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2 **FOR PUBLICATION**
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7 **IN THE SUPERIOR COURT**
8 **FOR THE**
9 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

10 **JACK ANGELLO,**) **SMALL CLAIMS NO. 03-1113**
11)
12 Plaintiff,)
13 v.) **ORDER**
14 **KENNETH WRIGHT, NMC PRESIDENT;**)
15 **AND NORTHERN MARIANAS COLLEGE,**)
16 Defendants.)
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18 This matter came before the Court on March 26, 2004, at 9:00 a.m. in Courtroom 220A of
19 the Guma Hustisia, on Defendants’ Motion to Dismiss and for trial. Plaintiff Jack Angello
20 (“Angello”) appeared personally and *pro se*.¹ Jesus C. Borja, Esq., appeared on behalf of
21 Defendants Kenneth Wright, as NMC President, and Northern Marianas College (collectively
22 “NMC”).
23

24 **I. FACTS**

25 Angello’s son is twelve years old and has attended NMC’s laboratory school since 1996.

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¹ As a matter of standing, the Court notes that, although Angello asserted the constitutional rights of his son, he did not
27 expressly state that he was also appearing on his son’s behalf. Nevertheless, the Court treats Angello’s appearance as
28 that of a guardian on behalf of his child, consistent with Commonwealth Rule of Civil Procedure 17, which provides that
a “guardian . . . may sue in that person’s own name without joining the party for whose benefit the action is brought.”
Com. R. Civ. P. 17(a)

1 He is currently enrolled in the seventh grade and has been charged with tuition and fees. Angello
2 has paid for his son's tuition and fees. NMC's Laboratory School is administered by NMC.
3

4 **II. ISSUES**

- 5 A. Whether this Court, acting as a small claims court, has jurisdiction over Plaintiff's claim for
6 a refund of tuition and fees paid when his Complaint seeks a judgment for \$2,990 yet
7 Plaintiff submits evidence of additional costs he incurred that, if included with the tuition
8 and fees figure, would surpass the \$3,000 limit under Com.R.Civ.P. 83(a).
- 9 B. Whether Plaintiff's son, a person living in the Northern Mariana Islands who falls within the
10 age and educational levels defined by the Commonwealth Legislature that would
11 constitutionally and statutorily entitle him to a free elementary and secondary education,
12 is entitled to a free elementary and secondary education from NMC, thereby entitling
13 Plaintiff to reimbursement for the tuition and fees he paid for his son.

12 **III. ANALYSIS**

13 **A. Small Claim Jurisdiction Was Not Lost By Virtue of Angello's Filing of Additional 14 Evidence.**

15 NMC moves to dismiss Angello's small claims complaint for lack of jurisdiction based on
16 its review of Angello's complaint for \$2,990 for tuition and fees, and Angello's supplemental
17 evidence. The supplemental evidence includes paid receipts worth more than \$10 for supplies
18 Angello purchased for his son's NMC Lab School projects.
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20 Rule 83 of the Commonwealth Rules of Civil Procedure limits small claims to "any civil
21 action within the jurisdiction of the court, involving a claim the value of which is three thousand
22 (\$3,000.00) dollars or less, exclusive of interest, attorneys' fees, and costs." Com. R. Civ. P. 83(a).

23 It is true that if the value of the paid receipts is added to the tuition and fees claimed in this case, this
24 Court would lose jurisdiction and this Court would have to dismiss Angello's claim. However,
25 Angello stated in his opposition and at the hearing that he is not asserting a claim for reimbursement
26 for these purchases of school supplies. Furthermore, in Angello's Memorandum of Complaint,
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1 Angello's monetary prayer for relief is limited to tuition and fees spent which total \$2,990, and
2 Angello also provided a copy of NMC's statements to show the basis for the total. Based on the
3 foregoing, this Court finds Angello's claim is below the \$3,000 limit, and therefore concludes that
4 it has not lost jurisdiction over Angello's claim for reimbursement. Accordingly, NMC's motion
5 to dismiss for lack of jurisdiction is denied.
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7 **B. A Person's Right To a Free Public Elementary and Secondary Education Under the**
8 **Commonwealth's Constitution and Statute Does Not Entitle a Person To a Free**
9 **Elementary and Secondary Education From the Northern Marianas College Laboratory**
10 **School.**

