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# Superior Court of California, County of Alameda
# Rene C. Davidson Alameda County Courthouse

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| Cruz<br>Plaintiff/Petitioner(s)<br>VS.<br>State of California<br>Defendant/Respondent(s)<br>(Abbreviated Title) | No. RG14727139<br>Order<br>Motion<br>Denied |

The Motion filed for Jordan Parx and Eduardo Tamayo and Jason Magana and Jesus Tamayo and Lucia Barajas and Ignacia Barajas and Nathan Sauceda and Rianna Brown and Daisy Romo and Edith Quintero and Eric Flood and Arnold Gutierrez and Taliyah Jacobs and Samaria Hudson and Myriam Giselle Gonzalez and Lee Simmons and Cristian Gaspar and Briana Lamb and Brain Cruz and Jessy Cruz was set for hearing on 04/10/2015 at 01:30 PM in Department 17 before the Honorable George C. Hernandez, Jr..

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The Motion of Plaintiffs Jessy Cruz, et al. ("Plaintiffs") for Preliminary Injunction (the "Motion") came on for hearing on April 10, 2015 at 1:30 p.m., in Department 17 of the above-entitled Court. The hearing was originally set for April 9 at 2:30 p.m. On the morning of April 8, the court issued a tentative ruling denying the motion, providing some observations regarding the applicable law and the nature of Plaintiffs' claims, and setting forth areas of inquiry for the parties to address. To give the parties time to respond in an organized fashion, the court invited counsel to stipulate to continue the hearing 1-3 business days. The parties agreed to defer the hearing to April 10 at 1:30 p.m. and, at that time, appeared by and through counsel. Having considered the papers submitted to this court and the arguments of counsel, the court hereby DENIES the Motion, for the reasons that follow.

PROCEDURAL BACKGROUND. Plaintiffs' complaint was filed on May 29, 2014. Plaintiffs allege that defendants, including the State Board of Education, the State Department of Education and the Superintendent of Public Instruction, Tom Torlakson (together, the "State Education Defendants"), and the State of California (the "State"), have violated the California Constitution, the United States Constitution and California Government Code § 11135 by failing to provide Plaintiffs (who are students in seven public schools) with substantially the same amount of "meaningful instruction time" as their peers in other public schools. Specifically, although the State has recognized that time is an integral unit of learning, and has established minimum standards for the number of instructional days and minutes that schools must deliver, the audit process does not account for various factors that cause gross disparities in meaningful instruction time, which occur in Plaintiffs' schools. Plaintiffs allege that the State has failed to establish a system that meaningfully identifies and remedies grossly disparate and inadequate allocations of meaning learning time in the system, with the result that Plaintiffs have received and are receiving an education that is substantially inferior that provided to students in other public schools, and does not meet the minimum level of instruction time adequate to teach them the skills they need to success as productive members of society. Plaintiffs seek declaratory relief and an injunction.

On August 8, State Education Defendants answered, and The State filed a demurrer, which was overruled. On October 1, Plaintiffs filed an application for temporary restraining order as to Thomas Jefferson High School, in Los Angeles, only. A supplemental complaint was filed on October 7, 2014, which added Thomas Jefferson High School and Susan Miller Dorsey High School to the complaint. Over Defendants' opposition, and after two hearings, the TRO was granted. (See Temporary Restraining Order dated 10/8/2014.) The court found that Plaintiffs had shown a possibility of prevailing at trial on the claims of Jefferson students that they were suffering a "denial of "basic educational equality" compared to other California high school students. This finding was based upon evidence showing that Jefferson had been unable to implement new scheduling software, causing pervasive errors in the master schedule, which in turn affected the school's ability to finalize schedules, teachers' ability to teach the first month's worth of lesson plans, and students' ability to absorb the material. The court also found that some students were being assigned to contentless classes in lieu of substantive courses because the school was unable to provide substantive instruction.

As to whether Plaintiffs showed that instructional time at Jefferson fell below the "prevailing statewide standard," the court characterized Plaintiffs' showing (which was based solely on a declaration by education equality expert Jennie Oakes) as "minimal," but also observed that Defendants had not provided any evidence to undermine Plaintiffs' showing. (See 10/8/2015 Order at 6-7.) As to the balancing of harms, the court found that further delays would compound the serious harms to students caused by lost instruction time, and that Defendants had failed to identify any more serious harms to Defendants or the public. Because LAUSD was aware of these issues but had done little if anything to remedy them, the court determined that "limited" provisional relief was necessary, and declined to express any opinion regarding the sufficiency of Plaintiffs' showing should Plaintiffs seek a preliminary or permanent injunction. (Id. at 9 & n.8.)

