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IN THE UNITED STATES DISTRICT COURT
FOR THE STATE OF ARIZONA

CURTIS ACOSTA, SEAN
ARCE, MAYA ARCE, MARIA
FEDERICO BRUMMER,
DOLORES CARRION,
ALEXANDRO ESCAMILLA,
JOSE GONZALEZ, NORMA
GONZALEZ, LORENZO
LOPEZ, JR., KORINA ELIZA
LOPEZ, RENE F. MARTINEZ,
SARA "SALLY" RUSK,
and YOLANDA SOTELO,

Plaintiffs,

v.

JOHN HUPPENTHAL,
Superintendent of Public
Instruction, in his Official
Capacity; ARIZONA STATE
BOARD OF EDUCATION,
including all members in
their Official Capacity,
VICKI BALENTINE, JACOB
MOORE, JAIME MOLERA,
AMY HAMILTON, EILEEN
KLEIN, GREGORY MILLER,
JAMES HORTON, DIANNE
ORTIZ-PARSONS, and
THOMAS TYREE,

Defendants.

No. CV 10 - 623 TUC AWT

SECOND AMENDED COMPLAINT

(Action for Declaratory and Injunctive Relief)

Exhibit A
To
Second Amended Complaint

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HOUSE BILL 2281

AN ACT

AMENDING TITLE 15, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 15-111 AND 15-112; AMENDING SECTION 15-843, ARIZONA REVISED STATUTES; RELATING TO SCHOOL CURRICULUM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 15, chapter 1, article 1, Arizona Revised Statutes,
3 is amended by adding sections 15-111 and 15-112, to read:

4 15-111. Declaration of policy

5 THE LEGISLATURE FINDS AND DECLARES THAT PUBLIC SCHOOL PUPILS SHOULD BE
6 TAUGHT TO TREAT AND VALUE EACH OTHER AS INDIVIDUALS AND NOT BE TAUGHT TO
7 RESENT OR HATE OTHER RACES OR CLASSES OF PEOPLE.

8 15-112. Prohibited courses and classes; enforcement

9 A. A SCHOOL DISTRICT OR CHARTER SCHOOL IN THIS STATE SHALL NOT INCLUDE
10 IN ITS PROGRAM OF INSTRUCTION ANY COURSES OR CLASSES THAT INCLUDE ANY OF THE
11 FOLLOWING:

- 12 1. PROMOTE THE OVERTHROW OF THE UNITED STATES GOVERNMENT.
13 2. PROMOTE RESENTMENT TOWARD A RACE OR CLASS OF PEOPLE.
14 3. ARE DESIGNED PRIMARILY FOR PUPILS OF A PARTICULAR ETHNIC GROUP.
15 4. ADVOCATE ETHNIC SOLIDARITY INSTEAD OF THE TREATMENT OF PUPILS AS
16 INDIVIDUALS.

17 B. IF THE STATE BOARD OF EDUCATION OR THE SUPERINTENDENT OF PUBLIC
18 INSTRUCTION DETERMINES THAT A SCHOOL DISTRICT OR CHARTER SCHOOL IS IN
19 VIOLATION OF SUBSECTION A, THE STATE BOARD OF EDUCATION OR THE SUPERINTENDENT
20 OF PUBLIC INSTRUCTION SHALL NOTIFY THE SCHOOL DISTRICT OR CHARTER SCHOOL THAT
21 IT IS IN VIOLATION OF SUBSECTION A. IF THE STATE BOARD OF EDUCATION OR THE
22 SUPERINTENDENT OF PUBLIC INSTRUCTION DETERMINES THAT THE SCHOOL DISTRICT OR
23 CHARTER SCHOOL HAS FAILED TO COMPLY WITH SUBSECTION A WITHIN SIXTY DAYS AFTER
24 A NOTICE HAS BEEN ISSUED PURSUANT TO THIS SUBSECTION, THE STATE BOARD OF
25 EDUCATION OR THE SUPERINTENDENT OF PUBLIC INSTRUCTION MAY DIRECT THE
26 DEPARTMENT OF EDUCATION TO WITHHOLD UP TO TEN PER CENT OF THE MONTHLY
27 APPORTIONMENT OF STATE AID THAT WOULD OTHERWISE BE DUE THE SCHOOL DISTRICT OR
28 CHARTER SCHOOL. THE DEPARTMENT OF EDUCATION SHALL ADJUST THE SCHOOL DISTRICT
29 OR CHARTER SCHOOL'S APPORTIONMENT ACCORDINGLY. WHEN THE STATE BOARD OF
30 EDUCATION OR THE SUPERINTENDENT OF PUBLIC INSTRUCTION DETERMINES THAT THE
31 SCHOOL DISTRICT OR CHARTER SCHOOL IS IN COMPLIANCE WITH SUBSECTION A, THE
32 DEPARTMENT OF EDUCATION SHALL RESTORE THE FULL AMOUNT OF STATE AID PAYMENTS
33 TO THE SCHOOL DISTRICT OR CHARTER SCHOOL.

