

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

**ANGELA MEDROW**, Individually  
And on Behalf of Others Similarly Situated,

Plaintiffs,

vs.

No. D-101-CV-2017-00864

**STATE OF NEW MEXICO PUBLIC  
EDUCATION DEPARTMENT**, and  
**HANNA SKANDERA**, Secretary of the  
New Mexico Education Department, in  
her Official Capacity.

Case assigned to Ortiz, Raymond Z.

Defendants.

**CLASS ACTION COMPLAINT**  
**FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND DAMAGES**

**COMES NOW**, the Plaintiff by and through her attorney of record, Warren F. Frost, P.C.  
(Warren F. Frost), and for his cause of action States:

**FACTUAL BACKGROUND**

1. The Plaintiff Angela Medrow is a resident of Logan, Quay County, New Mexico and is currently a teacher at Logan Public Schools. The Defendant, State of New Mexico Public Education Department (PED) is an agency of the State of New Mexico with its principal offices located in Santa Fe, New Mexico. The Defendant Hanna Skandera is Secretary of Education, the Cabinet Secretary responsible for and who oversees the State of New Mexico Public Education Department.

2. This action is brought pursuant to the New Mexico Declaratory Judgment Act Section 44-6-1 to 44-6-15 NMSA 1978, Article II, Section 20 of the New Mexico Constitution and Section 42A-1-29 NMSA 1978.

3. In 2012 the Defendant PED adopted new regulations measuring teacher and school leader effectiveness, N.M. Admin.Code 6.69.8. The evaluation system established a point based system where the maximum score was two hundred (200) points. Each teacher was then given a designation depending upon the number of points they received in the evaluation process. Teachers receiving one hundred seventy-three to two hundred (173-200) points were declared exemplary; one hundred forty-six to one hundred seventy-two (146-172), highly effective; one hundred nineteen to one hundred forty-five (119-145), effective; ninety-two to one hundred eighteen (92-118), minimally effective; and below ninety-two (92), ineffective.

4. Teachers identified as minimally effective or ineffective, are subject to be placed on a growth plan and without sufficient improvement terminated from their teaching position.

5. The initial regulations required that twenty (20) points of each teacher's evaluation be based upon student surveys, teacher attendance, or a combination of both. A school district could choose to award all twenty (20) points for either student surveys or teacher attendance or provide ten (10) points each.

6. In December of 2015, The First Judicial District Court entered a Preliminary Injunction against the PED prohibiting the PED from taking any negative employment action against teachers under the new regulations. The court ruled that as currently implemented the regulations were neither highly objective nor uniform statewide. Although the court prohibited the taking of negative employment actions against teachers pending a final ruling, it allowed PED to continue to gather data and information under the regulations and continue to make

modifications to the evaluation process in an attempt to meet the statutory requirement of high objectivity and statewide uniformity.

7. Pursuant to the guidelines set forth by the District Court the PED has continued to modify the provisions of the evaluation system including the teacher attendance portion of the system. Effective in the 2016-2017 school year, districts can no longer ignore teacher attendance and give twenty (20) points in the evaluation to student evaluations but have to give ten (10) points to student evaluations and ten (10) points to teacher attendance.

8. On August 19, 2016 the Defendant Skandera issued a memorandum to all districts and charter schools informing them that the teacher attendance scoring would be modified. Any teacher who missed three (3) days of school or less would not have those absences counted against their evaluation. Any teacher missing four (4) or more days would have all their missed days counted against the attendance portion of their evaluation, including the first three absences.

9. The Plaintiff Angela Medrow began working at the Logan Municipal Schools during the 2004-2005 school year. She currently has a Master's Degree in Education, Level Three (3) Licensure and twelve (12) years of experience under 2016-2017 contract. Her 2016-2017 contract and all preceding contracts refer Medrow to "the rules and regulations of the school district" to address the districts leave policy.

10. The Logan Municipal School's sick leave policy allows each teacher to earn one (1) day of sick leave per month of employment. Teacher contracts are nine (9) months therefore a teacher can earn nine (9) days of sick leave annually. A teacher may accumulate a maximum of ninety (90) days of sick leave at which point no more sick leave can be earned until the teacher's use of sick leave causes the total to be reduced below ninety (90).

11. In addition to the sick leave the school district provides Medrow and all other teachers four (4) days of personal leave that can be used at the discretion of the teacher. Under Logan's policy, two (2) days of personal leave are provided with no reduction in pay and two (2) days of leave result in the reduction of pay in the amount of the cost of a substitute to fill in for the teacher. Personal leave cannot be accumulated and if not used during the year in which it was granted, it is lost.

12. Upon information and belief the Logan Municipal School's sick leave and personal leave policies are representative of leave policies that exist in every school district and charter school in the state, and provide teachers somewhere between ten (10) and fourteen (14) leave days annually.