The parties submitted periodic reports regarding compliance with the TRO. (See Status Reports dated 10/16/2014 and 10/23/2014.) On February 5, 2015, Plaintiffs filed this Motion. Defendants filed written oppositions. On April 2, Plaintiffs moved to strike several declarations (in whole or in part) filed in support of those oppositions. That motion is also opposed.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION. Plaintiffs contend that many problems contribute to their alleged educational deprivations, but focus primarily on two. First, Plaintiffs claim that, due to the lack of available courses, their schools involuntarily assign students to "instructional periods" (e.g., Inside Work Experience, Home, Service, unscheduled, early release, etc.) that involve no pedagogical content, rather than assigning them to the courses needed by the students in order to graduate, to qualify for admission to college, and/or to prepare for life as independent adults. Plaintiffs contend that these non-instructional periods have little if any educational value because these courses are wholly unsupervised, involve no academic or professional objectives, and do not evaluate the students' progress in meeting such objectives. Plaintiffs contend that their high schools fail to appropriately limit the number of contentless courses assigned to students, and that as a result, they suffer disproportionate harm because, as a statistical matter, they are more likely to be academically behind/vulnerable.

Second, Plaintiffs contend that, at the beginning of the school year, their high schools have failed to timely implement appropriate master schedules, which has caused massive disruption to students' education and unconstitutional reductions in instructional time. Plaintiffs contend this has been caused by inappropriate course assignments due to teacher or counselor shortages, and repeated adjustments to rebalance courses, due to unanticipated last-minute enrollments. Plaintiffs assert that, for several weeks, they and many other students were forced to wait (e.g., in the cafeteria) and/or endure repeated schedule changes, and were thus deprived of critical instruction time at the beginning of the year. This also caused teachers to slow the pace of instruction so that they would not have to repeat material for newcomers.

Initially, Plaintiffs sought an injunction that could cover all high schools in three separate school districts, based upon evidence from selected schools in each district: Oakland Unified School District (Castlemont and Fremont High Schools); Los Angeles Unified School District (Jefferson, Dorsey, and Fremont High Schools); and Compton Unified School District (Compton High School). In the tentative ruling, the court asked Plaintiffs to explain whether the court could issue district-wide injunctions without evidence of the number of public high schools each district and whether students from other schools, not represented in the record, have suffered similar harm. At the hearing, Plaintiffs amended

their injunction to cover only the six above-enumerated schools.

APPLICABLE LEGAL STANDARD. The standard for issuance of a preliminary injunction is well-established: The court must weigh two interrelated factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) relative interim harm to the parties from issuance or nonissuance of the injunction. (See, e.g., Butt v. State of California (1992) 4 Cal.4th 668, 677-78.) The greater Plaintiffs' showing on one factor, the less must be shown on the other to support an injunction. (Id. at 678.) However, the court cannot grant a preliminary injunction unless there is at least some possibility that the Plaintiffs would ultimately prevail on the merits of their claims. (Id.) In addition, the scope of available relief is limited by the scope of relief likely to be obtained at trial. (Butt, supra, at 678.) Finally, in a case, such as this one, alleging constitutional violations by state officials, injunctive relief must be appropriately tailored and limited to redress constitutional harms; the trial court should not violate separation of powers through specific legislative directives. (O'Connell v. Superior Court (2006) 141 Cal.App.4th 1452, 1474-76, citing inter alia Butt, supra, at 694.)

The decision to grant a preliminary injunction rests in the sound discretion of the trial court. (Shoemaker v. Cnty. of Los Angeles (1995) 37 Cal.App.4th 618, 624, citing authority.) "[T]he trial court is the judge of the credibility of the affidavits filed in support of the application for preliminary injunction and it is that court's province to resolve conflicts." (Id. at 625, citations and internal quotations omitted.) The usual purpose of a preliminary injunction is to preserve "the status quo until a final determination of the merits of the action." (Continental Baking Co. v. Katz (1968) 68 Cal.2d 512, 528.) As Defendants suggested at the hearing, a request for a mandatory injunction that changes the status quo is subjected to higher scrutiny and is "not permitted except in extreme cases where the right thereto is clearly established." (Id. at 625, internal quotations and citations omitted.) (See also People ex rel. Herrera v. Stender (2012) 212 Cal.App.4th 614, 630, as modified (Jan. 16, 2013).)

