

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

CANDICE HERRERA and
T.H., a minor by and through her father and
Guardian VINCENT HERRERA, and all others
Similarly situated,

Plaintiffs,

vs.

No. CIV-2011-00422 JB/KBM

SANTA FE PUBLIC SCHOOLS,
SANTA FE PUBLIC SCHOOLS BOARD OF
EDUCATION, BARBARA GUDWIN, GLENN
WIKLE, LINDA TRUJILLO, FRANK MONTANO,
STEVEN J. CARRILLO, in their official capacities as
Members of the Santa Fe Public Schools Board of
Education, BOBBIE J. GUTIERREZ, in her official
Capacity as Superintendent of Santa Fe Public
Schools, MELANIE ROMERO, individually and in
her official capacity as Principal of Capital High
School, ROBERT STEPHENS, in his official
Capacity as Principal of Santa Fe High School as
a necessary party for complete relief,

ASI NEW MEXICO, LLC

JOHN/JANE DOE Nos. 1-8,

Defendants.

**SCHOOL DISTRICT DEFENDANTS' RESPONSE IN OPPOSITION
TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

COME NOW Defendants, Santa Fe Public Schools, Board of Education for the Santa Fe Public School, including its individual members, Superintendent of Schools Bobbie J. Gutierrez, High School Principal Melanie Romero, and High School Principal Robert Stephens, (collectively "School District"), by and through their undersigned counsel of record, Cuddy & McCarthy, LLP

(Andrew M. Sanchez and Matthew Campbell), and as its response in opposition to Plaintiffs' Motion for a Temporary Restraining Order ("Motion") (**Doc. 2**) states as follows:

I. INTRODUCTION

Plaintiffs are requesting a Temporary Restraining Order ("TRO") enjoining the Defendants from conducting "intrusive searches of SFPS students." Motion at p. 25 (**Doc. 2-1**). However, Plaintiffs' claims against the School District are fatally flawed and are destined to fail, as a matter of law, as set forth below, as no Constitutional deprivation has occurred causing the Plaintiffs irreparable harm. Therefore, Plaintiffs' Motion for a TRO must be denied.

II. ARGUMENT

A. LEGAL STANDARD.

To merit a TRO, Plaintiffs must establish "(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) [that] the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) [that] the injunction, if issued, will not adversely affect the public interest." *Federal Lands Legal Consortium ex rel. Robart Estate v. United States*, 195 F.3d 1190, 1194 (10th Cir. 1999); see *Country Kids 'N City Slicks, Inc. v. Sheen*, 77 F.3d 1280, 1283 (10th Cir. 1996).

Should Plaintiffs establish the final three factors in its favor, the test is modified, and Plaintiffs may meet the requirement for showing success on the merits by showing "that questions going to the merits are so serious, substantial, difficult, and doubtful as to make the issue ripe for litigation and deserving of more deliberate investigation." *Federal Lands Legal Consortium*, 195 F.3d at 1195.

B. A TRO WILL NOT MAINTAIN THE STATUS QUO.

Plaintiffs' Motion for injunctive relief does not reflect the *status quo* in reality between the parties. “[S]tatus quo is ‘defined by the **reality** of the existing relationship between the parties, regardless of whether the existing status and relationships may ultimately be found to be in accord or not in accord with the parties' legal rights.’” *Winnebago Tribe of Nebraska v. Stovall*, 216 F.Supp.2d 1226, 1231 (D.Kan. 2002), quoting *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096, 1100 (10th Cir. 1991) (emphasis in original) (alternatively defining status quo as the “last uncontested status between the parties which preceded the controversy . . .”). See also *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001). Here, Plaintiffs allege that there exists a custom and practice of the School District conducting the challenged searches of students at extracurricular events. See Complaint at ¶ 88 (**Doc. 1**); Motion at pp. 7-8 (**Doc. 2-1**).

The School District's practice of searching students at extracurricular functions has been in place for more than five years—spanning Plaintiff Candice Herrera's entire school career in high school. In fact, the testimony at the TRO Hearing established that it has been taking place for six to seven years. See Testimony of Superintendent Gutierrez. Maintaining the *status quo* in this matter is not enjoining the practice of conducting the searches. A TRO is simply not necessary. Plaintiff has had more than a fair opportunity to bring this issue before this Court over the last four years of her high school career. Plaintiff admitted in her testimony to having attended two proms and three homecoming dances at her school during which the School District conducted its alleged custom and practice of searching students without reasonable suspicion. See Testimony of Candice Herrera. As such, there is no immediate or irreparable harm to support the issuance of a TRO.

