SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ELIEZER WILLIAMS, et al., Plaintiffs, vs. STATE OF CALIFORNIA, et al., Defendants.	Case No.: 312 236 ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS AS TO SECOND CAUSE OF ACTION

Defendants' Motion for Judgment on the Pleadings As To Second Cause of Action came on for hearing June 19, 2003. Having reviewed the pleadings filed in connection with that motion and considered the arguments presented at the hearing, the Court grants the motion.

The second cause of action, as it survives the various amendments and court rulings so far in the litigation, asserts that the State's failure adequately to oversee and manage California's system of public education deprives Plaintiffs of their rights under Article IX, Sections 1 and 5 of the California Constitution. Plaintiffs allege that the State's failure has had a substantial negative impact on their ability to take advantage of the benefits of public education and has deprived Plaintiffs of equal access to the basics of an education. *See* Pl. Case Management

Statement for June 19, 2003, Ex. A at 1. In particular, Plaintiffs allege that the State's failure has resulted in their being deprived of qualified teachers, adequate facilities, sufficient textbooks, and other essentials necessary to learning. These deprivations, however, are not themselves the alleged wrongs. Nor do Plaintiffs seek to redress the specific alleged failings at particular schools or in particular districts. Rather Plaintiffs seek state-level relief to remedy the alleged deficiencies in the State's oversight and management system.

Article IX, section 1 provides: "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." Section 5 adds: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district in every year, after the first year in which a school has been established." These provisions, combined with other constitutional and statutory provisions, clearly announce the very important, central role of education in preserving our democratic system of government and the State's responsibility to offer a suitable education to each of its citizens. Butt v. California, 4 Cal. 4th 668, 680-81 (1992). It cannot be overemphasized that education is a fundamental right of every Californian. Serrano v. Priest, 18 Cal. 3d 728, 767-68 (1976).

Defendants' motion does not contest the importance of education or the State's role in providing it. Rather, they argue that these two constitutional provisions do not give Plaintiffs the rights they assert in this case and that Plaintiffs cannot assert a claim directly under either of these sections now that Plaintiffs have dropped their original claim that the State was permitting at least one school district to charge fees. The parties agree that the remaining claims are cognizable under constitutional equal protection guarantees as explained by the leading case of Butt v. State of California, 4 Cal. 4th 668 (1992).

There is, to be sure, a presumption that constitutional provisions are self-executing, absent a clearly expressed contrary intention. *See* Winchester v. Howard, 136 Cal. 432, 440 (1902). This presumption, however, is limited by the general rule in California that a constitutional provision is self-executing, in the sense of conferring a direct right on a litigant to sue for its enforcement, only if it "supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced." Leger v. Stockton Unified School District, 202 Cal. App. 3d 1448, 1455. The provision is not self-executing in this sense "when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law." *Id.* "As a general rule, a directive to the Legislature to implement a constitutional provision is an expression of intent that the provision not be self-executing, as the language of the provision is addressed to the Legislature rather than to the courts." People v. Vega-Hernandez, 179 Cal. App. 3d 1084, 1092 (1986). These principles, at least in part, take account of separation of powers concerns, directing courts not to adjudicate issues directed to legislative expertise where the courts would have to supply the specifics of the right to be enforced.

Article IX, section 1 may be the quintessential example of a constitutional provision that "merely indicates principles, without laying down rules by means of which those principles may be given the force of law." Leger, *supra*. And both Sections 1 and 5 are directed on their faces to legislative action. That may well account for the assumption made by the Supreme Court shortly after the adoption of the constitution that Section 5 is not self-executing. People v. Board of Education of Oakland, 55 Cal. 331, 334 (1880). People v. Board of Education of Oakland, commenting on Article IX, section 6, also recognized, though, that a constitutional section could be self-executing as to one of its parts, but not as to another. *Id.* Subsequent courts have recognized that direct claims may be brought under Section 5 where the plaintiff has been *completely* excluded from the system of public education (Piper v. Big Pine School District, 193

Cal. 664, 672-73 (1924); *see* Helena F. v. West Contra Costa Unified School District, 49 Cal. App. 4th 1793, 1800 (1996)) or has been required to pay for an aspect of public education in violation of Section 5's requirement that public education be "free" (*E.g.* Hartzell v. Connell, 35 Cal. 3d 899 (1984)). None of the cases upholding such a cause of action, so far as the Court is aware, have carefully considered the application of the Leger test to Section 5. But it is apparent that whether any particular case may be brought under that section as a direct claim depends on the specific violation asserted.