Plaintiffs responded that the injunction is prohibitory, citing Butt, supra. However, the injunction in Butt required the State and its officials to take (unspecified) affirmative action (including, ultimately, a plan authorizing the Superintendent of Public Education to take temporary charge of the district's operations) to assist the district so that schools could remain open. Although the order was designed to preserve the status quo for students, its effect required the State to take affirmative action and alter its position vis-à-vis the students, making it mandatory. (See, e.g., 6 Witkin, Cal. Proc. 5th (2008) Prov. Rem. §§ 282-83, pp. 223-24.) Similarly, the injunction sought by Plaintiffs has consistently required Defendants to take affirmative action (to ensure that certain students are not assigned to contentless classes unless certain criteria are met) which would have the effect of changing Defendants' position with respect to both the students and their school districts. (See, e.g., Plaintiffs' Not. of Mot. & Mot. filed 2/5/2015 [seeking an injunction requiring Defendants to "develop[] an accountability plan" that ensures that, before a court period lacking curricular content is assigned to any student, certain conditions are met; and that further ensures that appropriate final master schedules are timely in place]; Amended [Proposed] Order Granting a Preliminary Injunction filed 4/10/2015 [requiring Defendants to ensure, by whatever means they deem appropriate, that students at specified schools do not experience a loss of meaningful learning time due to scheduling problems and the use of non-instructional court periods, absent identified criteria].) The effect of the proposed injunction, here, is likewise mandatory.

In Butt, the Supreme Court did not address or resolve the question of whether mandatory injunctions require a heightened showing or apply such a heightened standard. (4 Cal.4th at 678 [discussing applicable legal standard].) This may be because the distinction is not relevant here and mainly pertains to the question of whether an injunction shall be stayed, pending appeal. (See, e.g., 6 Witkin, Cal. Proc. 5th (2008) Prov. Rem. § 280, citing, inter alia, Allen v. Stowell (1905) 145 Cal. 666, 669 [no change in applicable standard at preliminary injunction stage, even where mandatory injunction sought]; Mark v. Superior Court of City & Cnty. of San Francisco (1900) 129 Cal. 1, 7 [where injunction was primarily mandatory in nature, pending appeal, the enjoined party (school board) "should only be required to remain passive, and take no action in favor of or against either of the real parties to the contest in said action"].) Even if that is not the case, it was not necessary to address the question in Butt, where the Supreme Court concluded in emphatic language that there was little question but that the entitlement to an injunction was clearly established. (Butt, supra, at 678 n.8, 693-94, 697 [even on a "truncated and incomplete" record, finding "extreme and aggravated" conditions that threatened to cause "extreme and unprecedented" constitutional deprivations; injunctive relief was "fully justified"].)

SUBSTANTIVE LAW. At trial, to establish a violation of the California Constitution's equal protection clause, Plaintiffs must show that disparate treatment has a real or appreciable impact on their

education, such that the district's program, as a whole, falls fundamentally below prevailing statewide standards. (Butt, supra, 686-87.) If Plaintiffs can make such a showing, the State must demonstrate a compelling reason for failing to intervene; otherwise, the State must intervene to prevent unconstitutional discrimination at the local level. (Id. at 686-88.)

"PREVAILING STATEWIDE STANDARD." Plaintiffs contend that they have established prevailing statewide standards for the use of non-instructional periods and for the provision of appropriate master schedules through their two experts, one of whom also relies upon declarations from senior district officials from 10 school districts, describing the policies and procedures of by these districts. Defendants opposed, in part on the grounds that Plaintiff's sampling is neither random nor statistically significant. At the hearing, Defendants also emphasized their experts' opinions that Plaintiffs' declarations from district administrators may not have accurately reflected the reality (or realities) at individual high schools within their districts, and that the comparison between the "standard" and Plaintiffs' high schools should be schools to schools, not schools to districts.

