

**SECOND JUDICIAL DISTRICT COURT
BERNALILLO COUNTY
STATE OF NEW MEXICO**

MCKENZIE JOHNSON,

Plaintiff,

v.

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

Defendants.

**COMPLAINT TO REMEDY NEW MEXICO HUMAN RIGHTS ACT VIOLATIONS,
AND FOR DAMAGES UNDER THE TORT CLAIMS ACT**

Plaintiff, McKenzie Johnson (Ms. Johnson), by and through her undersigned counsel, hereby and respectfully brings this Complaint for monetary damages for violations of the New Mexico Human Rights Act (NMHRA) and Tort Claims Act (NMTCA) and alleges as follows:

INTRODUCTION

This case is about protecting our children in school from discrimination perpetuated by the very professionals we trust to keep them safe. On October 31, 2018, Cibola High School (CHS) teacher, Defendant Mary Jane Eastin (Ms. Eastin), referred to Ms. Johnson, who is a Native American, as a “bloody Indian” in front of her entire 11th grade Advanced Placement English class. At the time, Ms. Johnson was just 16-years-old. Ms. Eastin uttered the unconscionable comment just moments after she cut off the braids of another female Native American student against her will in front of the same class. That day’s incidents thrust Ms. Johnson’s world into a downward spiral. Her teacher was the person entrusted with protecting her from discrimination and creating an environment conducive to learning. Through her actions, Ms. Eastin forever breeched that trust and inflicted indelible injuries on Ms. Johnson.

Albuquerque Public Schools (APS) is the public school system that is responsible for the operations of CHS. Under the New Mexico Constitution, APS has a duty to the public to provide a sufficient education and maintain a public school system open to all school-aged children. Those in supervisory positions at APS failed Ms. Johnson by neglecting to properly supervise and train Ms. Eastin. Accordingly, the harm inflicted upon Ms. Johnson was foreseeable and APS failed to protect her.

Ms. Johnson brings this action seeking redress for violations of the NMHRA and NMTCA by Defendants Eastin and APS.

JURISDICTION, VENUE AND PARTIES

1. Jurisdiction and venue are proper pursuant to Article VI, Section 13 of the New Mexico Constitution, NMSA § 38-3-1(A), and NMSA § 28-1-12. All parties reside in New Mexico, and the acts complained of occurred within Bernalillo County, New Mexico.
2. Venue is proper in the Second Judicial District as Defendants and Ms. Johnson all reside in and/or conduct business in Bernalillo County, New Mexico.
3. Defendant Cibola High School (CHS) is a public educational entity under the control and supervision of Defendant APS. The school's staff are public employees within the scope of Section 4 of Ch. 21, NMSA 1978.
4. All actions complained of in this Complaint occurred in Bernalillo County, New Mexico.
5. Ms. Johnson filed charges of public accommodation discrimination against Defendants on May 30, 2019, with the New Mexico Human Rights Bureau (NMHRB).
6. On September 9, 2019, APS responded to the May 30, 2019 complaint by denying allegations of discrimination.

7. The NMHRB issued an order of non-determination on October 11, 2019, giving Ms. Johnson the right to file claims under the New Mexico Human Rights Act (NMHRA) with the District Court within 90 days from the date of service of the Order. *See* Exhibit A, attached.
8. Defendant Board of Education for Albuquerque Public Schools (APS) is a governing board of the school district created under the New Mexico Constitution and state statutes, with its principal place of business in Albuquerque, New Mexico.
9. Defendant APS is a public school district. The New Mexico Constitution provides public schools shall be “...sufficient for the education of, and open to, all children of school age in the state and shall be established and maintained.” N.M. Const. Art. XII, Sect.1.
10. APS’s mission statement states, “The 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.*”¹
11. Defendant APS is a “public accommodation” pursuant to the New Mexico Human Rights Act, NMSA 1978 § 28-1-7 (F), as it pertains to the administration of public education to grade school students.
12. A “public accommodation” is defined in the NMHRA as “any establishment that provides or provides its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private.” NMSA § 28–1–2(H). APS provides its educational services to *all* children who are of grade school ages.

