

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

FILED  
CHARLOTTE, N. C.

MAY 28 1999

U. S. DISTRICT COURT  
W. DIST. OF N. C.

WILLIAM CAPACCHIONE, Individually )  
and on Behalf of CRISTINA CAPACCHIONE, )  
a Minor, )

Plaintiff, )

v. )

CHARLOTTE-MECKLENBURG SCHOOLS )  
et al., )

Defendants. )

3:97-CV-482-P

JAMES E. SWANN et al., )

Plaintiffs, )

v. )

CHARLOTTE-MECKLENBURG BOARD )  
OF EDUCATION et al., )

Defendants. )

3:65-CV-1974-P

MICHAEL P. GRANT et al., )

Plaintiff-Intervenors, )

v. )

CHARLOTTE-MECKLENBURG BOARD )  
OF EDUCATION et al., )

Defendants. )

ORDER

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**THESE MATTERS** are before the Court on CMS's Motion for Partial Judgment as a Matter of Law [document no. 174, filed May 11, 1999] and the Swann Plaintiffs' Motion for Directed Verdict [document no. 176, filed May 11, 1999].

At the conclusion of the Plaintiff-Intervenors' evidence, CMS and the Swann Plaintiffs both filed motions to dismiss the various claims of the Plaintiff-Intervenors. The Court will reserve ruling on most of these arguments because they involve factually justiciable issues or they involve issues where an immediate ruling will not reduce significantly the remaining amount of testimony.


With regard to actual damages, however, the Court finds that the Plaintiff-Intervenors have not satisfied their factual burden of proof under Price v. City of Charlotte, 93 F.3d 1241, 1248-57 (4th Cir. 1996), cert. denied, 520 U.S. 1116 (1997). The Plaintiff-Intervenors only presented conclusory statements that their children suffered emotional distress; none of the Plaintiff-Intervenors ever sought medical or psychological treatment for their children. Moreover, the alleged injuries did not flow from the alleged equal protection violation. Therefore, the Plaintiff-Intervenors are not entitled to actual damages, and CMS need not present any rebuttal witnesses on this issue.

The Court will reserve ruling on whether a declaration of unitary status, nominal damages, and injunctive relief are appropriate after all the parties have presented their evidence and submitted their post-trial briefs.

**NOW, THEREFORE, IT IS ORDERED** that CMS's Motion for Partial Judgment as a Matter of Law be, and hereby is, **GRANTED IN PART AND DENIED IN PART**.

**IT IS FURTHER ORDERED** that the Swann Plaintiffs' Motion for Directed Verdict be, and hereby is, **GRANTED IN PART AND DENIED IN PART**.

This the 28th day of May 1999.

  
ROBERT D. POTTER  
SENIOR UNITED STATES DISTRICT JUDGE

United States District Court  
for the  
Western District of North Carolina  
May 28, 1999

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 3:97-cv-00482

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Bureau of Prisons ( )  
Court Reporter ( )  
Courtroom Deputy ( )  
Orig-Security ( )  
Bankruptcy Clerk's Ofc. ( )  
Other \_\_\_\_\_ ( )

Date: 5/28/99

Frank G. Johns, Clerk

By:   
Deputy Clerk

United States District Court  
for the  
Western District of North Carolina  
May 28, 1999

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Re: 3:65-cv-01974

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