SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Cayla J. et al Plaintiff/Petitioner(s) vs. State of California et al Defendant/Respondent(s)	No. RG20084386 Date: 06/07/2022 Time: 2:43 PM Dept: 21 Judge: Evelio Grillo ORDER re: Ruling on Submitted Matter

The Court, having taken the matter under submission on 05/18/2022, now rules as follows: The Demurrer of the State to Amended and Supplemental Complaint is OVERRULED except for the demurrer to fifth cause of action (Ed Code 43500), which is SUSTAINED WITHOUT LEAVE TO AMEND. The motion of the State to strike portions of the Amended and Supplemental Complaint is DENIED.

BACKGROUND

In March 2020, the COVID-19 pandemic started. The COVID-19 pandemic has exposed and highlighted certain deficiencies in the California educational system.

In June 2020, the State of California enacted SB 98, which authorized distance learning and authorized $5.3 billion to assist school districts with that and other COVID related challenges.

On November 30, 2020, plaintiffs filed this case alleging that the state's response to the pandemic was inadequate.

In June 2021, Governor directed that schools reopen in September 2021. The schools have been open from September 2021 through May 2022.

On 12/9/21, the court sustained the demurrer to the complaint with leave to amend.

In 2/9/22, plaintiffs filed the Amended and Supplemental Complaint. In the ASC, plaintiffs allege that the state's response to the pandemic was inadequate and that its continuing response to the educational needs of students from education lost due to the pandemic has been inadequate. The complaint asserts claims for (1) equal protection - race discrimination (Art I, sec 7), (2) equal protection – wealth discrimination (Art I, sec 7), (3) equal protection (Art I, sec 7), (4) public education (Art I, sec 5), adequate distance learning (Ed Code 51865), (6) adequate education (Ed Code 60119), (7) race discrimination (Ed Code 11135), (8) writ of mandamus, (9) declaratory relief (CCP 1060).

All causes of action are to a large degree based on the duty to provide " 'basically equal' " education to all students attending California public schools. (Butt v. State of California (1992) 4 Cal.4th 668 (Butt).) In Butt, the California Supreme Court held:

"California['s] Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." (Butt, supra, 4 Cal.4th at 685.)

On 3/7/22, the State filed a demurrer to the Amended and Supplemental Complaint,

PROCEDURE/ JUDICIAL NOTICE

This is a demurrer, so the court assumes "the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken." (Redfearn v. Trader Joe's Co. (2018) 20 Cal.App.5th 989, 996.)

The court is wary of permitting the use of judicial notice to turn a demurrer into a de facto motion for summary judgment. (Richtek USA, Inc. v. uPI Semiconductor Corporation (2015) 242 Cal.App.4th 651, 660.) The court GRANTS the requests for judicial notice of legislative action since the filing of the case. The court finds judicial notice of evolving legislative actions appropriate on the facts of this case because the State's response to the facts that underlie the claims regarding COVID continue to evolve.

The court GRANTS the requests for judicial notice of statements of public health officials regarding the reopening of schools and similar public health matters that related to public schools. The court finds judicial notice of evolving public health information appropriate on the facts of this case because the public health concerns affect the State's ability to address the educational concerns in this case.

The court's grant of judicial notice follows the lead of the California Supreme Court in Serrano v. Priest (1971) 5 Cal.3d 584, 591, 614, 617, which also concerned equal protection issues in the California educational system.

The court DENIES the requests for judicial notice of other matters.

DEMURRER TO PLAINTIFFS' COMPLAINT

ALL CAUSES OF ACTION - MOOTNESS

The demurrer of the State to all causes of action in the complaint based on mootness is OVERRULED.

"A case is considered moot when "the question addressed was at one time a live issue in the case," but has been deprived of life "because of events occurring after the judicial process was initiated." … The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief." (Wilson & Wilson v. City Council of Redwood City (2011) 191 Cal.App.4th 1559, 1574.)

