


Corrections to this opinion/decision not affecting the outcome, at the Court's discretion, can occur up to the time of publication with NM Compilation Commission. The Court will ensure that the electronic version of this opinion/decision is updated accordingly in Odyssey.

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: _____

Court of Appeals of New Mexico
Filed 5/23/2023 8:35 AM

3 Filing Date: **May 23, 2023**



Mark Reynolds

4 **No. A-1-CA-39732**

5 **MCKENZIE JOHNSON,**

6 Plaintiff-Appellant,

7 v.

8 **BOARD OF EDUCATION FOR**
9 **ALBUQUERQUE PUBLIC SCHOOLS**
10 **and MARY JANE EASTIN,**

11 Defendants-Appellees.

12 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**
13 **Benjamin Chavez, District Court Judge**

14 Parnall & Adams Law
15 Charles S. Parnall
16 David M. Adams
17 Albuquerque, NM

18 ACLU of New Mexico
19 Leon Howard
20 Maria Martinez Sánchez
21 Preston Sanchez
22 Albuquerque, NM

23 NM Center on Law and Poverty
24 Sovereign Hager
25 Verenice Peregrino Pompa
26 Albuquerque, NM

27 for Appellant

1 Walsh Gallegos Treviño Kyle & Robinson, P.C.
2 Roxie P. Rawls-De Santiago
3 Karla Schultz
4 Stephanie Mendivil
5 Albuquerque, NM

6 for Appellee Board of Education for the Albuquerque Public Schools

7 Robles, Rael and Anaya
8 Luis Robles
9 Albuquerque, NM

10 for Appellee Mary Jane Eastin

11 Egolf + Ferlic +Martinez + Harwood, LLC
12 Kristina Martinez
13 Jeff Dan Herrera
14 Santa Fe, NM

15 for Amicus Curiae Equality New Mexico

16 Lysette Romero Córdova, Supervising Attorney
17 Elisa Cibils, Clinicial Law Student
18 Emily Romero, Clinical Law Student
19 Albuquerque, NM

20 for Amici Curiae Native American Budget and Policy Institute and Native
21 American Disability Law Center

1 **OPINION**

2 **HANISEE, Judge.**

3 {1} This appeal asks whether a public secondary school in New Mexico can be
4 classified as a public accommodation under the pre-2023 iteration of the New
5 Mexico Human Rights Act (the NMHRA), NMSA 1978, §§ 28-1-1 to -15 (1969, as
6 amended through 2021), and therefore subject to the requirements of that statute.¹
7 Although one interpretation of historic New Mexico Supreme Court precedent
8 suggests otherwise, *see Hum. Rts. Comm’n of N.M. v. Bd. of Regents of Univ. of*
9 *N.M. Coll. of Nursing (Regents)*, 1981-NMSC-026, ¶ 11, 95 N.M. 576, 624 P.2d 518
10 (determining a state university not to be a public accommodation within the meaning
11 of the NMHRA), we conclude differently here based on the plain language of the
12 NMHRA, the differing circumstances of this case, and our Supreme Court’s own
13 language declaring *Regents’* limited prospective application, even to the very state
14 university at issue therein.

15 {2} Plaintiff appeals the grant of Albuquerque Public Schools (APS) and teacher
16 Mary Jane Eastin’s (collectively, Defendants’) motion to dismiss under the
17 NMHRA. The NMHRA makes it unlawful for “any person in any public

¹Since briefing was completed in this case, the Legislature amended Section 28-1-2(H) of the NMHRA to restate the definition of “public accommodation” to expressly include “any governmental entity” in addition to “any establishment.” *See* 2023 N.M. Laws, ch. 29, § 1(H) (signed into law as H.B. 207, Mar. 24, 2023).

