

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Brenda G. Chicharello,)	
)	Case No. 20-cv-1070-PJK-JHR
Plaintiff,)	
)	
v.)	
)	
Sally Jewell, former U.S. Secretary of the)	AMENDED COMPLAINT
Interior, Bryan Rice, former Director of the)	
Bureau of Indian Affairs, Tony Dearman,)	
Director of the Bureau of Indian Education;)	
Mike Hyatt, Superintendent, Gallup)	
McKinley County Schools, a New Mexico)	
Public School District,)	
)	
Defendants.)	
_____)	

A. JURISDICTION AND PARTIES

1. This is a matter involving the civil rights of Plaintiff. Jurisdiction against Mike Hyatt, Superintendent of Gallup McKinley County Schools, is pursuant to 42 U.S.C. § 1983. Jurisdiction against all other defendants is asserted under the doctrine of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).
2. Plaintiff is a citizen of New Mexico who presently resides at in Gallup, New Mexico.
3. Sally Jewell was the U.S. Secretary of the Interior. This position is now held by Deb Haaland. Bryan Rice was the Director of the U.S. Bureau of Indian Affairs. This position is now held by Darryl LaCounte .Tony Dearman is the Director of the U.S. Bureau of Indian Education.
4. Mike Hyatt is a state employee. He is a state administrator and the GMCS Superintendent.

B. NATURE OF THE CASE

5. The Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638) authorized the Secretary of the Interior, the Secretary of Health, Education, and Welfare, and some other government agencies to enter into contracts with, and make grants directly to, federally recognized Indian tribes.
6. Plaintiff is a Native American parent originally from Gallup, New Mexico. She is a community member and register voter in McKinley County and in the Red Rock Chapter House. Her children attend schools in the district. She is also a parent advocate for the students regarding Indian education.
7. In 2012, Plaintiff started to get involved with the local Indian Education Committee (IEC), which is a body of Native American parents empowered under the Johnson O'Malley Act of 1934 (JOM). The regulations for JOM are found at 25 CFR Part 273. Plaintiff was elected and voted in by parents' ballots from the Tobe Turpen Elementary School located in Gallup, New Mexico. David Oakes was the former school principal at the time.
8. In 2012-2013, she attended training on Indian Education in public schools. As a member of the IEC, she attended IEC Meetings and learned what the roles and responsibilities were for IEC parent involvement under the JOM. She learned that the IEC was established by 25 CFR § 273.115, and that the membership of the IEC was elected by parents of eligible Native American students. She learned that the IEC was vested with the authority to participate fully in the planning, development, implementation, and evaluation of all programs (25 CFR § 273.116), and that all programs were required to be

developed and approved in full compliance with the powers and duties of the IEC. 25
CFR § 273.117.

9. Priscilla Manuelito at the time was the IEC President. Later she was elected for the District 3 seat to serve as a Gallup McKinley County School board member.
10. In 2013-2014, as an IEC member, Plaintiff observed that the JOM Program with regard to Gallup McKinley County Schools was not functioning properly. For example, when students from the schools wanted to attend field trips using JOM Funds, the busing for field trips was an issue due to time constraints from scheduling of sports activities and afterschool programs, and due to a shortage of bus drivers. There were problems with purchase orders for field trips to have an open account from the business office.
11. In 2014-2015, she observed that a few schools would submit a disproportionate amount of JOM fund requests. The rest of the schools were not utilizing the JOM Program due to the fact that they had no IEC involvement or representation. This disparity was addressed at IEC Regular Meetings without any real resolution.
12. The IEC Officers started working on these problems the next school year. The IEC Parent Education plan was overhauled, and the whole JOM Program was restructured so that JOM funds would be used more efficiently in the school district.
13. Under the restructure, JOM funds would be equally distributed based on the population of Native American Students enrolled at each school. The 35 schools had a JOM School Plan that consist of three components. Component 1 was Native American School Events, promotion ceremony, and incentives. Component 2 was field trips and consultants. Component 3 was for Navajo Language Teachers, and it allowed them to be able to purchase supplies culturally relevant for students in the Navajo Language Classes.

Component 4 was incentives and enrichment. Component 5 was parent costs. Component 6 was a Native studies program.

