



**2007 CNMI
HIGH SCHOOL MOCK TRIAL
COMPETITION**

CHRIS M.

-v-

CNMI SCHOOL DISTRICT AND TERRY NUN

**(Tentative Dates)
Friday March 9, 2007
And
Saturday March 10, 2007**

**A PROJECT COORDINATED BY THE CNMI BAR ASSOCIATION
2007 MOCK TRIAL COORDINATOR Karen Klaver and Teresa Kim**

INTRODUCTION

Hafa Adai and thank you to all students, teachers, attorneys, and educators/volunteers who will participate in the 9th CNMI High School Mock Trial Competition. The CNMI High School Mock Trial Competition was started in 1999 by the CNMI Bar Association and former Justice Ramon G. Villagomez as a way to bring high school students into the courtroom.

The goals of the competition are:

- To promote and further the understanding and appreciation of the judicial system, court procedures and the legal system;
- To promote better communication and cooperation between the legal and educational communities;
- To improve awareness of current social and legal issues; and
- To provide an education event to support students of all abilities and varying interests.

Dates: The tentative dates for the 2007 Competition are Friday, March 9 and Saturday, March 10, 2006 on Saipan at the Guma Hustisia/ House of Justice in Susupe. We will be qualifying team to represent the CNMI at the national Mock Trial competition in Texas. However, expenses for the team to travel to the national competition are not the responsibility of the CNMI Bar Association.

This year's case is the civil case of Chris M. v. the CNMI School District and Terry Nun. We would like to gratefully thank the creators of the original problem, the D.C. Street Law Project at Georgetown University Law Center and Street Law, Inc. The problem has been modified to suit the CNMI High School Mock Trial competition. The problem is attached as follows:

1. **Statement of Stipulated Facts, Claims and Defenses, Relief Requested**
2. **Applicable Law**
3. **Case Law**
4. **Complaint**
5. **Witness Statements:**
 - Chris Matagolai, Plaintiff
 - Dr. Gerry Aquino Education Testing Specialist
 - Sydney Seman, Office Manager, Bowers & Jenkins law firm
 - Dr. Terry Nun, School Superintendent
 - Leslie Green, teacher, Capitol Hill Senior High School
 - Alex Taitano, student, Capitol Hill Senior High School
6. Exhibits:
 - Bowers & Jenkins Job Application

- Report Cards
- High School Diploma
- Outlook Calendar
- Police Clearance

If there are any questions, please address them to Karen Klaver at 237-3046 (work), 322-7246(home) klaverk@pss.cnmi.mp or karenksaipan@hotmail.com.

We thank you, the educators, and your students for your strong support and interest in the CNMI Mock Trial Competition. We hope that you enjoy participating and find that your involvement is an educational and rewarding experience.

Thank you and Si Yu'us Ma'ase, we look forward to the competition!

Sincerely,

Karen M. Klaver
2007 Mock Trial Coordinator
CNMI Bar Association

**CHRIS M. v. DR. TERRY NUN AND
CNMI SCHOOL DISTRICT**

Statement of Stipulated Facts

Chris Matagolai lives at 2300 14th Street in Capitol Hill, in the island of Saipan, and is a -graduate of Capitol Hill Senior High School. Capitol Hill is a public school within the CNMI School District. Chris has been enrolled in the CNMI's schools since entering kindergarten at the age of five. Chris has progressed from grade to grade and has always at least minimally passed all classes. Chris has never been tested for any learning disabilities, and the standardized test scores indicate an average student. Chris graduated on time and received a high school diploma at the end of the 2005-2006 school year.

Chris' basic skills in reading, writing and arithmetic are extremely weak. The basic skills Chris possesses are so poor that Chris finds it difficult to function adequately in society. Chris has difficulty reading simple books, the newspaper, a menu in a restaurant, writing a simple letter or making sure correct change is given by a store.

Chris has applied for several jobs during the past year and a half and has been unsuccessful in finding and holding a job. Chris has had difficulty in filling out job applications due to poor reading and writing skills. Prospective employers feel Chris cannot handle minimal responsibilities in a job. Chris has also been looking for a full-time job after graduation and has not been able to find one. Chris and Chris' mother believe the inability to find employment is directly related to a lack of basic academic skills.

