IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MCKENZIE JOHNSON,

Plaintiff-Appellee

v.

S-1-SC-39961
A-1-CA-39732
D-202-CV-2020-00121

BOARD OF EDUCATION FOR THE ALBUQUERQUE PUBLIC SCHOOLS AND MARY JANE EASTIN,

Defendant-Appellants

PLAINTIFF-APPELLEE JOHNSON'S ANSWER BRIEF

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ORAL ARGUMENT REQUESTED: Pursuant to NMRA, Rule 12-319(B)(l), Plaintiff-Appellee McKenzie Johnson requests oral argument on this appeal.

TABLE OF CONTENTS

STATEMENT OF COMPLIANCE

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TABLE OF AUTHORITIES

FEDERAL CASES **Page(s)**

NEW MEXICO CASES

NEW MEXICO STATUTES

LEGISLATIVE MATERIALS

COURT FILINGS

Plaintiff-Appellee McKenzie Johnson (Plaintiff-Appellee Johnson), by and through counsel of record, respectfully submits this Answer to the Brief in Chief filed by Defendant-Appellant Board of Education for Albuquerque Public Schools (Defendant-Appellant APS) and Defendant-Appellant Mary Jane Eastin (Defendant-Appellant Eastin) (collectively referred to as Defendant-Appellants) pursuant to NMSA 1978 §§ 34-5-14(B)(1)-(4) and NMRA, Rule 12-502(H). This Court has granted Certiorari on both questions raised by the Petition for Certiorari. In the Defendant-Appellants' Brief in Chief, they identified the following questions: 1) Did the Court of Appeals err when it determined that a public school in New Mexico is a public accommodation under the New Mexico Human Rights Act (NMHRA), NMSA 1978, §§ 28-1-1 to 15 (1969, as amended through 2019), and therefore amenable to suit thereunder, and; 2) Does the decision of the Court of Appeals conflict with this Court's holding in *Regents*? The answer to both questions is "no."

I. Introduction

In the realm of anti-discrimination law under the NMHRA, the significance of each word within the definition of public accommodation, along with what was kept out, carries the weight of justice; the present case stands as a crucial testament to the broad scope of protection afforded by the NMHRA. Plaintiff-Appellee Johnson seeks the redress of a profound wrong – a targeted act of discrimination against her identity inflicted upon her in what should be the very bastion of

enlightenment, a public-school classroom, by the very person entrusted to guide her, her teacher, Defendant-Appellant Eastin. In a reprehensible sequence of actions, Defendant-Appellant Eastin not only severed the braid of Plaintiff-Appellee Johnson's Native American peer but proceeded to direct a racially charged slur, referring to Plaintiff-Appellee Johnson as a "Bloody Indian," perpetuating discrimination towards Native American students. The gravity of this case lies not only in the act itself, but in the fundamental question it raises: Does the NMHRA shield students from targeted discriminatory acts by school officials within the cherished halls of public education? This inquiry necessitates a meticulous examination of the NMHRA's definition of "public accommodation," a definition that, as illuminated by the Court of Appeals, extends its protective umbrella over many entities, including public schools. Ct. of Appeals' Op. 7:1-7, May 23, 2023.

The Court of Appeals, in overturning the District Court's ruling, rejected the blanket exception for public schools as non-public accommodations. It differentiated this case from *Human Rights Comm'n of New Mexico v. Bd. of Regents of Univ. of New Mexico Coll. of Nursing*, 1981-NMSC-026 (*Regents*), which predominantly applies to state universities, focusing on academic program administration. The Court of Appeals focused on Cibola High School's constitutional role in secondary education for New Mexico minors, distinct from any formal method of administration, as it stems from a single teacher's spontaneous actions and remarks,

not institutionally effectuated conduct. Ct. of Appeals' Op. 5:16-6:2. Also, the Court of Appeals' discerning analysis guides us through the intricate interplay of statutory interpretation and legislative intent. At its core, this case hinges on the NMHRA's clear and unambiguous definition of "public accommodation" and whether Defendant-Appellant APS "offers" services to the public. Ct. of Appeals' Op. 7:1-7. This definition, unburdened by artificial limitations, unequivocally encompasses ***any*** establishment that offers services to the public, save for a narrowly tailored exception (bonafide private clubs). The Court of Appeals, in its review, rightly grasped the essence of the NMHRA – a statute designed to guard against discriminatory acts that tarnish the public's right to equal access. Ct. of Appeals' Op. 13:9-14.