C. PLAINTIFF CANNOT MEET THE REQUIREMENTS FOR A TRO.

Plaintiffs' Motion discusses many points on the general application of the Fourth Amendment, but Plaintiffs have not focused on its application to the unique environment of public schools. Although the underlying command of the Fourth Amendment is always that searches and seizures must be reasonable, what is "reasonable" depends on the context within which a search takes place. Thus, although public school students retain Fourth Amendment rights under federal law, those rights are different than elsewhere. *See New Jersey v. T.L.O.*, 469 U.S. 325, 339 (1985) (identifying "the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds"). The "reasonableness" inquiry cannot disregard the schools' custodial and supervisory responsibility for children. *See Id.* When one focuses on this subcategory of governmental interaction with public school students, the issue clarifies and the uniqueness of the Fourth Amendment's application in the public school setting becomes apparent in mooting the use of the general principles of the Fourth Amendment that Plaintiffs have set forth in their briefing and at the TRO Hearing. The Court's attention is more properly focused on the major points of the application of the Fourth Amendment in public schools, rather than on general principles.

Existing case law makes it clear that public schools may conduct suspicionless drug testing of students who participate in extracurricular activities. *See Bd. of Educ. v. Earls*, 536 U.S. 822, 838 (2002). Drug testing of a student is a "search" implicating the restrictions of the Fourth Amendment. *See Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 668 (1989) (custom services employees carrying firearms can be searched through drug testing); *see also Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 624 (1989) (railroad employees in safety sensitive position can be searched through drug testing). In this case, the Santa Fe Public

Schools have changed the manner of the search being conducted, but has maintained its limitation to searching only those students who voluntarily choose to participate in extracurricular activities for the purposes of maintaining the health and security of the children within its custody and supervision. This action complies with the Constitutional mandates of *Earls* and is permissible.

The distinction between this case and that of *Earls* is simply the change in the type of search being conducted of a student, the Supreme Court decision in *Earls* provides the guideposts which should serve the Court well in this case. In *Earls*, the Supreme Court observed initially that because there is a “special need” in the school environment to uncover or prevent drug usage, individualized suspicion is not a prerequisite to a valid search of a student. Rather, the Supreme Court deemed it appropriate under the three-factor test set forth in *Vernonia School Dist. v. Acton*, 515 U.S. 646 (1995) simply to weigh the intrusion upon the student’s Fourth Amendment rights against the promotion of a legitimate governmental interest. *Earls*, 536 U.S. at 830. Concerning the students’ privacy interests, the Supreme Court found no controlling distinction between athletic and non-athletic activities, thus concluding that all participants in extracurricular activities had a diminished expectation of privacy. *See Earls*, 536 U.S. at 831-32.

As for the second *Vernonia* factor, the Supreme Court recognized that the intrusion upon privacy was twofold: the intrusion created by the collection of urine samples, and that resulting from disclosure of the test results. The Court dismissed the first component of the intrusion as trivial, noting that the collection method was essentially the same as that in *Vernonia*. *Earls*, 536 U.S. at 833. As to the second component, the Court noted that the test results are only released to those with a “need to know,” are used only to regulate participation in school activities, and

are not forwarded to law enforcement authorities, which rendered “the invasion of the students’ privacy . . . not significant.” *Earls*, 536 U.S. at 834.

Turning to the final *Vernonia* factor, the Supreme Court removed any inquiry into the actual effectiveness of the program from the Fourth Amendment analysis employed in *Vernonia*, instead stating categorically that testing extracurricular participants is an effective means of achieving the goal of deterring student drug use generally. *Earls*, 536 U.S. at 837-38.

The Supreme Court weighed the minor intrusion upon the students’ significantly reduced privacy rights against the interest to be promoted and found that the governmental interest prevailed, and thus, rejected the Fourth Amendment challenge. *Earls*, 536 U.S. at 835-38.