11 Angello's claim to reimbursement for the tuition and fees he paid to NMC for his son's
12 education is based on his assertion of his son's right to a free public elementary and secondary
13 education as provided by the Commonwealth Constitution and statutes. Section 1 of Article XV of
14 the Commonwealth Constitution addresses elementary and secondary education in the
15 Commonwealth. In relevant parts, Section 1 of Article XV states:

16 a) *Every person in the Northern Mariana Islands has the right to free,*
17 *compulsory and public elementary and secondary education within age and*
18 *educational levels provided by law. . . .*

19 b) *Administration of the public elementary and secondary education*
20 *system of the Commonwealth shall be the responsibility of a superintendent of*
21 *education appointed by a representative board of education. The board of*
education shall formulate policy and exercise control over the public school
system through the superintendent.

22 N.M.I. Const. art. XV, § 1(a) & (b) (emphasis added).

23 In 1988, the Commonwealth Legislature passed Public Law 6-10, the "Education Act of
24 1988," codified at 3 CMC §§ 1101 et seq., to repeal existing law and to enact provisions to conform
25 to the 1985 Constitutional Amendment No. 38, which amended Article XV of the Constitution.²
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27 _____
28 ² Article XV of the Commonwealth's Constitution originally provided as follows:

1
2 Section 1: Education.

- 3 a) Every person in the Northern Mariana Islands shall have the right to free, compulsory and public
4 elementary and secondary education within age and educational levels provided by law.
5 b) There shall be higher education and adult education within the Northern Mariana Islands
6 consistent with the needs and resources of the people as provided by law.

7 In 1985, the Constitution was amended by the Second Constitution Convention Amendment 38, and so Article XV
8 now reads in its entirety (with emphasis added) as follows:

9 **Section 1: Elementary and Secondary Education.**

10 a) *Every person in the Northern Mariana Islands has the right to free, compulsory and public*
11 *elementary and secondary education within age and educational levels provided by law.* The educational
12 system shall provide maximum educational and training opportunities and be sensitive and responsive to the
13 needs and desires of the community as it pursues its central objective of developing human potential. The
14 educational system shall also provide support and guidance for students in assessing areas of interest and
15 ability, in clarifying values and goals, and in providing students with clear and accurate information so they
16 may gain the most from their educational experience. The educational system shall recognize the distinct and
17 unique cultural heritage and indigenous way of life of the people and shall be committed to provide for the
18 language needs of the people and the preservation of their cultural integrity within a global community.

19 b) *Administration of the public elementary and secondary education system of the Commonwealth shall*
20 *be the responsibility of a superintendent of education appointed by a representative board of education.*
21 The board of education shall formulate policy and exercise control over the public school system through the
22 superintendent. Other matters pertaining to its operations and duties shall be provided by law.

23 c) The board of education shall have five members, elected at large on a non-partisan basis as follows: one
24 from the first senatorial district, one from the second senatorial district and three from the third senatorial
25 district. Elected members of the board of education shall serve terms of four years except that the terms of the
26 first members elected shall be determined by drawing of lots with three members serving a term of four years
27 and two members serving a term of two years. The governor shall appoint three nonvoting ex-officio
28 members to the board of education: one member shall be a student attending a public school; one member
shall be a representative of nonpublic schools; and one member selected by an exclusive bargaining
representative of the teachers within the Department of Education. Elected members of the board shall serve
commencing on the second Monday of January in the year following the regular general election at which
they were elected.

d) A member of the board of education shall be qualified to vote in the Commonwealth, at least twenty-five
years of age, and a resident and domiciliary of the Commonwealth for at least five years immediately
preceding the date on which the member takes office. A longer residency and domicile requirement may be
provided by law.

e) The public elementary and secondary education system shall be guaranteed an annual budget of not less
than fifteen percent of the general revenues of the Commonwealth. The budgetary appropriation may not be
rerogrammed for other purposes, and any unencumbered fund balance at the end of a fiscal year shall be
available for reappropriation.