Claims and Defenses

Chris, through Chris' mother, is suing the CNMI School District for educational malpractice. Educational malpractice is not widely recognized, but is emerging as a new cause of action in jurisdictions. Chris claims the school district has negligently failed in its statutory duty under the CNMI Constitution and Education Code Sections 2097, 2098, 2099, 3500 and 3505 to educate Chris in the basic academic skills. Chris claims the school district has a statutory duty to educate students and to meet the individual needs of students in the school district and has failed to do so in this case. Since Chris has not acquired the basic skills necessary to succeed in society, Chris is unable to find employment and will be unable to provide for basic needs in the future.

The school district claims it has met its duty, which it describes as providing educational opportunities for students enrolled in the schools. Chris had the opportunity to attend school and was exposed to the same educational opportunities as other students who were able to learn and master basic academic skills and more. In addition, the school district states there is no proof that the schools are responsible for Chris' failure to learn, as there are many outside factors that contribute to a student's inability to learn.

Relief Requested

Chris is asking the court to make a finding of educational malpractice and grant injunctive relief. The school district should be ordered to develop a program and policies that meet the needs of individual students so all students graduate from senior high school with at least the ability to perform basic academic skills. In addition, the plaintiff is requesting the sum of \$100, 000 to pay for an individual tutor who would help bring Chris' academic skills up to par, plus attorney fees and court costs.

The defendants are asking the court to find there was no educational malpractice on the part of the defendants and to deny the injunctive or monetary relief sought by the plaintiff.

Witnesses for the Plaintiff

Chris Matagolai, Plaintiff

Dr. Gerry Aquino Education Testing Specialist

Sydney Seman, Office Manager, Bowers & Jenkins law firm

Witnesses for the Defendant

Dr. Terry Nun, School Superintendent

Leslie Green, teacher, Capitol Hill Senior High School

Alex Taitano, student, Capitol Hill Senior High School

Applicable Law

RELATED LAW and STATUTES¹

CNMI Constitution, Art X § 1

It is the goal of the people to establish a system of education that will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person.

CNMI Educ. Code Section 2097: Proficiency Standards for Students

Each school district shall develop proficiency standards which shall include, but need not be limited to, reading comprehension, writing and computation skills in the English language, necessary to success in school and life experience, and shall be such as will enable individual achievement to be ascertained and evaluated. The standards shall be directly related to the district's instructional program.

CNMI Educ. Code Section 2098: Analysis of Individual Needs and Potential

The competent educator shall use or promote the use of appropriate diagnostic techniques to analyze the needs and potential of individuals. Among the techniques to be considered are personal observation, analysis of individual performance and achievement, and specific performance testing.

The competent educator shall use the results of evaluations for planning and program modification, and share the results of evaluation with affected parties.

CNMI Educ. Code Section 2099: Instructional Procedures

Each competent educator shall create an atmosphere that encourages learning, use procedures appropriate to the designated task, and encourage expression of ideas, opinions and feelings.

Each competent teacher shall create interest through the use of appropriate materials and consider the individual interests and abilities of students.

Each competent administrator shall support the process of learning by providing appropriate and reasonable materials and equipment and by making reasonable assignments of tasks.

¹ These are fictitious laws, which may be used, in the mock trial.

CNMI Educ. Code. Section 3500: Highly Qualified Test

Highly Qualified Test: All teacher applicants and current teachers shall submit proof to the CNMI School District that he or she has received a passing grade on the Highly Qualified Teaching Test. The Highly Qualified Teaching test shall apply to every teacher in the CNMI School District. A teacher's failure to take the test or to obtain a passing score shall result in his or her employment contact not being renewed. Beginning August 1, 2004, all teachers employed by the CNMI School District will have taken and passed the Highly Qualified exams in their subject area.

(Educ. Code 3500 adopted April 4, 2003)

CNMI Educ. Code § 3505: Teacher Report Cards

School District must provide annual report cards about teacher qualifications, including the percentage of classrooms in the state not taught by Highly Qualified teachers. Principals must also maintain information about whether or not a school's teachers meet the requirements. Notices must be sent out to parents regarding teachers who are not Highly Qualified.

(Educ. Code 3505 adopted December 28, 2004)

CNMI Educ Code. Section 6215: Student Teacher Ratios:

The CNMI School District is committed to providing quality services to all students. Reduced classroom size is a recognized way to meet this commitment. As such, the school district will meet the student to teacher maximum guidelines for class size instruction. The CNMI School District will meet the following student to teacher guidelines governing class sizes for instruction.

