

Civil · Tentative Rulings

DEPARTMENT 58 LAW AND MOTION RULINGS

If oral argument is desired, kindly refer to CRC 3.1308.

Note the extensive revisions of the Los Angeles Superior Court Local Rules, effective 7-1-11.

This Tentative Ruling is not an invitation nor an opportunity to file further documents relative to the hearing in question. No such filing will be considered by the Court in the absence of permission first obtained following ex parte application therefore.

Case Number: BC484642 **Hearing Date:** November 09, 2012 **Dept:** 58

JUDGE ROLF M. TREU
DEPARTMENT 58

Hearing Date: Friday, November 9, 2012

Calendar No: 8

Case Name: Vergara, et al. v. State of California, et al.

Case No.: BC484642

Motion: Demurrers to the First Amended Complaint

Moving Party: (1) Defendants, State of California; Edmund G. Brown Jr., in his official capacity as Governor of California; Tom Torlakson, in his official capacity as State Superintendent of Public Instruction; California Department of Education; and State Board of Education

(2) Defendant Alum Rock Union School District

Responding Party: Plaintiffs

Notice: OK

Tentative Ruling: Demurrers are overruled. Defendants to answer within 10 days.

Background –

The operative First Amended Complaint is brought by Plaintiffs Beatriz Vergara, Elizabeth Vergara, Clara Grace Campbell, Brandon DeBose Jr., Kate Elliot, Herschel Liss, Julia Macia, Daniella Martinez, and Raylene Monterroza (by their guardians ad litem) against Defendants State of California; Edmund G. Brown Jr., in his official capacity as Governor of California; Tom Torlakson, in his official capacity as State Superintendent of Public Instruction; California Department of Education; State Board of Education; Los Angeles Unified School District ("LAUSD"); Oakland Unified School District ("OUSD"); and Alum Rock Union School District ("ARUSD").

Plaintiffs are minors ranging from ages 7 to 16 who attend public schools in LAUSD, OUSD, the Sequoia Union High School District, ARUSD, and the Pasadena Unified School District.

Plaintiffs challenge five statutes of the Education Code as violating the Equal Protection Clause of the California Constitution: Section 44929.21(b) (referred to as the "Permanent Employment Statute"); Sections 44934, 44938(b)(1) and (2), and 44944 (referred to collectively as the "Dismissal Statutes"); and Section 44955 (referred to as the "Seniority-Based Reduction Statute"). Collectively, these statutes

will be referred to as “Challenged Statutes.”

Plaintiffs allege that the Challenged Statutes result in “grossly ineffective” teachers obtaining and retaining permanent employment, and that these “grossly ineffective” teachers are disproportionately situated in schools serving predominately low-income and minority students. These “grossly ineffective” teachers are unable to prepare students to compete in the economic marketplace or to participate in democracy.

Defendants Los Angeles Unified School District and the Oakland Unified School District have each filed answers to the FAC.

Defendants State of California; Edmund G. Brown Jr., in his official capacity as Governor of California; Tom Torlakson, in his official capacity as State Superintendent of Public Instruction; California Department of Education; and State Board of Education (collectively “State Defendants”) and ARUSD have each filed demurrers to the FAC. ARUSD partially joins in State Defendants’ demurrer and joins in State Defendants’ request for judicial notice.

Request for Judicial Notice –

Demurring Defendants request judicial notice of the Challenged Statutes, Senate Bill 1059 in the 2011-2012 regular session and its history and status, and an order by Judge William F. Highberger granting a preliminary injunction in *Reed v. State of Cal.* (Case No. BC434420). The RJN is granted.

State Defendants’ Demurrer –

State Defendants argue that Plaintiffs have failed to allege facts that the Challenged Statutes are unconstitutional on their face or as applied. The Court disagrees.

1. Equal Protection

a. Facial

A facial challenge to the constitutionality of a statute considers only the text of the measure and requires demonstrating that the provisions “inevitably pose a present total and fatal conflict with applicable constitutional prohibitions”; however, the actual standards in the procedural scheme cannot be ignored simply because some hypothetical situation might lead to a permissible result. See, e.g., *Cal. Ass’n of PSES v. Cal. Dept. of Education* (2006) 141 Cal.App.4th 360, 371-72.

