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SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

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ELIEZER WILLIAMS, et al.,) Case No. 312 236
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Plaintiffs,) Hearing Date: April 11, 2001
)
vs.) Time: 8:30 a.m.
)
STATE OF CALIFORNIA, DELAINE) Department: 16
)
EASTIN, State Superintendent)
Of Public Instruction, STATE) Judge: Hon. Peter J. Busch
)
DEPARTMENT OF EDUCATION, STATE)
)
BOARD OF EDUCATION,)
)
Defendants.)
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)
AND RELATED CROSS-ACTION.)
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)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF
DEFENDANT STATE OF CALIFORNIA FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY ADJUDICATION AS TO THE FIRST, SECOND,
THIRD, FOURTH, AND/OR SEVENTH CAUSES OF ACTION BROUGHT BY THE
CLOVERDALE PLAINTIFFS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, FOR SUMMARY ADJUDICATION AS TO CLAIMS BROUGHT BY THE CLOVERDALE PLAINTIFFS

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1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
2 MOTION OF DEFENDANT STATE OF CALIFORNIA FOR SUMMARY JUDGMENT OR,
3 IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION AS TO THE FIRST,
4 SECOND, THIRD, FOURTH, AND/OR SEVENTH CAUSES OF ACTION BROUGHT BY
5 THE CLOVERDALE PLAINTIFFS

6 I. INTRODUCTION.

7 Plaintiffs Drew Smith, Gino Buchignani, and Jason
8 Kehrli (the "Cloverdale Plaintiffs") attend Cloverdale High
9 School in the Cloverdale Unified School District.¹ In their
10 First Amended Complaint ("FAC"), the Cloverdale Plaintiffs allege
11 that defendant State of California is currently depriving them of
12 "basic educational opportunities" by subjecting them to
13 "deplorable conditions" that "shock the conscience." FAC ¶¶ 1,
14 3-4.

15 The Cloverdale Plaintiffs complain about only two
16 specific conditions. First, they allege that there are either an
17 insufficient number of textbooks or no textbooks at all in some
18 classes, including science and geography. FAC ¶ 141. Second,
19 they allege that some of the classrooms at Cloverdale High lack
20 air-conditioning and that the absence of air-conditioning
21 undermines students' performance on hot days. FAC ¶ 140. The
22 Cloverdale Plaintiffs contend that these conditions have resulted
23 in a host of constitutional and statutory violations entitling
24 them to broad declaratory and injunctive relief.²

25 ¹ A fourth named plaintiff, Jonathan Cambra, also attends
26 Cloverdale High School. On or about February 5, 2001, however,
27 Plaintiff Jonathan Cambra filed a Request for Dismissal with
28 prejudice as to all causes of action and all defendants.

² The Cloverdale Plaintiffs assert the following five causes
of action: (1) a violation of Article I, Section 7(a) and

1 The Cloverdale Plaintiffs theorize that the State lacks
2 an effective system for monitoring and correcting the conditions
3 of which they complain. Regardless of whether their theory has
4 any merit, the factual record before the Court indicates that the
5 conditions alleged by the Cloverdale Plaintiffs either do not
6 exist or else have been mischaracterized. Moreover, to the
7 extent that the conditions do exist, they do not violate the
8 Cloverdale Plaintiffs' educational rights. Accordingly, the
9 Cloverdale Plaintiffs are not entitled to any relief against the
10 State. Summary judgment on their claims is therefore
11 appropriate.

12
13 **II. THERE IS NO MERIT TO THE CLOVERDALE PLAINTIFFS' FIRST CAUSE**
14 **OF ACTION FOR VIOLATION OF ARTICLE I, SECTION 7(a) AND**
ARTICLE IV, SECTION 16(a) OF THE CALIFORNIA CONSTITUTION.

15 A motion for summary judgment must be granted when the
16 evidence demonstrates that there is no triable issue of material
17 fact and the moving party is entitled to judgment as a matter of
18 law. Cal. Civ. Proc. Code § 437c(c). Similarly, a motion for
19 summary adjudication as to a cause of action must be granted if
20 the cause of action has no merit. Cal. Civ. Proc. Code § 437c
21 (f)(1).

22
23
24 Article IV, Section 16(a) of the California Constitution; (2) a
25 violation of Article IX, Sections 1 and 5 of the California
26 Constitution; (3) a violation of Article I, Sections 7(a) and 15
27 of the California Constitution; (4) a violation of Title VI of
28 the Civil Rights Act of 1964, 42 U.S.C. § 2000d and 34 C.F.R. §
100.3(b)(2); and (5) a cause of action for declaratory relief
based on the foregoing alleged violations.

