Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Tiffini Flynn Forslund; Justina Person; Bonnie Dominguez; and Roxanne Draughn,

Plaintiffs,

vs.

State of Minnesota; Mark Dayton, in his official capacity as the Governor of the State of Minnesota; the Minnesota Department of Education; and Brenda Cassellius, in her official capacity as the Commissioner of Education; St. Paul Public Schools, Independent School District 625; Anoka-Hennepin School District 11; Duluth Public Schools, Independent School District 709; West St. Paul-Mendota Heights Eagan Area Schools, Independent School District 197,

Defendants.

Court File No. 62-CV-16-2161
Case Type: Other Civil
Judge Margaret M. Marrinan

STATE DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

TABLE OF AUTHORITIES

Page

FEDERAL COURT CASES

STATE COURT CASES

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

STATUTORY AUTHORITIES

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

This reply memorandum is filed on behalf of Defendants State of Minnesota, Governor Mark Dayton, Minnesota Department of Education, and Commissioner Brenda Cassellius (hereinafter "State Defendants"). Plaintiffs' response mischaracterizes the State Defendants' arguments. Ultimately, the teacher tenure act and continuing contract law ("tenure laws") are part of a general and uniform system of education in Minnesota. The Minnesota Supreme Court has recognized that tenure laws ensure a professional workforce and serve the interests of schools, students and teachers. Because the challenged provisions of the teacher tenure laws do not run afoul of the Minnesota Constitution, Plaintiffs' claims fail as a matter of law.

ARGUMENT

I. THIS COURT LACKS JURISDICTION OVER THE CLAIMS ALLEGED.

A. Plaintiffs' Claims Are Barred By The Political Question Doctrine. Minnesota case law prescribes the limits of this Court's authority as it relates to the Education Clause. As acknowledged in the State's initial memorandum, the Court has authority to determine whether the legislature has fulfilled its duty to create a general and uniform system, and whether an individual has been denied their fundamental right to have access to that system.[1] *See* State Br. at 9-10; *see also Skeen v. State*, 505 N.W.2d 299, 312 (Minn. 1993) (finding that the legislature has created a general and uniform system). Here, Plaintiffs do not and cannot claim that Minnesota's teacher tenure laws, as a system, fail to apply generally and uniformly across the State. Plaintiffs also admit they are attending public schools. As such, their claims do not implicate the rights the Education Clause secures.

The Minnesota Supreme Court has also clearly stated that it is a matter of legislative

[1] The Court also has authority to consider whether funding provided is constitutionally sufficient. *Skeen v. State,* 515 N.W.2d 299 (Minn. 1993). But Plaintiffs do not challenge school funding.

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

discretion to determine the policies and procedures through which these guarantees are implemented, and that review of educational policy choices is not a justiciable question. *Bd. of Ed. v. Erickson*, 295 N.W. 302, 304 (Minn. 1940); State Br. at 8-10. Indeed, Plaintiffs' claims do not fall within the scope of rights secured by the Education Clause, but rather seek to adjudicate legislative policy making.

B. Plaintiffs Lack Standing. The State Defendants demonstrated in their initial memorandum that Plaintiffs lacked standing because their First Amended Complaint failed to identify a concrete, particularized, and actual or imminent "injury-in-fact," fairly traceable to the teacher tenure laws. State Br. at 12-16.[2] Plaintiffs reiteration of their generalized grievances set forth in the First Amended Complaint do not alter this conclusion.

Nor will this case remedy Plaintiffs' alleged harms. State Br. at 14-16. As Plaintiffs acknowledge, eliminating teacher tenure will not ensure Plaintiffs' children never again receive a teacher they consider "ineffective." *See* Pls' Br. at 34; *see also McSherry v. City of St. Paul*, 277 N.W. 541, 543 (Minn. 1938) (concerns about teacher quality predate teacher tenure laws). Furthermore, Plaintiffs also fail to address the causal deficiencies in their claims, including the fact that (1) it is speculative whether elimination of the teacher tenure laws would result in greater teacher "effectiveness" or higher district-wide test scores; and (2) that Minnesota Charter schools, which do not have tenure, are disproportionally represented among Minnesota's lowest performing schools. State Br. at 7, 16.

C. State Defendants Are Not Proper Party Defendants. State Defendants are not contesting that the Commissioner of Education is the proper state representative to defend

[2] The Minnesota Supreme Court has relied on the standing analysis in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). *In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011).

