

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

**NATIONAL EDUCATION  
ASSOCIATION OF NEW MEXICO  
and CENTRAL CONSOLIDATED  
EDUCATION ASSOCIATION,**

Court of Appeals of New Mexico  
Filed 10/25/2023 11:42 AM



Mark Reynolds

Petitioners-Appellees,

v.

**No. A-1-CA-39830**

**CENTRAL CONSOLIDATED  
SCHOOL DISTRICT; THE BOARD  
OF EDUCATION OF CENTRAL  
CONSOLIDATED SCHOOL DISTRICT;  
GARY J. MONTOYA, President of the  
Central Consolidated School District  
Board of Education, in his official capacity;  
SUZETTE JEAN HASKIE, Vice President  
of the Central Consolidated School District  
Board of Education, in her official capacity;  
CHRISTINA J. ASPAAS, Secretary of the  
Central Consolidated School District Board  
of Education, in her official capacity;  
CHARLIE T. JONES, JR., Member of the  
Central Consolidated School District Board  
of Education, in his official capacity;  
SHELDON PICKERING, Member of the  
Central Consolidated School District Board  
of Education, in his official capacity; and  
DANIEL P. BENAVIDEZ, Superintendent of  
the Central Consolidated School District  
Board of Education, in his official capacity,**

Respondents-Appellants.

**APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY  
Sarah V. Weaver, District Court Judge**

1 Jones, Snead, Wertheim & Clifford, P.A.  
2 Jerry Todd Wertheim  
3 Kaitlyn DelBene  
4 Santa Fe, NM

5 for Appellees

6 Germaine Chappelle  
7 Flora Vista, NM

8 for Appellants

9 **MEMORANDUM OPINION**

10 **BOGARDUS, Judge.**

11 {1} Central Consolidated School District (CCSD), the Board of Education of  
12 Central Consolidated District (Board), Board President Gary J. Montoya, Board  
13 Vice President Suzette Jean Haskie, Board Secretary Christina J. Aspaas, Board  
14 member Charlie T. Jones, Jr., Board member Sheldon Pickering, and CCSD  
15 Superintendent Daniel P. Benavidez (collectively, Respondents) appeal the district  
16 court’s grant of a peremptory writ of mandamus ordering Respondents to engage in  
17 meaningful, good-faith tribal consultation with the Navajo Nation regarding  
18 Respondents’ decision to expand in-person learning for all public school students.  
19 We conclude, after review of the briefing and the record of the case before us, that  
20 the issue presented is moot and the appeal should be dismissed. *See Gunaji v.*  
21 *Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008 (“As a general rule, this  
22 Court does not decide moot cases.”).

1 {2} On March 11, 2020, Governor Michelle Lujan Grisham declared a public  
2 health emergency due to the spread of COVID-19. *See* State of N.M. Executive  
3 Order 2020-004 (March 11, 2020). The health emergency led to both the State of  
4 New Mexico and the Navajo Nation closing schools and/or adopting provisions for  
5 online learning. *See* State of N.M. Executive Order 2020-005 (March 13, 2020)  
6 (ordering that “[a]ll New Mexico public school shall close”); Resolution of the  
7 Navajo Nation Council, CO-84-20 (supporting the Navajo Nation Board of  
8 Education opposing in-class instructions).

9 {3} On January 26, 2021, the New Mexico Public Education Department  
10 (including Respondents) announced the expansion of in-person learning for all  
11 public school students beginning on February 16, 2021. As a result of concerns  
12 raised by stakeholders, including the Navajo Nation’s concerns about the decision  
13 to transition back to in-person schooling, the National Education Association of New  
14 Mexico and the Central Consolidated Education Association (collectively,  
15 Petitioners) filed a petition for writ of mandamus arguing that Respondents failed to  
16 meet their “mandatory, non[]discretionary duty to engage in meaningful, good-faith  
17 tribal consultation with the Navajo Nation” pursuant to the New Mexico State-Tribal  
18 Collaboration Act, NMSA 1978, § 11-18-1 to -5 (2009) and the New Mexico Indian  
19 Education Act, NMSA 1978, § 22-23A-1 to -11 (2003, as amended through 2007).  
20 The district court agreed, granting an alternative writ of mandamus followed by a

1 hearing to show cause and a peremptory writ ordering Respondents to comply with  
2 such duty and to “allow virtual/online instructions for students upon request.” This  
3 appeal follows.