1 The Cloverdale Plaintiffs' first and principal cause of
2 action alleges a violation of the equal protection clauses of the
3 California Constitution.³ The Cloverdale Plaintiffs, however,
4 are not entitled to any relief unless they prove that the State
5 has denied them "basic educational equality." Butt v. State of
6 California, 4 Cal. 4th 668, 685 (1992). And they cannot meet that
7 standard unless they prove that the "actual quality" of their
8 school district's educational program, "*viewed as a whole, falls*
9 *fundamentally below prevailing statewide standards.*" Id. at 686-
10 687 (emphasis added). In assessing whether a plaintiff has met
11 this test, courts must recognize the "inevitable variances in
12 local programs, philosophies, and conditions" and give
13 "considerable deference" to a local school district's efforts to
14 "gain maximum educational benefit from limited resources." Id.
15 at 686.

16 Filed herewith is the declaration of Gene Lile, the
17 principal of Cloverdale High School. Mr. Lile has been at
18 Cloverdale High School for a total of 21 years, serving
19 successively as teacher, vice-principal, and principal. His
20 declaration makes clear that the Cloverdale Plaintiffs cannot
21 prove that they have been denied basic educational equality.
22 First, their claim has no factual basis. Second, even assuming,
23 arguendo, that their claim had some factual basis, the

24
25 ³ Article I, Section 7 of the California Constitution
26 provides in part that "[a] person may not be . . . denied equal
27 protection of the laws." Cal. Const. art. I, § 7(a). Article
28 IV, Section 16 of the California Constitution provides in part
that "[a]ll laws of a general nature have uniform operation."
Cal. Const. art. IV, § 16(a).

1 educational program of Cloverdale Unified, when viewed as a
2 whole, does not fall fundamentally below prevailing educational
3 standards and therefore is not constitutionally deficient. Butt,
4 Cal. 4th 686-687.

5
6 A. The Textbook Allegations Have No Merit.

7 The Cloverdale Plaintiffs allege that in some classes,
8 including science and geography, either there is an insufficient
9 number of textbooks or there are no textbooks at all:

10 Students cannot take books home for homework in some
11 classes, including science and geography classes, because
12 the school does not have enough books for all students in
13 the school. In addition, students in some classes,
including geography, do not have any books to use at all.

14 FAC ¶ 141. This allegation is untrue.

15 In every class at Cloverdale High that utilizes a
16 textbook, each student has a textbook to use in class and to take
17 home. Lile Decl. ¶¶ 5, 7, 8, 11. The sole exception is Physics.
18 Lile Decl. ¶ 5. While each Physics student had a textbook to use
19 in class and to take home at the beginning of the current school
20 year, some students have since lost or damaged their textbooks.
21 Lile Decl. ¶ 9. Because Cloverdale Unified is purchasing a new
22 edition of the Physics textbook for all students for the upcoming
23 2001-2002 school year, it has decided not to replace those
24 textbooks that have been recently lost or damaged. Lile Decl. ¶
25 9. Despite this, students who currently lack a Physics textbook
26 are provided with photocopies of necessary textbook information.
27 Lile Decl. ¶ 9. Accordingly, the Cloverdale Plaintiffs'

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1 allegation that some classes, including science classes, have an
2 insufficient number of textbooks is simply wrong.⁴

3 Technically true but fundamentally misleading is the
4 Cloverdale Plaintiffs' allegation that some classes lack any
5 textbooks at all. The fact is that some classes use
6 instructional materials other than textbooks, but only in cases
7 where a teacher makes a professional judgment that such materials
8 may provide a superior method of instruction.⁵ Lile Decl. ¶ 5.
9 For example, Cloverdale High teaches geography not by using
10 traditional textbooks, but by exposing students directly to maps,
11 atlases, and "on-line" computer resources. Lile Decl. ¶ 6. In
12 fact, each geography student has access to atlases and maps and
13 is provided with photocopies of these resources as needed for
14 assignments. Lile Decl. ¶ 6. Notebooks containing instructional
15 information are also used during class and are distributed to
16 students at the beginning of the semester. Lile Decl. ¶ 6.

17
18 ⁴ During the 1999-2000 school year the Integrated Science
19 class had only one set of textbooks, which was for use in class.
20 Lile Decl. ¶ 11. Cloverdale High, however, only began offering
21 Integrated Science as a pilot class beginning that year. Lile
22 Decl. ¶ 10. Accordingly, a decision was made to purchase only
one initial set of textbooks. Lile Decl. ¶ 11. When the
Integrated Science class proved to be a success and Cloverdale
High decided to continue offering it, Cloverdale Unified
purchased additional textbooks for each student taking the class.
Lile Decl. ¶ 11.