¹ Found at: <https://www.aps.edu/about-us/policies-and-procedural-directives/policies/a.-foundations-and-basic-commitments/a.01-mission-statement> (emphasis added).

13. Plaintiff McKenzie Johnson is a resident of Bernalillo County, New Mexico and a student in Defendant APS's public school district.

14. Defendant Mary Jane Eastin (Ms. Eastin) is a resident of Bernalillo County, New Mexico.

FACTUAL ALLEGATIONS

15. Ms. Johnson is a Native American secondary education student who at all times relevant was in the 11th grade at CHS in Albuquerque, New Mexico.

16. It has been the practice of Pamela Meyer, CHS's Principal at the time of the incident, to allow faculty to dress in costume for Halloween.

17. On the morning of October 31, 2018 (Halloween), Principal Meyer along with Assistant Principals Melissa Sedillo and Angel Reitmann visited Ms. Eastin's classroom before class started.

18. As the three leaders of the school entered Defendant Eastin's classroom, Ms. Eastin pointed scissors at them, and told them she would dole out the penalty of making students eat dog food for any incorrect answers articulated during her class session.

19. At that point the principal and two assistant principals were on notice of Ms. Eastin's off behavior. They nevertheless left the classroom and none of them told her that it was inappropriate to make students eat dog food.

20. That same day, Ms. Johnson arrived to her junior year Advanced Placement (AP) English class taught by Ms. Eastin.

21. Ms. Eastin was dressed as a voodoo witch for Halloween.

22. Ms. Eastin informed the class that they would be playing a game that day where she would ask students questions aloud. Those who answered correctly would be given marshmallows and those who answered incorrectly would be given dog food.
23. At one point during the class, Ms. Eastin approached another female Native American student with a box cutter.
24. The young woman had long hair combed into braids. Ms. Eastin asked the student if she liked her braids and the student replied in the affirmative.
25. Ms. Eastin then suggested that she was going to cut the young woman's hair with the box cutter.
26. Ms. Eastin put the box cutter down and exchanged it for a pair of scissors.
27. Ms. Eastin proceeded to cut approximately three inches of the student's hair from her head and sprinkled it on the desk in front of her.
28. Ms. Johnson was shocked and disturbed by what she witnessed transpire against her fellow Native American classmate.
29. Upon seeing this, Ms. Johnson immediately felt that she was in an environment that was hostile to Native American students.
30. This was especially so given the sanctity of hair in her Native American culture.
31. Soon after Ms. Eastin's unconscionable act, she turned to Ms. Johnson who had fake blood on her cheek as a part of her costume.
32. Staring directly at Ms. Johnson, Ms. Eastin inquired, "What are you supposed to be, a bloody Indian?"
33. In response to the collective gasps from her fellow students, Ms. Eastin doubled down and stated, "What? She is bloody, and she is an ..."

34. Ms. Eastin stopped short of finishing her sentence and allowed her racist comments to linger.
35. After these events, Ms. Johnson no longer felt welcome in the school environment and her behavior fundamentally changed at school.
36. Prior to this incident, Ms. Johnson was outgoing and upbeat. After the incident she became withdrawn and reserved.
37. Ms. Eastin's actions caused injury to Ms. Johnson, including harm to her reputation, emotional distress, and other damages.
38. APS, through its supervisory employees, failed to take corrective action when a potentially harmful situation to students, including Ms. Johnson, was presented directly to it.
39. Additionally, based on information and belief, those responsible for training employees, including Ms. Eastin, failed to adequately train and supervise its employees on the harms of racism and cultural competence and humility.
40. Defendant APS's agents and employees were acting in the scope of their employment with APS.
41. Defendant APS, as the employer of Ms. Eastin, is liable for the damage caused by its negligence under the doctrine of *respondeat superior* or other agency theories.
42. The conduct of Defendant APS's agents or employees, taken as a whole, show that it was malicious, willful, reckless, wanton, or in bad faith.
43. The actions and inaction of Defendants caused Ms. Johnson injuries and damages, including:
 - a. harm to reputation;

- b. personal injury;
- c. past medical expenses;
- d. future medical expenses;
- e. loss of life's enjoyment;
- f. emotional distress;
- g. pain and suffering;
- h. out-of-pocket expenses; and
- i. other damages.

