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**IN THE
HO-CHUNK NATION TRIAL COURT**

**In the Interest of Minor Child: J.M.T.,
DOB 04/08/1997,
By Juanita Faye Tracy,
Petitioner,**

v.

Case No.: CV 11-25

**Ho-Chunk Nation Office of Tribal
Enrollment,
Respondent.**

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**ORDER
(Petition Denied Without Prejudice)**

INTRODUCTION

This case concerns whether the parent, Juanita Faye Tracy, can access monies on behalf of her minor child, J.M.T., DOB 04/08/1997, from the Children's Trust Fund (hereinafter CTF) to pay for costs associated with private school tuition. The Court employs the standard enunciated in the PER CAPITA DISTRIBUTION ORDINANCE (hereinafter PER CAPITA ORDINANCE), 2 HCC § 12.8c to assess the merit of the parent's request. The analysis and holding of the Court follow below.

PROCEDURAL HISTORY

The petitioner, Juanita Faye Tracy, initiated the current action by filing the March 25, 2011 *Petition for Release of Per Capita Distribution* (hereinafter *Petition*). Consequently, the Court issued a *Summons*, accompanied by the above-mentioned *Petition*, on March 25, 2011, and

1 served the documents upon the respondent's representative, Ho-Chunk Nation Department of
2 Justice (hereinafter DOJ),¹ by personal service as permitted by *HCN R. Civ. P. 5(C)(1)*. The
3 *Summons* informed the respondent of the right to file an *Answer* within twenty (20) days of the
4 issuance of the *Summons* pursuant to *HCN R. Civ. P. 5(A)(2)*. The *Summons* also cautioned the
5 respondent that a *default judgment* could result from failure to file within the prescribed time
6 period.
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8 The respondent, by and through DOJ Attorney Paul Rosheim, timely filed *Notice and*
9 *Motion to Dismiss* along with *Respondent's Answer and Motion to Dismiss* on April 13, 2011,
10 asking the Court to dismiss the *Petition*. In response, on April 21, 2011, the Court issued an
11 *Order* scheduling a *Motion Hearing* to allow the respondent to argue its *Motion to Dismiss*. On
12 April 21, 2011, the Court issued a *Notice of Hearing* to the parties informing them of the date,
13 time, and location of the *Motion Hearing*. On May 10, 2011, the petitioner filed an untimely
14 *Response to Motion to Dismiss* along with several attachments. The Court convened the *Motion*
15 *Hearing* on May 10, 2011 at 1:30 p.m. CDT. The following parties appeared at the *Motion*
16 *Hearing*: Juanita Faye Tracy, petitioner, and DOJ Attorney Paul Rosheim, respondent's counsel.
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20 APPLICABLE LAW

21 PER CAPITA DISTRIBUTION ORDINANCE, 2 HCC § 12

22 Subsec. 8. Minors and Other Legal Incompetents.

23 a. The interests of minors and other legally incompetent Members, otherwise entitled to
24 receive per capita payments, shall, in lieu of payments to such minor or incompetent Member, be
25 disbursed to a Children's Trust Fund which shall establish a formal irrevocable legal structure for
26 such CTFs approved by the Legislature as soon after passage of this Ordinance as shall be
27 practical, with any amounts currently held by the Nation for passage for the benefit of minor or

28 ¹ The *Ho-Chunk Nation Rules of Civil Procedure* (hereinafter *HCN R. Civ. P.*) permit the Court to serve the *Complaint* upon the DOJ when the plaintiff/petitioner names as a party a unit of government or enterprise. *HCN R. Civ. P. 27(B)*.

1 legally incompetent Members, and all additions thereto pending approval and establishment of
2 such formal irrevocable structure, to be held in an account for the benefit of each such Member-
3 beneficiary under the supervision of the Trial Court of the Nation. Trust assets of such CTFs
4 shall be invested in a reasonable and prudent manner, which protects the principal and seeks a
5 reasonable return.

6 b. Education Criterion.

