XAVIER BECERRA
Attorney General of California
SUSAN M. CARSON
Supervising Deputy Attorney General
JENNIFER A. BUNSHOFT
HADARA R. STANTON
Deputy Attorneys General
State Bar No. 227040
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5561
Fax: (415) 703-5480
E-mail: Hadara.Stanton@doj.ca.gov
Attorneys for Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Ella T. and Katie T., through their guardian ad litem Tamika T.; Sasha E., through her guardian ad litem Thomas E.; Russell W., through his guardian ad litem Tiana W.; Dylan O., through his guardian ad litem Melody O.; Bella G. and Alex G., through their guardian ad litem Samantha G.; Judith B., through her guardian ad litem Sophie B.; Victoria Q., through her guardian ad litem Alexis Q.; and Bernie M., through his guardian ad litem Wanda M., Fathers & Families of San Joaquin; CADRE; Azalee Green; and David Moch, Plaintiffs, **v.** **STATE OF CALIFORNIA; State Board of Education; State Department of Education; Tom Torlakson, in his official capacity as State Superintendent of Public Instruction, and DOES 1 - 100,** Defendants.	Case No. BC685730 **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT** Date: July 11, 2018 Time: 8:45 a.m. Dept: 28 Judge: The Hon. Yvette Palazuelos Trial Date: Not Assigned Action Filed: December 5, 2017 **RES ID: 180411305336**

TABLE OF CONTENTS

Page

Introduction 5

Background 6

I. California's Public School System 6

A. Public Education in California 6

B. Legislative Approach to Local Control of Education 6

1. The Local Control Funding Formula 7

2. The Local Control Funding Formula Requires Each District to Develop and Annually Update a Local Control Accountability Plan (LCAP) 8

3. The Local Control Funding Formula Included Accountability Provisions Focused on Improving Student Outcomes and Established a System for Supporting School Districts with Poor Student Outcomes 9

C. The Striving Readers Plan Was a Grant Proposal Rejected by the US Department of Education. 10

II. Plaintiffs and Their Claims 11

Standard of Review 12

Argument 12

I. Plaintiffs Fail to State a Claim for Violation of Equal Protection 12

A. Plaintiffs Cannot State a Claim for Violation of Fundamental Interest 12

1. Plaintiffs' Fundamental Interest Claim Fails Because They Do Not Allege Any Classification of Students 12

B. Plaintiffs Cannot State a Claim for Violation of Suspect Class 16

II. Claims for Violation of Taxpayer Funds and for Declaratory Relief Fail, As Do All Claims Against the "State of California" 17

A. Plaintiffs Have Not Stated a Taxpayer Claim 17

B. Plaintiffs Have Not Met the Requirements for Declaratory Relief 17

C. Claims Against Defendant "State of California" Should Be Dismissed 18

III. Plaintiffs' Lawsuit Must Be Dismissed Because the Complaint Seeks Relief That Violates the Separation of Powers Doctrine 18

Conclusion 19

CASES

Ball v. FleetBoston Fin. Corp.
(2008) 164 Cal.App.4th 794 18

Butt v. State of California
(1992) 4 Cal.4th 668 ..... *passim*

California Assn. for Safety Education v. Brown
(1994) 30 Cal.App.4th 1264 17

California State Employees' Assn. v. State of California
(1973) 32 Cal.App.3d 103 13

Campaign for Quality Educ. v. State
(2016) 246 Cal.App.4th 896 ..... 7, 12, 19

City of Cotati v. Cashman
(2002) 29 Cal.4th 69 18

Common Cause v. Bd. of Supervisors
(1989) 49 Cal.3d 432 19

Cooley v. Superior Court
(2002) 29 Cal.4th 228 12

Humane Society of the United States v. State Bd. of Equalization
(2007) 152 Cal.App.4th 349 17

Peter W. v. San Francisco Unified School Dist.
(1976) 60 Cal.App.3d 814 ..... 15, 19

Santa Clara County Local Transportation Authority v. Guardino
(1995) 11 Cal.4th 220 13

*Sato v. Orange County Dept. of Educ*ation
(9th Cir. 2017) 861 F.3d 923 7

Serrano v. Priest
(1971) 5 Cal.3d 584 ..... 12, 16

Serrano v. Priest
(1976) 18 Cal.3d 728 18

State v. Superior Court
(1974) 12 Cal.3d 237 18

Vergara v. State
(2016) 246 Cal.App.4th 619 ..... *passim*

Walgreen Co. v. City and County of San Francisco
(2010) 185 Cal.App.4th 424 13

Weatherford v. City of San Rafael
(2017) 2 Cal.5th 1241, 1245 17

STATUTES

California Code of Regulations, Title 5
§ 15496 8

Code of Civil. Procedure
§ 526a 11, 17
§ 1061 17

Education Code
§ 33030 *et seq.* 6
§ 33111 *et seq.* 6
§ 33300 6
§ 35010 7
§ 42238.02, subds. (e), (f) 8
§ 42238.07 8
§ 47606.5 ..... 8, 9
§ 51210 8
§§ 52060–52077 8
§ 52060 ..... 8, 9, 13,19
§ 52060, subd. (d) 18
§ 52061 8
§ 52064.5 9
§ 52071 9
§ 52072 10
§ 52074 9
§ 52075 10