The claims in the case are limited to those based on the State's actions or inaction before 11/30/20. The order of 2/8/22 granting the motion of plaintiffs for leave to file supplemental complaint states: "[P]laintiffs are limited to claims that concern statutes or administrative action that was in effect as of 11/30/20. Plaintiffs may not use a supplemental complaint to assert claims that accrued after 11/30/20 or that are directed to the legality of statutes adopted after 11/30/20 or the adequacy of administrative action after 11/30/20."

The court cannot determine at the demurrer stage that the claims based on alleged discrimination and other theories related to addressing pre-11/30/20 aspects of the COVID-19 pandemic are moot. The court could plausibly provide effectual relief if plaintiff proved their claims

The court cannot determine at the demurrer stage that the claims based on alleged discrimination and other theories related to addressing the lost learning and mental health consequences of the pre-11/30/20 pandemic are moot. The court could plausibly provide effectual relief if plaintiff proved their claims

The State's argument that the claims are moot is arguably really a defense that in light of the legislative and executive actions from 11/30/20 to date that plaintiffs cannot prove that the State has not taken reasonable efforts to mitigate the harms that allegedly arose from its action or inaction before 11/30/20. This might be some kind of meritorious defense related to post-11/30/20 mitigation, but it is not a defense that the pre-11/30/20 claims are moot.

FIRST CAUSE OF ACTION - EQUAL PROTECTION – EQUIVALENT EDUCATION - RACE

The demurrer of the State to first cause of action (Cal Const Art I, sec 7, Art IV, sec 16) is OVERRULED.

Plaintiffs adequately assert violations of equal protection before 11/30/20 based on race under the California Constitution. (Collins v. Thurmond (2019) 41 Cal.App.5th 879, 891-900.)

SECOND CAUSE OF ACTION - EQUAL PROTECTION - EQUIVALENT EDUCATION - WEALTH

The demurrer of the State to second cause of action (Cal Const Art I, sec 7, Art IV, sec 16) is OVERRULED.

The elements for wealth based equal protection are the same as for race based equal protection. Wealth is a protected category for purposes of education and the court will apply a high level of scrutiny. (Vergara v. State of California (2016) 246 Cal.App.4th 619, 648 ["In the context of education, under California law, wealth is considered a suspect classification."].)

Plaintiffs adequately assert violations of equal protection before 11/30/20 based on wealth under the California Constitution.

THIRD CAUSE OF ACTION - EQUAL PROTECTION - EQUIVALENT EDUCATION – ACCESS TO EDUCATION

The demurrer of the State to third cause of action (Cal Const Art I, sec 7(b)) is OVERRULED.

"[T]he California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." (Butt, 4 Cal.4th at 685 and fn 9.)

"California has enshrined the right to education within its own Constitution. Accordingly, established California case law holds that there is a fundamental right of equal access to public education, warranting strict scrutiny of legislative and executive action that is alleged to infringe on that right." (Collins v. Thurmond (2019) 41 Cal.App.5th 879, 896.)

Plaintiffs adequately assert violations of "basic educational equality" before 11/30/20 under the California Constitution to the extent the claim is tied to State policies or practices that implicate race or the wealth of students or their families.

As stated in the order of 12/9/21, plaintiffs do not adequately assert violations of "basic educational equality" under the California Constitution to the extent the claim is tied to support that some students receive as a result of the wealth of their families. The claim is based on disparities arising from the policies or practices of the State defendants, as opposed to disparities arising from the disparate wealth and other resources of parents.

FOURTH CAUSE OF ACTION – COMMON AND FREE SCHOOLS

The demurrer of the State to fourth cause of action (Cal Const Art IX, sec 1 and 5) is OVERRULED.

Cal Const Art IX, sec 1, states: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." The phrase "shall encourage" indicates this is a mission statement and aspirational in nature.

Cal Const Art IX, sec 5, states: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." The phrase "shall provide" suggests this could be a mandate.

Campaign for Quality Education v. State of California (2016) 246 Cal.App.4th 896, 906, holds that although sections 1 and 5 of Article IX guarantee access to education, they "evince no constitutional mandate to an education of a particular standard of achievement or impose on the Legislature an affirmative duty to provide for a particular level of education expenditures."

Plaintiffs argue that the lack of access to distance learning during the pandemic was an "access to education" issue rather than a "quality of education" issue. Taking all inferences in favor of

plaintiffs, this argument might have merit.