In its tentative ruling, the court asked the parties to address what is required to establish a "prevailing statewide standard" and whether, at the preliminary injunction stage, the showing must be supported by admissible evidence. Having reviewed the authorities cited by the parties, and others, the court has the following observations:

A. Substantive Showing Required by Butt v. State of California

In Butt, the Supreme Court rejected the argument (similar to one made by Plaintiffs in this case) that the "prevailing statewide standard" may be established by legislation alone. The fact that California statutes effectively required a 175-day term did not create a constitutional mandate and the requirement was not itself protected by the equal protection guarantee. (Butt, supra, 4 Cal.4th at 686.) Instead, the court found a prevailing statewide standard based upon evidence of the hours of instruction actually provided to all other students in the State. (Id. at 686-87 & n.14.) To establish a prevailing statewide standard, then, Plaintiffs must provide some evidence of how much instructional time is actually provided to other California high school students. In Butt, the plaintiffs' showing was robust: There was admissible evidence that "virtually every established school district in California operated for at least 175 days." (Id. at 687 n.14.) Further, Plaintiffs' district had intended to operate for at least 175 days, but owing to a financial crisis purportedly caused by district mismanagement, could not continue to operate unless the State provided additional funds. (Id.)

B. Admissible Evidence Requirement at Preliminary Injunction Stage

Generally, the decision of whether to issue an injunction turns upon admissible evidence. (See C.C.P. § 527 [requiring verified complaint or affidavit in support of motion]; Riviello v. Journeymen Barbers, Hairdressers & Cosmetologists' Int'l Union of Am., Local No. 148 (1948) 88 Cal.App.2d 499, 503 [hearsay must be disregarded]. See also Ancora-Citronelle Corp. v. Green (1974) 41 Cal.App.3d 146, 150 ["It is the clear policy of the law that the drastic remedy of an injunction pendente lite may not be permitted except upon a sufficient factual showing, by someone having knowledge thereof, made under oath or by declaration under penalty of perjury. The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true."].)

One case suggests that there may be room for some flexibility. (See City & Cnty. of San Francisco v. Evankovich (1977) 69 Cal.App.3d 41, 54-55 ["[r]eturning to Code of Civil Procedure section 527, we note that while affidavits containing specific factual allegations to supplement the complaint for a preliminary injunction are desirable, they are not required; neither is a full evidentiary hearing with testimony from all sides..." (internal citations omitted)].) However, as with Butt, context likely played a role in the court's exercise of discretion: In that case, the trial court enjoined a labor strike by a union including employees of plaintiff City. Because the strike plainly violated the law, the trial court did not require cross-examination of the City's witnesses or require that the City directly demonstrate (and rather, reasonable inferred) that a strike would inhibit the City's ability to provide governmental and other services; this exercise of discretion was upheld on appeal. (Id. 55-56.)

Thus, it appears that an injunction must be supported by admissible evidence; however, in appropriate (exceptional) circumstances, the court may exercise its discretion to apply a more lenient standard.

C. Use of Statistical Evidence

A recent California Supreme Court case suggests that statistical evidence must be "employed with caution," and - at least when used to establish liability or compute damages at trial - must meet certain well-accepted, minimum criteria. (See Duran v. U.S. Bank Nat. Assn. (2014) 59 Cal.4th 1, 41.) These are the very standards identified by Defendants' experts: An expert must analyze the degree of variability in a population to determine the minimum size needed to obtain a representative sample; selection must be random; and the margin of error must be reasonable. (Id. at 42+.) These issues were raised by Defendants' experts. (See Haertel Decl. ¶¶ 7, 9, 12-16; Guthrie Decl. ¶¶ 7, 11-12.)

Because Duran involved the use of such evidence to establish liability and damages at trial, the due process concerns in that case were far more acute than here, at preliminary injunction stage. Duran is further distinguishable in that it involved the exclusion of defendant's (individualized) evidence, which tended to show that plaintiffs' statistical analysis was not reliable or accurate; here, the question is whether to admit plaintiff's statistical evidence, and there is no suggestion that such admission would preclude the consideration of Defendants' contrary evidence. Perhaps most importantly, the Supreme Court acknowledged that the use of statistical evidence is less problematic, from a due process standpoint, when it is necessary to establish a general point of liability (e.g., a pattern and practice of discrimination) that even an individual plaintiff must satisfy in order to prevail. (59 Cal.4th at 35-36 [discussing the use of such evidence in a disparate treatment case under Title VII].) That is the case here, where Plaintiffs proffer statistical evidence not to establish the deprivations of individual Plaintiffs, but to identify the prevailing statewide standard against which Plaintiffs' individualized evidence may ultimately be compared.