CONSTITUTIONAL PROVISIONS

California Constitution Article I, § 7(a) and Article IV, § 16(a) 12

California Constitution, Article III, § 3 19

California Constitution, Article IX, § 5 6

California Constitution Article IX, § 2 6

INTRODUCTION

Plaintiffs' lawsuit against the State of California and its educational entities (defendants) for violating the equal protection clause of the State Constitution because 10 students, who attend or have attended three schools, cannot read at grade-level, should be dismissed. Plaintiffs have not met the basic requirements for an equal protection claim under either a fundamental interest or suspect class theory. They have failed to identify a classification of students who are somehow being denied their fundamental right to education, and have failed to identify a suspect class to which these students purportedly belong.

Instead, plaintiffs complain that because the State has not adopted a statewide literacy plan, and in particular, a plan that was developed in 2011 to 2012 for a grant application to the federal government that California was not awarded, defendants are in violation of the equal protection clause. Plaintiffs do not point to any requirement that the State adopt such a plan, and ignore the State's extraordinary efforts over the last few years to provide millions of dollars to local school districts to address their students' educational needs, including reading and literacy. In 2013, the Legislature adopted the Local Control Funding Formula that particularly targets funding toward assisting students who are living in poverty, foster care, and who are English language learners. Under this legislation, school districts have been granted greater latitude with state funds, and were required to adopt a Local Control and Accountability Plan (LCAP) with input from educators, parents, and community members, that outlines the educational priorities of the district based on the particular needs of its students. The law also includes performance-based accountability for school districts based on multiple measures of student success, including the state assessment for English language arts, with mandatory support provided to school districts with low student performance. There is also a complaint process, by which parents may bring their concerns and disputes against districts for failing to comply with the requirements of developing and implementing their LCAPs. Yet, plaintiffs have not sued their school districts, or alleged that they utilized this complaint process. Instead, plaintiffs bring suit against the state-level education defendants for failing to adopt a statewide literacy plan that is not constitutionally or statutorily required. This cannot be the basis for any claim against the State, and certainly not

a claim for violation of the equal protection clause. Plaintiffs have also failed to state a taxpayer claim against defendants. Consequently, defendants' demurrer must be sustained.

BACKGROUND

I. CALIFORNIA'S PUBLIC SCHOOL SYSTEM

A. Public Education in California

The California Constitution requires "[t]he Legislature [to] provide for a system of common schools." (Cal. Const., art. IX, § 5.) California provides instruction and support services to nearly six million students in grades kindergarten through twelve (K-12) in more than 10,000 schools.[1] The California Department of Education (CDE) oversees the state's diverse public school system. (Ed. Code, § 33300.) The State Board of Education (SBE) is California's K-12 policy-making body for academic standards, curriculum, instructional materials, assessments and accountability. (Ed. Code, §§ 33030 *et seq.*) The Superintendent of Public Instruction is an independently elected state officer, charged with responsibility to "superintend the schools of this state" including executing the policies and regulations of the SBE. (Const. Art. IX, § 2; Ed. Code, §§ 33111 *et seq.*) Each of these entities has enumerated statutory responsibilities for State Administration of Elementary and Secondary Education. (*Ibid.*) None of these State Administration responsibilities are challenged in this lawsuit, nor do plaintiffs allege that any defendant is violating any of these statutory requirements.

B. Legislative Approach to Local Control of Education

"The California Constitution also provides for the incorporation and organization of school districts by the Legislature." (*Vergara v. State* (2016) 246 Cal.App.4th 619, 628, citing Cal. Const., art. IX, § 14.) Thus, "[l]ocal school districts, as agents of the state, are responsible for implementation of educational programs and activities." (*Ibid.*; *Butt v. State of California* (1992) 4 Cal.4th 668, 681.) "[T]he Legislature has assigned much of the governance of the public schools to the local districts." (*Vergara, supra*, 246 Cal.App.4th at p. 628, citing *Butt, supra*, 4 Cal.4th at p. 681.) The Legislature has enumerated the requirements for local administration of

[1] http://www.ebudget.ca.gov/2018-19/pdf/BudgetSummary/K-12Education.pdf (See Request for Judicial Notice (RJN), Exh. A, p. 21.)

education, including providing that "[e]very school district shall be under the control of a board of school trustees or a board of education." (Ed. Code, § 35010.) Plaintiffs have not brought suit against any school or district in this lawsuit.