In addition, Justice Stephen Breyer, who also joined the majority in *Earls*, filed a concurring opinion, emphasizing that the drug problem in the nation’s schools is serious, and that governmental supply-side interdiction efforts have not reduced teenage drug use in recent years. Justice Breyer noted his approval of the school district’s attempt in *Earls* to reduce the demand for drugs by targeting peer pressure, which he termed the “single most important factor leading school children to take drugs,” and observing that the policy of drug testing “offers the adolescent a nonthreatening reason to decline his or her friend’s drug-use invitations,” i.e., by explaining that he or she wants to participate in school athletics or extracurricular activities. *Earls*, 536 U.S. at 840-41, (Breyer, J., concurring).

Justice Breyer acknowledged that while some would disagree that the intrusion on privacy inherent in producing a urine sample is “negligible,” he deemed it important that, in resolving “this kind of close question involving the interpretation of constitutional values,” the school board had “provided an opportunity for the airing of these differences at public meetings designed to give the entire community the opportunity to be able to participate in developing the

drug policy.” *Id.* He further noted that that “democratic, participatory process to uncover and to resolve differences” had “revealed little if any objection to the proposed testing program.” *Id.* at 841. Plaintiffs concedes here that the Board of Education for the Santa Fe Public Schools did just that and the community was provided with an opportunity resolve any differences with regard to the School District’s action to protect the health and safety of students during the dangerous prom and graduation season. *See* Defendants’ Exhibit B; Plaintiffs’ Exhibit 6 (Doc. 2-7). Plaintiffs provide no evidence of community objection or that the searches are otherwise offensive to any constitutional value held by the community.

D. THE SCHOOL DISTRICT’S SPECIAL RELATIONSHIP TO STUDENTS.

The Supreme Court in *Earls* spoke about the “special needs” inherent in public schools and that it was the weighing factor in its analysis. The School District’s “special need” did not change for this case. The safety interests asserted by the government in *Vernonia* and in *Earls* were of lesser magnitude than those at stake in *Skinner* and in *Von Raab*. In the student drug testing cases, the safety interest of the governmental interest arose from the state’s special relationship to school children. “[T]he necessity for the State to act is magnified by the fact that this evil is being visited not just upon individuals at large, but upon children for whom it has undertaken a special responsibility of care and direction.” *Vernonia*, 515 U.S. at 662. The Supreme Court found that drug use by children causes particular harm to them because they experience the physical, psychological and addictive effects of drugs more severely than do adults. *Vernonia*, 515 U.S. at 661-62. Children also may die from a drug overdose. *Earls*, 536 U.S. at 836-37. The harm to individual children who consume illegal drugs and in this case also alcohol, are serious and can lead to catastrophic results.

The Supreme Court in *Earls* found that the safety interests were sufficient to justify the suspicionless drug testing of students because they outweighed a **drastically** reduced privacy interest and so were sufficient to tip the scale in favor of the school's special need. The privacy interests of student athletes and participants in extra-curricular activities are greatly diminished in ways that the privacy interests of teachers and other school employees are not. Minor children are subject to the control of their parents or guardians and to the control of teachers and administrators when they are in school and those state actors are responsible for maintaining discipline, health, and safety. *Earls*, 536 U.S. at 830; *Vernonia*, 515 U.S. at 654-55.

In the case of *Safford Unified Sch. Dist. #1 v. Redding*, ___ U.S. ___, ___, 129 S. Ct. 2633 (2009), the Supreme Court stated that “[f]or nearly 25 years this Court has understood that maintaining order in the classroom has never been easy, but in more recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems.” *Redding*, 129 S. Ct. at 2646 (internal citations and quotation marks omitted). In schools, “[e]vents calling for discipline are frequent occurrences and sometimes require immediate, effective action.” *Goss v. Lopez*, 419 U.S. 565, 580 (1975); *see also T. L. O.*, 469 U.S. at 340 (explaining that schools have a “legitimate need to maintain an environment in which learning can take place”). For this reason, school officials retain broad authority to protect students under the Fourth Amendment. *See Redding*, 129 S. Ct. at 2646-47, *citing T.L.O.*, 469 U.S. at 339.