14. In June 2015, the JOM Coordinator, Herlinda Mann, was transferring to the Exceptional Student Services to serve as the SPED Coordinator. The JOM Coordinator is responsible for running day to day operation for the JOM Program and taking in account for all the transaction. During her time as JOM Coordinator, Ms. Mann did not account for all expenditures with proper documentation. This was discovered five months later. An audit was performed, but Plaintiff disputes the findings of the audit.
15. In August 2015, the former Superintendent, Frank Chiapetti, hired Wonda D. Johnson as the GMCS JOM Coordinator. The same month Mr. Chiapetti was put on his first administrative leave by the GMCS Board pending investigation. The GMCS Board directed Carmen Moffett to be acting interim Superintendent while Mr. Chiapetti was on admin leave.
16. IEC President Monica Yazzie questioned whether a government state representative could be employed by a federal program. The 2015-2016 JOM subcontract between the Navajo Nation and Gallup McKinley County School District stated that half of the JOM Coordinator's salary would be paid out of JOM funding, and the other half will be paid by the district.
17. Ms. Johnson, JOM Coordinator, stayed less than five months before leaving the district.
18. Terri Cron stepped in as a temporary JOM Coordinator. She only stayed less than four months before leaving the district.
19. In October 2015, The Gallup Independent ran a front-page story stating that Indian education funds had been spent at casinos.

20. Jovana Hanks, fiscal officer for GMCS, stated in the article that because the Indian Education Committee is an elected board, they are technically employees of the school district.
21. Days later the Independent ran another article. This article was dated October 8, 2015. It alleged that there may have been deficiencies.
22. In November 2015, Bryan Manning was hired. Mr. Chiapetti was still on admin leave, and Ms. Moffett was still acting interim superintendent. Defendant Hyatt was the Director of Personnel and Javanna Hanks was the Fiscal Officer.
23. Bryan Manning had been the Central Consolidated School District's financial director. He had been placed on administrative leave May 17, 2011, for undisclosed reasons. The New Mexico Public Education Secretary designate, Hanna Skandera, ruled on June 8, 2011, that she would keep the district intact. Mr. Manning left the school district and started his own business. Manning Accounting and Consulting Services LLC (MACS) was established in January 2013 by Bryon R. Manning, CPA.

C. CAUSE OF ACTION

24. Plaintiff realleges every allegation of the complaint.
25. Plaintiff alleges that her due process rights under the Fifth and Fourteenth Amendments to the United States Constitution have been violated by Defendants.
26. Under the 25 CFR § 273.15, "Establishment of the Indian Education Committee", Plaintiff had a liberty right to serve on the IEC. This right was violated by Defendants.
27. Plaintiff's due process rights were violated based upon the 2017-2018 JOM Subcontract between the Navajo Nation and Gallup McKinley County School District (JOM Contract

No. A15AV00154). The rights violation occurred due to contract non-compliance following the governing body structure of the IEC By-Laws.

28. The bylaws for School Year 2017-2018, at page 7, provided steps for removal. These steps were critical to provide due process to an IEC member, and they were not followed through by IEC Officers and the GMCS Administration. Plaintiff received no prior notification of her removal from the IEC.
29. In 2015 Plaintiff filed an IEC Complaint against former IEC Member Ruby Haley for IEC misconduct. The IEC President Monica Yazzie didn't answer this complaint.
30. In 2017 Ruby Haley was no longer an IEC Member. However, she would still get IEC paperwork during regular IEC Meetings from Carmen Moffett, and she was allowed by IEC President Monica Yazzie to sit at the IEC Board Table during IEC Meetings.
31. Mrs. Haley was known to interrupt IEC Meetings by voicing her opinion and made negative comments when no one agreed with her. She was also very rude to other IEC Members.
32. The discrimination from the IEC Officers and JOM Coordinator, Carmen Moffett, involved favoritism to allow Ruby Haley to engage in misconduct toward Plaintiff. Instead of answering Plaintiff's complaint, Defendants removed Plaintiff without giving her any due process.
33. Plaintiff attended the IEC Regular Meeting on October 15, 2017, at 3:00 pm at the Student Support Center, 680 S. Boardman Gallup, NM 87301. At the meeting, she was ambushed when it came to Agenda Item # H, "Removal of IEC Member". No name was put on the agenda, and IEC President Monica Yazzie stated that Plaintiff was not working

with the IEC Officers to resolve the formal complaints she had filed with government agencies.

34. No discussion was had, and Plaintiff was removed, without due process, in retaliation for filing whistle-blower complaints.