7 (1) The trust assets of each such account maintained for a minor shall be disbursed to
8 the Member-beneficiary thereof upon the earlier of (i) said Member-beneficiary meeting the dual
9 criteria if [*sic*] (a) reaching the age of eighteen (18) and (b) producing evidence of personal
10 acquisition of a high school diploma to the Department of Enrollment (HSED, GED or any
11 similar substitute shall not be acceptable), or (ii) the Member reaches the age of twenty-five (25);
12 provided that this provision shall not operate to compel disbursement of funds to Members
13 legally determined to be incompetent. In the event a Member, upon reaching the age of eighteen
14 (18) does not produce proof of personal acquisition of a high school diploma, such Member's per
15 capita funds shall be retained in the CTF account and any and all per capita distributions payable
16 to said Member after reaching age 18 will be added to such fund and not be paid to the
17 Member[,] and the CTF account and [*sic*] shall be held on the same terms and conditions applied
18 during the Member-beneficiary's minority until the earliest to occur: (1) the Member produces
19 the required diploma; (2) the Member reaches the age of twenty-five (25); or (3) the Member is
20 deceased.

21 c. Funds in the CTF of a minor or legally incompetent Member may be available for the
22 benefit of a beneficiary's health, education, and welfare when the needs of such person are not
23 being met from other Tribal funds or other state or federal public entitlement programs, and upon
24 a finding of special need by the Ho-Chunk Nation Trial Court. In order to request such funds,
25 the following provisions apply:

26 (1) A written request must be submitted to the Trial Court by the beneficiary's parent
27 or legal guardian detailing the purpose and needs for such funds.

28 (2) The parent or legal guardian shall maintain records and account to the Trial Court
in sufficient detail to demonstrate that the funds disbursed were expended as required by this
Ordinance and any other applicable federal law.

(3) Any other standards, procedures, and conditions that may be subsequently
adopted by the Legislature consistent with any applicable federal law shall be met.

HO-CHUNK NATION RULES OF CIVIL PROCEDURE

Rule 5. Notice of Service of Process.

(A) Definitions.

1 2. Summons - The official notice to the party informing him/her that he/she is identified
2 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See*
3 *HCN R. Civ. P. 6*) and that a *Default Judgment* may be entered against them if they do not file an
4 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case
5 number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and
6 shall be served with a copy of the filed *Complaint* attached.

7 (C) Methods of Service of Process.

8 1. Personal Service. The required papers are delivered to the party in person by the
9 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any
10 other person not a party to the action who is eighteen (18) years of age or older and of suitable
11 discretion.

12 3. After the first successful service of process, the Court and the parties will then perform
13 all written communications through regular mail at that address. Therefore, each party to an
14 action has an affirmative duty to notify the Court.

15 Rule 27. The Nation as a Party.

16 (B) Civil Actions. When the Nation is filing a civil suit, a writ of mandamus, or the Nation is
17 named as a party, the *Complaint* should identify the unit of government, enterprise or name of
18 the official or employee involved. The *Complaint*, in the case of an official or employee being
19 sued, should indicate whether the official or employee is being sued in his or her individual or
20 official capacity. Service can be made on the Ho-Chunk Nation Department of Justice and will
21 be considered proper unless otherwise indicated by these rules, successive rules of the Ho-Chunk
22 Nation Court, or Ho-Chunk Nation Law.

23 Rule 58. Amendment to or Relief from Judgment or Order.

24 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
25 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*
26 must be based on an error or irregularity that prevented a party from receiving a fair trial or a
27 substantial legal error that affected the outcome of the action.

28 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
conclusions or make additional findings or conclusions, amending the judgment accordingly.
The motion may be made with a motion for a new trial. If the Court amends the judgment, the
time for initiating an appeal commences upon entry of the amended judgment. If the Court
denies a motion filed under this Rule, the time for initiating appeal from the judgment
commences when the Court denies the motion on the record or when an order denying the
motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
motion, and the Court does not decide a motion under this Rule or the judge does not sign an
order denying the motion, the motion is considered denied. The time for initiating the appeal
from judgment commences in accordance with the *Rules of Appellate Procedure*.

1 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*
2 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*
3 must be based upon new information that has come to the party's attention that, if true, could
4 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify
5 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal
6 commences upon entry of the modified judgment. If the Court denies a motion filed under this
7 Rule, the time for initiating an appeal from the judgment commences when the Court denies the
8 motion on the record or when an order denying the motion is entered, whichever occurs first. If
9 within thirty (30) calendar days after the filing of such motion, and the Court does not decide the
10 motion or the judge does not sign an order denying the motion, the motion is considered denied.
11 The time for initiating an appeal from judgment commences in accordance with the *Rules of*
12 *Appellate Procedure*.