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

against Plaintiffs' claims that the challenged provisions of the tenure laws are facially unconstitutional. But to the extent Plaintiffs challenge the implementation of those laws, the Commissioner's general oversight does not give her authority to override specific statutory language directing districts to implement teacher employment and teacher-student assignments. Minn. Stat. §§ 122A.40; 122A.41; 120A.38. As Minnesota Courts have recognized, the other State Defendants are not proper defendants. State Br. at 16-18.[3] They are also redundant, because they can provide no relief beyond what the Commissioner can offer.

II. PLAINTIFFS' CLAIMS FAIL AS A MATTER OF LAW.

A. Plaintiffs Have Not Met The Standard For Either A Facial Or As-Applied Challenge Against State Defendants. Plaintiffs' facial claims fail because they do not allege that the teacher tenure laws are unconstitutional in all, or even a substantial majority, of its applications. *McCaughtry v. City of Red Wing*, 831 N.W.2d 518, 522 (Minn. 2013). Even under Plaintiffs' own theory, Plaintiffs admit that tenure is granted to teachers are effective in the instruction of children.

Plaintiffs' assertion of as-applied claims against the Commissioner of Education also fail because they have not actually alleged how the laws have been applied to Plaintiffs. State Br. at 13-14. Nor have Plaintiffs identified any actions actually taken by the Commissioner in applying the laws to the Plaintiffs. *See, e.g., Benson v. Alverson*, No. A11-0811, 2012 WL 171399, at *2 (Minn. Ct. App. Apr. 17, 2012) (recognizing that where state does not implement a law, there is not a justiciable controversy as against the state actor).

[3] *State v. Ness*, 834 N.W.2d 177 (Minn. 2013) is inapposite. *Ness* is a criminal case, in which the criminal defendant raised a constitutional issue germane to his criminal conviction. *See Hoch v. State*, No. 62-CV-5-3953 (Minn. Dist. Ct. Jan. 14, 2016); *Laudenbach v. State*, No. 62-CV-14-6539 (Minn. Dist. Ct. Feb. 6, 2015).

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

B. Plaintiffs Fail To State A Viable Education Clause Claim. Plaintiffs fundamentally misunderstand the guarantees of the Education Clause. Plaintiffs would have the Court focus on whether the challenged provisions affect individual students identically. But, as the Minnesota Supreme Court explained in *Skeen*, the Education Clause focuses only "on the broad purposes of an education system" and requires "that such a standardized system be established throughout the state." 505 N.W.2d at 312. Teacher tenure laws are standardized, general laws that apply uniformly throughout the state. *Skeen* also rejects Plaintiffs' emphasis on individual-level identity, explaining that reading the term "'uniform' as meaning 'identical' (or 'nearly identical') is inconsistent with a plain reading of the Education Clause." *Id*.

Furthermore, Plaintiffs' reliance on the concepts of adequacy and thoroughness relate to funding, about which Plaintiffs make no allegations. *See Skeen*, 505 N.W.2d at 315 ("Thus, a clear reading of the original constitution indicates that the drafters intended to draw a distinction between the fundamental right to a 'general and uniform system of education' and the financing of education, which merely must be 'thorough and efficient.'") Nonetheless, Plaintiffs do not dispute that Minnesota schools rank in the top five in the nation, and students in all demographics score near or above national averages. State Br. at 6.

Finally, Plaintiffs attempt to apply the framework of strict scrutiny or rational basis review to the Education Clause claim is misplaced. *Compare* Pls' Br. at 10-11 *with Skeen*, 505 N.W.2d at 308-312 (analyzing Education Clause under the plain language of the Constitution).

B. Plaintiffs Do Not State A Claim Under The Equal Protection Clause. Plaintiffs assert an individual fundamental right to a "uniform and thorough education." *See, e.g.*, FAC *passim*; Pls.' Br. at 5, 10-13. No such *constitutional* right has been recognized in Minnesota.

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

The Minnesota Supreme Court has recognized a fundamental right only to a "general and uniform *system* of education." State Br. at 23 (quoting *Skeen*, 505 N.W.2d at 313).

The Minnesota Supreme Court has not extended this right to include a constitutional right to uniformity or similarity at an individual student level. Indeed, the Court has repeatedly rejected that very argument. *See, e.g.*, State Br. at 20-22 (citing *Curryer v. Merrill*, 25 Minn. 1, 5-6 (Minn. 1878) (no right to uniformity in the types of textbooks); *State ex rel. Klimek v. Otter Tail County*, 283 N.W. 397, 398 (Minn. 1939) (no right to uniformity in free school busing); *Skeen*, 505 N.W.2d at 310-11 (no right to uniformity in school funding); *see also Melby v. Hellie*, 80 N.W.2d 849, 852 (Minn. 1957) (stating that the Education Clause does not require uniformity in "access" or "quality" of education). In any event, because Minnesota's *system* of education is adequate and the teacher tenure laws are uniform across the state, the challenged provisions survive either strict scrutiny or rational basis review. *See Skeen*, 505 N.W.2d at 315.