1 accommodation to make a distinction, directly or indirectly, in offering or refusing
2 to offer its services, facilities, accommodations or goods to any person because of
3 race, religion, color,” or other protected class. Section 28-1-7(F). The district court
4 determined Plaintiff had failed to state a claim because, under *Regents*, APS is not a
5 public accommodation for purposes of the NMHRA. *Regents* held that
6 “[u]niversities are not public accommodations in the ordinary and usual sense of the
7 words,” as indicated by the historical statutory definition and analogous nineteenth
8 century United States Supreme Court precedent, *Regents*, 1981-NMSC-026, ¶¶ 12-
9 15, but declared its ruling “should be construed narrowly and is limited to the
10 [u]niversity’s manner and method of administering its academic program.” *Id.* ¶ 16.
11 Indeed, our Supreme Court pointedly declined to exclude universities altogether
12 from the reach of the NMHRA, stating that *Regents* did not answer “the question of
13 whether in a different set of circumstances the [u]niversity would be a ‘public
14 accommodation’ and subject to the jurisdiction of the [NMHRA].” *Id.* *Regents*
15 provided no guidance, however, as to what might have led to a different outcome
16 regarding the university then under review. Upon consideration of plain language
17 within the NMHRA and what guiding principles we can discern in *Regents*, we reach
18 a different outcome in this case. We hold that Cibola High School, a secondary
19 public school, is a public accommodation under the NMHRA, and therefore reverse
20 the district court’s contrary determination.

1 **BACKGROUND**

2 {3} Plaintiff alleges the following facts in her complaint: Plaintiff is a Native
3 American who, at the time the underlying events occurred, was a sixteen-year-old
4 student enrolled at Cibola High School, a school under the supervision of APS.
5 During an in-classroom Halloween activity on October 31, 2018, Plaintiff’s
6 Advanced Placement English teacher, Eastin, cut off three inches of hair from
7 another Native American student and sprinkled it on that student’s desk. Eastin then
8 turned to Plaintiff and—in an apparent reference to a blood smear as part of
9 Plaintiff’s Halloween costume—asked, “What are you supposed to be, a bloody
10 Indian?” Following these events, Plaintiff alleges she “no longer felt welcome in the
11 school environment and her behavior fundamentally changed at school.”

12 {4} Plaintiff filed a complaint alleging a violation of the NMHRA, Section 28-1-
13 7(F), against Defendants, in addition to a claim of negligent operation of a school
14 under the New Mexico Torts Claims Act that does not pertain to this appeal.
15 Defendants filed a motion to dismiss, arguing that public schools are not public
16 accommodations in the administration of their academic programs. After a hearing,
17 the district court granted the motion, determining that public secondary schools are
18 not sufficiently distinct from universities to warrant a different outcome than that in
19 *Regents*.

1 **DISCUSSION**

2 {5} The sole issue raised by Plaintiff is whether the district court erred in
3 determining APS not to be a public accommodation. “A district court’s decision to
4 dismiss a case for failure to state a claim under Rule 1-012(B)(6) [NMRA] is
5 reviewed de novo.” *Delfino v. Griffio*, 2011-NMSC-015, ¶ 9, 150 N.M. 97, 257 P.3d
6 917 (internal quotation marks and citation omitted). “In reviewing a district court’s
7 decision to dismiss for failure to state a claim, we accept all well-pleaded factual
8 allegations in the complaint as true and resolve all doubts in favor of sufficiency of
9 the complaint.” *Id.* (internal quotation marks and citation omitted). “The [district]
10 court’s conclusions of law are not binding upon us; we may draw our own legal
11 conclusions.” *Trigg v. Allemand*, 1980-NMCA-151, ¶ 15, 95 N.M. 128, 619 P.2d
12 573.