1. The Local Control Funding Formula

To further the purpose of education, "there is no dispute that 'our Constitution vests the Legislature with sweeping and comprehensive powers in relation to our public schools, including broad discretion to determine the types of programs and services which further the purposes of education,' and 'such functions as educational focus, teaching methods, school operations, furnishing of textbooks and the like.' " (*Campaign for Quality Educ. v. State* (2016) 246 Cal.App.4th 896, 907, internal citations omitted.) "[T]he Legislature, consistent with its constitutional authority, has addressed the quality of education to be afforded public school students." (*Ibid.*) Plaintiffs do not challenge the statutes governing education, including those addressing "the quality of education to be afforded public school students."

The Legislature recently re-affirmed California's commitment to local control of education, when it enacted the Local Control Funding Formula (LCFF) in 2013, which replaced the K–12 finance system which had existed for roughly 40 years and overhauled the state's public school accountability system. (Assem. Bill No. 97 (2013-2014 Reg. Sess.) Chapter 47; Sen. Bill No. 91 (2013-2014 Reg. Sess.) Chapter 49.) This was "a massive reform package designed to streamline public education financing and decentralize education governance," and it did so in two ways. (*Sato v. Orange County Dept. of Educ*ation (9th Cir. 2017) 861 F.3d 923, 934.) "First, it replaced the old mechanism by which the state funded public education, which relied on a combination of 'revenue limits' funding and 'categorical funding grants,' with the [LCFF]. The LCFF streamlined the number of state funding sources and increased K-12 spending, particularly for low-income and English-language-learner (ELL) student populations. Second, AB 97 required that school districts and county Offices of Education] develop Local Control and Accountability Plans (LCAPs) to measure progress toward state and district goals for student achievement." (*Id.*, at p. 929.)

Specifically, LCFF gives each district an equal "base grant" for each student, and provides additional monetary resources to districts based on the number of students they serve who are low-income, foster youth and English learners, through grants referred to as "supplemental" and "concentration" grants. (Ed. Code, § 42238.02, subds. (e), (f).) Districts must demonstrate increased or improved services for those students in proportion to the increase in funds provided for them. (Ed. Code, § 42238.07; Cal. Code Regs., tit. 5, § 15496.)

The Governor's Proposed Budget, released on January 10, 2018, proposes $3 billion in new funding to fully implement the LCFF two years earlier than originally scheduled. The Summary of the Proposed Budget explains that "the Budget proposes advancing the core priorities of the Administration to fund the [LCFF], pay down debts owed to schools, and support local educational agencies in their efforts to improve outcomes for low-achieving students."[2]

2. The Local Control Funding Formula Requires Each District to Develop and Annually Update a Local Control Accountability Plan (LCAP)

California's new accountability and continuous improvement system provides information about how local educational agencies and schools are meeting the needs of California's diverse student population based on a concise set of measures as codified by the Legislature. (Ed. Code, §§ 52060–52077.) The LCAP is a tool for local educational agencies to set goals, plan actions, and leverage resources to meet those goals to improve student outcomes.[3] It is a three-year plan prepared by each district and charter school and updated annually, that describes the goals, actions, services, and expenditures to support positive student outcomes that address each of the required eight state priorities and any local priorities, including, as relevant here, state priorities:

- No. 2: Implementation of the academic content and performance standards adopted by the SBE;
- No. 4: "Pupil achievement;" and
- No. 8: "Pupil outcomes," in subject areas, including "English, including knowledge of, and appreciation for literature and the language, as well as the skills of speaking, reading, listening, spelling, handwriting, and composition."

(Ed. Code, §§ 52060, 52061, 51210, 47606.5.)

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[2] http://www.ebudget.ca.gov/2018-19/pdf/BudgetSummary/K-12Education.pdf (See RJN, Exh. A.)

[3] https://www.cde.ca.gov/re/lc/ (See RJN, Exh. B.)

The LCAP must set forth the specific actions the district or charter school will take during each year of the LCAP to achieve the identified goals, including specific actions necessary to correct any deficiencies in meeting each of the state priorities. In addition, each district and charter school must prepare an annual update that reviews the progress toward reaching its goals and describe the changes it will make as a result of this review and assessment. (Ed. Code, §§ 52060, 52061, 52064.5, 47606.5.)