COUNT I
Violation of the New Mexico Human Rights Act
(Against Defendants Eastin and APS)

44. Plaintiff incorporates the preceding paragraphs as though they were fully stated herein.
45. APS provides educational services to students in the Albuquerque area and is a “public accommodation” pursuant to NMSA 1978 § 28-1-2 (H).
46. APS’s educational services are open to all students in the Albuquerque area who are in the appropriate age ranges for elementary, middle school, and high school.
47. The NMHRA provides that it is unlawful for “any person in any public accommodation” to discriminate against an individual based on race, religion, color, national origin, or ancestry, among other characteristics. NMSA 1978 § 28-1-7 (F).
48. As described above, Defendants discriminated against Ms. Johnson based on her race and ancestry when Ms. Eastin called her a “bloody Indian.”
49. Further, Ms. Eastin created a hostile learning environment for Ms. Johnson when she cut another Native American student's hair, without consent, in front of Ms. Johnson.

50. Plaintiff has suffered damages, including emotional pain and suffering and loss of enjoyment of life, as a result of Defendants' unlawful conduct.

COUNT II
NEGLIGENT OPERATION OF A PUBLIC SCHOOL
(Against Defendant APS)

51. Plaintiff incorporates the preceding paragraphs as though they were fully stated herein.

52. Plaintiff's complaint against the governmental entity is brought pursuant to NMSA 1978 § 41-4-6.

53. Defendant APS is responsible for the acts and omissions of their employees, agents, and subcontractors.

54. Defendant APS had a duty to take reasonable actions to ensure that Cibola High School students would be safe and free from abuse, racial discrimination, and violations of the New Mexico Human Rights Act while at Cibola High School.

55. Defendant APS breached its duty to take reasonable actions to ensure that Cibola High School students would be safe and free from abuse, racial discrimination, and violations of the New Mexico Human Rights Act while at Cibola High School.

56. In its operation of Cibola High School, Defendant APS owed a duty to exercise ordinary care to prevent foreseeable risks of harm, including foreseeable harm caused by abuse, racial discrimination, and violation of the New Mexico Human Rights Act.

57. Defendant APS failed to make a reasonable inspection, or ignored other indications, that would have revealed the dangerous conditions it created that lead to this incident of abuse, racial discrimination, and violation of the New Mexico Human Rights Act.

58. Defendant APS breached their duty to adequately and appropriately operate Cibola High School.

59. Ms. Johnson was referred to as a “bloody Indian” by a teacher, and employee of Albuquerque Public School.
60. Defendant Eastin was employed by APS. During the course of Defendant Eastin’s relationship with Defendant APS as a teacher, APS was responsible for her training and supervision.
61. On the morning of October 31, 2018, Defendant Eastin brandished a dangerous weapon in front of her class and explicitly told the principal and two assistant principals that she intended to make her students eat dog food if they incorrectly answered questions in class.
62. Defendant Albuquerque Public Schools owed a duty to its students, including Ms. Johnson, to take reasonable precautions and use ordinary and due care to provide for its students’ safety, including that of Ms. Johnson, while at school.
63. Defendant APS breached this duty by allowing a culture that would condone the treatment of students as dogs.
64. Defendant APS failed to set guidelines with teachers, thereby creating an unreasonable risk of harm to individuals who were enrolled in APS classes, including Ms. Johnson.
65. Defendant APS failed to adequately train teachers on the harms of racism and cultural humility and competence, thereby creating an unreasonable risk of harm to students, particularly Native American and students of color, including Ms. Johnson, who were enrolled in APS classes.
66. Defendant APS was negligent in its operation of Cibola High School and failed to act reasonably to prevent the prejudice and emotional harm suffered by Ms. Johnson when she was referred to as a “bloody Indian” by Defendant Eastin.
67. Defendant APS’s immunity is waived pursuant to NMSA 1978 §§ 41-4-44 and 41-4-6 for

its negligence and that of its employees by failing to properly maintain the school classrooms in a safe manner.