23 ⁵ This is clearly the type of pedagogical choice that a
24 local district is entitled to make. Not only does Butt
25 specifically require "considerable deference" to such choices, 4
26 Cal. 4th at 686, but the Legislature has specifically recognized
27 that "because of economic, geographic, physical, political,
28 educational, and social diversity, specific choices about
instructional materials need to be made at the local level."
Cal. Educ. Code § 60000(b). School districts "must have the
ability to choose instructional materials that are appropriate to
their courses of study." Cal. Educ. Code § 60000(c).

1 Geography students thus lack textbooks only because Cloverdale
2 High has chosen not to use textbooks to teach geography. But all
3 students have the instructional materials that are appropriate
4 for their respective classes.

5 Finally, students at Cloverdale High receive more than
6 just the textbooks and other instructional materials they need.
7 The school also has two computer labs. Lile Decl. ¶ 4. And
8 every classroom has additional computers with internet access.
9 Lile Decl. ¶ 4.

10
11 B. The Allegations Regarding a Lack of Air-Conditioning
12 Have No Merit.

13 The Cloverdale Plaintiffs also allege that some
14 classrooms at Cloverdale High lack air-conditioning and that the
15 absence of air-conditioning undermines students' ability to
16 concentrate on hot days:

17 Very few of the classrooms at Cloverdale High have air
18 conditioning, even though temperatures inside the classrooms
19 reach as high as 110 degrees and are consistently extremely
20 hot during the months of August, September, October, May,
21 and June. Students in the classrooms without air
22 conditioning have difficulty concentrating and learning in
23 the extreme heat. The Cloverdale High school calendar
24 begins at the end of August and ends in June, and the
25 absence of air conditioning severely undermines students'
26 ability to concentrate during hot days.

27 FAC ¶ 140. Again, the facts do not support this allegation.

28 The School has two main wings of classrooms, six
portable classrooms, two computer labs, an auto/metal shop
classroom, a woodshop classroom, and a library. Lile Decl. ¶¶ 4,
12. Of these facilities, only the two classroom wings and the
two shop classrooms currently lack air-conditioning. Lile Decl.

1 ¶ 12. But every classroom at Cloverdale High is equipped with
2 two ceiling fans. Lile Decl. ¶ 12. If it is hot, the teachers
3 do what millions of other Californians do: they ventilate the
4 classrooms with cool air in the morning and use the ceiling fans
5 to maintain the airflow throughout the day. Lile Decl. ¶ 12.⁶
6 The principal of Cloverdale High has never received a formal
7 complaint from a student or a student's parent regarding
8 excessive heat in classrooms. Lile Decl. ¶ 14. In addition,
9 voters in Cloverdale Unified passed a \$4 million facilities
10 modernization bond in 1999 that will provide air-conditioning to
11 the two classroom wings at Cloverdale High; the improvements are
12 expected to be completed within the next two years. Lile Decl. ¶
13 13.

14 Contrary to the Cloverdale Plaintiffs' allegation,
15 objective criteria demonstrate that students' performance has not
16 suffered because some classrooms lack air-conditioning. In 1999,
17 Cloverdale High met or exceeded the average of all California
18 high schools in 4 of 5 categories tested on the SAT-9 (a
19 statewide aptitude test), including reading, language arts,
20 science, and social science. Lile Decl. ¶ 3. And in 2000,
21 Cloverdale High met or exceeded the average of all California
22 high schools in 3 of 5 categories tested on the SAT-9, including
23 math, science, and social science. Lile Decl. ¶ 3. Cloverdale

24
25 ⁶ The Cloverdale Plaintiffs allege that classroom
26 temperatures reach as high as 110 degrees and are consistently
27 hot from late Spring to early Fall. FAC ¶ 140. In actuality,
28 however, temperatures at Cloverdale High may occasionally reach
90 degrees in late August or early June; but these are not
average temperatures even at those times of the year. Lile Decl.
¶ 14.

1 High also met its year 2000 improvement goal for the Academic
2 Performance Index, a tool used by the State Department of
3 Education to measure student achievement. Lile Decl. ¶ 3.
4 Finally, Cloverdale High has been accredited for a period of six
5 years--the maximum period allowed--by the Western Association of
6 Schools and Colleges, the relevant accrediting agency. Lile
7 Decl. ¶ 3.