9 (D) Erratum Order or Re-issuance of Judgment. Clerical errors in a Court record, including the
10 *Judgment* or *Order*, may be corrected by the Court at any time.

11 (E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a
12 party made within a reasonable time for the following reasons: (1) newly discovered evidence
13 which could not reasonably have been discovered in time to request a new trial; (2) fraud,
14 misrepresentation or serious misconduct of another party to the action; (3) good cause if the
15 requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii), did not
16 have proper service and did not appear in the action; or (4) the judgment has been satisfied,
17 released, discharged or is without effect due to a judgment earlier in time.

16 Rule 61. Appeals.

17 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme Court. The
18 *Appeal* must comply with the *Rules of Appellate Procedure*, specifically *Rules of Appellate*
19 *Procedure*, Rule 7, Right of Appeal. All subsequent actions of a final *Judgment* or Trial Court
20 *Order* must follow the *Rules of Appellate Procedure*.

21 **FINDINGS OF FACT**

- 22 1. The parties received proper notice of the May 10, 2011 *Motion Hearing*.
- 23 2. The minor child, J.M.T., DOB 04/08/1997, is an enrolled member of the Ho-Chunk
24 Nation, Tribal ID No. 439A006470.
- 25 3. The petitioner and mother of the minor child, Juanita Faye Tracy, is an enrolled member
26 of the Ho-Chunk Nation, Tribal ID# 439A005451, and maintains a mailing address of 4110 W.
27 8th Court, Wisconsin Dells, WI 53965. *Pet.* at 2.

1 4. The petitioner requested a release of CTF monies for costs associated with private
2 schooling:

3 St. Mary's High School
4 113 Duke of Gloucester Street
5 Annapolis, MD 21401

6 *Pet.* at 4.

7 5. Tuition for St. Mary's High School is \$13,220.00 per year. There is also a \$1,000.00
8 registration fee and a \$535.00 activity, campus ministry, PFA and retreat fee. *Pet.* at 5

9 6. St. Mary's High School awarded the petitioner \$3,966.00 in tuition assistance to be
10 deducted from the total tuition cost. *Id.*

11 7. The HCN Tuition Assistance program has approved \$2,500.00 for the benefit of J.M.T.
12 every year since she was in kindergarten. *Id.* If this assistance is approved again the petitioner is
13 requesting a total of \$8,289.00 from the minor child's CTF. *Id.*

14 8. According to the petitioner's 2010 tax return, her total annual income is \$49,256.00. The
15 petitioner's husband has been unemployed for about a year. *Pet.* at 5. However, the petitioner's
16 husband has gone back to work for a carpet cleaning and restoration business in Maryland. *Mot.*
17 *Hr'g* (LPER at 6, May 10, 2011, 02:04:30 CDT)

18 9. The federal poverty level for a family of four (4) is \$22,350.00 per year. 76 Fed. Reg.
19 3,637 (Jan. 20, 2011).

20 10. The petitioner owns a home in Wisconsin Dells valued around \$325,000.00. The
21 petitioner's monthly mortgage payment is currently around \$1,555.00. *Mot. Hr'g* (LPER at 13,
22 May 10, 2011, 02:26:52 CDT).

1 11. Real estate agents advised the petitioner not to sell the property until the local real estate
2 market recovered, as the petitioner would likely not be able to sell the home for its value. *Id.*
3 02:29:00 CDT.

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5 12. The respondent recommended that the Court deny the petitioner's request for monies
6 associated with the private schooling. *Id.* at 18, 02:46:13 CDT.