3. The Local Control Funding Formula Included Accountability Provisions Focused on Improving Student Outcomes and Established a System for Supporting School Districts with Poor Student Outcomes

For statewide accountability, the LCFF required the State Board of Education to adopt an accountability tool, called "evaluation rubrics," that includes performance and improvement standards within each of the state priorities to identify strengths, weaknesses, and areas in need of improvement at the school district and school levels. (Ed. Code, § 52064.5.) Performance data for each school district and school in the state is available through the California School Dashboard, a public Web site administered by the CDE.[4]

County offices of education are required to provide technical assistance to any school district in which one or more student group does not meet the performance and improvement standards within two or more state priorities. (Ed. Code, § 52071.) The LCFF also created a new agency, the California Collaborative for Educational Excellence (CCEE), "to advise and assist school districts, county superintendents of schools, and charter schools in achieving the goals set forth in a local control and accountability plan." (Ed. Code, § 52074.) Under LCFF, the county offices of education, the CCEE, and CDE are charged with roles providing assistance to local educational agencies. "Each entity has specific responsibilities but, working together, this statewide support team is charged with providing all districts with additional support, i.e. differentiated assistance."[5] The Legislature also provided a mechanism for intervention by the Superintendent of Public Instruction if a school district has persistent performance issues, but

[4] https://www.caschooldashboard.org/#/Home (See RJN, Exh. C)
[5] http://ccee-ca.org/about-ccee.asp (See RJN, Exh. D.)

specified certain steps that must prior to state intervention, including that the CCEE advice and assistance process has been exhausted. (Ed. Code § 52072.)

Finally, in creating the LCFF/LCAP system, the Legislature established a procedure by which pupils, parents and guardians, and other interested parties may file a complaint that a school district or charter school has not complied with its duties under the LCAP. (Ed. Code, § 52075.) The complaint must first be filed with the district or charter school, and if the complainant is not satisfied with the district or charter school's response, he or she may appeal the decision to the state Superintendent of Public Instruction. (*Ibid.*) If the district or Superintendent of Public Instruction finds merit in the complaint, the district or charter school must provide a remedy to all affected pupils, parents, and guardians. (*Ibid.*)

C. The Striving Readers Plan Was a Grant Proposal Rejected by the US Department of Education.

The State's Striving Readers Comprehensive Literacy Plan (SRCL Plan) that plaintiffs rely upon in their Complaint was created in response to the U.S. Department of Education's SRCL program, in an effort to obtain federal grant funding. The SRCL was authorized as part of the FY 2010 Consolidated Appropriations Act (Pub. L. No. 111-117) under the Title I demonstration authority (Part E, Section 1502 of the Elementary and Secondary Education Act).[6] California, along with 47 other states, developed a Comprehensive Literacy Plan to apply for a discretionary grant to create a comprehensive literacy program. (*Ibid.*) The final draft of California's SRCL Plan was updated following the final Striving Readers Literacy Team meeting on September 6, 2012.[7] It is that plan that plaintiffs refer to as the "SRCL Plan." (Comp. ¶¶ 39, 43-46.)

The Complaint, however, fails to mention that California did not receive the federal grant for its SRCL Plan.[8] Moreover, defendants completed the SRCL Plan prior to the substantial change in the State education funding and accountability system through the Legislature's adoption of the LCFF/LCAP system in 2013-2014, and defendant's 2014 adoption of the

[6] https://www2.ed.gov/programs/strivingreaders-literacy/literacyprofiles.html (See RJN, Exh. E.)

[7] https://www.cde.ca.gov/pd/ca/rl/srclhomepage.asp (See RJN, Exh. F.)

[8] https://www2.ed.gov/programs/strivingreaders-literacy/awards.html (See RJN, Exh. G.)

curriculum frameworks for English language arts/English language development, which implemented the common core state standards.[9]

II. PLAINTIFFS AND THEIR CLAIMS

Plaintiffs allege they are in the following self-described categories. The first three groups — comprised of students of different ethnicities, different ages, and different genders at different schools in three school districts — are collectively referred to as "Student Plaintiffs." (Comp. ¶¶ 14-23.) Of these Student Plaintiffs, they are grouped into three classifications. First, "[s]tudents attending or who have recently attended, La Salle Elementary School in the Los Angeles Unified School District." (Comp., ¶¶ 14-17.) They are four African-American children between the ages of seven and 11, only one of whom currently attends La Salle Elementary. (*Ibid.*) Second, are "[s]tudents attending or who have recently attended, Van Buren Elementary School in the Stockton Unified School District." (Comp., ¶¶ 18-21.) These are identified as three Latina students, and one multiracial student, between the ages of six and 14, only two of whom currently attend Van Buren Elementary. (*Ibid.*) The third group comprises "[s]tudents attending or who have attended, Children of Promise Preparatory Academy in the Inglewood Unified School District." (Comp., ¶¶ 22-23.) These are identified as two African American students, ages seven and 11 years old. (*Ibid.*) None of the Student Plaintiffs allege they have sought any assistance or relief from their school or school districts. (Comp. ¶¶ 14-23.) To the contrary, they all allege they were "not offered" or "did not receive any meaningful intervention." (*Ibid.*; see also *id.*, ¶¶ 72-105.) The Student Plaintiffs assert two causes of action for violation of the California Equal Protection Clauses, for fundamental interest and suspect class. (Comp., ¶¶ 146, 147.)