8 Simply put, the Cloverdale Plaintiffs' first cause of
9 action has no factual basis. Nothing about the educational
10 experience at Cloverdale High translates into a constitutional
11 violation that meets the requirements of Butt. Using ceiling
12 fans on the occasional hot day and teaching geography students
13 with maps, atlases, and on-line computer resources cannot
14 reasonably be considered to render the educational program of
15 Cloverdale Unified, when viewed as a whole, constitutionally
16 deficient.

17 When the California Supreme Court decided Butt, it
18 acknowledged that constitutional relief against the State is
19 warranted only in "extreme circumstances." Id. at 688. There
20 are no extreme circumstances here. To conclude otherwise would
21 render meaningless the Legislature's constitutional authority to
22 create a system of local school districts. The facts do not
23 support that outcome.

24 Accordingly, the Cloverdale Plaintiffs' first cause of
25 action has no merit and the State is entitled to summary
26 judgment.

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1 III. THERE IS NO MERIT TO THE CLOVERDALE PLAINTIFFS' SECOND CAUSE
2 OF ACTION FOR VIOLATION OF ARTICLE IX, SECTIONS 1 AND 5 OF
3 THE CALIFORNIA CONSTITUTION.

4 In their second cause of action, the Cloverdale
5 Plaintiffs allege that the State has violated their right to a
6 "basic education" under Article IX, Sections 1 and 5 of the
7 California Constitution by depriving them of the "bare essentials
8 of an education." FAC ¶ 302. The facts do not support this
9 cause of action either.

10 Article IX, Section 1 of the California Constitution
11 recognizes the importance of a "general diffusion of knowledge
12 and intelligence" and exhorts the Legislature to "encourage by
13 all suitable means the promotion of intellectual, scientific,
14 moral, and agricultural improvement." Cal. Const. art. IX, § 1.
15 It is the State's position that Article IX, Section 1 does not
16 create an enforceable right in anyone because it is not self-
17 executing; instead, it is one of those constitutional provisions
18 that "merely indicates principles, without laying down rules by
19 means of which those principles may be given the force of law."
20 Leger v. Stockton Unified Sch. Dist., 202 Cal. App. 3d 1448, 1455
21 (1988). But even if Article IX, Section 1 is construed to create
22 a right that may be judicially enforced, it is quite apparent
23 that there is nothing offensive to this constitutional provision
24 in the fact that teachers at Cloverdale High use ceiling fans
25 when it is hot and instruct geography students with maps and
26 atlases instead of textbooks.

27 Plaintiffs also rely on Article IX, Section 5 of the
28 California Constitution, known as the "free school guarantee,"

1 which directs the Legislature to establish "a system of common
2 schools by which a free school shall be kept up and supported in
3 each district." Cal. Const. art. IX, § 5. But the Cloverdale
4 Plaintiffs do not allege any facts--and there are none--
5 suggesting that they have been charged any fees for participation
6 in educational activities.⁷ Hartzell v. Connell, 35 Cal. 3d 899,
7 911 (1984).

8 Accordingly, the Cloverdale Plaintiffs' second cause of
9 action has no merit and the State is entitled to summary
10 judgment.

11
12 **IV. THERE IS NO MERIT TO THE CLOVERDALE PLAINTIFFS' THIRD CAUSE**
13 **OF ACTION FOR VIOLATION OF ARTICLE I, SECTIONS 7(a) AND 15**
14 **OF THE CALIFORNIA CONSTITUTION.**

15 In their third cause of action, the Cloverdale
16 Plaintiffs allege that the State has violated their
17 constitutional right to due process⁸ by: (1) depriving them of
18 "basic educational opportunities" (FAC ¶¶ 309-310); (2) requiring
19 them to attend a "dangerous" school that jeopardizes their health
20 and safety (FAC ¶ 306); and (3) "ill-preparing" them for a high

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22 ⁷ It is not clear that the Cloverdale Plaintiffs even allege
23 a violation of their right to attend a "free school." Compare
24 FAC ¶ 302 ("Defendants have violated . . . Plaintiffs' right,
pursuant to article IX, Sections 1 and 5") with FAC ¶ 303
(Cloverdale Plaintiffs not included among those plaintiffs who
allege a violation of Section 5).

25 ⁸ Article I, Section 7 of the California Constitution
26 provides in part that "[a] person may not be deprived of life,
27 liberty, or property without due process of law." Cal. Const.
28 art. I, § (7)(a). Article I, Section 15 also provides in part
that "[p]ersons may not . . . be deprived of life, liberty, or
property without due process of law." Cal. Const. art. I, § 15.