35. Plaintiff contacted the Bureau of Indian Education, which oversees the JOM Program, to work out a solution for violations of the JOM Sub-Contract at Gallup McKinley County Schools and for the violation of her due process rights. She emailed BIE Director, Defendant Tony Dearman, and Angela Barnett, the OM Program Specialist at the Department of the Interior/Bureau of Indian Affairs.

36. Ms. Barnett stated that the BIE could not help Plaintiff.

37. Plaintiff alleges that she has the following due process rights violated by Defendants:

- a. A right to be informed of a proposed action and the reason for it;
- b. A right to a hearing on the facts involved;
- c. A right to adequate notice of the hearing;
- d. A right to written reasons for a decision; and
- e. A right to appeal.

25 U.S.C. § 450 (The Indian Self-Determination and Education Assistance Act), 88 Stat. 2203, Pub.L. 93-638, Pub.L. 100-472; 102 Stat. 2285, Pub.L. 103-413. 25 U.S.C. 452 (The Johnson-O'Malley Act of April 16, 1934), 48 Stat. 596, Pub.L. 73-167; Pub.L. 103-332.

38. On May 11, 2017, at a meeting located in the media room at GMCS Central Admin Building Meeting with BIA and the Navajo Nation JOM program, Plaintiff sought clarification regarding a letter authored by Mike Hyatt, who was then the Interim

Superintendent of GMCS. Defendant Hyatt claimed in the letter, falsely, that the IEC was only a subset of the local school board.

39. Apparently, Defendant Hyatt believed that the GMCS Governing Board is the IEC.

Under federal regulations, this was only true if a majority of the Governing Board was native, which it was not. 25 C.F.R. § 273.115.

40. The Navajo Nation had the right to review GMCS' implementation of the JOM

Subcontract to ensure that the powers and duties of the IEC were being fully implemented and maintained.

41. Mike Hyatt, Gallup McKinley County School Superintendent, directly participated in the removal of Plaintiff in violation of her due process rights. He engaged in such actions to avoid scrutiny of the GMCS use of JOM grant funds.

42. An audit, the "Manning Audit", was conducted of possibly misused JOM funds.

Although Plaintiff was on the IEC, she was not informed of the Manning Audit until after the fact. She experienced injustice from Mr. Hyatt, who denied her the ability to inspect public records. In fact, Mr. Hyatt took extreme steps to ensure that IEC members had no say in the investigation of the possible misuse of JOM funds or that resulting corrective plan.

43. Mr. Hyatt, at the time the Interim Superintendent, went to IEC Meetings and informed the IEC members, including Plaintiff, that they were state employees and needed to follow state laws versus federal laws. Plaintiff was treated unreasonably as a parent on the IEC by being prevented from questioning the use of JOM funds and from access to crucial documents.

44. With regard to the Manning Audit, Bryon Manning was hired by the GMCS

Administration to audit the use of JOM funds. This included instructions to:

- a. Review the grant between Gallup-McKinley County school and the JOM program; review expenditures to identify if they do not meet the stated goals and objective of the program; identify any issues which may exist with those agreements.
- b. Review the by-laws of the Indian Education Committee (IEC): review for consistency and compliance.
- c. Review the relevant portion of code of federal regulation Title 25 Indians (25 CFR) as it pertains to the JOM Program and the Indian Education Committee; identify any issues which may exist.
- d. Obtain a detail listing of all non-payroll related expenditures for each year, 2011 and 2015, by object code. Review the expenditure detail for areas of significant expenditure, questionable cost, reasonable cost, allowable cost, etc. Particular attention should be applied in areas which may be abused or misused. Interview staff, if needed, to identify any areas of concerns or potential abuse. Perform any other procedures which will provide insight on the program, its history, and any potential issues which may exist.
- e. Select a sample of disbursement for each year under review, 2011 through 2015, and test for compliance with Federal, State, and District Guidelines.
- f. Summarize the results of the review of the JOM program and its related parts in a report to the Board and administrative and provide recommendations to improve operations.

45. Plaintiff verbally made a request for Manning Audit PO in front of several witness, including IEC Members, Ms. Moffett, Ms. White, Mr. Remillard and Vida Silvers.

D. REQUEST FOR RELIEF

46. Plaintiff requests the following relief:

- a. Damages, in the form of extreme emotional harm and the deprivation of civil liberties,
- b. Attorneys' fees,
- c. Costs,
- d. Such other relief as the Court deems appropriate.

DATED this 3rd day of June, 2021.

The Law Offices of David R. Jordan, P.C

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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