As acknowledged in Butt, the record at the preliminary injunction stage may be "truncated and incomplete" and, if the situation is sufficiently urgent, the court's decision may be based upon "a hasty tentative showing of constitutional necessity." (Butt, supra, 4 Cal.4th at 678 n.8 [and stating: "The evidence on which the trial court was forced to act may thus be significantly different from that which would be available after a trial on the merits."].) Such concerns are less present in this case, however, where the court opined, almost four months before this motion was filed, that Plaintiffs' showing of a "prevailing statewide standard" element was "minimal" and suggested that more may be required at the preliminary injunction stage. Thus, at this stage the court does not require an "impeccable" statistical analysis; however, the analysis must exhibit some indicia of reliability.

D. Evidence of "Prevailing Statewide Standards" in this Case

Plaintiffs rely primarily upon two experts, Merle Price and Jennie Oakes, to establish the prevailing statewide standards.

1. Use of Non-Instructional Periods

Expert Price recites facts in his declaration showing a sufficient foundation to opine on educational standards in California, including work as a teacher, coordinator of programs, developer of curricula, and various senior administrative positions at Los Angeles-area high schools and LAUSD that included responsibility for instructional programs. (See Price Decl. ¶¶ 1-6.) Price also cites to, and relies upon, "observations in the field of hundreds of schools in many different school districts" and research and interactions with others in the field of educational administration. (Id. ¶ 7.) He does not say which districts he has visited, when this occurred, or whether he specifically observed scheduling practices in those districts.

Price opines that "home periods" (or similar courses that permit students to leave campus early during the regularly scheduled day) are generally limited to very specific circumstances, e.g., students who are on track to complete graduation requirements and have passed both parts of the CAHSEE. He avers that this is "[c]onsistent with prevailing professional standards and prevailing practices in most California high schools." (Id. ¶ 8. See also ¶ 9 [sending students home because the school has no other available option for the student is "not the prevailing educational practice in the great majority of schools in California"].)

As to "service" periods (called independent work experience or teaching assistant periods in some schools), however, Mr. Price does not opine as to the prevailing actual practice in California schools; rather, he avers that "professional standards" impose certain, minimum requirements on the use of such

periods to ensure that they provide meaningful learning opportunities. (Id. ¶ 10.) Mr. Price does not rely upon Plaintiffs' sampling of ten school districts.

Dr. Oakes is plainly qualified to opine regarding educational equity in California. (See Oakes Decl. ISO Applic. for TRO ("Oakes TRO Decl."), filed 10/1/2014 ¶¶ 2-5; see also Oakes Decl. ISO Prelim. Inj. ("Oakes Inj. Decl.") filed 2/5/2015, ¶¶ 3-4.) The question is whether she establishes the existence of any "prevailing statewide practice" at California high schools for the assignment of students to contentless periods, and if so, whether that opinion is based upon sound foundation and methodology.

It is unclear whether Dr. Oakes has done so. While she provides an answer to the ultimate question to be decided by this court (whether the practices in the schools at issue in this motion comport with prevailing standards in the majority of California schools), her opinion on the existence and character of a "prevailing statewide standard" for the use of such periods is nebulous. It is unclear to what extent she is informed of, and based her opinion on, the actual practice at a majority of California high schools. Dr. Oakes refers repeatedly to "professional standards", which would appear to be normative; on reply, Dr. Oakes clarifies that she means to refer to standards that "the great majority of professional educators and researchers would agree" are minimum standards. (See Oakes Decl. ISO Reply ("Oakes Reply Decl."), filed 4/2/2015 ¶¶ 9-10, 16.) She also testifies that she cannot envision a professional educator who would countenance the practice of assigning underperforming students to home periods (where the students are free to leave campus and their activities are unmonitored) in lieu of substantive instruction. (Id. ¶¶ 13-14.) However, these are the normative judgments of professionals, not evidence of what actually occurs in California high schools.

Dr. Oakes relies in part on a survey of school administrators from 10 selected school districts (the "Comparison Districts"), and the declarations they provided in lieu of depositions. (See Oakes Inj. Decl. ¶ 6.) However, this survey is utilized for the limited purpose of providing a cross-check on her own professional and expert judgment, to provide a "yes or no" answer as to whether the practices in the schools at issue in this motion comport with prevailing standards in the majority of California schools. (See Oakes Decl. ISO Reply ("Oakes Reply Decl."), filed 4/2/2015 ¶¶ 8, 16.) Thus, Dr. Oakes admits that the survey of Comparison Districts should be afforded less weight than her professional opinions.