FIFTH CAUSE OF ACTION –ED CODE 43500

The demurrer of the State to fifth cause of action (Ed Code 43500) is SUSTAINED WITHOUT LEAVE TO AMEND.

Ed Code 43500 et seq. expired on 6/30/21. Plaintiffs do not object to the dismissal of the Ed Code 43500 claim. (Oppo at 18:28.)

SIXTH CAUSE OF ACTION – DEC RELIEF

The demurrer of the State to sixth cause of action (Dec Relief) is OVERRULED. The declaratory relief claim is derivative of the other claims.

SEVENTH CAUSE OF ACTION – TAXPAYER CLAIM

The demurrer of the State to seventh cause of action (Taxpayer claim under CCP 526a) is OVERRULED.

CCP 526a(a) permits an action by a taxpayer "to obtain a judgment restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency." " taxpayer may sue to enjoin wasteful expenditures by state agencies as well as local governmental bodies." (Cates v. California Gambling Control Com. (2007) 154 Cal.App.4th 1302, 1308.)

The Complaint adequately alleges standing.

The plaintiffs did not need to exhaust administrative remedies at the local agency level under the Uniform Complaint Procedure. (5 CCR 4610) (Collins v. Thurmond (2019) 41

Cal.App.5th 879, 912) The ASC assert a CCP 526s taxpayer claim more based on actions by the State that affect matters outside the control of individual school districts.

PLAINTIFFS NATALIA T. AND DANIEL A.

The demurrer of the State to the claims of Natalia T. and Daniel A. are OVERRULED. Natalia T. and Daniel A. have completed 12th grade, but they arguably suffered injury before 11/30/20 and the court could arguably fashion relief for that injury even though they have completed 12th grade.

MOTION TO STRIKE PORTIONS OF THE ASC

The motion to strike portions of the ASC is DENIED.

The motion to strike the allegations regarding actions after 11/30/20 is DENIED. These allegations are reasonably in the ASC as information related to the adequacy of the State's

actions after 11/30/20 to mitigate the harm from the alleged injuries that resulted from the State's action or inaction before 11/30/20. The inclusion of the post-11/30/20 allegations in the ASC does not mean that the claims are or can be based on those allegations. The post-11/30/20 allegations in the ASC are relevant for the same reason that the State's reference to post-11/30/20 legislation and executive action is relevant – because it is relevant to the post-11/30/22 efforts to mitigate the harm from the pre-11/30/20 action or inaction.

The motion to strike the allegations regarding the allegedly deficient special education services provided to two plaintiffs, Billy T. and Joshua I. is DENIED. These are background facts related to the claims in the ASC. If Billy T. and Joshua I. have claims relating to them as individuals for a local school's failure to comply with the Individuals with Disabilities Education Act (IDEA), then they must exhaust the appropriate administrative remedies. The ASC does not include a claim under the IDEA. (Oppo at 12:8-9.)

The motion to strike the allegations regarding the mental health support for Plaintiffs Alex R. and Bella R. following the death of a close family member is DENIED. These are background facts related to the claims in the ASC.

The motion to strike the allegations regarding the adequacy of virtual instruction on an electronic device for Plaintiff Isaac I. is DENIED. These are background facts related to the claims in the ASC.

The motion to strike the allegations related to Natalia T. and Daniel A. are DENIED. Natalia T. and Daniel A. have completed 12th grade, but they arguably suffered injury before 11/30/20 and the court could arguably fashion relief for that injury even though they have completed 12th grade.

The motion to strike the prayer for relief is DENIED. The order of 12/9/21 states: "As a matter of case management, the court is not inclined at the demurrer stage to limit the scope of remedies that he court could order at the conclusion of the case. (CCP 580(a)["the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue"]; Superior Motels, Inc. v. Rinn Motor Hotels, Inc. (1987) 195 Cal.App.3d 1032, 1067.) As a matter of practicality, at the conclusion of the case the court will not be inclined to knowingly order any relief that would be in excess of the court's authority or a violation of the Constitutional separation of powers."

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated: 06/07/2022

Evelio Grillo / Judge