8 DECISION

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10 The Court applies a four-part test when determining the circumstances under which it
11 would grant a release of monies from the CTF account of a minor tribal member. *See In the*
12 *Interest of Minor Child(ren): V.D.C., DOB 10/03/84, et al., by Debra Crowe v. HCN Office of*
13 *Tribal Enrollment, CV 00-25 (HCN Tr. Ct., Apr. 6, 2001) at 7 (citing In the Interest of Minor*
14 *Child: S.D.S., DOB 04/25/83, by Michelle R. DeCora v. HCN Office of Tribal Enrollment, CV*
15 *00-35 (HCN Tr. Ct., May 4, 2000) at 7). The Court derived the four-part test from language*
16 *appearing in the PER CAPITA ORDINANCE, § 12.8c. Crowe at 7. First, the Court may only grant a*
17 *release for the benefit of a beneficiary's health, education, or welfare. Second, any such benefit*
18 *must represent a necessity, and not a want or desire. Third, the parent or guardian must*
19 *demonstrate special financial need. Finally, the petitioner must provide evidence of exhaustion*
20 *of tribal funds and public entitlement programs. Id. at 8.*

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23 The Court closely examines each *Petition for Release of Per Capita Distribution* in
24 fulfillment of its statutory obligation to supervise the CTF accounts. PER CAPITA ORDINANCE, §
25 12.8a. The Court performs this supervision against the backdrop of federal enabling legislation.
26 Specifically, the INDIAN GAMING REGULATORY ACT requires that parents receive per capita
27 monies “in such amounts as may be *necessary* for the health, education, or welfare, of the
28

1 minor.” INDIAN GAMING REGULATORY ACT, 25 U.S.C. § 2710(b)(3)(C) (emphasis added). The
2 Court has focused upon this limitation in developing its case law, announcing basic principles
3 and rudimentary understandings that have guided it through a variety of requests.
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5 Foremost among these understandings is the recognition that petitioners are “asking that
6 the Court do something very unusual and extraordinary, *i.e.*, take money from children and give
7 it to the parents.” *In the Interest of the Minor Children: M.C., DOB 04/09/89, et al. by Myra*
8 *Cunneen v. HCN Dep’t of Enrollment*, CV 99-83 (HCN Tr. Ct., Jan. 21, 2000) at 3. The Court
9 rightfully practices restraint when asked to serve as this instrumentality. The Court reasons that
10 “no matter what the financial plight of the parents, the ordinary and usual expenses for raising
11 children should not be shifted to the children.” *Id.* at 6.
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13 Only a verifiable claim of poverty can justify a parent’s failure to provide a child’s basic
14 necessities of life: “adequate food, clothing, shelter, medical care, education [and] supervision.”
15 HOC██K NATION CHILDREN AND FAMILY ACT, 4 HCC § 3.5bb. The Court, however, shall not
16 relieve a parent of this responsibility if the impoverished condition of the family derives from
17 poor parental decisions. The Court will not elevate a child to the status of provider as a
18 consequence of regrettable choices made by the parent. *Crowe* at 13-14. “When a person
19 becomes a parent, that parent inherently accepts the responsibility to provide for the health,
20 education and welfare for that child or children. . . . As a parent, [he or she] has inherently
21 accepted these financial obligations by bringing . . . children into this world.” *In the Interest of*
22 *Gary Alan Funmaker, Sr. v. Ho-Chunk Nation*, CV 96-39 (HCN Tr. Ct., Oct. 18, 1996) at 7.
24

25 Accordingly, the Court has only granted CTF releases for food, clothing, shelter or
26 medical care in the most egregious of circumstances. *See In the Interest of Minor Child: D.A.S.,*
27 *DOB 10/14/87, by Larry Swan v. HCN Office of Tribal Enrollment*, CV 00-96 (HCN Tr. Ct.,
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1 Dec. 18, 2000) (insufficient Social Security Income to satisfy clothing needs of twelve (12) year
2 old child cared for by terminally ill single parent); *In the Interest of Minor Child: D.M.S.T.,*
3 *DOB 07/01/83, by Roxanne Tallmadge-Johnson v. HCN Office of Tribal Enrollment, CV 00-14*
4 *(HCN Tr. Ct., Apr. 13, 2000)* (inability of Medical Assistance to cover a sports-related injury of
5 a teenager residing in a household with eleven (11) other minor children). For other requests
6 relating to health, education or welfare, the Court has distinguished between cases where the
7 child receives the direct, tangible benefit (orthodontics) as opposed to those where the request
8 proves beneficial to the entire family (automobiles). The Court is certainly less inclined to grant
9 the latter type of requests due to the presence of this distinction. Also, the Court typically will
10 require the parent(s) to offer a greater financial contribution depending upon the circumstances.