24 **Section 2: Higher and Adult Continuing Education.**

25 a) The legislature shall establish by law a Northern Marianas College that shall be headed by a president.
26 The president of the college shall be appointed by a representative board of regents. The board of regents
27 shall be appointed to staggered terms by the governor and shall have autonomy in the administration of its
28 affairs and shall formulate policy relating to the higher education needs of the Commonwealth of the Northern
Mariana Islands. The composition of the board of regents and other matters pertaining to its operations and
duties shall be provided by law.

b) The mission of the college shall be to provide the best quality and meaningful postsecondary and adult
educational opportunities for the purpose of improving the quality of life for the individual and for the
Commonwealth as a whole. The college shall be responsible for providing education in the areas of adult and

1 “Every person within the Northern Mariana Islands who is between the ages of six and 16 has the
2 right to *free public education*.” 3 CMC § 1102(a) (emphasis added). Angello argues that because
3 NMC’s Laboratory School is funded by taxpayers’ money, the Lab School is a public elementary
4 and secondary education institution and, therefore, cannot charge tuition and fees because of Article
5 XV of the Commonwealth Constitution and 3 CMC § 1102(a).
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7 Article XV of the Constitution, as amended, created an elected Board of Education and gave
8 it the responsibility to administer the “public elementary and secondary education system” in which
9 every person within the age and educational levels identified by the legislature is entitled to a free
10 education. N.M.I. Const. art. XV, § 1(b) & (c). At the same time, Article XV, as amended, created
11 Northern Marianas College, N.M.I. Const. art. XV, § 2(a), and gave the College the responsibility
12 “for providing education in the areas of adult and continuing education, postsecondary and adult
13 vocational education and professional development for the people of the Commonwealth.” N.M.I.
14 Const. art. XV, § 2(b).
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17 This Court understands Angello’s simple reasoning that, because NMC’s Laboratory School
18 receives public funds and is supported by the Commonwealth government, the Lab School can be
19 seen as a “public school” and as a “public school,” it can be expected to provide a free education.
20 However, based on a review of the plain terms of Section 1(a) and 1(b) of Article XV of the
21 Commonwealth Constitution, and the joint reading of the two subsections, this Court concludes that
22 the NMC Lab School is not a “public school” within the meaning of Article XV. The ANALYSIS OF
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26 continuing education, postsecondary and adult vocational education and professional development for the
people of the Commonwealth.

27 c) The college shall be guaranteed an annual budget of not less than one percent of the general revenues of
the Commonwealth. The budgetary appropriation may not be reprogrammed for other purposes, and any
28 unencumbered fund balance at the end of a fiscal year shall be available for reappropriation.

1 THE CONSTITUTION OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (1976)
2 (“ANALYSIS”) also supports this conclusion. In defining the terms “free” and “public” as used in
3 the original Article XV, Section 1(a) (which remained essentially the same in the amended Article
4 XV), the ANALYSIS defines them to mean:

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6 that schools supported by the government *will be available to the extent needed* and
7 that students will not have to pay a fee to attend school. *This section requires public*
8 *schools only to the extent necessary.* If most children attend private schools, the
9 government must supply schools sufficient to provide an education only for the
10 number of children who are not enrolled in private schools.

11 ANALYSIS at 184 (emphasis added). The free public schools that are mandated under Article XV,
12 Section 1(a) are the schools that are made available “*to the extent needed,*” and “*only to the extent*
13 *necessary.*” Such needed and necessary free public schools are those within the public school
14 system controlled by the Board of Education and administered through the superintendent of
15 education, which is statutorily defined as the Commissioner. *See* 3 CMC §§ 1103, 1104(b). The
16 NMC laboratory school is not a “public school” within the meaning of Article XV. It was not
17 created to satisfy any of the mandatory programs of Article XV, Section 1, but rather, to satisfy the
18 mandates of Article XV, Section 2. The NMC Laboratory School was not created to meet the
19 requirement for “needed” and “necessary” public schools of the Commonwealth. It was specifically
20 created “for the purpose of teacher training.” 3 CMC § 1306; *see also*, Angello’s Mem. of
21 Complaint, Ex. 3 (“the College Lab School was designed and developed *to offer NMC students a*
22 *venue for observation and practice in teaching experiences* in grade K4 through grade eight”)
23 (emphasis added). Based on the specific delegation of responsibilities and the intended purpose
24 provided for in the Constitution and described in the ANALYSIS, Angello’s reasoning fails.