Moreover, the Court of Appeals aptly invoked the two primary cases that provide guidance, *Regents* and *Elane Photography, LLC v. Willock*, 2012-NMCA-086, *aff'd*, 2013-NMSC-040, ¶ 79 (*Elane Photography*). First, by following the directive from this Court in *Regents*, it recognized that the context of the administration of an academic program in *Regents* was confined to a university setting and did not extend to the targeted discrimination against a school-aged child in the instant matter. Ct. of Appeals' Op. 12:5-13. The Court of Appeals appropriately kept *Regents* within its intended boundaries. As directed in this Court's opinion, "[*Regents*] should be construed narrowly and is limited to the

University's manner and method of administering its academic program." *Regents*, at ¶ 16, (emphasis added). It's noteworthy that even within the university context, which is vastly distinct from public secondary education considered in the instant matter, this Court did not establish a blanket exclusion from public accommodation for universities as Defendant-Appellants contend. *Id.* ("We reserve the question of whether in a different set of circumstances the University would be a 'public accommodation'...").

Second, the Court of Appeals used as guidance *Elane Photography*, which reinforced the principle that public accommodations cases demand a nuanced, case-by-case evaluation. *Id.*, at ¶ 12. Relying on the legislative intent behind the NMHRA and precedents such as *Regents*, the Court of Appeals concluded that public schools, as government entities, can indeed be classified as public accommodations under certain circumstances.

Stepping back from the path laid out by the Court of Appeals, even if we were to entertain the argument put forth by Defendant-Appellants that *Regents*' shadow stretches beyond a university's "manner and method of administering an academic program," Defendant-Appellant APS's attempt to apply this standard falters when scrutinizing the nature of the act in question as applied to public schools providing secondary education. The targeted discrimination suffered by Plaintiff-Appellee Johnson is a departure from the cases relied on by Defendant-Appellants, which

involve matters of grades for a college student and the rehiring of an employee.[1] It is an act that transcends the bounds of academic discourse, leaving the realm of protected academic freedom and entering the forbidden territory of individual prejudice and bias.

Upholding the Court of Appeals' decision would reaffirm a principle of justice – that the NMHRA's protective shield extends to students within the halls of public education when they are subjected to targeted acts of discrimination; acknowledging that every act of targeted discrimination perpetuated by officials providing services, even within the hallowed halls of academia, has consequences that resonate far beyond the classroom walls.

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[1] *See Regents*, at ¶ 1; and *Hall v. Albuquerque Pub. Schs.* (*Hall*), 1998 WL 36030620 (The District of New Mexico federal court determined that "APS's administration of its bilingual education program [was] not a 'public accommodation' within the meaning of the [NMHRA].") The *Hall* holding, however, is inapposite to the facts of this case for the same reason that *Regents* is inapposite – Plaintiff-Appellee Johnson is not claiming discrimination based on the manner and method of APS's administration of its academic program. In *Hall*, the court analyzed an APS program's relationship to an employee as opposed to APS's relationship to the students to whom it must be open.

ARGUMENT

II. A proper analysis of the plain meaning and legislative intent of "public accommodation" as defined in the NMHRA leads to a determination that the facts pled could result in liability for Defendant-Appellants under NMHRA

Defendant-Appellants argument that "public accommodation" necessarily requires commercial business or enterprise seeks to artificially confine the plain and unambiguous definition of "public accommodation" under the NMHRA. The Court of Appeals correctly recognized the expansive scope of this definition, a determination that aligns with the NMHRA's intent, purpose, and the broader principles of statutory interpretation. This Answer rebuts the restrictive interpretation by demonstrating how the plain language of the NMHRA, legislative intent, and applicable case law support the Court of Appeals' decision. It will also underscore how this broad interpretation serves the fundamental purpose of the NMHRA, preventing discrimination in public accommodations. The forthcoming sections will emphasize the Defendant-Appellants' misinterpretation of the plain language in definition of public accommodation, unwarranted criticism of focusing on the term "establishment," and erroneous characterization of the facts presented in Plaintiff-Appellee Johnson's complaint as it pertains to the NMRA, Rule 1–012(B)(6) standard.