In *Earls*, the Supreme Court reviewed its previous analysis of *Vernonia* to analyze the expansion of the drug testing searches beyond student athletes. The *Earls* Court found that central to its analysis is the fact that the subjects of the school's drug testing policy are (1) children, who (2) have been committed to the temporary custody of the State as schoolmaster;

see Vernonia, 515 U.S. at 665. “The most significant element in this case is the first we discussed: that the Policy was undertaken in furtherance of the government’s responsibilities, under a public school system, as guardian and tutor of children entrusted to its care.” *Earls*, 536 U.S. at 744-45, *quoting Vernonia*, 515 U.S. at 665. “When the government acts as guardian and tutor the relevant question--and the relevant question here--is whether the search is one that a reasonable guardian and tutor might undertake.” *Id.*

A student’s privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety. Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults. In upholding the drug testing program in *Vernonia* and again in *Earls*, the Supreme Court considered the school context to be “central” and “the most significant element.” *Vernonia*, 515 U.S. at 654, 665; *Earls*, 536 U.S. at 831. This hefty weight on the side of the school’s balance applies with similar force in this case even though the Court must undertake a separate analysis of the manner of search in this particular practice by the School District. Therefore, *Vernonia* and *Earls* show that a health and safety concern can qualify as a “special need” when it outweighs a greatly diminished privacy interest on the part of the student.

Plaintiff cites to the Minnesota District Court case of *Hough* and the 8th Circuit case of *Doe v. Little Rock Sch. Dist.* in support of its Motion. While those cases address pat-down searches at schools and searches of belongings (*Doe*), they do not, however, address pat-down or other searches at schools where the students have substantially reduced expectation of privacy attached to voluntarily participating in extracurricular activities. These cases are clearly outside the rationale of *Vernonia* and *Earls*. This Court previously recognized that this important distinction changes the analysis significantly. *See Pacheco v. Hopmeier*, 2011 U.S. Dist. LEXIS

25976 (D.N.M. 2011) (J. Black). *Pacheco* distinguishes searches conducted on student participants in extracurricular activities from those conducted on the general student body. In analysis of the qualified immunity defense, this Court held that since the search at issue there was not conducted in conjunction with an extracurricular activity, a reasonable official would have no reason to believe that the *Vernonia* suspicionless standard might apply. *Id.*

E. STUDENTS HAVE A SIGNIFICANTLY REDUCED EXPECTATION OF PRIVACY.

The School District contends that a pat-down search conducted similar to those conducted every day at every airport in the United States by the TSA and approved by the federal courts is minimally intrusive and is less intrusive than the search conducted by urinalysis testing permitted under *Vernonia* and *Earls*. The intrusiveness of search is directly connected to the level of the student's expectation of privacy. Contrary to the Plaintiff's assertions here, her expectation of privacy is no greater than that of athletes or other students participating in extracurricular activities already discussed in detail in *Vernonia* and in *Earls*.

As a result of the "special needs" present in the public school setting, a determination of the reasonableness of a search requires this Court to balance the individual's expectation of privacy against the government's legitimate interests. *Vernonia*, 515 U.S. at 652-53. In doing so, the Court must first consider the scope of the individual's expectation of privacy. *Vernonia*, 515 U.S. at 654. It is important to note here again that it is well established that public school students enjoy a drastically reduced expectation of privacy in comparison to the public at large and in comparison to students in the general population simply attending the mandatory educational program of the School District. *See Earls*, 536 U.S. at 830-31; *Vernonia*, 515 U.S. at 657¹. It is also well established that student athletes have an even lower expectation of privacy

¹ *See* New Mexico Compulsory School Attendance Act, N.M. Stat. Ann. § 22-12-1 *et. seq.* (2007).

than those students who do not engage in athletics or other extracurricular activities. *Vernonia*, 515 U.S. at 657; *Earls*, 536 U.S. at 831-32².

The regulation of extracurricular activities by public schools further diminishes the expectation of privacy among schoolchildren. Like adults who choose to participate in a closely regulated industry, students who voluntarily participate in school athletics and all other extracurricular activities have reason to expect intrusions upon their normal rights and privileges, including those of privacy. *See Vernonia*, 515 U.S. at 657; *Earls*, 536 U.S. at 831-32. Therefore, Plaintiffs' expectation of privacy remains a substantially limited expectation shared with students who voluntarily participate in extracurricular activities possess, and contrary to Plaintiffs' assertion does not rise to the level enjoyed by the general public or those students who attend the mandatory portion of their public education. The student's expectation of privacy, balanced against the special need of the School District to protect the health and safety of students as their custodian and tutor, favors the School District. Therefore, the School District's suspicionless searches of students to include pat-down searches that are necessary to detect contraband prior to attendance at extracurricular functions is permissible under the Fourth Amendment. As such, the Motion should be denied.