1. Elementary School Class Size: Maximum 25/1
2. Jr. High Schol Class Size. Regular Program: Grades 7-8 Maximum 25/1
3. High School Class Size. Regular Program: Grades 9-12 Maximum 25/1

(Educ Code 6215 adopted July 30, 2006)

57 Am Jur. 2d Municipal and State Tort Liability 577 (2003)

Educational malpractice is the failure to educate a student in basic academic skills and in that failure the school agency breached a duty owed to the student under common law or under constitutional or statutory provisions, or that the school agency was liable for negligently or intentionally misrepresenting that a student was performing at or near grade level in basic academic skills.

CASE LAW*

Jane Smith v. Charlotte School District, 65 A.2d 54 (1988)

Student sued the school district for failing to educate her in the basic academic skills. She graduated from high school with the inability to fill out a job application or do simple mathematical computations. Statutes in the state required school districts to provide analysis of students' individual needs and to develop learning programs which meet these needs. In addition, the state provided for certification of teachers and viewed them as professionals. The court made a finding of educational malpractice based on the school district's failure to meet the requirements of the statutes. The court stated "... public educators are professionals. They hold themselves out as possessing certain skill and knowledge with some minimum degree of competence. In addition, like other professionals, they must often make educated judgments in applying their knowledge to specific individual needs. As professionals, they owe a professional duty of care to children who receive their services and a standard of care based upon customary conduct is appropriate. There can be no question that negligent conduct on the part of a public educator may damage a child by inflicting psychological damage and emotional distress. Moreover, since public educators purport to teach, it follows that some causal relationship may exist between the conduct of a teacher and the failure of a child to learn. Thus, it is possible to maintain a viable tort action against such professionals for educational malpractice."

John W. v Broad School District, 54 Cal. App.3d 822 (1988)

The student sued the school district for failing to educate him because he graduated from high school reading and writing on only a sixth grade level. The court would not entertain any action for educational malpractice, stating "the achievement of literacy in the schools, or its failure, is influenced by a host of factors which affect the pupil subjectively, from outside the formal teaching process and beyond the control of its ministers. These may be physical, neurological, emotional, cultural or environmental. They may be present but not perceived. School authorities may not be able to recognize them nor can schools be held responsible for the failure of parents or the students themselves."

Benson v. Happyville Board of Education, N.E. 2d (July 30, 1986)

Plaintiff- Appellant alleged that school officials promoted him from grade one through grade twelve without teaching him how to read, asserting the teachers nurtured his athletic ability at the expense of his formal education. The court found that school officials should be accountable for plaintiff's injuries resulting from this failure to instruct and their failure to recognize appellant's inability to read. Plaintiff-Appellant was given

* These are fictitious cases, which may be used, in the mock trial. It should be assumed they are not from the CNMI and not binding on this Court.

the chance to prove that, as certified professionals, his teachers and school administrators could have but did not even minimally educate him.

It may be a correct statement of the law today to say, "The overwhelming line of authority maintains that educational malpractice is not actionable." The courts' reluctance to recognize educational malpractice is not surprising considering the obvious difficulties in formulating a workable rule of law and in evaluating educational policy from the standpoint of the individual pupil. However, judicial review of such claims is not completely unmanageable. In fact, such review is compatible with the remedial policy of tort law and the traditional concept of negligence.

Actionable negligence consists of three essential elements: a duty of care, which the defendant owes to the plaintiff, a breach of that duty, and an injury to the plaintiff proximately resulting from the breach. Courts admit that the cause of action could at least be stated "within the strictures of a traditional negligence or malpractice action."

This court feels that as a matter of public policy, the courts should not excuse themselves from addressing alleged failures of our educational system. Judicial review of claims involving decisions made by educators is no more "unmanageable" than review of claims involving decisions made by other professionals, including doctors, lawyers, accountants, or engineers. With the assistance of expert testimony, and other evidence, the judge or jury can determine whether the educator's performance meets the standard of ordinary knowledge and skill in his or her profession. The dilemma of "second guessing" the qualified school teacher does not compel the courts to dismiss on motion the claim of a pupil who was graduated without being taught to read.