13 {6} Although our Supreme Court did conclude the aspect of the state university
14 under review in *Regents* was insufficient to establish the school as public
15 accommodation—specifically, “manner and method of administering its academic
16 program”—we abide by the stated instruction that its holding “should be construed
17 narrowly.” 1981-NMSC-026, ¶ 16. “The Court of Appeals must follow applicable
18 precedents of our Supreme Court, but in appropriate situations we may consider
19 whether Supreme Court precedent is applicable.” *State v. Travarez*, 1983-NMCA-
20 003, ¶ 5, 99 N.M. 309, 657 P.2d 636; *see id.* (concluding in the context of criminal

1 sentencing that “[a]lthough the case law presented by the [s]tate has never been
2 expressly overruled, it is clear that it no longer has precedential value in light of the
3 more recent legislative enactments”). Regarding *Regents*, we have previously said
4 that our Supreme Court’s pointed restraint therein signaled that this Court should
5 “independently evaluate the applicability of the NMHRA in all future cases.” *Elane*
6 *Photography, LLC v. Willock*, 2012-NMCA-086, ¶ 12, 284 P.3d 428. We likewise
7 observed that “[n]o other guidance was provided by [our] Supreme Court to address
8 the Legislature’s expansion of the NMHRA to other public accommodations outside
9 the unique academic circumstances analyzed in *Regents*.” *Elane Photography, LLC*,
10 2012-NMCA-086, ¶ 11. We interpret *Regents* to be a case that most directly pertains
11 to state universities, and more specifically, to administration of the academic
12 programs available to students or applicants to the university under review. By
13 contrast, we initially observe two circumstances that distinguish this case from
14 *Regents*: First, Cibola High School provides a constitutionally mandated function;
15 that is, the provision of secondary education to primarily minor New Mexico
16 residents. *See* N.M. Const. art. XII, § 1. Second, this cases arises not from any
17 specified manner or method of administration, such as admission processes or, in
18 *Regents*, the decision by university officials not to permit a Black nursing student to
19 retake a course after having not received a passing grade in her first such effort,
20 1981-NMSC-026, ¶ 1, effectuated by APS or Cibola High School; rather, it arises

1 from the spontaneous actions and remark undertaken and spoken by a single teacher
2 on a single occasion as alleged by Plaintiff. With this in mind, we proceed to apply
3 general principles of statutory interpretation in order to identify the scope of the
4 NMHRA as applied to the circumstance herein, recognizing that equating state
5 universities as a whole, or even the university to which *Regents* narrowly applied,
6 and public secondary schools as a stand-alone inquiry—as Defendants suggest—is
7 not outcome determinative.

8 **Plain Language**

9 {7} “The guiding principle in statutory construction requires that we look to the
10 wording of the statute and attempt to apply the plain meaning rule, recognizing that
11 when a statute contains language which is clear and unambiguous, we must give
12 effect to that language and refrain from further statutory interpretation.” *Tucson*
13 *Elec. Power Co. v. N.M. Tax’n & Revenue Dep’t*, 2020-NMCA-011, ¶ 8, 456 P.3d
14 1085 (internal quotation marks and citation omitted). “We use the plain language of
15 the statute as the primary indicator of legislative intent.” *Baker v. Hedstrom*, 2013-
16 NMSC-043, ¶ 11, 309 P.3d 1047 (alterations, internal quotation marks, and citation
17 omitted). “However, if the plain meaning of the statute is doubtful, ambiguous, or if
18 an adherence to the literal use of the words would lead to injustice, absurdity or
19 contradiction, we will construe the statute according to its obvious spirit or reason.”
20 *Id.* (alterations, internal quotation marks, and citation omitted).

1 {8} The Legislature provided a definition for “public accommodation” in the
2 NMHRA statute to mean “any establishment that provides or offers its services,
3 facilities, accommodations or goods to the public, but does not include a bona fide
4 private club or other place or establishment that is by its nature and use distinctly
5 private.” Section 28-1-2(H). This definition exhibits two points of potential
6 ambiguity when applied to public secondary schools: the term “establishment” and
7 the phrase “provides or offers its services . . . to the public.”

