Tentative Rulings

DEPARTMENT 58 LAW AND MOTION RULINGS

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

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.

The Court would appreciate any attorney who orders a Court Reporter ensure that such reporter be equipped to connect to Dept. 58's Live Note system.

Case Number: BC484642 **Hearing Date:** December 13, 2013 **Dept:** 58

The Court in this matter has permitted augmentation of memoranda of points and authorities. Given this, and the complexity of the issues to be decided on the pending motion for summary judgment/adjudication, the Court finds good cause pursuant to CCP 437(b)(2,4) for the following order:

The filing and service dates of any opposition and reply papers with respect to the motions set for December 13, 2013 are ordered advanced as follows: any opposition be filed and served no later than November 13, 2013 and any reply be filed and served no later than November 27, 2013.

Clerk to give notice.

JUDGE ROLF M. TREU
DEPARTMENT 58

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Hearing Date: Friday, December 13, 2013
Calendar No: 12
Case Name: Vergara, et al. v. State of California, et al.
Case No.: BC484642
Motion: Motions for Summary Judgment/Adjudication
Moving Party: (1) Intervenors
(2) State Defendants
Responding Party: Plaintiffs
Notice: OK

Tentative Ruling: Motions for summary judgment/adjudication are denied. The Court makes no determination herein of whether the Challenged Statutes are, or are not, constitutional. It merely finds sufficient evidence exists to permit the parties herein to proceed to trial, where all issues will be addressed

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I. BACKGROUND
Plaintiffs Beatriz Vergara, Elizabeth Vergara, Clara Grace Campbell, Brandon DeBose Jr., Kate Elliott, Herschel Liss, Julia Macia, Daniella Martinez, and Raylene Monterroza (by their guardians ad litem) filed this action 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

capacity as State Superintendent of Public Instruction; California Department of Education; and State Board of Education (collectively "State Defendants"); and 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) ("Permanent Employment Statute"); Sections 44934, 44938(b)(1) and (2), and 44944 (collectively "Dismissal Statutes"); and Section 44955 ("LIFO (Last-In, First-Out) Statute"). Collectively, these statues will be referred to as the "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. Plaintiffs allege that these grossly ineffective teachers are unable to prepare students to compete in the economic marketplace or to participate in democracy.

Plaintiffs' equal protection claims assert that the Challenged Statutes violate their fundamental rights to equality of education (Claims 1-3) and makes the quality of education a function of race and wealth (Claims 4-6).

II. PROCEDURAL HISTORY
This action was filed on 5/14/12; on 8/15/12, the operative First Amended Complaint was filed. On 11/9/12, the Court overruled demurrers filed by State Defendants and ARUSD: the Court certified this action pursuant to CCP § 166.1. On 12/10/12, Defendants filed a petition for writ of mandate with the Court of Appeal, which issued a stay of all proceedings in this Court on 12/18/12. On 1/29/13, the Court of Appeal denied the petition for writ of mandate. On 5/2/13, the Court granted a motion to intervene filed by California Teachers Association and California Federation of Teachers (collectively "Intervenors"). Plaintiffs voluntarily dismissed ARUSD with prejudice on 9/13/13 and LAUSD with prejudice on 9/18/13.

Trial is set for 1/27/14; FSC for 1/16/14.

III. MOTIONS FOR SUMMARY JUDGMENT/ADJUDICATION
State Defendants and Intervenors (collectively "Moving Parties") have each filed motions for summary judgment or in the alternative summary adjudication. Except as specified below, the motions raise substantively identical issues.

A. Evidentiary Objections

1. Plaintiffs

Plaintiffs object to evidence submitted by Intervenors in the following declarations: Ann Niehaus (Nos. 1-2), Stephen Fiss (Nos. 3-6), Jeffrey B. Demain (Nos. 7-12), and P. Casey Pitts (Nos. 13-53). Objections Nos. 1-2, 19-21, and 23-25, are sustained; remainder overruled.

Plaintiffs object to evidence submitted by State Defendants in the following declarations: Lynda M. Nichols (Nos. 1-16), Susan M. Carson (Nos. 17-31). All objections are overruled.