13. The Plaintiff Medrow began the 2016-17 school year with twenty-one (21) days of accumulated sick leave. As of March 30, 2017 Medrow had accrued six and one half (6½) days of sick leave this current school year and used three (3) days leaving her a balance of twenty-four (24) days of sick leave. Medrow has not used any of her four (4) personal leave days.

14. Medrow's evaluation score during the 2013-2014 school year was 91.90 points, ineffective. Her 2014-2015 score was 105.01 points, minimally effective. Her 2015-2016 score was 125.51, effective.

15. Under the PED leave evaluation criteria, If Medrow misses another day of school whether it be for sick leave or personal leave then all of the days that she has been absent will be counted against her for evaluation purposes.

16. One of the three (3) sick leave days that Medrow has taken was used for a Doctor appointment with her gynecologist. During that appointment she was informed that she has two

large tumors on her uterus and it will be necessary for her to have at least a partial hysterectomy to remove those tumors. In coordination with her Doctor, Medrow has scheduled her surgery on May 22, 2017 the last week of school, which will result in her using four (4) days of sick leave. Medrow anticipates using at least one (1) additional sick leave day prior to that to conduct testing in anticipation of surgery. All sick leave days used by Medrow from this point forward, including those necessary for surgery shall result in her losing points on her 2016-2017 teacher evaluation. All sick leave days used by Medrow are consistent with the sick leave criteria of Logan School's leave policy.

17. Based upon Medrow's annual salary of fifty-four thousand, seven hundred dollars, (\$54,700.00) per year and the length of her teaching contract of one hundred and fifty-one (151) days, each sick leave day and the first two (2) personal days have a value of three hundred and sixty-two dollars and twenty-five cents (\$362.25). The value of each teacher's sick day is dependent upon the number of days in their contract and their respective salaries.

#### **CLASS ACTION ALLEGATIONS**

18. This is a class action brought by the plaintiff on her own behalf and on behalf of all others similarly situated pursuant to rule 1-023 NMRA.

19. The class represented by the Plaintiffs are licensed school teachers in school districts and charter schools throughout the state of New Mexico who are subject to having their evaluation scores reduced for the use of contractually granted leave time.

20. The class is so numerous that the joinder of all members is impractical. During the 2014-15 school year the PED identified twenty-one thousand eight hundred (21,800) school teachers in the state of New Mexico subject to the evaluation system.

21. The individual Plaintiffs' claims are identical to the claims of the members of the class.

22. There are questions of law and fact common to the class, which predominate over questions affecting individual class members.

23. The Plaintiff will fairly and adequately protect the interests of the class.

24. The Defendants have acted on grounds generally applicable to the class thereby making declaratory and injunctive relief appropriate with respect to the class as a whole.

**COUNT I: DECLARATORY AND INJUNCTIVE RELIEF**

25. The Plaintiff re-alleges allegations contained in paragraphs one (1) through twenty-four (24) as if fully set out herein.

26. The New Mexico Constitution Article II, Section 20 states, "Private property shall not be taken or damaged for public use without just compensation".

27. The Plaintiffs' leave regardless of whether it is referred to as sick leave, personal leave or otherwise is property created by the provisions of each teacher's contract and school board policies.

28. The Defendants conduct in preventing the Plaintiffs use of their property right deprives them of those rights without just compensation in violation of Article II, Section 20 of the New Mexico Constitution.

29. An actual controversy exists between the Plaintiffs and the Defendants concerning preventing teachers from using contractual property rights making declaratory relief appropriate.

30. The Plaintiffs are suffering irreparable injury for which there is no adequate remedy at law.

**WHEREFORE**, the Plaintiffs pray that the Court declare that the Defendants use of contractually earned leave as a basis for subtracting points from a teacher's annual evaluation violates Article II, Section 20 of the New Mexico Constitution. The Plaintiffs further pray that the Court enter a permanent injunction prohibiting the Defendants from in any way considering teachers use of earned leave, consistent with Board of Education policies, as a factor in evaluating teacher performance and for such other and further reliefs the Court deems just and proper.

**COUNT II: DAMAGES**

31. The Plaintiff re-allege the allegations contained in paragraphs one (1) through thirty (30) as if fully set out herein.

32. Section 42A-1-29 NMSA 1978, authorizes persons who have had their property taken or damaged by the state without just compensation to pursue a claim for damages.

33. The Defendants through implementation of a teacher evaluation system which prevents teachers from using earned leave, have taken that leave without just compensation.

32. The Plaintiff and each individual member of the class are entitled to damages from the Defendants for the value of their earned leave that they were deprived of as a direct and proximate result of the Defendant's conduct.

**WHEREFORE**, the Plaintiffs pray the Court enter judgment against the Defendants for the value of leave that they were deprived of without just compensation, for cost of this action, attorney's fees and such other and further reliefs the Court deems just and proper.

Respectfully Submitted:

**WARREN F. FROST, P.C.**

Electronically Filed

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