68. Defendant APS's negligent and wrongful conduct caused Ms. Johnson damages.

69. Emotional pain and suffering is recognized as personal injury under New Mexico law.²

70. Defendants' conduct was malicious, willful, reckless, and wanton, or in bad faith.

71. Plaintiff is entitled to recover actual damages and punitive damages, plus costs.

WHEREFORE, Plaintiff respectfully request that this Court grant the following relief:

- A. Compensatory and punitive damages, in amounts to be proven at trial, against Defendants for Violations of the New Mexico Human Rights Act;
- B. Compensatory and punitive damages, in amounts to be proven at trial, against Defendants for Negligent Operation of a Public School;
- C. Reasonable attorney fees;
- D. Costs; and
- E. Any further relief that this Court deems just and proper; and any other relief allowed by law.

Respectfully submitted by:

/s/ Leon Howard

Leon Howard

María Martínez Sánchez

Preston Sanchez

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² *Thompson v. City of Albuquerque*, 2017-NMSC-021, 397 P.3d 1279.

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/s/ David Adams

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DEPARTMENT OF WORKFORCE SOLUTIONS
Labor Relations Division
Human Rights Bureau
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Santa Fe, NM 87505
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ORDER OF NON-DETERMINATION

October 11, 2019

McKenzie Johnson
C/o Tiffany McCree ACLU NM
1410 Coal Avenue SW
Albuquerque, NM 87104

Lisa Zanussi
Albuquerque Public Schools
PO Box 25704
Albuquerque, NM 87125

**Re: McKenzie Johnson vs. Albuquerque Public Schools/Mary Eastin
HRB# 19-05-30-0196**

Dear Ms. Johnson:


As authorized by Section 28-1-10 (D) of the New Mexico Human Rights Act, this letter constitutes an Order of Non-Determination as to your complaint. Section 28-1-10 (D) of the Act permits any person who has filed a timely complaint with the Human Rights Bureau to request an Order of Non-Determination. Section 28-1-10 (D) also requires that the Director of the Bureau issue an Order of Non-Determination when a proper request for the order is made.

By issuing this Order of Non-Determination, the Bureau has closed this complaint administratively, with prejudice. Therefore, you may not file this complaint again with this Bureau. You may obtain a new trial however, by appealing this Order of Non-Determination to the proper district court. According to Section 28-1-13 (A) of the New Mexico Human Rights Act, you have ninety (90) days from the date of service of this Order of Non-Determination to file notice of appeal in the district court of the county where the alleged discriminatory practice occurred or where the respondent does business. The Bureau should not be named as a party to the appeal, unless you have an independent and separate claim against the Bureau. Section 28-1-13 (A) of the Act also requires that you serve a copy of the notice of appeal personally or by certified mail, return receipt requested, at the last known address of all parties. You also must serve a copy of the notice of appeal on the Bureau office in Santa Fe. To properly serve the parties, you must comply with any other service of process requirements set forth in the New Mexico Rules of Civil Procedure at 1-004.

IF YOU DO NOT FILE A NOTICE OF APPEAL WITH THE APPROPRIATE DISTRICT COURT WITHIN NINETY (90) DAYS OF YOUR RECEIPT OF THIS ORDER, AND IF YOU DO NOT PROPERLY SERVE THE NOTICE, YOUR RIGHT TO APPEAL THIS ORDER OF NON-DETERMINATION TO THE DISTRICT COURT WILL EXPIRE.

If you have any question concerning this Order of Non-Determination, contact the Human Rights Bureau.

Deborah Williamson, Ph.D.
Labor Relations Director


Bureau Manager