2. Intervenors
Intervenors object to evidence submitted by Plaintiffs in opposition to

Intervenors motion in the following declarations: Brandon DeBose, Jr. (Nos. 1-2), Satonna Ballard-DeBose (Nos. 3-4), Kate Elliott (Nos. 5-7), Terri Elliott (Nos. 8-9), Herschel Liss (No. 10), Lisa Liss (Nos. 11-12), Julia Macias (No. 13), Daniella Martinez (No. 14), Karen Martinez (No. 15), Raylene Monterroza (Nos. 16-17), John E. Deasy (Nos. 18-27), Vivian Ekchian (No. 28), Kenneth Noonan (Nos. 29-40), Rick Rogers (Nos. 41-52), Mark Greenfield (Nos. 53-59), William Bragg (Nos. 60-69), Stephen Fiss (Nos. 70-74), Susan Parks (Nos. 75-84), Jonathan Raymond (Nos. 85-98), Debbra Lindo (Nos. 99-111), Eric Hanushek (Nos. 111-115), Arun Ramanathan (No. 116), Dan Goldhaber (No. 117), Kevin Reed (Nos. 118-120), Kevin Ring-Dowell (Nos. 121-124), Enrique A. Monagas (Nos. 125-170). All objections are overruled.

3. State Defendants
State Defendants object to evidence submitted by Plaintiffs in opposition to State Defendants' motion in the following declarations: Beatriz Vergara (Nos. 1-2), Elizabeth Vergara (No. 3), Alicia Martinez (Nos. 4-5), Clara Campbell (No. 7), Lauren Campbell (Nos. 8-9), Brandon DeBose Jr. (No. 10), Satonna Ballard-DeBose (No. 11), Kate Elliott (No. 12), Terri Elliott (Nos. 13-14), Herschel Liss (No. 15), Lisa Liss (Nos. 16-17), Juilia Macias (No. 18), Jose Macias (Nos. 19-20), Daniella Martinez (No. 21), Karen Martinez (Nos. 22-24), Raylene Moterroza (No. 25), Martha Monterroza (No. 26), John Deasy (Nos. 27-28), Kenneth Noonan (Nos. 29-38), Rick Rogers (Nos. 39-49), Mark Greenfield (Nos. 50-59), William Bragg (Nos. 60-70), Stephen Fiss (No. 71), Susan Parks (Nos. 72-81), Jonathan Raymond (Nos. 82-93), Debbra Lindo (Nos. 94-105), Eric Hanushek (Nos. 106-125), Arun Ramanathan (Nos. 126-140), Dan Goldhaber (Nos. 141-153), and Kevin Reed (Nos. 154-160). Objection Nos. 8, 10, 12-13, and 20 are sustained; remainder overruled.

B. Requests for Judicial Notice

1. Intervenors
Intervenors request judicial notice of the legislative history of the Challenged Statutes (IMSJ RJN Exs. A-B), Assembly Bill 375 of the 2013-2014 regular session ("AB 375") and its bill history (Exs. C-D), resolutions by the OUSD Board of Education (Exs. E-F), and minutes approving the charter petitions of charter schools attended by Raylene Monterroza (Exs. G-H) and Daniella Martinez (Exs. I-J). Intervenors' request for judicial notice is granted.

2. Plaintiffs
Plaintiffs request judicial notice of the Governor's veto message of AB 375 dated 10/10/13 (Pls.' RJN Ex. A), a writ petition filed by United Teachers Los Angeles in BC432420 Reed v. Los Angeles Unified School Dist. (Ex. B), and the United States Department of Education's rules and regulations as appearing in 78 Fed. Reg. 47980 (Ex. C). Plaintiffs' request for judicial notice is granted.

C. Factual Issues
For clarity, the Court will separate the parties' factual arguments, although the Court notes that they are raised in the context of the parties' legal arguments pertaining to Plaintiffs' equal protection claims. The Court notes that because these factual issues are raised in connection with Moving Parties' motions for summary judgment/adjudication, the Court construes Moving Parties' evidence strictly and Plaintiffs' evidence liberally, resolving any doubts in favor of Plaintiffs and trial. Roger H. Proulx & Co. v. Crest-Liners, Inc. (2002) 98 Cal.App.4th 182, 195.

1. Plaintiffs' Facts

Plaintiffs submit evidence of the following facts. The Court does not find these facts to be true nor untrue, but merely recites them in the limited context of these motions.