1 school exit examination, the passage of which is necessary to
2 obtain a high school diploma (FAC §§ 307-310).

3 Education is a fundamental right in California.
4 Serrano v. Priest, 18 Cal. 3d 728, 766 (1976). But the
5 Cloverdale Plaintiffs cannot establish a due process violation
6 unless they prove that the State has significantly interfered
7 with that right. Quintana v. Municipal Court, 192 Cal. App. 3d
8 361, 368 (1987). The facts do not indicate that any such
9 interference has occurred.

10 First, every student at Cloverdale High has textbooks
11 or other instructional materials to use in class and to take
12 home. Students also have access to computers in every classroom
13 and in two additional computer labs. And there has been no
14 showing that the absence of air-conditioning in some classrooms
15 has interfered with the Cloverdale Plaintiffs' education at all,
16 let alone deprived them of "basic educational opportunities."
17 Accordingly, the State has not interfered at all, let alone
18 significantly, with the Cloverdale Plaintiffs' right to an
19 education, and there is no due process violation.

20 Moreover, there are no facts indicating that Cloverdale
21 High is a "dangerous" school or that the Cloverdale Plaintiffs'
22 "health and safety" has been jeopardized in any way.⁹ Finally,
23

24 ⁹ In any event, the State does not have a constitutional
25 obligation to guarantee safe schools. Clausing v. San Francisco
26 Unified Sch. Dist., 221 Cal. App. 3d 1224, 1237-38 (1990)
27 (holding that Article I, Section 28 of the California
28 Constitution, which provides that all students have the right to
attend "safe" schools, does not "impose an express affirmative
duty on any government agency to guarantee the safety of
schools").

1 the facts do not indicate that the State has "ill-prepared" the
2 Cloverdale Plaintiffs to graduate from high school. As explained
3 above, objective criteria indicate that Cloverdale High is a good
4 school that prepares its students to succeed.

5 Accordingly, the Cloverdale Plaintiffs' third cause of
6 action has no merit and the State is entitled to summary
7 judgment.

8
9 V. THERE IS NO MERIT TO THE CLOVERDALE PLAINTIFFS' FOURTH CAUSE
10 OF ACTION FOR VIOLATION OF TITLE VI OF THE CIVIL RIGHTS ACT
OF 1964.

11 In their fourth cause of action, the Cloverdale
12 Plaintiffs allege that the State has violated their right under
13 Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and
14 34 C.F.R. § 100.3(b)(2), to be free from discrimination on the
15 basis of race, color, or national origin. The theory of the
16 First Amended Complaint is that the State's conduct has a
17 disparate impact on "students of color." FAC ¶ 314. The
18 Cloverdale Plaintiffs may not bring this discrimination claim,
19 however, since they are non-Hispanic white students. Lile Decl.
20 ¶ 15. That is, they are among the class of students who, by
21 plaintiffs' own allegations, are avored by the State's alleged
22 conduct. FAC ¶ 314; Fobbs v. Holy Cross Health Sys. Corp., 29
23 F.3d 1439, 1447 (9th Cir. 1994) (no claim under Title VI in
24 absence of racial discrimination), overruled on other grounds by
25 Daviton v. Columbia/HCA Healthcare Corp., 2000 WL 33191565 (9th
26 Cir. Mar. 1, 2001).

1 VI. THERE IS NO MERIT TO THE CLOVERDALE PLAINTIFFS' SEVENTH
2 CAUSE OF ACTION FOR DECLARATORY RELIEF.

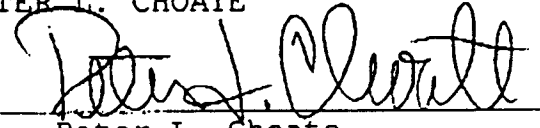
3 As explained above, the Cloverdale Plaintiffs' first,
4 second, third, and fourth causes of action have no merit.
5 Accordingly, their seventh cause of action for declaratory relief
6 has no merit either and the State is entitled to summary
7 judgment.

8
9 CONCLUSION

10 For the reasons stated, the motion of defendant State
11 of California for summary judgment or, in the alternative, for
12 summary adjudication as to the Cloverdale Plaintiffs' first,
13 second, third, fourth, and/or seventh causes of action should be
14 granted.¹⁰

15
16 Dated: March 14, 2001.

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23
24 ¹⁰ If the Court grants the State's motion for summary
25 judgment, the State's Cross-Complaint as against the Cloverdale
26 Unified School District will be moot. In that event, the State
27 contemplates that it will request the dismissal of its sixth
28 cause of action against the Cloverdale Unified School District.