Plaintiffs admit that their equal protection claim based on disparate impact must allege intent to discriminate. *See* Pls.' Br. at 22. Yet, Plaintiffs have not alleged, and do not argue, that the State Defendants intended to discriminate in enacting the teacher tenure laws. *See Odunlade v. City of Minneapolis*, 823 N.W.2d 638, 648 (Minn. 2012) (Plaintiff's disparate impact claim fails as a matter of law where Plaintiffs did not plead that the "state actor intended to discriminate against the suspect class.")

Furthermore, when there are legitimate reasons for the state legislature to adopt and maintain a particular statute, the courts "will not infer a discriminatory purpose on the part of the [State]." *McClesky v. Kemp*, 481 U.S. 279, 297-99 (1987). The Minnesota Supreme Court has repeatedly recognized the legitimate purposes supporting the teacher tenure laws, and stated that the Legislature's rationale was not only legitimate but "wise." State Br. at 1-3, 26-27; *see, e.g.*,

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

Oxman v. Indep. Sch. Dist. Of Duluth, 227 N.W. 351, 352 (Minn. 1929). Also, because there is a rational, neutral explanation for the discriminatory impact alleged, "an inference of discriminatory purpose is not permitted." *Ricketts v. City of Columbia, Mo.*, 36 F.3d 775, 781-82 (8th Cir. 1994). Public data and research also demonstrate that the achievement gap is caused by factors *other* than tenure laws, and that myriad factors affect student test scores and student performance generally. State Br. at 6-7; 15-16. Indeed, Charter schools, which are not subject to tenure laws, struggle with these same outcomes and disparities. *Id.* at 7.

Finally, Plaintiffs incorrectly argue that it remains an "open question" whether socio-economic status is a suspect class under Minnesota equal protection law. In 2012, the Minnesota Supreme Court held that "wealth or socioeconomic status does not constitute a suspect class." *Odunlade*, 823 N.W.2d at 648 (citation omitted) (no distinction between adults and children).

C. Plaintiffs' Procedural Due Process Claim Fails As A Matter Of Law. Contrary to Plaintiffs' suggestion, procedural due process turns not on the existence of constitutional fundamental rights, but instead on whether a plaintiff has a protectable property or liberty interest defined by state law. *See* State Br. at 27; Minn. Stat. § 120A.22, subd. 5. Minnesota courts have found a statutory basis only for the property interest in the right to attend public school, which Plaintiffs indisputably are receiving. *Id.*[4] Plaintiffs do not identify a statutory basis to find a property interest in certain teacher assignments.

CONCLUSION

For all of the reasons stated herein and in their moving memorandum, the State Defendants ask this Court to dismiss Plaintiffs' First Amended Complaint.

[4] *J.K. ex rel. Kaplan v. Minneapolis Public Schools (Special Sch. Dist. No. 1)*, 849 F. Supp. 2d 865, 874 (D. Minn. 2011) is inapposite. Indeed, *Kaplan* recognized that the relevant inquiry is whether there has been a denial of "*any* public education." *Id.* at 871.

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

Dated: July 11, 2016

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
State of Minnesota

/s/ Alethea M. Huyser
Alethea M. Huyser
Assistant Solicitor General
Atty. Reg. No. 0389270
alethea.huyser@ag.state.mn.us

Andrew Tweeten
Assistant Attorney General
Atty. Reg. No. 0395190
andrew.tweeten@ag.state.mn.us

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1243 (Voice)
(651) 282-5832 (Fax)

Attorneys for Defendants State of Minnesota, Mark Dayton, Minnesota Department of Education and Commissioner Brenda Cassellius

Filed in Second Judicial District Court
7/11/2016 3:40:57 PM
Ramsey County, MN

MINN. STAT. § 549.211 ACKNOWLEDGMENT

The parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: July 11, 2016

/s/ Alethea M. Huyser
Alethea M. Huyser
Assistant Solicitor General
Atty. Reg. No. 0389270
alethea.huyser@ag.state.mn.us

Andrew Tweeten
Assistant Attorney General
Atty. Reg. No. 0395190
andrew.tweeten@ag.state.mn.us

445 Minnesota Street, Suite 1100
St. Paul, Minnesota 55101-2128
(651) 757-1243 (Voice)
(651) 282-5832 (Fax)

Attorneys for Defendants State of Minnesota, Mark Dayton, Minnesota Department of Education and Commissioner Brenda Cassellius