The final group of plaintiffs, "Taxpayer and Organizational Plaintiffs," is comprised of two community-based non-profit organizations, one based in Stockton and the other in South Los Angeles, and a former teacher's aide and a former teacher at La Salle. (Comp., ¶¶ 24-37.) They assert a taxpayer claim under Code of Civil Procedure section 526a. (Comp. ¶¶ 150-154.)

[9] https://www.cde.ca.gov/ci/rl/cf/elaeldfrmwrksbeadopted.asp (See RJN, Exh. H.)

All plaintiffs seek declaratory relief, in the form of a finding "that Defendants' actions and inactions as described above have violated Article I, section 7(a) and Article IV, section 16(a) of the California Constitution." (Comp. ¶¶ 148, 149.)

STANDARD OF REVIEW

In ruling on a demurrer, "the trial court examines the pleading to determine whether it alleges facts sufficient to state a cause of action under any legal theory, with the facts being assumed true for purposes of this inquiry." (*Campaign for Quality Educ., supra,* 246 Cal.App.4th at p. 904.) However, conclusory assertions are not "facts" that the court must accept as true at this stage. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591 ["We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law."].)

ARGUMENT

I. PLAINTIFFS FAIL TO STATE A CLAIM FOR VIOLATION OF EQUAL PROTECTION

Plaintiffs have failed to state a claim for violation of equal protection, which requires them to show that the State has adopted a classification that treats "similarly situated" people in an unequal manner. (*Vergara, supra*, 246 Cal.App.4th at p. 644.) Nor, as a matter of law could they amend their complaint to do so, because the fact that some students do not read at grade level is not a constitutional violation. (*Butt*, *supra*, 4 Cal.4th at p. 686.) As discussed below, plaintiffs' "fundamental interest" and "suspect class" claims fail to state a cause of action for violation of the equal protection clause.

A. Plaintiffs Cannot State a Claim for Violation of Fundamental Interest

1. Plaintiffs' Fundamental Interest Claim Fails Because They Do Not Allege Any Classification of Students

Plaintiffs' fundamental interest claim fails as a matter of law at the first step of the equal protection analysis because they have not alleged that defendants have adopted any classification of any group. They also have not alleged any class of persons that defendants allegedly are discriminating against. "The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has *adopted a classification* that affects two or more *similarly situated* groups in an unequal manner." (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253

[emphasis in original].) "In equal protection analysis, the threshold question is whether the legislation under attack somehow discriminates against an identifiable class of persons. Only then do the courts ask the further question of whether this identifiable group is a suspect class or is being denied some fundamental interest, thus requiring the discrimination to be subjected to close scrutiny." (*Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 258; see also *Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 434, quoting *People v. Buffington* (1999) 74 Cal.App.4th 1149, 1155 [" 'If persons are not similarly situated for purposes of the law, an equal protection claim fails at the threshold. [Citation.]'"].) And while, "[i]t is within the legitimate power of the judiciary, to declare the action of the Legislature unconstitutional, where that action exceeds the limits of the supreme law; . . . . the Courts have no means, and no power, to avoid the effects of non-action." (*California State Employees' Assn. v. State of California* (1973) 32 Cal.App.3d 103, 109.)

Here, plaintiffs fail to allege any classification that the State has adopted that affects two similarly situated groups in an unequal manner. They allege that 10 students in California cannot read at grade level, and allege that therefore "Defendants have denied [them] access to literacy, meaning they have denied [them] [their] fundamental right to an education as provided for in the California Constitution." (Comp., ¶¶ 14-23.) But they do not allege any action by which defendants have created a "classification." Indeed, within their 59-page complaint, plaintiffs allege no "action" on the part of the State. And, the only "inaction" they allege is that "the State has never implemented the SRCL Plan as part of its statewide system of education, nor did it implement any other targeted literacy remediation plan or take any other steps to ensure that school districts were offering students access to literacy." (Comp. ¶ 2, 46.) Yet plaintiffs ignore the enactment of LCFF and LCAP, which require districts to prioritize certain areas of learning, including reading and literacy, and set forth the means by which districts may be held accountable. (See Ed. Code, §§ 52060 et seq.)

Plaintiffs also fail to allege any class of persons who are being discriminated against. To state an equal protection violation, "group members must have some pertinent common characteristic other than the fact that they are assertedly harmed by a statute." (*Vergara*, *supra*,

246 Cal.App.4th at p. 646.) Here, the 10 Student Plaintiffs are not alleged to share any common characteristic, other than that they allegedly cannot read at their various grade-levels, and thus have had their fundamental right to an education allegedly violated. (Comp., ¶¶ 14-23.) But "[s]uch a circular premise is an insufficient basis for a proper equal protection claim. [Citation] To avoid this circularity, a group must be identifiable by a shared trait other than the violation of a fundamental right." (*Vergara*, *supra*, 246 Cal.App.4th at p. 647.)