8 {9} First, the general meaning of “establishment” plainly applies to businesses
9 and commercial enterprises, but cannot be read to exclude public institutions such
10 as secondary schools. To give words not defined in a statute their ordinary meaning,
11 we often “consult common dictionary definitions.” *State v. Vest*, 2021-NMSC-020,
12 ¶ 14, 488 P.3d 626. *Webster’s Third New International Dictionary* in part defines an
13 “establishment” as “1:d: a more or less fixed and usu[ally] sizable place of business
14 or residence together with all the things that are an essential part of it,” and more
15 specifically, “1:e: a public or private institution (as a school or hospital).”
16 *Establishment*, *Webster’s Third New Int’l Dictionary* (Unabridged ed. 2002).
17 Similarly, the relevant definition in the current edition of *Black’s Law Dictionary*
18 defines “establishment” as “[a]n institution or place of business.” *Establishment*,
19 *Black’s Law Dictionary* (11th ed. 2019). A public secondary school—even if merely
20 potentially an establishment—is decidedly an institution. *See Institution*, *Black’s*

1 *Law Dictionary* (11th ed. 2019) (defining “institution” in pertinent part: “An
2 established organization, esp[ecially] one of a public character”). The edition of
3 *Black’s Law Dictionary* that was current in 1969 at the formulation of the NMHRA
4 defined an “establishment” as an “[i]nstitution, place where conducted and
5 equipment; industrial plant and appurtenances; place of business and fixtures;
6 residence with grounds, furniture, equipage, etc.” *Establishment, Black’s Law*
7 *Dictionary* (4th ed. 1968). We observe that the 1968 definition carries a more
8 commercial orientation, but this does not change that dictionaries consistently have
9 defined establishments as including institutions for the past five decades. We easily
10 conclude there to be an absence of ambiguity, doubt, or for that matter, contrary
11 legislative intent, such as to make it necessary or justified to deviate from the
12 ordinary meaning of “establishment” or “institution.” Therefore, considering the
13 language of the statute and the ordinary definitions of the words therein, we agree
14 with Plaintiff that a public secondary school is an establishment for purposes of the
15 NMHRA.

16 {10} The second point of potential ambiguity we encounter within the statutory
17 definition of public accommodation comes from the phrase, “provides or offers its
18 services . . . to the public.” Section 28-1-2(H). Defendants contend that schools are
19 not public accommodations because they are not “open to the public at large,” as
20 they cater their services to school-age children within a certain age range. Under

1 Defendants’ argument, a public school is even less like a public accommodation than
2 a university in *Regents* because public schools cater to “a much smaller and finite
3 group of young people.” Plaintiff argues that schools are open to the public because
4 they are mandated to offer services to all school-age students according to Article
5 XII, Section 1 of the New Mexico Constitution, and accordingly offer a “wide array
6 of services and accommodations to students and families.” Moreover, Plaintiff
7 asserts that APS’s adult education services, such as GED and adult literacy classes,
8 provide services to individuals well beyond school-age years. Again, we conclude
9 that Plaintiff gets the better of this disagreement.

10 {11} Both parties focus their arguments on the statutory term “public,” but that is
11 but a smaller part of the larger phrase “provides or offers its services . . . to the
12 public.” Defendant might be correct if the only verb in the statute was “provide,” but
13 the statute also includes establishments that *offer* services to the public. *Black’s Law*
14 *Dictionary* provides relevant definitions for “offer” as “[t]he act or an instance of
15 presenting something for acceptance; specif[ically], a statement that one is willing
16 to do something for another person or to give that person something,” *Offer, Black’s*
17 *Law Dictionary* (11th ed. 2019), and “public” as “[t]he people of a country or
18 community as a whole,” *Public, Black’s Law Dictionary* (11th ed. 2019). A public
19 school does present its services to the community as a whole, which appears to fall
20 into the plain language of the statute.