State Defendants argue that the Challenged Statutes are facially neutral. However, Plaintiffs allege that the Permanent Employment Statute results in teachers being offered permanent employment without determining their effectiveness (FAC ¶¶ 46-47); that the Dismissal Statute results in an ineffective process to dismiss teachers for poor performance such that proceedings initiated based on performance rarely results in dismissal and often “grossly ineffective” teachers are left in the classroom or (FAC ¶¶ 52-56); and that the Seniority-Based Reduction Statute results in teachers being retained or laid-off without taking into account their performance (FAC ¶¶ 64-65). Plaintiffs allege the Challenged Statutes, alone and in conjunction with each other, results in similarly situated children having unequal access to education because some students are assigned to “grossly ineffective” teachers. FAC ¶¶ 48-49, 59-60, 69-69.

These are sufficient facts to allege a facial equal protection challenge to the Challenged Statutes arising out of their actual procedural scheme. See, e.g., *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253 (“The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.” (citation and internal quotation marks omitted)). That this type of challenge is the most difficult

one to mount successfully (*American Civil Rights Foundation v. Berkeley Unified School Dist.* (2009) 172 Cal.App.4th 207, 216) recognizes only Plaintiffs' burden to prove their constitutional claim, which is not properly directed at the pleadings.

b. As Applied

An as applied challenge "contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right." See, e.g., *Cal. Ass'n of PSES*, 141 Cal.App.4th at 376.

State Defendants argue that Plaintiffs' allegations are based on undefined terms and unsupported conclusions. However, Plaintiffs define "grossly ineffective" teachers as teachers "who fail to provide their students with the most basic tools necessary to compete in the economic marketplace or to participate as a citizen in our democracy." FAC ¶ 9. Plaintiffs' allegation that the Challenged Statutes results in "grossly ineffective" teachers being disproportionately situated in schools serving predominately low-income and minority students (see, e.g., FAC ¶ 13) is supported by factual allegations: Plaintiffs allege that when district-wide layoffs occur, schools serving the largest numbers of minority and economically disadvantaged students are more likely to lose teachers due to the Seniority-Based Reduction Statute (FAC ¶ 72) and that "grossly ineffective" teachers are then assigned to these schools (FAC ¶ 73) because these teachers are transferred to other schools rather than undergoing dismissal pursuant to the Dismissal Statutes (see FAC ¶¶ 41, 71).

These are specifically pled facts sufficient to allege an as applied equal protection challenge to the Challenged Statutes (see, e.g., *Cal. Ass'n of PSES*, 141 Cal.App.4th at 376-77) based on the alleged denial of basic equality of educational opportunities (see, e.g., *Butt v. State of Cal.* (1992) 4 Cal.4th 668, 685).

c. Standing

State Defendants argue that Plaintiffs fail to allege standing. The requirement of standing has been summarized:

As a general principle, standing to invoke the judicial process requires an actual justiciable controversy as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator. To have standing, a party must be beneficially interested in the controversy; that is, he or she must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical.

Holmes v. Cal. Nat'l Guard (2001) 90 Cal.App.4th 297, 314-15.

Plaintiffs allege they are students attending public schools and that they have been assigned and/or are at a substantial risk of being assigned to a "grossly ineffective" teacher. FAC ¶¶ 15-23. In conjunction with Plaintiffs' allegations as to the effect between "grossly ineffective" teachers and student success (see, e.g., FAC ¶¶ 8-9, 36-38), Plaintiffs have sufficiently alleged standing.

d. Standard of Review

The Court notes that the parties dispute whether the standard of review for the Challenged Statutes is rational basis or strict scrutiny. Plaintiffs' allegations may support the strict scrutiny standard based on a disparate impact on a fundamental right (see *Serrano v. Priest* (1971) 5 Cal.3d 584, 608-9, 614-15); *Butt*, 4 Cal.4th at 685-86); however, at the pleading stage, it is unnecessary to determine the proper

standard of review to be applied.

e. Other Demurrer Arguments

State Defendants argue that Plaintiffs' allegations are contradictory. However, Plaintiffs' allegations that the number of "grossly ineffective" teachers is small (FAC ¶ 9) is not necessarily inconsistent with the allegation that "grossly ineffective" teachers are retained at "alarming rates" (see, e.g., FAC ¶¶ 11, 39-41).