Teachers are a key determinant for student achievement and success, both in school and outside of school. PAMF ¶¶ 1-5. California school districts employ grossly ineffective teachers (PAMF ¶ 7) who harm students' education (PAMF ¶ 8) and whose removal would benefit those students who would otherwise be assigned such teachers (PAMF ¶ 10). In California, minority and low-wealth students have a disproportionate number of grossly ineffective teachers. PAMF ¶ 54.

The Permanent Employment Statute does not permit sufficient time for school districts to evaluate teacher effectiveness before deciding whether to reelect probationary teachers as permanent employees by March 15 of their second year of probation. PAMF ¶¶ 11-13. This results in school districts reelecting some grossly ineffective teachers (PAMF ¶¶ 14, 16) who otherwise would not be reelected if given more time for evaluation (PAMF ¶¶ 17-18).

The Dismissal Statutes (PAMF ¶¶ 19-23) makes the dismissal process for teachers extremely difficult for school districts (PAMF ¶¶ 24-25). They impose a high burden of proof that requires school districts to leave ineffective teachers in classrooms to build an evidentiary record for unsatisfactory performance. PAMF ¶¶ 26, 28. They make it extremely costly to dismiss teachers (PAMF ¶ 29), where the dismissal process typically takes two years or longer (PAMF ¶ 31) and school districts are required to pay a teacher's attorney's fees if the dismissal process is unsuccessful (PAMF ¶ 30). The associated costs and time for dismissal proceedings result in school districts retaining grossly ineffective teachers (PAMF ¶¶ 33-34) who otherwise would have dismissal proceedings initiated against them (PAMF ¶ 35). To avoid the dismissal process, grossly ineffective teachers are sometimes transferred to other schools (PAMF ¶ 36) or given settlement agreements to secure resignations (PAMF ¶ 37): the settlement amounts are related to the costs and burden of dismissal proceedings (PAMF ¶ 38). Settlement agreements are insufficient to remove all grossly ineffective teachers. PAMF ¶ 40.

Teacher seniority is not an accurate indication of teacher effectiveness (PAMF ¶ 41), and teacher turnover negatively affects students (PAMF ¶ 48). The LIFO Statute mandates reductions-in-force ("RIFs") in reverse order of seniority (PAMF ¶ 42), where teacher effectiveness is not taken into consideration (PAMF ¶ 43) and cannot be considered under the exceptions provided in the LIFO Statute (PAMF ¶¶ 44-47). In the absence of the LIFO Statute, school districts would consider teacher effectiveness in RIFs. PAMF ¶ 50. The LIFO Statute result in grossly ineffective teachers being retained who otherwise would have been laid off. PAMF ¶¶ 51-52. In California, schools with high percentages of minority and low-wealth students have a disproportionate number of teachers with low levels of experience (PAMF ¶ 53), resulting in such schools losing a greater percentage of their teaching staff during RIFs (PAMF ¶ 55). RIFs are typically announced around March 15 (PAMF ¶ 58), and some California school districts will implement RIFs in the 2014-2015 school year (PAMF ¶ 59).

School districts are subject to punishment or enforcement action by the State and/or private suits by aggrieved teachers if the Challenged Statutes are not followed. PAMF ¶ 57.

2. Causation

Moving Parties argue that the effect of the Challenged Statutes on students is attenuated, noting that the Challenged Statutes do not provide for the assignment of teachers. Additionally, Moving Parties submit that the Challenged Statutes permit and have resulted in school districts declining to reelect and successfully dismissing some teachers, and that the numbers of such actions have recently risen. However, Plaintiffs' evidence raises triable issues of fact as to the effect of the Challenged Statutes.

Plaintiffs' evidence could support the following factual findings at trial: that the Permanent Employment Statute prevents informed decisions with respect to granting permanent employment, that the Dismissal Statutes prevent effective action with respect to dismissal of teachers, that the LIFO Statute prevents considered decisions with respect to which teachers are subject to layoffs, that the Challenged Statutes results in grossly ineffective teachers obtaining and retaining permanent employment, and that grossly ineffective teachers are predominately assigned to minority and low-wealth students. Although Moving Parties note that Plaintiffs provide no evidence concerning how teachers are assigned, a reasonable trier of fact can conclude that, given limited resources, the existence of grossly ineffective teachers supports a causal relationship between the Challenged Statutes and the assignment of grossly ineffective teachers to students.