F. THE CHARACTER OF THE SEARCH IS NOT UNREASONABLE.

The Court must also consider the character of the intrusion imposed by the change in the type of search from urinalysis to pat-down of the students' person. *See Vernonia*, 515 U.S. at

² A vast majority of other federal courts have held that a public school student does not have a protected property interest in participating in extracurricular activities. *See, e.g., Nevares v. San Marcos Consol. Indep. Sch. Dist.*, 111 F.3d 25, 27 (5th Cir. 1997); *Poling v. Murphy*, 872 F.2d 757, 764 (6th Cir. 1989); *Davenport v. Randolph County Bd. of Educ.*, 730 F.2d 1395, 1397 (11th Cir. 1984); *Hebert v. Ventetuolo*, 638 F.2d 5, 6 (1st Cir. 1981); *Walsh v. La. High Sch. Athletic Ass'n*, 616 F.2d 152, 159 (5th Cir. 1980); *Dominic J. v. Wyoming Valley West High School*, 362 F.Supp.2d 560, 571-72 (M.D. Pa. 2005); *Coleman v. Newburgh Enlarged City School Dist.*, 319 F.Supp.2d 446, 452 (S.D.N.Y. 2004); *Smith v. Chippewa Falls Area Unified Sch. Dist.*, 302 F.Supp.2d 953, 957 (W.D. Wis. 2002); *Mazevski v. Horseheads Cent. Sch. Dist.*, 950 F.Supp. 69, 72-73 (W.D.N.Y. 1997); *Palmer v. Merluzzi*, 689 F.Supp. 400, 410 (D.N.J. 1988), *aff'd* 868 F.2d 90 (3rd Cir. 1989).

658. The Supreme Court in *Earls* noted the Court has repeatedly stated that reasonableness under the Fourth Amendment does not require employing the least intrusive means, because “the logic of such elaborate less-restrictive-alternative arguments could raise insuperable barriers to the exercise of virtually all search-and-seizure powers.” *Earls*, 536 U.S. at 837, citing *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-57, n. 12 (1976); see also *Skinner*, 489 U.S. at 624 (“a showing of individualized suspicion is not a constitutional floor, below which a search must be presumed unreasonable”).

In this case notice was provided of the searches at the prom at Capital High School and for the upcoming prom at Santa Fe High School. See Defendants’ Exhibit B. As with the School District’s notice to students on the requirements for prom and graduation, TSA provides notice to the public of the use of the AIT machines (micrometer x-ray type machine displaying image of person essentially naked) and advises the passenger that they may decline AIT screening and, instead, undergo a pat-down. In the air safety arena, these pat-downs are necessary to detect explosives, chemical weapons or other dangerous items that could be secreted on the body of the person in order to prevent a tragedy on an airliner. The worst case scenario occurred on September 11, 2001. Similarly, the School District determined that pat-downs are necessary to detect drugs, alcohol and weapons secreted on the person of its students to prevent a tragedy of teenage alcohol and drug use resulting in injury or death to a student. The worst case scenario has visited upon too many families with the unnecessary loss of a young life or a catastrophic injury.

To ensure that pat-downs are minimally invasive, the TSA conducts the pat-downs by the same gender security officers, and passengers have the right to request a private screening with a witness. The district court in the case of *Corbett v. United States*, 2011 U.S. Dist. LEXIS 38531,

*12-13 (S.D. Fla. 2011) held that the plaintiff had failed to establish a likelihood of success on the merits on his constitutional claim because the pat-down searches were not overly intrusive compared to the governmental interest in airline safety. *See United States v. Marquez*, 410 F.3d 612, 616 (9th Cir. 2005) (An airport screening is reasonable if “(1) it is no more extensive or intensive than necessary, in light of current technology, to detect weapons or explosives; (2) it is confined in good faith to that purpose; and (3) passengers may avoid the search by electing not to fly.”).

