of proof, the Court cannot dismiss this case under equal protection or due process. The court in Breen discusses the differing treatment of children who were undocumented immigrants, and the Court is of the opinion that was the type of classification envisioned when intermediate scrutiny was employed.[12] The Court is of the opinion that same reasoning applies to the Plaintiff children who are at issue in this case.

For the above stated reasons, the Court denies the Motion to dismiss. Defendants shall file their Answer to Plaintiffs' Second Amended Complaint on or before December 5, 2014.

IT IS SO ORDERED.

SARAH M. SINGLETON, District Judge

Modified from proposal [sms]
Submitted by:

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[11] *See id.* ¶ 13.
[12] *See id.* ¶¶ 17-21.

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Court considered and adopted, in part, defense objections to Plaintiffs' proposal. [sms]
Not approved as to form:

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