A. Defendant-Appellants confuse the definition of public accommodation by simultaneously adding language that does not exist but also limiting it to their added language.

The NMHRA defines a "public accommodation" as "any establishment that provides or offers its services, facilities, accommodations or goods to the public." NMSA § 28-1-2(H) (emphasis added). As the Court of Appeals noted, a key phrase in the definition is to "offer" services to the public, and "[a] public school does present its services to the community as a whole, which appears to fall into the plain language of the statute." Ct. of Appeals' Op. 9:10-20. Defendant-Appellants misapprehend "commercial business or enterprise" as an exclusive factor in determining whether an establishment is a public accommodation, when this Court used these factors in *Elane Photography* as non-exhaustive indicative factors of a public accommodation in the facts of that case. Appellant's Br. in Chief at 11, Oct. 19, 2023. However, this restrictive interpretation contradicts both the plain language of the statute and established principles of statutory construction in New Mexico. Defendant-Appellant APS's ironic stance criticizes the Court of Appeals for delving deeper into the term "establishment," which appears in the definition of public accommodation, while simultaneously urging this Court to read into the definition commercial business or enterprise, which do not appear in the definition. Commercial business and enterprise considerations can be viewed more as a non-exhaustive analytical approach used by the *Elane Photography* Court that can be

indicative that an establishment is a public accommodation. Stated differently, the *Elane Photography* Court did not focus on analyzing the absolute meaning of the public accommodation definition. Instead, it delved into the facts at hand and employed tangible real-world indicators to discern whether an establishment was involved in offering goods or services to the public. Fundamentally, Defendant-Appellants argument is paradoxical because attempts to limit the ability to look at the word "establishment" in the definition, while also asking this Court to limit the definition to a factor not in the definition.

Defendant-Appellants' endeavor to insist on the inclusion of commercial business or enterprise within public accommodations is misguided given the plain meaning rule. The plain meaning rule is a well-established principle in New Mexico that dictates that statutes are to be given effect as written without requiring further interpretation, unless the language is doubtful, ambiguous, or its literal use leads to injustice, absurdity, or contradiction. *State v. Maestas*, 2007-NMSC-001, ¶ 9 (quoting *State v. Davis*, 2003–NMSC–022); Ct. of Appeals' Op. 6:9-20. In *Maestas,* this Court emphasized that statutes should be construed according to their "obvious spirit or reason" only when the plain meaning is doubtful or when strict adherence to the literal words of the statute would lead to undesirable outcomes. *Id. Masteas* is fatal for Defendant-Appellants for two reasons.

First, the plain meaning of the statute is abundantly clear--the NMHRA defines a "public accommodation" as "***any*** establishment that provides or offers its services, facilities, accommodations, or goods to the public." NMSA § 28-1-2(H) (emphasis added). It is an all-encompassing definition that explicitly includes "any establishment," leaving no room for doubt and a definition that is broad, comprehensive, and consistent with the anti-discrimination objectives of the NMHRA.[2] Second, even if, for the sake of argument, ambiguity were to be found in the statute's definition, considering the Court's rationale in *Maestas*, it is imperative to emphasize that denying protection to a student targeted by a teacher with an act of discrimination in a public school would undeniably be an undesirable and absurd outcome. This case provides a striking illustration of precisely the type of injustice the NMHRA is designed to prevent. Public schools, as established in the New Mexico Constitution, must provide a uniform system of free public education open to all children of school age in the state. *See generally Martinez et al. v. State of New*

[2] The *Regents* decision faced early scrutiny from legal scholars. Analyzing the NMHRA's public accommodation principles through statutory construction suggests a reasonable interpretation that public universities fall within the scope of public accommodations. *See* Heisey, Todd, "*Human Rights Commission v. Board of Regents*: Should a University be Considered a Public Accommodation Under the New Mexico Human Rights Act?," 12 N.M.L. Rev. 541, 545 (1982) ("Principles of statutory construction support a finding that the University is a public accommodation.").

Mexico, et al. and Yazzie et al. v. State et al., (consolidated), D-101-CV-2014-00793 (N.M. 1st Dist. Ct. 2018).