To the extent plaintiffs are relying on *Butt* to assert that the identifiable class of persons being discriminated against consists of "former and current" students at the three schools identified in the Complaint (Compl., ¶¶ 4, 5, 7), this too fails to state a cognizable class that is being discriminated against in comparison to other students in the State.[10] In *Butt*, the identifiable group was *all* Richmond Unified School District students. (*Butt*, *supra*, 4 Cal.4th at p. 685 ["the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State."].) There, *every* student in the district would have been deprived of five weeks of school, in stark contrast to students in every other district in the State. Thus, the court held that all students in that district would suffer an equal protection violation if their schools – but not those in any other district – were allowed to abruptly close their doors before the scheduled end of the school year. (*Id.* at pp. 681, 685.)

Unlike *Butt*, plaintiffs here do not allege that *every* current and former student at the three identified schools is unable to read at grade level. Nor could they. Assuming for the purposes of this Demurrer that scoring "Standard Met" or above on the California Assessment of Student Performance and Progress for English language arts is necessary to demonstrate grade-level literacy—as Student Plaintiffs appear to allege—the Complaint alleges that some students at their schools demonstrate grade-level literacy (e.g., Comp. ¶¶ 67, 80, 94.) Instead, based on the

[10] Plaintiffs admit that those three schools are not *the* lowest performing schools in the State. (Comp. ¶ 4). Likewise, the chart plaintiffs include in their Complaint, which ranks the 26 lowest performing districts in the nation, shows that seven California districts are lower performing than Los Angeles Unified School District, in which La Salle Avenue Elementary resides, and does not even include Inglewood Unified School District, in which Children of Promise Academy resides. (*Id.*, ¶¶ 3-4.)

allegations in the Complaint, plaintiffs are left only to maintain that the inability of some students, including themselves, at three schools to read at grade level demonstrates that their constitutional rights are being denied, which is precisely the "circular premise" that cannot support an equal protection claim. (*Vergara, supra*, 246 Cal.App.4th at p. 647.)

As the Supreme Court noted in *Butt*, "the Constitution does not prohibit all disparities in educational quality or service. Despite extensive State regulation and standardization . . . the experience offered by our vast and diverse public school system undoubtedly differs to a considerable degree among districts, schools, and individual students." (*Butt*, *supra*, 4 Cal.4th at p. 686.)[11] "[P]rinciples of equal protection have never required the State to remedy all ills or eliminate all variances in service" (*Butt, supra,* 4 Cal.4th at p. 686), yet plaintiffs seek to require defendants to do just that, in the absence of allegations establishing a classification that can properly support an equal protection claim.

Moreover, *Butt* determined that the California Constitution required the State "to correct basic 'interdistrict' disparities." (*Id.* at p. 681.) Here, in contrast, plaintiffs are not alleging inter-district disparities. Indeed, they allege that children in their schools are not receiving an education "equal to children in other schools within their own districts" (Comp. ¶ 5), which states an intra-district disparity claim. Thus, *Butt* does not support plaintiffs' argument that the State must intervene to correct alleged intra-district disparities, rather than the districts in which the schools at issue reside.

Nor have plaintiffs alleged any facts showing that State intervention is necessary here, in contrast to the circumstances in *Butt*. (*Butt*, *supra*, 4 Cal. 4th at p. 688, citing *Tinsley v. Palo Alto Unified School District* (1979) 91 Cal.App.3d 871, 904.) Here, any alleged harm is taking place at the individual school level, and plaintiffs have not alleged that any of the three districts is unable or unwilling to intervene to assist students at the three schools that Plaintiffs currently or

[11] Indeed, as previously recognized, where the claimed "injury" is the alleged inability to read and write at grade level, "substantial professional authority attests that the achievement of literacy in the schools, or its failure, are influenced by a host of factors which affect the pupil subjectively, from outside the formal teaching process, and beyond the control of its ministers. They may be physical, neurological, emotional, cultural, environmental; they may be present but not perceived, recognized but not identified." (*Peter W. v. San Francisco Unified School Dist.* (1976) 60 Cal.App.3d 814, 824.)

formerly attended. Accordingly, plaintiffs have failed to meet the fundamental requirement for an equal protection claim: A classification by the State that affects two or more similarly situated groups in an unequal manner.

B. Plaintiffs Cannot State a Claim for Violation of Suspect Class

Similarly, plaintiffs cannot state a claim for violation of equal protection based on a suspect class. To state such a claim, plaintiffs must allege that defendants have made a classification which discriminates on the basis of a suspect personal characteristic. (*Serrano v. Priest*, *supra*, 5 Cal.3d at pp. 597-598.)