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27 Angello further argued that statutorily, NMC’s Lab School is a public school and therefore,
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1 his claim is still valid. However, when Section 1102(a) of Title 3 was enacted by Public Law 6-10,
2 the Legislature specifically noted that it was “[a]n Act To repeal P.L. 3-43 *to conform to*
3 *Constitutional Amendment No. 38.*” PL 6-10 (title) (emphasis added). There is no evidence to
4 demonstrate that this statute was intended to grant more rights than those provided for in Article XV
5 of the Commonwealth Constitution.
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7 Furthermore, when the Commonwealth Legislature statutorily created NMC’s Laboratory
8 School, the original provision of Section 1306 of Title 3 stated as follows:
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10 The college is hereby *authorized to establish* a laboratory school within the
11 College for the purpose of teacher training. *The College shall administer and*
12 *operate the laboratory school in conformity with the public schools policy*
13 *adopted by the Board of Education.* A laboratory school as used in this
14 chapter means a model school or classroom where new teaching methods,
15 techniques and skills may be implemented and where teachers and college
16 students are trained under monitored conditions.

17 PL 8-18 § 6, codified at 3 CMC § 1306 (emphasis added). In 1995, the Legislature amended Section
18 1306 to include the words “administer and operate” within the first sentence and to delete the entire
19 second sentence which required the College to conform to the Board of Education’s policy. *See* PL
20 9-53 § 5. Section 1306 now reads as follows:

21 The college is hereby *authorized to establish, administer and operate* a
22 laboratory school within the college for the purpose of teacher training. A
23 laboratory school as used in this chapter means a model school or classroom
24 where new teaching methods, techniques and skills may be implemented, and
25 where teachers and college students are trained under monitored conditions.

26 3 CMC §1306 (emphasis added). By repealing the language in Section 1306 which mandated the
27 College to comply with the Board of Education’s policy, the CNMI Legislature left NMC with
28 autonomous authority to administer its laboratory school program as it sees fit, independent from

1 the Board of Education.³ The 1995 Legislative amendment to Section 1306 is also consistent with
2 the statutory provisions at 3 CMC §§ 1311, *et seq.*, which established a Board of Regents for NMC
3 and vested independent authority in that Board to manage the College and its programs.
4 Furthermore, it is consistent with the provision of Article XV, Section 2 (a) of the Commonwealth
5 Constitution which provides that the Board of Regents “shall have autonomy in the administration
6 of its affairs.” N.M.I. Const. art. XV, § 2(a). Based on the foregoing, distinct Constitutional
7 authority entrusted to the Board of Education and to the Board of Regents, this Court finds that a
8 person’s Constitutional right to a *free elementary and secondary education* from the Board of
9 Education and the public school system that it administers, and the Legislative mandate that a person
10 has the right to *free public education*, do not prohibit NMC from imposing tuition and fees on the
11 elementary and secondary education students attending its Laboratory School.
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15 Finally, Angello argued that NMC’s Lab School must be either a public school or a private
16 school, and that in either case, it must be chartered by the Board of Education. However, the
17 Legislature never addressed schools as being either a public school or a private school, but rather,
18 a public school or a nonpublic school. In 1998, the Legislature, in defining the age group subject
19 to *the compulsory* requirement of Article XV of the Constitution, declared that “[e]very person
20 between the ages of six and 16 shall attend *a public school or nonpublic school* until the completion
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23 ³ The legislative findings to PL 9-53, which amended 3 CMC § 1306, reveals that, in granting autonomy to the College’s
24 Board of Regents, the Legislature was concerned primarily with preserving the College’s accreditation. Those findings
25 read in their entirety as follows:

26 The Legislature finds that protecting the accreditation of the Northern Marianas College is of
27 paramount importance to the transferability of credits earned by students at the College, to the
28 eligibility of those students for Federal financial aid, and to the continued eligibility of the College to
receive Federal grant funding. *The Legislature further finds that maintaining the autonomy of the
Board of Regents in its constitutional and legally mandated duties, and of the College's Board
approved personnel policies is essential to the maintenance of the College's accreditation.*

PL 9-53, § 2 (“Findings”) (emphasis added).