State Defendants argue that Plaintiffs fail to allege a causal connection. However, Plaintiff alleges a causal connection between "grossly ineffective" teachers and student success. See, e.g., FAC ¶¶ 8-9, 36-38.

Lastly, State Defendants submit that the Challenged Statutes have been held to be constitutional. See, e.g., *Cal. Teachers Ass'n v. State of Cal.* (1999) 20 Cal.4th 327, 344. However, whether the Challenged Statutes comply with the Due Process rights of teachers is a separate and distinct inquiry from whether they comply with the Equal Protection rights of students.

2. Proper Parties

State Defendants argue that they are not proper parties because the decision to offer tenure, assign teachers, or dismiss teachers lies with the school districts pursuant to the Challenged Statutes. "[I]t is the general and long-established rule that in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers with statewide administrative functions under the challenged statute are the proper parties defendant." *Serrano v. Priest* (1976) 18 Cal.3d 728, 752 (*Serrano II*).

Plaintiffs allege that the State is responsible to establish and maintain the public school education system (FAC ¶ 25); that the Governor is responsible to ensure that the laws of the State are properly enforced (FAC ¶ 26); that the Superintendent of Public Instruction is obligated to take all necessary steps to ensure school districts' compliance with law (FAC ¶ 27); that the California Department of Education is responsible for administering and enforcing laws related to education (FAC ¶ 28); and that the State Board of Education is responsible for governing schools and adopting rules and regulations for the school districts (FAC ¶ 29).

Serrano II did not hold that the Governor was an improper party, only that the Governor was not an indispensable one whose absence would not deprive the trial court of jurisdiction and that the Governor's interest may be fully and adequately represented by appropriate state administrative officers. 18 Cal.3d at 750-53. Additionally, responsibility for public education lies with the State, even though school districts are agents for local operations. *Butt*, 4 Cal.4th at 680-81. Therefore, Plaintiff sufficiently bring this action against the State Defendants.

3. Non-Justiciable Claim

State Defendants argue that Plaintiffs improperly seek a permanent injunction that violates the separation of powers, citing to *Serrano II*, 18 Cal.3d at 751 (stating that courts may not order the Legislature to enact or not to enact, or the Governor to sign or not to sign, specific legislation)).

However, Plaintiffs are not requesting the Governor to sign or not sign specific legislation. Plaintiffs' injunctive relief seeks only the Court enjoining the enforcement of the Challenged Statutes, or something substantially similar to its framework, if found to be unconstitutional. See FAC p. 26:16-25. This is proper. See *O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1477; *Serrano II*, 18 Cal.3d at 735 n.1.

ARUSD demurrer raises many of the same issues as State Defendants' demurrer, which the Court incorporates the above discussion. The Court here addresses specific arguments raised only by ARUSD.

Plaintiffs allege that ARUSD is charged with the administration of public schools within its jurisdiction. FAC ¶ 32. Plaintiff Daniella Martinez is alleged to attend a public charter school in ARUSD. FAC ¶ 22.

ARUSD argues that it is not a proper party because it simply followed the Challenged Statutes with which it is required to comply and because there are no facts of wrongdoing alleged against ARUDS. Plaintiff Daniella Martinez alleges that she was deterred from continued to attend traditional public schools because of the substantial risk of being assigned a "grossly ineffective" teacher. FAC ¶ 22. The Challenged Statutes reveal that the school districts share in the responsibility for public education. See *San Francisco NAACP v. San Francisco Unified School Dist.* (1979) 484 F.Supp. 657, 666. Therefore, Plaintiffs' properly name ARUSD as a defendant.

To the extent ARUSD argues that Plaintiff Daniella Martinez does not have standing to bring this action against ARUDS because she attends a public charter school (see ARUSD Dem. p. 3:20-22), this argument relies on facts that are extrinsic to the FAC (i.e., that a public charter school is not within the jurisdiction of ARUSD).

Lastly, ARUSD argues that Plaintiffs fail to allege a cause of action and improperly asserts "claims for relief." However, in ruling on a demurrer, the Court considers whether the facts alleged warrant legal relief and does not focus on the labels or titles for causes of action. See, e.g., *Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 525; *Alfaro v. Community Housing Improvement System & Planning Ass'n, Inc.* (2009) 171 Cal.App.4th 1356, 1371.

Ruling –

The demurrers are overruled. Defendants to answer within 10 days.