Plaintiffs' second cause of action, for violation of suspect class, like their cause of action for violation of fundamental interest, fails because they have not alleged a classification that can support an equal protection claim, much less a suspect classification. Additionally, plaintiffs have failed to allege any discriminatory action. They assert that the right of "student Plaintiffs and those similarly situated," is "to receive educational opportunity [sic] regardless of wealth and race." (Compl. ¶ 157.) It is unclear which students are "similarly situated" to plaintiffs. The 10 Student Plaintiffs do not share a race, but all allege they are either Latino, African American, or multiracial. (*Id.* ¶¶ 14-23.) By "similarly situated," do they mean all former and current students at plaintiffs' schools *including* those who are not African American, Latino or multiracial? If so, this fails to state a suspect class, as plaintiffs do not allege that all former and current students at those schools are African American, Latino or multiracial. And, there is no allegation in the Complaint regarding any Student Plaintiff's wealth, so there is no basis for a claim of discrimination based on that characteristic.

If addition, even if plaintiffs had alleged any suspect classification, they failed to allege how the defendants' alleged "inaction" *caused* these students at just three schools in the State to be unable to read at grade level. (*Vergara, supra*, 246 Cal.App.4th at p. 648 [required analysis for suspect class allegation was whether the challenged statutes caused the harm to the low-income and minority students.])

II. CLAIMS FOR VIOLATION OF TAXPAYER FUNDS AND FOR DECLARATORY RELIEF FAIL, AS DO ALL CLAIMS AGAINST THE "STATE OF CALIFORNIA"

A. Plaintiffs Have Not Stated a Taxpayer Claim

The remaining plaintiffs have failed to state a "taxpayer claim" under Code of Civil Procedure section 526a which provides "certain individuals and corporations" with "a right to pursue legal actions enjoining wasteful or illegal expenditures by government entities." (*Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1245.) The purpose of section 526a " 'is to permit a large body of persons to challenge wasteful government action that otherwise would go unchallenged because of the standing requirement.' " (*Humane Society of the United States v. State Bd. of Equalization* (2007) 152 Cal.App.4th 349, 355.) "A taxpayer suit is authorized only if the governing body has a duty to act and has refused to do so. If the governing body has discretion and decided not to act, then the court is prohibited from substituting its discretion for the discretion of the governing body." (*California Assn. for Safety Education v. Brown* (1994) 30 Cal.App.4th 1264, 1281.)

These plaintiffs, however, have failed to allege any facts which would show any "wasteful or illegal expenditures," instead making broad claims and generalized legal conclusions that Defendants' unidentified "actions and inactions" in expending funds to "administer and implement a system of public education that engages in unconstitutional discrimination . . . is unlawful." (Comp. ¶¶ 151, 154.) Such general allegations are insufficient to state a claim under section 526a. (*Humane Society*, 152 Cal.App.4th at p. 355 ["General allegations, innuendo, and legal conclusions are not sufficient; rather, the plaintiff must cite specific facts and reasons for a belief that some illegal expenditure or injury to the public fisc is occurring or will occur."]

B. Plaintiffs Have Not Met the Requirements for Declaratory Relief

This court should refuse to grant declaratory relief, as it "is not necessary or proper at the time under all the circumstances." (Code Civ. Proc., § 1061.) Declaratory relief requires an "actual controversy relating to the legal rights and duties of the respective parties." (*Id.*, § 1060.) All plaintiffs seek declaratory relief, but, as set forth above, each of the underlying causes of action brought by the Student Plaintiffs and Taxpayer Plaintiffs, fail as a matter of law. As the

Supreme Court has confirmed, "[t]he requirement that plaintiffs seeking declaratory relief allege 'the existence of an *actual, present controversy*' would be illusory if a plaintiff could meet it simply by pointing to the very lawsuit in which he or she seeks that relief. Obviously, the requirement cannot be met in such a bootstrapping manner; 'a request for declaratory relief will not create a cause of action that otherwise does not exist.'" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80); *see also Ball v. FleetBoston Fin. Corp.* (2008) 164 Cal.App.4th 794, 800.)

C. Claims Against Defendant "State of California" Should Be Dismissed

In addition to the state educational defendants, plaintiffs sued the "State of California." However, it is settled that the "State" — as distinct from a specific agency or officer — is not a proper defendant as against which relief may be granted. (*State v. Superior Court* (1974) 12 Cal.3d 237, 255; see also *Serrano v. Priest* (1976) 18 Cal.3d 728, 752 ["it 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."].) Because the State of California can only act through its agencies and officers, it is not a proper defendant here.