Dr. Oakes also suggests that the nature of the inquiry (confirming a yes-or-no question) excuses the survey from the rigorous requirements (for representative sampling) applied to traditional social science research. (Id. ¶ 17.) However, her explanation of the law of probability assumes that schools are chosen "at random," when they were not. (Id. ¶ 18.) Dr. Oakes does not satisfactorily address the criticisms of Defendants' experts regarding the non-randomness of the selection of the ten school districts, which appear to be legitimate and do give the court pause regarding the representativeness of the sample. (Compare Oakes Reply Decl. ¶20-21.) The court does not exclude Dr. Oakes' declarations, but finds that they should be afforded less weight due to the issues discussed above.

Finally, there are the declarations from the ten Comparison Districts, which the court may consider independently from Dr. Oakes. (See Eidmann Decl. Exs. 100-110.) The court's concern, here, also voiced by Defendants, is that the declarants are senior administrators at the district level. Generally, the declarants do not provide any foundation for their conclusory statements about the actual practices of all high schools within their respective school districts. One of the declarants had only held his position for six weeks at the time he executed his declaration. (See Ex. 105.) If these declarants engaged in any investigation as a basis for their sworn statements, they do not describe it. The supplemental declaration of Bill Sanderson, of SFUSD, illustrates the problem with relying on the declarations of senior district administrators: He states that he does not recall any complaints from students regarding assignments to elective classes during the current school year, but also says that if such a complaint were to arise, it would be addressed to other persons, and only come to the district's attention if it could not be resolved at the school level. (See Ex. 109 ¶ 10.) Similarly, April Gregerson is a high school principal and thus is more likely to have knowledge of actual scheduling practices at her high school, but admits that her knowledge of actual practices at the other high schools in her district is limited. (See Ex. 103 ¶ 20.) The lone exception is Jessica Kwek, who is a principal at El Rancho High School; while hers appears to be the only high school in her district, this is not clearly stated. (See Ex. 105.) Generally, however, these declarations lack foundation. In addition, Dr. Oakes admits that in LAUSD, there is slippage between LAUSD policies and actual practices at LA Schools; however, she does not acknowledge that the same may be true in the Comparison Districts. For these reasons, the 10-district sample is afforded minimal weight.

2. Implementation of Master Schedules

Mr. Price's declaration addresses standards for implementation of master schedules, but is limited to the practices of "well run" or "well functioning" schools. (Price Decl. ¶ 11.) He does not opine as to the actual practices of most California high schools.

Dr. Oakes' Preliminary Injunction Motion cites the testimony of LAUSD's Instructional Area Superintendent about the importance of timely implementing master schedules. This does not establish any statewide practice, i.e. how most districts actually implement master schedules. Her declaration does state that other schools (other than Jefferson) "across the state" have a master schedule in place before the students arrive on campus and adjustments are finalized in the first week or two of instruction. (Oakes Inj. Decl. ¶ 36.) However, this opinion is based exclusively upon the Comparison School Declarations, which do not themselves have adequate foundation. (See id. n.56.)

3. Conclusions regarding the Existence of Prevailing Statewide Standards

The court does not mean to suggest that the policies, procedures, and professional norms described in the above-cited declarations, submitted on behalf of Plaintiffs, do not in fact exist. Nor does the court imply these standards should be ignored. Indeed, Plaintiffs cite to statutory requirements regarding compulsory attendance, which informs Dr. Oakes' opinions regarding the prevailing standards of educational professionals. However, in Butt, the Supreme Court admonished that even legislative standards are subject to change, and that an equal protection claim measures the actual quality of a plaintiffs' education, as a whole, against the actual quality of most other programs in the State. (Butt, supra, 4 Cal.4th at 686-87.)

If, at this stage, Plaintiffs cannot supply reliable evidence regarding the actual practices of most California high schools with regard to the use of contentless classes and the timely implementation of appropriate master schedules, the court lacks a fair standard against which to measure the performance of Plaintiffs' own high schools and cannot determine, even preliminarily, whether Plaintiffs have some possibility of prevailing on their claims.

As such, it is not necessary to address whether Defendants have identified a compelling State interest for failing to intervene, or to conduct the balancing of harms analysis.