13 The Court must determine whether the petitioner has satisfied the statutory standard for
14 securing a release of CTF monies in the present case. PER CAPITA ORDINANCE, § 12.8c. A
15 component part of the standard requires the petitioner to demonstrate that “the needs of [the
16 minor] are not being met from other Tribal funds or other *state* or federal *public entitlement*
17 *programs.*” *Id.* (emphasis added). Consequently, a petitioner seeking CTF monies for private
18 schooling purposes must establish that available public schooling does not meet the minor’s
19 educational needs. A failure to do so will result in a denial of the request. *See, e.g., In the*
20 *Interest of Minor Child: G.N., DOB 02/25/00, by Julie Nakai v. HCN Office of Tribal*
21 *Enrollment, CV 07-62 (HCN Tr. Ct., Nov. 9, 2007)* at 6-7, 9-10 (holding that the petitioner could
22 not simply claim the existence of unidentified studies purportedly indicting a state’s poor
23 elementary educational system); *In the Interest of Minor Children: D.L., DOB 05/27/91, et al.*
24 *by Doracita Lonetree v. HCN Office of Tribal Enrollment, CV 06-26 (HCN Tr. Ct., June 16,*
25 *2006)* at 6, 11-12 (deeming mere allegations of a poor student to teacher ratio as insufficient to

1 demonstrate exhaustion). In each referenced case, the Court noted that “casting unsubstantiated
2 aspersions at a public institution should not suffice for the purpose of having a minor satisfy
3 educational costs.” *Lonetree*, CV 06-26 at 11.
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5 The Court must presume that the educational needs of a minor are reasonably being met
6 by means of a free state resource. For example, in the State of Maryland, the CONSTITUTION OF
7 MARYLAND states that it “shall by Law establish throughout the State a thorough and efficient
8 System of Free Public Schools” and further state law requires a “general system of free public
9 schools.” CONST. OF MD, ART. VIII, § 1.; MD. EDUCATION CODE ANN. § 1-201 (2011). This
10 provision is construed to mean that a public school education is free to all eligible students. The
11 petitioner, therefore, must effectively demonstrate otherwise through testimony and documentary
12 evidence. The Court will not release CTF monies based upon an educational preference as
13 opposed to an educational need. *See, e.g., In the Interest of Minor Children: Z.T.E., DOB*
14 *12/18/01, et al. by David Espinoza v. HCN Office of Tribal Enrollment*, CV 08-30-31 (HCN Tr.
15 Ct., Aug. 26, 2008) at 6, 9-10 (preferring the Montessori approach toward learning).
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18 However, the Court has granted a few private schooling requests. The Court has granted
19 a request for attendance at St. John’s Northwestern Military Academy in Delafield, WI, since the
20 minor child had been expelled from public school and could not return to a state academic
21 institution. *In the Interest of Minor Child: B.K.W.B., DOB 02/10/91, by Cara Lee Murphy v.*
22 *HCN Office of Tribal Enrollment*, CV 06-67 (HCN Tr. Ct., Jan. 19, 2006) at 6-7, 10-11 (finding
23 an absence of an available state educational resource); *see also In the Interest of Minor Child:*
24 *T.K., DOB 06/06/90, by Sara WhiteEagle v. HCN Office of Tribal Enrollment*, CV 07-07 (HCN
25 Tr. Ct., Mar. 26, 2007) at 6-8, 11-12 (permitting funding for a single academic year at
26 Wentworth Military Academy & Junior College in Lexington, MO, due to the minor’s failing
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1 grades in public school coupled with demonstrated academic improvement in the private setting.)
2 In relation to the latter case, the Court noted that it did “not necessarily wish to equate expulsion
3 with exhaustion,” but that a close question emerged since “[t]he petitioner presented no facts
4 showing [Reedsburg Area High School] culpable for the minor child's abysmal academic
5 record.” *Id.* at 11-12. Regardless, the High School Principal commented favorably upon the
6 decision to attend a private institution. *Id.* at 7-8.
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8 On the other end of the spectrum, the Court sanctioned the use of CTF monies for private
9 school expenses at Interlochen Arts Academy in Interlochen, MI, because the minor child had
10 demonstrated an extraordinary musical aptitude. The minor child could not receive the level of
11 musical instruction commensurate with the minor's skills and talents within a public school
12 setting. In essence, the petitioner exhausted the available state entitlement because the public
13 school proved lacking in its ability to prepare the minor for future obtainable ambitions. *In the*
14 *Interest of Minor Child: K.A.L., DOB 08/14/89, by Gary L. Lonetree, Jr. v. HCN Office of Tribal*
15 *Enrollment*, CV 05-66 (HCN Tr. Ct., Nov. 9, 2005) at 5-6, 9-10.
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18 Finally, the Court, former Associate Judge *Pro Tempore* Tina F. Gouty-Yellow presiding,
19 granted CTF monies to allow a seventh grade child to attend St. John's Northwestern Military
20 Academy in Delafield, WI, on the basis of the child's aspirations to become a pilot and attend a
21 collegiate military academy. *In the Interest of Minor Child: T.W., DOB 04/09/93, by Sara*
22 *WhiteEagle v. HCN Office of Tribal Enrollment*, CV 05-73 (HCN Tr. Ct., Dec. 29, 2005) at 5, 7-
23
24 8. In doing so, the Court announced:

25 [It] is cognizant that prior rulings involving educational requests have been
26 narrowly construed[,] and that by entering this decision the Court is
27 expanding this area of the law. The Court believes that the prior
28 decision(s) were issued at a time when the Nation had additional resources
available to the parents regarding funding of private educational settings
that are no longer available. Further, the Court contends that a quality

1 education does more to serve the current and future needs of the child and
2 of the Nation. It would be difficult to find a better investment of these
3 funds than the best education for the Nation's children.

4 *Id.* at 8. The Court later questioned the statement concerning a previously greater tribal funding
5 availability since the former judge cited no authority for its “belief,” and respondent’s counsel
6 later indicated that it provided no such grounds for the Court’s proposition. *In the Interest of*
7 *Minor Child: T.W., DOB 04/09/93, by Sara WhiteEagle v. HCN Office of Tribal Enrollment, CV*
8 *06-30 (HCN Tr. Ct., July 24, 2006) at 7 n.2.*

9 Within the subsequent year’s funding request submitted by Ms. WhiteEagle, the Court
10 articulated the following:
11

12 [T]he Court is concerned by the petitioner's statement that she maintained
13 no concerns with the quality of education offered by the public school
14 system. The Court cannot condone recourse to CTF monies on the basis
15 of an abstract educational goal. Unlike *Lonetree*, the minor child in the
16 instant case did not establish a degree of excellence in a chosen scholastic
17 field. However, the minor child did demonstrate an uncharacteristic level
18 of commitment to a chosen profession. Also, the minor child has
19 unquestionably thrived in the new scholastic setting.

20 The Court must emphasize that the case at bar presents a close question.
21 *The presiding judge would have unlikely granted the request when initially*
22 *submitted for judicial consideration.* One can easily conceive of future
23 requests for private school expenses that only tangentially satisfy the four-
24 prong test. The Court will conditionally grant the petitioner's request
25 since it does not wish to disrupt the expectations of the minor child. The
26 Court also wants to sustain the witnessed academic improvement.

27 *Id.* at 12 (emphasis added). Moreover, the Court must not simply set aside a past judgment with
28 which it later notes disagreement.² That being said, the Court is under no obligation to
perpetuate seemingly flawed reasoning in future cases as Trial Court opinions do not carry
precedential authority beyond actual parties to a dispute. *See generally David Abangan v. HCN*

² The Court regards the initial *WhiteEagle* decision as possessing *res judicata* effect amongst the parties, provided that the petitioner continues to assert essentially the same claim in subsequent incarnations of the case. *See Michael Sallaway et al. v. HCN Election Bd. et al., CV 07-47 (HCN Tr. Ct., June 27, 2007) at 11-12, aff'd, SU 07-11 (HCN*

1 *Dep't of Bus.*, CV 01-08 (HCN Tr. Ct., July 16, 2003) at 15-19.

2 In those instances where the Court has granted requests, it has always required a parental
3 contribution. *WhiteEagle*, CV 07-07 at 7, 12; *WhiteEagle*, CV 06-30 at 8, 12; *Murphy*, CV 06-
4 67 at 7, 11-12; *WhiteEagle*, CV 05-73 at 8; *Lonetree*, CV 05-66 at 6. The Court maintains, “[a]s
5 a general proposition, [that] a child should not bear the cost of providing his or her elementary or
6 high school education.” *Nakai*, CV 07-62 at 10. Furthermore, the Court has stressed that a
7 “parent must fulfill [his or] her inherent obligation to provide for the basic necessities of [a]
8 minor child.” *Murphy*, CV 06-67 at 11.