III. PLAINTIFFS' LAWSUIT MUST BE DISMISSED BECAUSE THE COMPLAINT SEEKS RELIEF THAT VIOLATES THE SEPARATION OF POWERS DOCTRINE

Plaintiffs assert that the court should order defendants to implement the following specific factors they believe are necessary in order "to provide access to literacy" (Comp., ¶ 132): (1) establish research-based literacy programs based on the stage of education (*Id.*, ¶¶ 133-134); (2) implement assessments and interventions (*Id.*, ¶¶ 135-136); (3) support for teachers (*Id.*, ¶¶ 137-139); (3) implement practices to promote parent involvement (*Id.*, ¶¶ 140-142); and (4) implement policies to promote learning readiness (*Id.*, ¶¶ 143-145). However, these factors have already been implemented and are being utilized, among others, as State Priorities as required by the Legislature (Ed. Code, § 52060, subd. (d); see also ELA/ELD Frameworks, RJN, Exh. H.) Thus, the Legislature and defendants have already provided for the relief that plaintiffs seek.

Insofar as plaintiffs' allegation "seeks to raise issues of the quality of education . . . or the academic results produced" the complaint is not actionable. (*Wells*, *supra*, 39 Cal.4th at p. 1213,

see also *Campaign for Quality Educ.*, *supra*, 246 Cal.App.4th at pp. 902-903 ["no constitutional mandate to an education of a particular standard of achievement"].) This lawsuit does not allege that defendants are not performing their specific statutory duties. Instead, plaintiffs seek to compel them to coerce school districts, who are not parties to this lawsuit, to provide education in a different manner. They want defendants to take different steps to ensure specific "academic results" (ie., ensuring that Student Plaintiffs read at grade-level) but in a manner contrary to the approach mandated by the Legislature. (See Ed. Code, §§ 52060 et seq.)

However, policy determinations about the best manner to provide education, and specifically how to improve the education received by children in the highest risk categories, are as varied as the many stakeholders involved in the public education of California's students. Courts repeatedly decline to engage in policy determinations about education and should here as well. "The science of pedagogy itself is fraught with different and conflicting theories of how or what a child should be taught, and any layman might - and commonly does - have his own emphatic views on the subject." (*Peter W.*, *supra*, 60 Cal.App.3d at p. 824.) The handful of plaintiffs here represent one view of education policy; and the view they present is their belief that a policy proposal —from six-years ago and rejected by the U.S. Department of Education — or a substantially similar plan, is the only viable approach to improving literacy. But as they have failed to satisfy the basic, minimum requirements to show any constitutional violation, their lawsuit amounts to nothing more than a request that the judiciary order the state agencies to implement different policies, in violation of the clear expression of legislative intent in the LCFF/LCAP funding and accountability system. As a result, the relief they seek violates separation of powers principles. "[T]he separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature." (*Butt*, *supra*, 4 Cal.4th at p. 695; see also *Common Cause v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 445.)

CONCLUSION

Plaintiffs have failed to state any claim against defendants, and therefore, the demurrer should be sustained in its entirety and without leave to amend.

Dated: May 1, 2018

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
SUSAN M. CARSON
Supervising Deputy Attorney General

JENNIFER A. BUNSHOFT
Deputy Attorney General
Attorneys for Defendants

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Ella T., et al. v. State of California, et al.**
No.: **BC685730**
I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of electronic correspondence.

On May 1, 2018, I served the attached:

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER TO COMPLAINT

DEFENDANTS' NOTICE OF DEMURRER AND DEMURRER

DECLARATION OF JENNIFER BUNSHOFT IN SUPPORT OF DEFENDANTS' DEMURRER TO COMPLAINT

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER

by transmitting a true copy via electronic mail.

Public Counsel 610 S. Ardmore Avenue Los Angeles, CA 90005 calliteracy@publiccounsel.org	Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 Literacy_MoFo@mofo.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 1, 2018, at San Francisco, California.

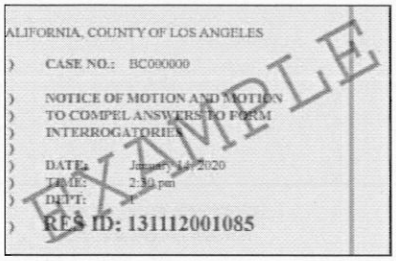
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Declarant

Signature

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RESERVATION INFORMATION

Reservation ID:	**180411305336**
Transaction Date:	April 11, 2018 4:08 PM
Case Number:	BC685730
Case Title:	ELLA T., ET AL VS. STATE OF CA LIFORNIA, ET AL
Party:	STATE OF CALIFORNIA (Defendant/Respondent)
Courthouse:	Stanley Mosk Courthouse
Department:	28
Reservation Type:	**Demurrer - without Motion to Strike**
Date:	7/11/2018
Time:	08:45 am

FEE INFORMATION (Fees are non-refundable)

First Paper Fee: (See below)

Description	Fee
First Paper (Unlimited Civil)	$435.00
Total Fees:	**$435.00**

PAYMENT INFORMATION

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Waived fees are recoverable (plus a one-time administrative fee upon judgment if the party becomes a judgment creditor).

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