34 C. THE DEPARTMENT OF EDUCATION SHALL PAY FOR ALL EXPENSES OF A HEARING
35 CONDUCTED PURSUANT TO THIS SECTION.

36 D. ACTIONS TAKEN UNDER THIS SECTION ARE SUBJECT TO APPEAL PURSUANT TO
37 TITLE 41, CHAPTER 6, ARTICLE 10.

38 E. THIS SECTION SHALL NOT BE CONSTRUED TO RESTRICT OR PROHIBIT:

39 1. COURSES OR CLASSES FOR NATIVE AMERICAN PUPILS THAT ARE REQUIRED TO
40 COMPLY WITH FEDERAL LAW.

41 2. THE GROUPING OF PUPILS ACCORDING TO ACADEMIC PERFORMANCE, INCLUDING
42 CAPABILITY IN THE ENGLISH LANGUAGE, THAT MAY RESULT IN A DISPARATE IMPACT BY
43 ETHNICITY.

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1 3. COURSES OR CLASSES THAT INCLUDE THE HISTORY OF ANY ETHNIC GROUP AND
2 THAT ARE OPEN TO ALL STUDENTS, UNLESS THE COURSE OR CLASS VIOLATES
3 SUBSECTION A.

4 4. COURSES OR CLASSES THAT INCLUDE THE DISCUSSION OF CONTROVERSIAL
5 ASPECTS OF HISTORY.

6 F. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT OR PROHIBIT
7 THE INSTRUCTION OF THE HOLOCAUST, ANY OTHER INSTANCE OF GENOCIDE, OR THE
8 HISTORICAL OPPRESSION OF A PARTICULAR GROUP OF PEOPLE BASED ON ETHNICITY,
9 RACE, OR CLASS.

10 Sec. 2. Section 15-843, Arizona Revised Statutes, is amended to read:
11 15-843. Pupil disciplinary proceedings

12 A. An action concerning discipline, suspension or expulsion of a pupil
13 is not subject to title 38, chapter 3, article 3.1, except that the governing
14 board of a school district shall post regular notice and shall take minutes
15 of any hearing held by the governing board concerning the discipline,
16 suspension or expulsion of a pupil.

17 B. The governing board of any school district, in consultation with
18 the teachers and parents of the school district, shall prescribe rules for
19 the discipline, suspension and expulsion of pupils. The rules shall be
20 consistent with the constitutional rights of pupils and shall include at
21 least the following:

22 1. Penalties for excessive pupil absenteeism pursuant to section
23 15-803, including failure in a subject, failure to pass a grade, suspension
24 or expulsion.

25 2. Procedures for the use of corporal punishment if allowed by the
26 governing board.

27 3. Procedures for the reasonable use of physical force by certificated
28 or classified personnel in self-defense, defense of others and defense of
29 property.

30 4. Procedures for dealing with pupils who have committed or who are
31 believed to have committed a crime.

32 5. A notice and hearing procedure for cases concerning the suspension
33 of a pupil for more than ten days.

34 6. Procedures and conditions for readmission of a pupil who has been
35 expelled or suspended for more than ten days.

36 7. Procedures for appeal to the governing board of the suspension of a
37 pupil for more than ten days, if the decision to suspend the pupil was not
38 made by the governing board.

39 8. Procedures for appeal of the recommendation of the hearing officer
40 or officers designated by the board as provided in subsection F of this
41 section at the time the board considers the recommendation.

42 C. Penalties adopted pursuant to subsection B, paragraph 1 of this
43 section for excessive absenteeism shall not be applied to pupils who have
44 completed the course requirements and whose absence from school is due solely

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1 to illness, disease or accident as certified by a person who is licensed
2 pursuant to title 32, chapter 7, 13, 15 or 17.

3 D. The governing board shall:

4 1. Support and assist teachers in the implementation and enforcement
5 of the rules prescribed pursuant to subsection B of this section.

6 2. Develop procedures allowing teachers and principals to recommend
7 the suspension or expulsion of pupils.

8 3. Develop procedures allowing teachers and principals to temporarily
9 remove disruptive pupils from a class.