These institutions are inherently open to the public and must offer their services without discrimination. Denying students protection under the NMHRA in cases of targeted discrimination by educators is fundamentally incongruent with the spirit of and reason for the NMHRA. When confronted with a situation where an educational authority perpetrates discriminatory actions against a student, allowing them to evade legal consequences is inconceivably unjust. This not only defies the core principles of anti-discrimination legislation but also disregards the desired public policy that students receive an education free from discrimination.

B. Defendant-Appellants were adequately informed that APS's services might be classified as part of a public accommodation, considering the notice pleading standard, and because Plaintiff-Appellee Johnson's complaint references Defendant-Appellant APS's public statement regarding their role in the community.

In their Brief in Chief, Defendant-Appellants erroneously contend that the Court of Appeals relied on facts not "well-pled" by Plaintiff-Appellee Johnson when considering services offered by APS. Defendant-Appellants contend that the Court cannot deliberate on the breadth of services provided by Defendant-Appellant APS, contending that Plaintiff-Appellee Johnson failed to enumerate these services in her complaint. Appellant's Br. in Chief at 27.

Defendant-Appellants' argument is misplaced and stems from a misapplication of the proper standard for a motion to dismiss and a failure to recognize the legal nature of the questions at hand. Contrary to Defendant-Appellants' assertion, a motion to dismiss under NMRA, Rule 1–012(B)(6) is intended to test the law of the claims contained in the complaint, not the exhaustive recitation of facts supporting it. *Trujillo v. Berry*, 1987-NMCA-072, ¶ 3. A motion to dismiss is properly granted only when it is apparent that the plaintiff cannot recover under any provable state of facts. *Id.* The well-pleaded facts alleged in the complaint are taken as true during a motion to dismiss, and the motion is properly granted only if the claimant cannot recover under any provable state of facts.

Plaintiff-Appellee Johnson's complaint applies the definition of public accommodation to Defendant-Appellant APS, which includes the provision of offering facilities and services to the public, its community role, and its constitutional obligation to be accessible to all. Pl.'s Compl. at 1-3, Jan. 08, 2020, RP 1-3. Thus, Defendant-Appellants' emphasis on the factual detail misses the mark; the critical inquiry is the legal sufficiency of the claim based on the pleaded facts. Further, Defendant-Appellants misleadingly only focus on the student and education based assertions in the complaint, Appellant's Br. in Chief at 26-28, and ignore the paragraph in Plaintiff's complaint that reads, "APS's mission statement is inclusive and states, "[t]he Albuquerque Public Schools Board of Education in collaboration

with the superintendent and staff *will work together and in partnership with families and the community in a systematic way to ensure that all students succeed.*" *Id.*, RP 3.

Contrary to Defendant-Appellants' insistence, courts are not required to be blind to common aspects of society when interpreting the law. *See generally*, *State v. Ware,* 1993-NMCA-041, ¶ 12 ("We are mindful of our duty to interpret the Rules of Criminal Procedure with logic and common sense to avoid absurd results."); *State v. Johnson,* 1991-NMCA-134, ¶ 4 (referencing that courts should not reject common sense with respect to motions to dismiss).[3] The Court of Appeals relied on widely recognized facts pertaining to the role of secondary public schools in the community and the services they provide. This is implicit in the *Maestas*' directive to avoid "absurd results" when engaging in statutory interpretation. *Maestas,* 2007-NMSC-001, ¶ 9.

The issue before this Court is not whether Plaintiff-Appellee Johnson appropriately detailed every nuance of public-school operations in her complaint,

[3] *See also Dabertin v. HCR Manor Care, Inc.*, 373 F.3d 822, 828-29 (7th Cir. 2004) (applying "simple common sense" to decide the appeal); *Newcomb v. Brennan*, 558 F.2d 825, 829 (7th Cir. 1977) (Courts may acknowledge "facts of 'common knowledge' in ruling on a motion to dismiss"); *Uncork & Create LLC v. Cincinnati Ins. Co.*, 498 F. Supp. 3d 878 (S.D.W. Va. 2020) (While factual allegations drive the analysis of a motion to dismiss, courts are not required to set aside common sense).