1 {12} We are unpersuaded by Defendants’ arguments that restrictions to an
2 otherwise public accommodation’s services based on age or place of residence are
3 determinative parameters that demonstrate Cibola High School’s, as administrated
4 by APS, educational services are not open to the public. In looking to the purpose
5 that underpins Plaintiff’s cause of action, our Supreme Court has said that “[t]he
6 prohibition against discrimination in public accommodations arose from the
7 common law duties of innkeepers and public carriers to provide their services to the
8 public without imposing unreasonable conditions.” *Regents*, 1981-NMSC-026, ¶ 12.
9 Reasonable conditions on an offer of services to the public do not render an offer
10 meaningless or without effect. *See Conditional Offer*, *Black’s Law Dictionary* (11th
11 ed. 2019) (defining a “conditional offer” as “[a]n offer made on the stipulation that
12 it will not take effect until some contingent prerequisite has been satisfied”).
13 Quintessential public accommodations such as inns and taverns are not excluded
14 from that class merely because they only rent rooms or offer alcoholic beverages to
15 individuals over a certain age. We do not believe it to be the intent of the Legislature
16 to exclude hotels, bars, and public transportation from being public accommodations
17 merely because there are *reasonable* age restrictions on their services. If mere age
18 or residence restrictions were enough to except an establishment from being open to
19 the public, small restrictions enacted in bad faith could suddenly permit

1 accommodations to avoid this statute that our Legislature clearly intended to apply
2 to govern such places of business or institutions.

3 {13} Accordingly, we are persuaded that in the context of this case, the term
4 “provides or offers its services . . . to the public” is not so ambiguous that we cannot
5 apply a plain language reading to the statute. *See* § 28-1-2(H). The statute only
6 expressly excepts the following from its definition of establishments that serve the
7 public: “bona fide private club or other place or establishment that is by its nature
8 and use distinctly private.” *Id.* Although that provision may not state the only
9 exclusions to the statute, we are persuaded by Plaintiff’s argument that APS does
10 not restrict its services in such a way that could be said to be by its nature and use
11 distinctly private. Cibola High School, and more broadly APS, offers services to the
12 community as a whole such that refusing educational services based on race,
13 religion, or any other protected category would be to contravene what the Legislature
14 intended under Section 28-1-7(F). The statutory definition of public accommodation
15 is clear to us in its ordinary and usual sense, and it includes public secondary schools.
16 Therefore, we hold that Cibola High School is a public accommodation for purposes
17 of the NMHRA under the circumstances of this case.

18 **Historical Meaning**

19 {14} Despite our conclusion that the plain language of the NMHRA directs the
20 outcome reached above, had the statute been ambiguous as to its application to

1 Cibola High School in this case, such that we were required to construe the statute
2 “according to its obvious purpose,” we believe the same outcome is appropriate. *See*
3 *N.M. Boys & Girls Ranch v. N.M. Bd. of Pharmacy*, 2022-NMCA-047, ¶ 19, 517
4 P.3d 248 (internal quotation marks and citation omitted). We briefly explain.

5 {15} In defining a “public accommodation” in *Regents*, our Supreme Court looked
6 to the “historical and traditional meanings,” 1981-NMSC-026, ¶ 11, including the
7 NMHRA’s predecessor, the New Mexico Public Accommodations Act, 1955 N.M.
8 Laws, ch. 192, §§ 1-7 (signed into law as H.B. 52, Mar. 24, 1955), and federal civil
9 rights jurisprudence and enactments such as the *Civil Rights Cases*, 109 U.S. 3
10 (1883) and 42 U.S.C. § 2000a(b) (1964). *See Regents*, 1981-NMSC-026, ¶¶ 12-14.
11 We do so as well, bearing in mind the NMHRA’s overarching purpose: “to promote
12 the equal rights of people within certain specified classes by protecting them against
13 discriminatory treatment.” *Elane Photography, LLC*, 2013-NMSC-040, ¶ 13. We
14 must also be mindful that the differing result we reach in this case is not afoul of
15 *Regents*.

16 {16} The 1955 Public Accommodations Act included the following kinds of
17 establishments as public accommodations: inns, taverns, roadhouses, hotels, motels,
18 buffets, saloons, barrooms, and any store or enclosure where spirituous or malt
19 liquors are sold, ice cream parlors, soda fountains, clinics, hospitals, recreation
20 parks, billiard and pool parlors, public libraries, and all public conveyances operated