10 4. Delegate to the principal the authority to remove a disruptive
11 pupil from the classroom.

12 E. If a pupil withdraws from school after receiving notice of possible
13 action concerning discipline, expulsion or suspension, the governing board
14 may continue with the action after the withdrawal and may record the results
15 of such action in the pupil's permanent file.

16 F. In all action concerning the expulsion of a pupil, the governing
17 board of a school district shall:

18 1. Be notified of the intended action.

19 2. Either:

20 (a) Decide, in executive session, whether to hold a hearing or to
21 designate one or more hearing officers to hold a hearing to hear the
22 evidence, prepare a record and bring a recommendation to the board for action
23 and whether the hearing shall be held in executive session.

24 (b) Provide by policy or vote at its annual organizational meeting
25 that all hearings concerning the expulsion of a pupil conducted pursuant to
26 this section will be conducted before a hearing officer selected from a list
27 of hearing officers approved by the governing board.

28 3. Give written notice, at least five working days before the hearing
29 by the governing board or the hearing officer or officers designated by the
30 governing board, to all pupils subject to expulsion and their parents or
31 guardians of the date, time and place of the hearing. If the governing board
32 decides that the hearing is to be held in executive session, the written
33 notice shall include a statement of the right of the parents or guardians or
34 an emancipated pupil who is subject to expulsion to object to the governing
35 board's decision to have the hearing held in executive session. Objections
36 shall be made in writing to the governing board.

37 G. If a parent or guardian or an emancipated pupil who is subject to
38 expulsion disagrees that the hearing should be held in executive session, it
39 shall be held in an open meeting unless:

40 1. If only one pupil is subject to expulsion and disagreement exists
41 between that pupil's parents or guardians, the governing board, after
42 consultations with the pupil's parents or guardians or the emancipated pupil,
43 shall decide in executive session whether the hearing will be in executive
44 session.

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1 2. If more than one pupil is subject to expulsion and disagreement
2 exists between the parents or guardians of different pupils, separate
3 hearings shall be held subject to this section.

4 H. This section does not prevent the pupil who is subject to expulsion
5 or suspension, and the pupil's parents or guardians and legal counsel, from
6 attending any executive session pertaining to the proposed disciplinary
7 action, from having access to the minutes and testimony of the executive
8 session or from recording the session at the parent's or guardian's expense.

9 I. In schools employing a superintendent or a principal, the authority
10 to suspend a pupil from school is vested in the superintendent, principal or
11 other school officials granted this power by the governing board of the
12 school district.

13 J. In schools that do not have a superintendent or principal, a
14 teacher may suspend a pupil from school.

15 K. In all cases of suspension, it shall be for good cause and shall be
16 reported within five days to the governing board by the superintendent or the
17 person imposing the suspension.

18 L. RULES PERTAINING TO THE DISCIPLINE, SUSPENSION AND EXPULSION OF
19 PUPILS SHALL NOT BE BASED ON RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN OR
20 ANCESTRY. IF THE DEPARTMENT OF EDUCATION, THE AUDITOR GENERAL OR THE
21 ATTORNEY GENERAL DETERMINES THAT A SCHOOL DISTRICT IS SUBSTANTIALLY AND
22 DELIBERATELY NOT IN COMPLIANCE WITH THIS SUBSECTION AND IF THE SCHOOL
23 DISTRICT HAS FAILED TO CORRECT THE DEFICIENCY WITHIN NINETY DAYS AFTER
24 RECEIVING NOTICE FROM THE DEPARTMENT OF EDUCATION, THE SUPERINTENDENT OF
25 PUBLIC INSTRUCTION MAY WITHHOLD THE MONIES THE SCHOOL DISTRICT WOULD
26 OTHERWISE BE ENTITLED TO RECEIVE FROM THE DATE OF THE DETERMINATION OF
27 NONCOMPLIANCE UNTIL THE DEPARTMENT OF EDUCATION DETERMINES THAT THE SCHOOL
28 DISTRICT IS IN COMPLIANCE WITH THIS SUBSECTION.

29 ~~L~~ M. The principal of each school shall ensure that a copy of all
30 rules pertaining to discipline, suspension and expulsion of pupils is
31 distributed to the parents of each pupil at the time the pupil is enrolled in
32 school.

33 ~~M~~ N. The principal of each school shall ensure that all rules
34 pertaining to the discipline, suspension and expulsion of pupils are
35 communicated to students at the beginning of each school year, and to
36 transfer students at the time of their enrollment in the school.

37 Sec. 3. Effective date

38 This act is effective from and after December 31, 2010.