Intervenors argue that Plaintiffs' general evidence concerning the effect of the Challenged Statues, and opinions as to certain actions that could be taken in their absence, are irrelevant because Plaintiffs only concern grossly ineffective teachers. However, Intervenors fail to submit any evidence or logical argument why the general effect of the Challenged Statutes on ineffective teachers is not relevant to grossly ineffective teachers.

3. Standing
Moving Parties argue that Plaintiffs do not have standing to bring the equal protection claims, distinguishing each Plaintiff as not being a member of a minority group, not being economically disadvantaged, and/or never having a grossly ineffective teacher. Moving Parties argue that Plaintiffs are not beneficially interested to have standing in this action because they have not suffered or will suffer an injury in controversy. See, e.g., County of San Diego v. San Diego NORML (2008) 165 Cal.App.4th 798, 814.

However, Plaintiffs have submitted declarations from each Plaintiff and their parents that support standing. See, e.g., DF IMSJ ¶¶ 48-106. Plaintiffs' evidence can support the factual findings that Plaintiffs have been assigned a grossly ineffective teacher (see Holmes v. Cal. Nat'l Guard (2001) 90 Cal.App.4th 297, 318 (demonstrating the effect of infringement of the right to equal protection)), are in substantial danger of being assigned a grossly ineffective teacher (see B. C. Cotton, Inc. v. Voss (1995) 33 Cal.App.4th 929, 948 (showing threatened injury)), and/or decided not to attend traditional public schools because of the risk of being assigned a grossly ineffective teacher (see Dibona v. Matthews (1990) 220 Cal.App.3d 1329, 1338-39 (being prevented from asserting a right but for alleged unconstitutional acts)). Each of these grounds supports Plaintiffs' standing.

4. LIFO – Ripeness
Intervenors argue that the LIFO Statute is not a ripe controversy (see, e.g., Pac. Legal Foundation v. Cal. Coastal Comm'n (1982) 33 Cal.3d 158, 170; City of Santa Monica v. Stewart (2005) 126 Cal.App.4th 43, 64), submitting that Plaintiffs' school districts do not presently intend to conduct RIFs. However, Intervenors' evidence fails to establish that RIFs will be not implemented in the upcoming Spring. Strictly construed, Intervenors' evidence only shows that there is no present intent to conduct RIFs.

Plaintiffs' evidence can support the factual finding that RIFs will be implemented in the future.

Additionally, the Court notes that the reasoning underlying Intervenors' argument has been implicitly rejected by the Supreme Court. See Serrano v. Priest (1976) 18 Cal.3d 728, 757 (Serrano II) (stating that deferring consideration of probable future funding disparities to their time of actual occurrence is to ignore inherent defects in the system that is to be examined). Therefore, Plaintiffs' claims against the LIFO Statute "is not merely a general, abstract challenge" but relies on evidence of specific applications of the LIFO Statute: this is similar to the claim considered to be ripe in Coral Constr., Inc. v. City & County of San Francisco (2004) 116 Cal.App.4th 6, 25-26.

5. State Defendants
State Defendants argue that they are not involved in the application of the Challenged Statutes, noting that the Challenged Statutes concern decisions and actions taken by the school districts. However, this argument misconstrues Plaintiffs' claims. Plaintiffs' evidence can support the factual finding that the Challenged Statutes effectively constrain the school districts' decisions and actions, which results in equal protection violations because of the assignment of grossly ineffective teachers to students. Plaintiffs correctly note that public education is uniquely a fundamental concern of the State which "bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity." Butt v. State of Cal. (1992) 4 Cal.4th 668, 685. Because Plaintiffs' claims focus on the effect on the fundamental right of equality of education as a result of the existence of the Challenged Statutes, this action is properly directed at State Defendants.

State Defendants' reliance on Salazar v. Eastin (1995) 9 Cal.4th 836, is misplaced. In Salazar, the Supreme Court only concluded that the Court of Appeal could not order the State to promulgate certain regulations concerning school transportation costs when the power and duty to adopt such rules and regulations was expressly delegated to the local school districts. Id. at 856. Plaintiffs' action does not request such improper relief.

6. Governor
State Defendants argue that the Governor is not a proper defendant, relying on Serrano II. "[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 II, 18 Cal.3d at 752. However, Serrano II did not conclude 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. Id. at 750-53. Additionally, Plaintiff correctly notes that supreme executive power of the State is vested in the Governor, who has a duty to see that the law is faithfully executed. Cal. Const. Art. V § 1. State Defendants fail to establish that the Governor is not a proper defendant.