The School District would like to bring the Court’s attention to the case of *United States v. Hartwell*, 436 F.3d 174, 180 (3rd Cir. 2006). The procedures involved in Hartwell’s search were found to be minimally intrusive as would a similar scheme undertaken by the School District at prom and graduation. They were well-tailored to protect personal privacy, escalating in invasiveness only after a lower level of screening disclosed a reason to conduct a more probing search. After Hartwell set off the metal detector he was screened with a wand. Only after the wand detected something solid on his person, and after repeated requests that he produce the item, did the TSA agents (according to Hartwell) reach into his pocket.” *Hartwell*, 436 F.3d at 180

In addition to being tailored to protect personal privacy, other factors make airport screening procedures minimally intrusive in comparison to other kinds of searches which should be applied in this case. Since every air passenger is subjected to a search, there is virtually no “stigma attached to being subjected to search at a known, designated airport search point.” *See United States v. Skipwith*, 482 F.2d 1272, 1275 (5th Cir. 1973). Moreover, the possibility for abuse is minimized by the public nature of the search. “Unlike searches conducted on dark and lonely streets at night where often the officer and the subject are the only witnesses, these

searches are made under supervision and not far from the scrutiny of the traveling public.” *Id.* at 1276. The airlines themselves have a strong interest in protecting passengers from unnecessary annoyance and harassment. *See id.*

Lastly, the entire procedure is rendered less offensive -- if not less intrusive -- because air passengers are on notice that they will be searched. *Singleton v. Commissioner*, 606 F.2d 50, 52 (3rd Cir. 1979) (approving a search where passengers “were given advance notice that the search was to be conducted, and could elect not to be searched by deciding not to board the aircraft”). Air passengers **choose to fly**, and screening procedures of this kind have existed in every airport in the country since at least 1974. *Hartwell*, 436 F.3d at 180-181. Applying the analysis of pat-down searches in the arena of individuals with substantially reduced expectations of privacy such as in airports, pat-down searches are deemed less offensive and less intrusive compared to governmental interest in health and safety. Thus, suspicionless pat-down searches of students by the School District who are voluntarily participating in extracurricular activities such as in *Vernonia* and *Earls* are permissible under the Fourth Amendment. The expectation of privacy has been drastically reduced due to participation in extracurricular activities and pat-down searches to detect drugs, alcohol and weapons meet the School District’s special need to protect the health and safety of students under its custodial care and guardianship. Therefore, Plaintiffs’ Motion should be denied as no Constitutional deprivation has occurred causing the Plaintiffs irreparable harm.

III. CONCLUSION

WHEREFORE Defendants, Santa Fe Public Schools, Board of Education for the Santa Fe Public School, including its individual members, Superintendent of Schools Bobbie J.

Gutierrez, High School Principal Melanie Romero, and High School Principal Robert Stephens request the Court deny Plaintiffs' Motion for a TRO and for any other relief the Court feels is appropriate.

Respectfully submitted,

CUDDY & MCCARTHY, LLP

By: *electronically filed on May 19, 2011*

ANDREW M. SANCHEZ
MATTHEW CAMPBELL
7770 Jefferson Street N.E., Suite 305
Albuquerque, New Mexico 87109-5912
(505) 888-1335
(505) 888-1369 (facsimile)

**ATTORNEYS FOR THE BOARD OF EDUCATION
FOR THE SANTA FE PUBLIC SCHOOLS, ITS
INDIVIDUAL MEMBERS, PRINCIPALS ROMERO
AND STEPHENS AND SUPERINTENDENT OF
SCHOOLS BOBBI GUTIERREZ**

I HEREBY CERTIFY that on the 19th day of May, 2011, the foregoing pleading was electronically filed through the Court's CM/ECF system, which caused the foregoing parties or counsel of record to be served by electronic means as more reflected on the Notice of Electronic Filing:

Reed Colfax
RELMAN, DANE & COLFAX PLLC
2009 Botolph Road, Suite 600
Santa Fe, New Mexico 87505

Megan Moran-Gates
RELMAN, DANE & COLFAX PLLC
1225 Nineteenth Street, Suite 600
Washington, D.C. 20036

Aimee Bevan
O'FRIEL & LEVY, P.C.
Post Office Box 2084
Santa Fe, New Mexico 87505

electronically filed on May 19, 2011
ANDREW M. SANCHEZ