1 on land, water, or in the air. *See* 1955 N.M. Laws, ch. 192, § 5. Although the *Regents*
2 Court pointed to the noninclusion of universities among expressly enumerated
3 accommodations, *see* 1981-NMSC-026, ¶ 14—nor for that matter are public
4 secondary schools mentioned—public institutions such as libraries and parks, along
5 with public transportation, are included. We cannot conclude that our Legislature
6 did not conceive of including constitutionally commanded public institutions of
7 learning, where services are offered to the public, when they created an enumerated
8 list of public accommodations. Indeed, prior to the NMHRA, such accommodations
9 included public institutions endorsed by state action. Although public secondary
10 schools are not identified along with the limited other examples in the Public
11 Accommodations Act, they are similar enough to the listed public institutions such
12 as public libraries, parks, and transit such that we feel comfortable concluding the
13 Legislature did intend to exclude public secondary schools such as Cibola High
14 School when they enacted a more general statute, the NMHRA in 1969.

15 {17} As well in *Regents*, our Supreme Court looked to the text of the federal 1964
16 Civil Rights Act, specifically to 42 U.S.C. § 2000a(b), pertaining to
17 “[e]stablishments affecting interstate commerce or supported in their activities by
18 [s]tate action as places of public accommodation” to find universities not
19 enumerated among the listed accommodations. *Regents*, 1981-NMSC-026, ¶ 13. The
20 Court observed that the statute follows the “traditional definition” of public

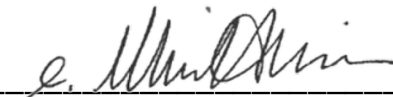
1 accommodations that “included places of lodging, entertainment and eating.” *Id.* We
2 note that even in the heading, 42 U.S.C. § 2000a(b) specifically includes
3 “[e]stablishments . . . supported in their activities by [s]tate action.” Pursuant to
4 statute, discrimination is supported by State action when it “is carried on under color
5 of any law, statute, ordinance, or regulation . . . is carried on under color of any
6 custom or usage required or enforced by officials of the [s]tate or political
7 subdivision thereof; or . . . is required by action of the [s]tate or political subdivision
8 thereof.” 42 U.S.C. § 2000a(d). A state-created public school enacting its
9 constitutional mandate to educate school-age children seems squarely in this
10 category; we can easily conceive of how a public school ordinance or a rule enforced
11 by public school officials could constitute discrimination for purposes of 42 U.S.C.
12 § 2000a. *See Nat’l Collegiate Athletic Ass’n v. Tarkanian*, 488 U.S. 179, 193 n.13
13 (1988) (observing the NCAA likely would be a state actor if “membership consisted
14 entirely of institutions located within the same [s]tate, many of them public
15 institutions created by the same sovereign”); *see also Brentwood Acad. v. Tenn.*
16 *Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 304 (2001) (“Nor do we think there is
17 anything to be said for the [a]ssociation’s contention that there is no need to treat it
18 as a state actor *since any public school applying the [a]ssociation’s rules is itself*
19 *subject to suit* under [42 U.S.C.] § 1983 [(1996),] or Title IX of the Education
20 Amendments of 1972 [20 U.S.C. §§ 1681-1688 (1986)].” (emphases added)).

1 {18} Even in historical context, public schools were seemingly contemplated by
2 the Legislature as among the types of establishments comprising a public
3 accommodation. If a public secondary school official in their official capacity were
4 to refuse services to an individual based on the individual's race, religion, or sexual
5 orientation, then the NMHRA would surely apply. As the district court held that
6 Cibola High School, as administered by APS, was not a public accommodation, we
7 reverse. We reiterate that this appeal, and our ruling today, pertains only to the
8 "public accommodation" element of the statutory cause of action, Section 28-1-7(F).
9 All remaining issues related to the viability of Plaintiff's claim under the NMHRA
10 may be litigated on remand.

11 **CONCLUSION**


12 {19} For the above reasons, we reverse the decision of the district court and remand
13 for further proceedings consistent with this opinion.

14 {20} **IT IS SO ORDERED.**

15 
16 _____
J. MILES HANISEE, Judge

17 **WE CONCUR:**

18 
19 _____
SHAMMARA H. HENDERSON, Judge

20 
21 _____
GERALD E. BACA, Judge