7. AB 375
Intervenors argue that AB 375 make Plaintiffs' claims against the Dismissal Statutes moot. See Fisher v. City of Berkeley (1984) 37 Cal.3d 644, 694. However, this argument is unavailing because AB 375 has been vetoed by the Governor (Pls.' RJN Ex. A).

D. Equal Protection Claims
Consistent with the Court's discussion as to the factual issues raised by the motions, the Court addresses the legal arguments raised as to Plaintiffs' equal protection claims.

1. Classification
Moving Parties argue that Plaintiffs cannot maintain their equal protection claims because the Challenged Statutes do not involve classifications of an identifiable group. See Cooley v. Superior Court (2002) 29 Cal.4th 228, 253 ("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." (citations omitted)). However, to the extent this argument relies on whether there are express classifications, this is not the standard. "In equal protection analysis, the threshold question is whether the legislation under attack somehow discriminates against an identifiable class of persons." Altadena Library Dist. v. Bloodgood (1987) 192 Cal.App.3d 585, 590 (added emphasis). Moving Parties fail to cite to any authorities that hold that the requisite classification for an equal protection claim must be express.

In Bloodgood, the Court of Appeal concluded that the 62% of voters who voted to increase taxes could not assert an equal protection challenge to a law that required a two-thirds majority voter approval for any tax increases because the 62% of voters were not an identifiable class. Id. at 592. However, the Court of Appeal stated in dicta that had the supermajority requirement singled out education, a valid equal protection claim might well have been asserted. Id. at 591. This is the case here. Plaintiffs' evidence concerning the effect of the Challenged Statutes can support the finding that the Challenged Statutes results in the assignment of teachers to students and/or to minority and low-wealth students who are thereby denied equality of education. This supports classifications based on the inequality among those students who are assigned grossly ineffective teachers and those who are not. Moving Parties fail to submit any evidence or logical argument that such students are not an identifiable group.

2. Facial Challenge
"A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual." Tobe v. City of Santa Ana (1995) 9 Cal.4th 1069, 1084. While this standard is "exacting," "[i]t is also the subject of some uncertainty." Today's Fresh Start, Inc. v. Los Angeles County Office of Educ. (2013) 57 Cal.4th 197, 218. The "least onerous phrasings of the test" requires showing equal protection problems in at least "the generality" or "vast majority" of cases. Id. (citations omitted). Moving Parties argue that only the text is considered in a facial challenge, asserting that the Challenged Statutes apply to all students. This argument misapplies the facial challenge standard.

The facial challenge standard only prohibits a facial challenge based on a statute's application to the particular circumstances of a specific plaintiff. It does not prohibit consideration of the actual procedural scheme. See Cal. Ass'n of PSES v. Cal. Dept. of Educ. (2006) 141 Cal.App.4th 360, 372. Plaintiffs' evidence can support the finding that the Challenged Statutes permits the employment of grossly ineffective teachers, which results in an equal protection violation in every instance that a student is assigned such a teacher. This would be a sufficient showing that the Challenge Statutes "inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." Tobe, 9 Cal.4th at 1084 (citations omitted).

3. Suspect Class – Discriminatory Intent
Plaintiffs' suspect class claims are based on race (see, e.g., Coral Constr., Inc. v. City & County of San Francisco (2010) 50 Cal.4th 315, 332) and wealth (see, e.g., Serrano II, 18 Cal.3d at 765-66). Moving Parties argue that explicit discrimination or discrimination by disparate impact is not unconstitutional unless motivated at least in part by purpose or intent to harm a protected group. Sanchez v. State (2009) 179 Cal.App.4th 467, 487. Moving Parties assert that Plaintiffs have no evidence of such discriminatory intent.

