

05-1508 ZUNI PUBLIC SCHOOL DIST. NO. 89 V. DEPT. OF EDUCATION

DECISION BELOW:437 F3d 1289

LOWER COURT CASE NUMBER: 01-9541

QUESTIONS PRESENTED:

The Federal Impact Aid Program, 20 U.S.C. § 7709, was enacted to subsidize local State school districts which have a federal presence within the district such as military bases or, as in the present case, Indian Reservations. These local districts are not able to tax such federally impacted lands. The Impact Aid Program prohibits the State from counting these federal subsidies as part of an impacted district's budget when the State allocates operational funds to the local districts, unless the State's operational funding to districts throughout the State is "equalized" under an equalization formula under the Impact Aid Program. If the State's operational funding is determined to be "equalized," the State can reduce operational funding to an impacted district by the amount of the Impact Aid subsidy

In 1994, the equalization formula was statutorily created and effectively repealed the equalization formula previously created by the Secretary of the United States Department of Education by regulation. However, in 1996, the Secretary, by regulation, reinstated his repealed and conflicting equalization formula and refuses to follow Congress' equalization formula. Under Congress' formula, New Mexico is not "equalized" and the intended beneficiaries receive the Impact Aid. Under the Secretary's formula, New Mexico is deemed "equalized" and the Impact Aid is taken from the impacted districts. The impacted districts are losing approximately \$50,000,000 per year in Impact Aid. The Tenth Circuit was split 6 to 6 on the question, leaving the Secretary's formula in effect.

The question presented is:

1. Whether the Secretary has the authority to create and impose his formula over the one prescribed by Congress and through this process certify New Mexico's operational funding for fiscal year 1999- 2000 as "equalized," thereby diverting the Impact Aid subsidies to the State and whether this is one of the rare cases where this Court should exercise its supervisory jurisdiction to correct a plain error that affects all State school districts that educate federally connected children.

CERT. GRANTED 9/26/2006