4 {4} Respondents concede that any decision by this Court cannot affect or change  
5 the actions they undertook in response to the writ: they engaged in tribal  
6 collaboration, continuously offered parents a choice of in-person or virtual  
7 instruction, and did not require in-person attendance. Nevertheless, Respondents  
8 argue, this Court should consider the basic issue of whether Sections 11-18-3 and  
9 22-3A-1 impose a nondiscretionary duty to consult with the Navajo Nation in these  
10 circumstances because they “are concerned that the rulings issued by the [d]istrict  
11 [c]ourt . . . [may] create confusing precedent in other cases.” Petitioners agree that  
12 the issue is moot, but for a different reason: the health emergency underlying the  
13 dispute has ended, and therefore no relief can be granted. We agree with Petitioners  
14 and explain.

15 {5} “A case is moot when no actual controversy exists, and the court cannot grant  
16 actual relief.” *Gunaji*, 2001-NMSC-028, ¶ 9 (internal quotation marks and citations  
17 omitted). Here, we agree with Petitioners that no actual controversy exists because  
18 the underlying health emergency that precipitated the dispute expired on March 31,  
19 2023. *See* State of N.M. Executive Order 2023-036 (March 03, 2023) (setting the  
20 health emergency expiration date for March 31, 2023); *Cf. Gunaji*, 2001-NMSC-

1 028, ¶ 9 (holding that an election contest issue is moot because the terms of office  
2 had expired). Accordingly, reversal of the district court would not provide actual  
3 relief because Respondents no longer have to consult with the Navajo Nation  
4 concerning COVID-related precautions given that the health emergency expired.  
5 Because the issue is moot, we now turn to the mootness exceptions.

6 {6} Respondents argue that this Court should consider the issue to avoid confusing  
7 precedent. That, however, is not a recognized exception to mootness and we decline  
8 to create a new exception. Although Respondents do not argue for their application,  
9 we analyze the two recognized exceptions to mootness: “cases which present issues  
10 of substantial public interest, and cases which are capable of repetition yet evade  
11 review.” *Republican Party of N.M. v. N.M. Tax’n & Revenue Dep’t*, 2012-NMSC-  
12 026, ¶ 10, 283 P.3d 853. “A case presents an issue of substantial public interest if it  
13 involves a constitutional question or affects a fundamental right such as voting.” *Id.*  
14 The present issue involves statutory interpretation regarding state agencies’ duties  
15 to communicate with tribal communities, and therefore is not a constitutional  
16 question nor does it affect a fundamental right. *See id.* Next, while misinterpreting  
17 the relevant statutes and inappropriately granting a writ of mandamus is no doubt  
18 capable of repetition, the issue will not evade review. Appeal is available for state  
19 agencies in the future who may be similarly situated to Respondents. *See Hoyt v.*

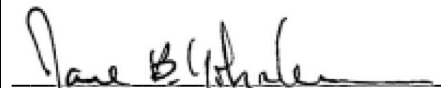
1 *State*, 2015-NMCA-108, ¶ 32, 359 P.3d 147 (“It is undisputed that a peremptory writ  
2 is a final, appealable judgment.”).


3 {7} Based on the foregoing, we dismiss the appeal as moot.

4 {8} **IT IS SO ORDERED.**

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6 **KRISTINA BOGARDUS, Judge**

7 **WE CONCUR:**

8   
9 **JANE B. YOHALEM, Judge**

10   
11 **MICHAEL D. BUSTAMANTE, Judge,**  
12 **Retired, sitting by designation**