but rather whether she adequately asserted she was subjected to public accommodation discrimination. In a notice pleading state, where a plaintiff is not required to detail facts exhaustively, the Plaintiff here sufficiently notified the court that she faced discriminatory conduct in an environment that can be considered a public accommodation. *See Madrid v. Vill. of Chama*, 2012-NMCA-071, ¶ 17. The Court of Appeals, considering common knowledge about public schools, did not exceed its bounds but rather acted appropriately to inform the legal analysis at hand. The nature of public schools themselves became a legal question when Defendant-Appellant challenged whether APS can ever qualify as a public accommodation. The Court of Appeals appropriately sought to comprehend the essence of public schools in our society. The legal sufficiency of the claim pivots on the interpretation of statutes and the understanding of the term "public accommodation" as it relates to entities like public schools, which are clearly offering and providing services. This Court should engage in a fair reading of the factual allegations in the Complaint and use common knowledge and its common sense to conclude that Plaintiff-Appellee alleged that schools are public accommodations.

C. The Court of Appeals' prudent examination unveils legislative clarity in public accommodation under the NMHRA.

Important to legislative intent is the purpose of the law. "… [Looking to the historical and traditional meanings], … the NMHRA's overarching purpose: 'to promote the equal rights of people within certain specified classes by protecting

them against discriminatory treatment.'" Ct. of Appeals' Op. 12:5-13. Further, as Plaintiff-Appellee Johnson has consistently argued through the stages of this matter, the removal of delineated accommodations from the NMHRA statute in 1969 should not be perceived as an effort to narrow the definition of "public accommodation" but rather as a strategic legislative decision aimed at avoiding an overly exhaustive and prescriptive list of accommodations. This departure was in pursuit of a more adaptable and inclusive definition capable of addressing a myriad of scenarios and encompassing a diverse range of entities. In this context, rather than constricting the scope of the NMHRA, the legislative action signifies a clear intent to expand the statute's protective ambit.

This approach resonates with the spirit of the NMHRA, which is to combat discrimination in public accommodations, particularly against protected classes of people. Defendant-Appellants' argument that the legislature intended to permit discrimination by entities not involved in commercial transactions is fundamentally flawed. The removal of the delineated establishments from the statute's definition of public accommodation, when coupled with the *Elane Photography* directive to assess acts of discrimination on a case-by-case basis, is a clear legislative measure to avoid absurd and unjust outcomes. *See Elane Photography, LLC v. Willock*, 2012-NMCA-086, ¶ 12; Ct. of Appeals' Op. 4:13-6:7. Denying a student who is the target of derogatory language from a teacher in a public classroom any form of recourse

while allowing a remedy for a person subjected to similar derogatory language in a paid seminar for school-aged children would be patently absurd.

This intentional legislative shift from an itemized list to a broader, case-by-case evaluation reflects an understanding that discrimination can occur in a variety of contexts, including public schools. The legislature aimed to ensure that the NMHRA's coverage is expansive and adaptable to evolving circumstances, rather than unduly constrictive. Therefore, it is indisputable that the legislature's intent was not to exclude complex entities like public school districts but, instead, to incorporate them within the NMHRA's protective framework. This Court should heed this clear legislative intent when interpreting the statute.

As the Court of Appeals noted, it is critical to recognize that the legislature had the opportunity to explicitly exclude public schools from the definition of "public accommodation" in the NMHRA, similar to legislative actions in other jurisdictions, but deliberately chose not to do so. "Although the *Regents* Court pointed to the non-inclusion of universities among expressly enumerated accommodations, *see Regents*, 1981-NMSC-026, ¶ 14—nor for that matter are public secondary schools mentioned—public institutions such as libraries and parks, along with public transportation, are included. We cannot conclude that our Legislature did not conceive of including constitutionally commanded public institutions of learning, where services are offered to the public, when they created

an enumerated list of public accommodations." Ct. of Appeals' Op. 13:1-8. The absence of any express exclusion for public schools underscores the legislature's intention to preserve the broad application of the statute and ensure that public schools could potentially fall within its purview.