CONCLUSION. For the foregoing reasons, the Motion for Preliminary Injunction is DENIED.

APPENDIX A: EVIDENTIARY OBJECTIONS

Plaintiffs have filed a Motion to Strike Declarations Submitted in Support of Opposition to Motion for Preliminary Injunction, challenging the following Declarations: Carolyn Chang; Samuel Diaz; William Chacarin; and Emiliano Sanchez. Plaintiffs also seek to strike portions of the declarations of Pedro Avalos and Reginald Sample. While Plaintiffs do identify some potentially meritorious issues, the court declines to rule on the motion because none of the objected-to testimony was considered by the court in formulating its order denying Plaintiffs' Motion for Preliminary Injunction. The motion is DROPPED AS MOOT.

The State Education Defendants also filed objections to evidence, but expressly declined to ask the court to rule on each objection; rather, Defendants asked the court to "take into account the evidentiary weaknesses of plaintiffs' evidence and weigh it accordingly." (See State Educ. Defs' Objs. to Evid., filed 3/19/2015, at p.1.) As set forth in the above order, the court has done so.

At the hearing, Plaintiffs proffered "Appendix 9," which summarizes the results of a student-led survey of students re: impact of scheduling issues on their individual schedules and performance, which was discovered (not conducted) by Plaintiffs' counsel. Plaintiffs only ask the court to consider the information on the chart pertaining to Dorsey and Fremont high schools (not any other schools, which are not the subject of this Motion). Defendants objected that the material was new. Plaintiffs responded that the Appendix merely a summarizes evidence that was timely provided, with Plaintiff's reply, in response to arguments raised in Defendants' oppositions. The court agreed with Plaintiffs. The objection is OVERRULED.

Plaintiffs also supplied a chart summarizing Plaintiff's record evidence for each of the six schools at issue in this motion, as it pertains to the six factors identified in the court's tentative ruling that could potentially comprise a "prevailing statewide standard" for the use of non-academic contentless) class periods. Defendants objected. The court overruled the objection but granted Defendants permission to file a responding summary or chart, which the State Education Defendants filed on April 14. (See State Education Defendants' Summary of Evidence Pertaining to Tentative Standards for Service Periods and Early Release, 4/14/2015.) However, Defendants' summary incorporates not only Opposition evidence, but other evidence that was not filed or served with Defendants' Oppositions. (See id. at n.3 (LAUSD), n.1 (CUSD and OUSD).) Plaintiffs objected on this ground and others, primarily that the Defendants' summary is argumentative and inaccurate. (See Pltfs' Objs. to Defs' Summary, 4/15/2015.)

One day later, on April 15, Defendants' additional evidence was filed, entitled "Supplemental Evidence in Opposition to Plaintiffs' Motion for Preliminary Injunction." It is approximately 2000 pages of new evidence, mainly student transcripts produced by non-party school districts in response to the court's order of February 24, 2015. These records were demanded by Defendants via subpoena on February 17, only 12 days after Plaintiffs filed this Motion and 47 student declarations. Because the school districts apparently required student consent or a court order to respond, the parties stipulated to the entry of a court order on February 23, and the court issued the order on February 24, 2015. The order required production within 5 business days. However, according to Defendants, the districts took 3-5 weeks, producing these records on March 23 and April 7, 2015. Plaintiffs promptly objected to the filing of this evidence. (See Objs. to State Educ. Defs' Supplemental Evidence, filed 4/16/2015.) While the Defendants were hardly dilatory in obtaining or serving this information, the court agrees that Plaintiffs have not had a fair chance to address it. While the court's ruling does not consider or rely upon Defendants' supplemental evidence, the objection SUSTAINED. Had Defendants wished for this information to be considered by the court in connection with this motion, they could have sought a continuance of the hearing and leave to file a surreply.

Also on April 14, 2015, Defendants filed supplemental objections to Plaintiffs' evidence; Defendants again suggested that the court not need rule on every objection, only those that are material to Plaintiffs' Motion. Because the items objected to by Defendants on April 14 are not material to this order, the objection is OVERRULED.

The court's consideration of the evidence is limited to this motion only and is not to be construed as an indication of admissibility in future motions or at trial.

Dated: 04/17/2015

facsimile

Judge George C. Hernandez, Jr.

| SHORT TITLE: | CASE NUMBER: |
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| Cruz VS State of California | RG14727139 |

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