However, classifications based on suspect classes have been invalidated in the absence of discriminatory motivation even when the laws were neutral on their face. See Serrano v. Priest (1981) 5 Cal.3d 584, 601-3 (Serrano I); see also Butt, 4 Cal.4th at 681. The Court notes that Serrano I can be reconciled with the general rule requiring discriminatory intent on the ground that the suspect class claims had important rights at stake. See Serrano I, 5 Cal.3d at 602. Plaintiffs' equal protection claims concern the deprivation of the fundamental right to equality of education. Serrano II, 18 Cal.3d at 767-68. This is distinguished from other suspect class cases in which discriminatory intent was required to be shown because there were no fundamental rights at stake in those other cases. See, e.g., Hardy v. Stumpf (1978) 21 Cal.3d 1, 8 (distinguishing law enforcement employment as not being a common occupation for purposes of the fundamental right to employment); Kim v. Workers' Compensation Appeals Bd. (1999) 73 Cal.App.4th 1357, 1360-61 (concerning a workers compensation cap on costs for vocational rehabilitation services).

The Court notes that Sanchez concerned funding for school construction and thus Sanchez arguably also concerns the fundamental right to equality of education similar to Butt. However, this was an argument that was rejected by the Court of Appeal in Sanchez. In Sanchez, the plaintiff's equal protection challenge concerned how the State calculated a school district's existing funds for purposes of providing matching State funds. 179 Cal.App.4th at 473-74. The Court of Appeal distinguished the plaintiff's challenge from the fundamental concerns for the denial of basic educational equality that were considered in Butt. Sanchez, 179 Cal.App.4th at 488-89 (noting that there existed a system for assisting school districts that unexpectedly incurred more construction expenses than anticipated). The Court of Appeal therefore required a showing of discriminatory intent (id. at 488) because the plaintiff's equal protection challenge did not concern the deprivation of the fundamental right to equality of education.

4. Fundamental Right – Strict Scrutiny versus Rational Basis
"Traditionally, the constitutional right to equal protection requires that state action bear some rational relationship to a legitimate governmental purpose. However, when state action creates a suspect classification or abridges some fundamental right, such action becomes subject to strict judicial scrutiny and the state must show a compelling state interest in justification." Hardy v. Stumpf (1978) 21 Cal.3d 1, 7 (citations omitted). Strict scrutiny requires showing that "a classification bears a close relation to the promoting of a compelling state interest, the classification is necessary to achieve the government's goal, and the classification is narrowly drawn to achieve the goal by the least restrictive means possible." Bd. of Supervisors v. Local Agency Formation Comm'n (1992) 3 Cal.4th 903, 913.

The parties dispute whether strict scrutiny or rational basis applies. When a fundamental interest is involved, "[i]t is only when there exists a real and appreciable impact on, or a significant interference with the exercise of the fundamental right that the strict scrutiny doctrine will be applied." King v.

McMahon (1986) 186 Cal.App.3d 648, 662 (quoting Fair Political Practices Comm'n v. Superior Court (1979) 25 Cal.3d 33, 47 (citations omitted)); see also Butt, 4 Cal.4th at 685-86 (stating that strict scrutiny applies to "State-maintained discrimination whenever the disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest." (original emphasis)).

Moving Parties argue that the rational basis test applies because the Challenged Statutes have only an incidental, unintended, indirect, and attenuated effect on the fundamental right of equality of education. See King, 186 Cal.App.3d at 662. However, whether the Challenged Statutes have a real and appreciable impact on the fundamental right of equality of education raises triable issues of fact that the Court should decide at trial. See Gould v. Grubb (1975) 14 Cal.3d 661, 669-670; Butt, 4 Cal.4th, 686-88.

The Court notes that Moving Parties assert that the Challenged Statutes satisfy the rational basis test, citing to various cases that support a rational basis for the Challenged Statutes. See, e.g., Bakersfield Elementary Teachers Ass'n v. Bakersfield (2006) 145 Cal.App.4th 1260, 1279-80 (Permanent Employment Statute); Cal. Teachers Ass'n v. State (1999) 20 Cal.4th at 327, 343-44 (Dismissal Statutes); Lacy v. Richmond Unified School Dist. (1975) 13 Cal.3d 469, 473-74 (LIFO Statute). However, even if the Court were to decide that the rational basis test applies and strict scrutiny does not, issues of fact would need to be determined at trial as to whether the Challenged Statutes are rationally related to their purpose (D'Amico v. Bd. of Medical Examiners (1970) 6 Cal.App.3d 716, 727-28) in light of Plaintiffs' evidentiary showing.

E. Ruling
Therefore, consistent with the Court's analysis, the motions for summary judgment/adjudication are denied. The Court makes no ultimate determination on any issue presented in the motions, preserving all such issues for trial.