Lastly, a compelling argument supporting the Court of Appeals' interpretation is the legislature's specific action to clarify that public entities are covered under the NMHRA. Ct. of Appeals' Op., 1 n.1. In 2023, the legislature amended the NMHRA to remove any ambiguity about whether public entities are subject to the statute. *See Mike v. Prof'l Clinical Lab., Inc.*, 450 Fed. Appx. 732, 737 (10th Cir. 2011) ("A subsequent amendment to an act can be used to ascertain the meaning of a prior statute. Where the meaning of a prior statute is subject to serious doubt and has not been judicially determined, the presumption arises that a subsequent amendment was meant to clarify as opposed to change, the prior statute.").

The 2023 amendment explicitly extended the reach of the NMHRA to public entities by including the phrase "public entities" within the definition of "person" under the Act. This legislative action serves as a clear and definitive statement of intent, demonstrating that public entities, such as public schools, are within the purview of the NMHRA. The legislature's decision to amend the NMHRA to encompass public entities is a significant indication of its purpose. It clarifies any doubt and leaves no room for ambiguity. By recognizing that public entities fall

under the Act, the legislature is reiterating its commitment to preventing discrimination in a wide array of public settings, including public schools. This legislative clarification aligns with the Court of Appeals' interpretation that public school districts can be considered public accommodations under the NMHRA. The 2023 amendment to the statute reflects the legislature's intent to ensure that public entities do not discriminate against individuals in protected classes. It underscores the broad scope and applicability of the NMHRA, reinforcing that the Court of Appeals' interpretation is in harmony with the statute's legislative intent by removing any so-called ambiguity around entities that are covered.

III. Notwithstanding the "manner and method of the administration of an academic program" language in *Regents*, the intent of the NMHRA, at least in part, is to prohibit targeted acts of discrimination such as the one at the heart of this case.

In the spirit of the NMHRA, it is vital to understand that the legislative intent was to establish a framework that promotes equality and prevents discrimination in public accommodations. Even though the Court of Appeals explicitly considered *Regents* and determined that it was applicable to the university setting. Ct. of Appeals' Op. 12:5-13. The Defendant-Appellants argue that the Court of Appeals ignored *Regents*, "manner and method of the administration of academic programs" language. Appellant's Br. in Chief at 34. This section considers *Regents* instruction around the administration of academic programs in university settings, assuming *arguendo* that language is relevant to the instant matter. To start, it would be

incomprehensible to assert that a targeted act of discrimination against students is sanctioned or outlined in any manual, protocol, lesson plan, textbook, or the like, as a manner or method to administer an academic program. The NMHRA offers a flexible and nuanced approach that allows for the analysis of each unique situation. Even if the "administration of an academic program" language is a standard that is applied to exclude alleged acts of discrimination outside of the university context from being considered under NMHRA, in this instance, Defendant-Appellant Eastin's actions were clearly outside the scope of the administration of academic programs. Rather than being an educational matter, Defendant-Appellant Eastin's acts were directed and targeted acts of discrimination aimed at Plaintiff-Appellee Johnson and another student. Such actions are precisely what the NMHRA seeks to address – they are indisputably within the statute's spirit. The NMHRA aims to prevent and remedy precisely the type of discrimination experienced by Plaintiff-Appellee Johnson in a public-school setting. The NMHRA does not require discriminatory actions to be related to the "manner and method of the administration of academic programs" for cases to move forward. Instead, it allows for a comprehensive analysis of situations in various public settings, including public schools, where discrimination can occur. Thus, the actions of Defendant-Appellant Eastin are well within the scope of the NMHRA, and the Court of Appeals' interpretation aligns with the statute's intended spirit.

The cases relied on by Defendant-Appellants, *Regent* and *Hall*, involve administrative-type decisions, but they attempt to stretch the meaning of the "administration of academic program" beyond its intended scope to anything that can occur within a classroom or on school grounds. The administrative-type decision in *Regents* concerned the administration of grades and the ability to retake a course in an academic program *Regents*, at ¶ 1, and the non-binding *Hall* case revolved around rehiring an employee in a specific Spanish program. *Hall*, at *2. Neither of these cases addressed targeted acts of discrimination against a public secondary school student as witnessed in the present facts. Moreover, both cases could arguably be framed as part of the "administration" of an academic program. Therefor, it is essential to differentiate between acts that are generally associated with academic administration and targeted acts of discrimination. The latter falls outside the scope of the term "administration of academic program" and students are protected under the NMHRA from this type of discrimination.