9
10
11 Turning to the instant matter, the Court finds that attending St. Mary’s High School
12 would benefit the education and welfare of J.M.T as required by the first prong of the four-part
13 test. Currently, the petitioner is supporting her family of four (4) individuals on her salary and
14 her per capita payments. The petitioner’s husband is employed in Maryland, but it is likely he
15 will earn very little income as his business is in its infancy. *Mot. Hr’g* (LPER at 7, May 10,
16 2011, 02:06:22 CDT). The petitioner owns a valuable house in Wisconsin Dells, Wisconsin but
17 according to real estate agents, selling the house at this time would likely result in a significant
18 financial loss. *Id.* at 13, May 10, 2011, 02:29:00 CDT. The petitioner cannot afford to pay the
19 tuition costs associated with J.M.T. attending St. Mary’s High School.

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22 Ultimately, the Court must deny the petitioner’s request based on a failure to satisfy the
23 interrelated second and fourth prongs of the four-part test. The petitioner must show the
24 proposed benefit represents a need as opposed to a want or desire *and* exhaustion of alternative
25 means. *Crowe* at 8. The CONSTITUTION OF MARYLAND states that it “shall by Law establish
26 throughout the State a thorough and efficient System of Free Public Schools” and further state
27 law requires a “general system of free public schools.” CONST. OF MD, ART. VIII, § 1.; MD.
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S. Ct., June 29, 2007).

1 EDUCATION CODE ANN. § 1-201 (2011). Preference of a Catholic private school over a public
2 school alone does not rise to the level of an educational need. The petitioner articulated that
3 J.M.T. has a special aptitude for singing and the performing arts and wishes to pursue a career in
4 that field. *Mot. Hr'g* (LPER at 11, May 10, 2011, 02:20:00 CDT). Extraordinary aptitude in a
5 specific field can raise enrollment in a private school to the level of an educational need.
6 *Lonetree* at 5-6, 9-10. In such instances the petitioner must also show that the public schools are
7 unable to satisfy that need. *Id.* The petitioner did not provide any such evidence. In fact, the
8 petitioner did not research the local public schools' performing arts programs. *Id.* at 11, 02:22:40
9 CDT. Therefore, even if St. Mary's High School performing arts programs represent a need for
10 J.M.T., the petitioner did not satisfy the exhaustion requirement of the four-part test. If the
11 petitioner can show that the performing arts programs available to J.M.T. through St. May's
12 represent an educational need *and* obtains evidence that the public schools in the area cannot
13 satisfy this need, the petitioner may re-file a *Petition for Release of Per Capita Distribution* with
14 the Court.
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18 **BASED UPON THE FOREGOING ANALYSIS**, the Court hereby denies the
19 petitioner's request without prejudice. The Court commends the petitioner and J.M.T. for seeking
20 an excellent education. However, the Court determines that the petitioner has not satisfied the
21 second and fourth prongs of the four-part test, and therefore denies the request for a release of
22 CTF monies. The parties retain the right to file a timely post judgment motion with this Court in
23 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.
24 Otherwise, "[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme
25 Court. The *Appeal* must comply with the *Rules of Appellate Procedure* [hereinafter *HCN R.*
26 *App. P.*], specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal." *HCN R. Civ. P.*
27
28

1 61. The appellant “shall within sixty (60) calendar days after the day such judgment or order
2 was rendered, file with the Supreme Court Clerk, a *Notice of Appeal* from such judgment or
3 order, together with a filing fee as stated in the appendix or schedule of fees.” *HCN R. App. P.*
4 7(b)(1). “All subsequent actions of a final *Judgment* or *Trial Court Order* must follow the [*HCN*
5 *R. App. P.*].” *HCN R. Civ. P.* 61.

7 **IT IS SO ORDERED** this 11th day of July 2011, by the Ho-Chunk Nation Trial Court
8 located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

9  SigP 1041
10 07/11/2011 10:36:27 AM

11 Honorable Amanda L. Rockman
12 Interim Chief Trial Court Judge

Ho-Chunk Nation Court System
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 or 800-434-4070