As previously stated, the violation alleged in this case is limited to the failure of the State's system of oversight and management of public education. Plaintiffs specifically eschewed a challenge based on the specific failings of particular schools and districts to provide educational necessities, perhaps recognizing the risk that such a suit might have had to give way, at least in the first instance, to available administrative remedies. Thus, this is not a case to require any particular level, kind, or quality of teachers, facilities, or textbooks to be provided to the Plaintiffs. Nor does it address the level of funding for education provided generally in the state or particularly for the Plaintiffs. The narrow focus on the state's oversight and management of public education distinguishes this case from the other cases decided under California's constitution and from the various out-of-state cases decided under arguably similar constitutional provisions that Plaintiffs have cited. This Court need not decide the broad question whether Section 5 creates a "substantive, actionable right to education" (Plaintiffs' Opposition at 1) nor the more specific question whether students could rely on Section 5 to argue that the constitution requires they receive better teachers, facilities, or textbooks. This Court need only decide whether Plaintiffs have stated a cause of action and may sue under this provision to redress the alleged deficiencies in the State's system of oversight and management.

Even assuming for purposes of this motion that Section 5 implies that the State must have some kind of system to oversee and manage the public education system the Legislature is

required to implement, it does not come close to telling a court what that system must look like or how it must act. In Hartzell the Supreme Court was able to determine the meaning of "free" and apply it to a school's system of fees. But a court would look in vain to the language of Section 5 for any guideline, mechanism, or procedures that would supply a sufficient rule on which to base a mandatory order directing the State to reform how it has chosen to oversee and manage public education.

This conclusion is also consistent with the interpretation of Section 5 that has emerged from the case law. Section 5 requires the Legislature to provide for "a system of common schools," but that has been construed to mean an "educational system ... uniform in terms of the prescribed course of study and educational progression from grade to grade." Serrano v. Priest, 5 Cal. 3d 584, 596 (1971)(holding in part "that section 5 should not be construed to apply to school financing" or to "require[] uniform educational expenditures"). "However, the curriculum and courses of study are not constitutionally prescribed. Rather, they are *details* left to the Legislature's discretion. Indeed, they do not constitute part of the system but are merely a function of it. (*California Teachers Assn. v. Board of Trustees, supra,* 82 Cal. App. 3d [249,] 255 [(1978)].) The same could be said for such functions as educational focus, teaching methods, school operations, furnishing of textbooks and the like." Wilson v. State Board of Education, 75 Cal. App. 4th 1125, 1135 (1999)(emphasis in original). The function of managing the system fits neatly into the sense of Wilson's non-exclusive list of functions that "are not constitutionally prescribed." If it is not constitutionally prescribed, then it follows that it cannot be the subject of a direct claim under Section 5.

Contrary to Plaintiffs' suggestion at the hearing, the Court's conclusion is not inconsistent with the parties' assumption that Plaintiffs may pursue their equal protection claim under Butt. That Plaintiffs may not pursue a claim challenging the State's oversight and management of public education directly under Article IX, section 5 does not mean that the State

is free to manage the system in a way that would deprive students of their right to equal protection of the laws or deprive them of substantially equivalent educational opportunity. Plaintiffs have an enforceable, "fundamental right to basic educational equality." Butt v. State of California, 4 Cal. 4th 668, 685-86 (1992). Butt discerned that right without locating it in Article IX, section 5—or, for that matter, in any other specific constitutional provision besides the equal protection provisions. *See* 4 Cal. 4th at 692 n.20 (finding it unnecessary to reach whether claims arose directly under Section 5). "Whatever the requirements of [the six-month minimum term guaranteed by] the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies equal protection. *Id.* at 685. Thus, concluding that Plaintiffs may not rely directly on Article IX, section 5 is not inconsistent with proceeding to analyze whether any inadequacies in the State's system of oversight and management deprive Plaintiffs of basic educational equality. *See* Arcadia Unified School District v. State Department of Education, 2 Cal. 4th 251, 265-66 (1992)(rejecting claim that school transportation fees violate Section 5's free school clause, but going on to consider whether the fee structure would violate equal protection). The California Supreme Court's long history of education jurisprudence clearly holds that the fundamental right to educational equality is greater than and not tied to the specifics of any one of the many constitutional sections addressing education. Or, put differently, the existence of the right to educational equality that could be violated by inadequate oversight does not carry as a necessary consequence that inadequate oversight violates Article IX, section 5.

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The motion for judgment on the pleadings is granted, and the second cause of action is dismissed. Most likely, this decision will not have any significant, practical impact on the future course of this litigation. Neither party has offered a convincing example of any evidence permissible under one theory but not the other or of any potential remedy supported by one but not the other. But, the issue having been tendered, it is now decided at this level.

DATED: July 10, 2003

Peter J. Busch
JUDGE OF THE SUPERIOR COURT