Finally, Defendant-Appellants' invocation of a "public policy" argument, citing the challenges in teaching the fraught history of this nation, including slavery and conquistadors as basis for not including public schools within the definition of "public accommodation" in the NMHRA. This argument underscores a very real-world manifestation of the discrimination the NMHRA is designed to protect against, and highlights a key distinction between teaching a lesson plan and targeting

a student with a racist action.[4] This bolsters the *Elane Photography*'s directive for a case-by-case analysis, and for creating a factual question around what could be considered within the realm of "administration of academic programs," assuming for the purpose of this argument that this is the appropriate standard outside of universities in public education. For instance, teaching the history of slavery and conquistadors could be a part of the academic program. Nevertheless, it is crucial to draw a clear line between educational content, even when sensitive or challenging,

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[4] Under their public policy argument, the Defendant-Appellants contend that Plaintiff-Appellee Johnson has misapplied the law, suggesting that this case would be more appropriately filed in federal court—the record is rife with this suggestion. Mot. to Dismiss Hr'g Tr. of Proceedings, 5-6, 28-29, 31-32, Feb. 11, 2021; Designation of Tr. of Proceedings, Dec. 17, 2021. They misconstrue the law. Federal Title VI and Equal Protection standards primarily target systemic failures within public education, imposing deliberate indifference and qualified immunity standards, requiring proof of pervasiveness, establishing a pattern, and examining the frequency and duration of conduct. *See generally*, *Brooks v. Skinner*, 139 F. Supp. 3d 869 (S.D. Ohio 2015); *Yap v. Oceanside Union Free School District*, 303 F. Supp. 2d 284 (E.D.N.Y 2004); and 80 Causes of Action 2d 309. In contrast, Plaintiff-Appellee Johnson brought the instant matter to seek redress for a single targeted act of discrimination. This is not to say that the NMHRA cannot also address systemic failures in public secondary education, nevertheless it certainly redresses single acts of discrimination. Drawing an analogy, just as a Black patron at a hotel turned away because of their race need not demonstrate a pattern of denying Black visitors to have a valid claim under NMHRA, Plaintiff-Appellee Johnson is not obligated to unveil a history of discrimination by the Defendant-Appellants to establish that she was subjected to a targeted act of discrimination that caused her personal harm. To place such a burden on her would be unjust. The NMHRA's public accommodation provision is precisely designed to address such individual instances of discrimination without imposing an unjust burden on the victim to prove a broader pattern. In other words, the Defendant-Appellants invite defending their case under these standards because they rarely hold single acts of unacceptable discrimination to account.

and targeted acts of discrimination. The public accommodation section aims to protect students from discreet, targeted acts of discrimination that are directly aimed at them. The examples provided by APS, while important for the educational system, do not detract from the need to address these cases individually to determine whether they constitute a violation of the NMHRA.

IV. CONCLUSION

The reasoning and decision of the Court of Appeals is sound. It applied the plain meaning of the statutory definition of "public accommodation" as provided by the NMHRA, NMSA § 28–1–2(H). Also, in its application of precedent to the facts alleged in Plaintiff-Appellee Johnson's Complaint, the Court of Appeals applied the directives from *Regents* and *Elane Photography* and noted the vast differences between the facts in *Regents* and *Hall* and the facts of this case.

Considering all facts asserted in Plaintiff-Appellee Johnson's Complaint as true, she sufficiently pled facts upon which her claims for relief may be granted. In this instance, Defendant-Appellants fall squarely under the NMHRA's definition of public accommodation and Defendant-Appellant Eastin's conduct falls under the type of discrimination the Act is designed to prevent. Further, a ruling against Plaintiff-Appellee Johnson would effectively mean that school children, who are members of myriad protected classes, have no legal remedy if they are victims of targeted acts of discrimination by adults entrusted to serve as agents of the public

school system, which would gut the whole spirit of the New Mexico Human Rights Act.

Wherefore, Plaintiff-Appellee Johnson respectfully asks this Court to affirm the decision of the Court of Appeals, and hold that under the facts pled by Plaintiff-Appellee Johnson, Defendant-Appellant APS is a public accommodation subject to the provisions of the New Mexico Human Rights Act.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon all counsel of record via the Odyssey filing system on this 20th day of November 2023.

/s/ Leon Howard
Leon Howard