1 of the eighth grade.” 3 CMC § 1141. Section 1141 previously stated that “[e]very person between
2 the ages of six and sixteen shall attend *public school or a chartered non-public school* until the
3 completion of the eighth grade.” PL 6-10, § 1. The Legislature also previously established
4 procedures for establishing or operating a non-public school. *See* 3 CMC § 1171, repealed by PL
5 11-32, § 2(b). However, the Legislature repealed those provisions to allow non-public schools to
6 “act in an independent manner and [to allow] the Board of Education to focus their energies and
7 resources on their primary area of responsibility, the public school system.” PL 11-32, § 1
8 (“Statement of Purpose”). Nevertheless, the definition of a non-public school remained the same.
9 The Legislature defined “non-public school” as “any school, other than a public school, within the
10 Commonwealth, wherein a resident of the Commonwealth may legally fulfill the compulsory school
11 attendance requirements of the Commonwealth.” 3 CMC § 1174(b).

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15 While the Lab School is open to the public by virtue of the College’s *self-imposed*
16 admissions policies, it is not entirely public, insofar as it has a limited enrollment. It is also worth
17 noting that nowhere in 3 CMC § 1306 is it stated that the laboratory school was *intended* by the
18 Legislature to be *open to the public*, and in fact, the word “public” is not contained anywhere within
19 the text of that statute. Just as NMC has the ability to deny admission to Angello’s child, or to
20 change its policies to make admission into the program more stringent, it has the ability to assess
21 tuition and fees as it sees fit. The Northern Marianas College has not interfered with Angello’s son’s
22 constitutional and statutory right to a free, public education. If Angello prefers, he can withdraw
23 his son from NMC’s laboratory school and enroll him in the Commonwealth’s public schools, which
24 are administered by the Board of Education, to give him his right to a free public education. In
25 short, Angello’s child has not been denied a free, public education. Angello has simply opted out
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1 of it voluntarily by enrolling at the NMC Lab School, in much the same way that some parents opt
2 in favor of private schooling. Based on the foregoing, this Court finds that NMC's Laboratory
3 School is a nonpublic school under 3 CMC § 1174(b).⁴
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5 This Court is also of the opinion that any other interpretation of Article XV and the statutes
6 enacted in furtherance thereof would directly contradict the consistent emphasis that has been placed
7 in the Constitution and elsewhere on the autonomy to be provided to the College in managing its
8 affairs. If NMC is required by this Court to forego the assessment of fees for the continued
9 operation of its laboratory school program, it could choose to dissolve the program altogether. This
10 Court cannot interpret the Legislature's action of statutorily establishing the laboratory school
11 program as an attempt to strip the College of its powers of management, or to hamper the College
12 in its efforts to pursue its stated mission under the Commonwealth Constitution: "to provide the best
13 quality and meaningful postsecondary and adult educational opportunities for the purpose of
14 improving the quality of life for the individual and the Commonwealth as a whole." N.M.I. Const.
15 art. XV, § 2 (b).
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19 **IV. CONCLUSION**

20 For the foregoing reasons, Defendants' MOTION TO DISMISS for lack of jurisdiction is
21 DENIED. However, Defendant's Motion to Dismiss for failure to state a claim is GRANTED. This
22 case is dismissed with prejudice. Each party shall bear its own attorney fees and costs.
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24 SO ORDERED this 7th day of April 2004.
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26 ⁴ Angello raised the fact that the NMC Lab School has never been chartered as previously mandated by law. This fact
27 does not make the Lab School a public school. It only bears on the Lab School's certification of complying with the
28 Board of Education's general mandate of ensuring that all students subject to Article XV's compulsory education
requirement satisfy the Board's minimum standards. See 3 CMC 1171(c), repealed by PL 11-32, §2(b) ("[t]he applicant
shall satisfy the Board that the proposed school or program meets standards of the Commonwealth.")

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/s/ _____
RAMONA V. MANGLONA, Associate Judge