IN THE CIRCUIT COURT OF COOK COUNT, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

Chicago Urban League, et. al.,
Plaintiffs
v. .

No. 08 CH 30490

State of Illinois, et al.
Defendants

Memorandum Opinion

This cause is before the Court on Defendants the State of Illinois ("State") and the Illinois State Board of Education's ("Board of Education") collectively ("The Defendants"), Motion to Dismiss Plaintiffs Chicago Urban League, Quad County Urban League, *et al.* ("The Plaintiffs") Complaint under 735 ILCS 5/2-615 and 735 ILCS 5/2-619.

## I. Introduction

This case presents vitally important issues to the people and State of Illinois. The Plaintiffs challenge the Defendants' creation and application of a funding system for its public schools. In their complaint, the Plaintiffs documented gaps in achievement between one school and another, and disparities in funding between one school district and another. The Defendants moves to dismiss, arguing that despite these inequalities the complaint fails to state a claim and that the State and its agencies are immune from suit.

## II. Facts

This case centers on the method of financing public schools in Illinois. According to state statute local school districts are authorized to levy property taxes up to a certain specified amount. *See* 105 ILCS 5/1-1 *et seq.* (Lexis 2006). Wealthy school districts with particularly valuable property generate substantially more revenue per pupil than districts with property of low worth. (Pl.'s Compl. ¶¶48-59). Each year, the State appropriates revenue for school funding based on the average daily attendance at each school and the equalized assessed valuation (EAV) of the property within each particular district. (Pl.'s Compl. ¶¶42-44); *see also* 105 ILCS 5/1-1 *et seq.* (Lexis 2006). The State then provides funding to each district on a sliding scale in order to make up the difference between revenue raised locally and the baseline level of funds determined necessary for each student, called the "foundation level." (Pl.'s Compl. ¶43). The State established an Education Funding Advisory Board (EFAB) in 1997 to identify the appropriate foundation level per pupil in Illinois, and recommend funding at that level. (Pl.'s Compl. ¶52-58).

The State provides substantially lower dollar amounts per-student than the amount recommended by the EFAB. (Pl.'s Compl. ¶¶ 41, 45, 47, 50, 52, 56, 57). Illinois ranks 49th in the nation in the size of the per-pupil funding disparity between its lowest and highest poverty districts. (Pl.'s Compl. ¶¶60-62). This disparity exists despite the fact that low property wealth areas generally pay much higher property tax rates than areas with higher property wealth, and that in 2005 the school districts with the top five EAV per pupil ranged from around $1.2 million to $1.8 million, which the bottom five districts ranged from around $7,000 to a little more than $24,000 EAV per pupil. (Pl.'s Compl. ¶¶63, 69). The school districts in the bottom EAV range are disproportionately Majority-Minority Districts (MMD's), schools where the majority of the student population are members of an ethnic or racial minority group. (Pl's Compl. ¶70). Taking Illinois School District Unit 188, in Brooklyn, IL, as just one example, the complaint states that the Brooklyn District ranked 386th out of a total 395 consolidated school districts in EAV per pupil in 2007, that 97% of Brooklyn's students came from low income households and that almost 100% of its students are members of ethnic minority groups. (Pl.'s Compl. ¶¶70, 71). The complaint provides four specific illustrations of funding disparities at MMD's in the Chicago, Aurora, East St. Louis, and Peoria communities. (Pl.'s Compl. ¶¶72, 75-95). Forty percent of Illinois school districts operate on a spending deficit. (Pl.'s Compl. ¶96).

The General Assembly created the Illinois Learning Standards ("ILS") in 1996. (Pl.'s Compl. ¶99); *see also* 105 ILCS 5/2-3.63. According to the Board of Education, the ILS "should reflect what Illinois citizens generally agree upon as constituting a core of student learning" and are defined as "essential knowledge and skills that all Illinois students must know and be able to do." (Pl.'s Compl. ¶¶99-103). The ILS are measured annually by the Illinois Standard Achievement Test ("ISAT"). (Id.). Students in MMDs attend classes taught by less qualified teachers, who hold fewer advanced degrees, and are more likely to have emergency or provisional teaching credentials. (Pl.'s Compl. ¶105). In 2007 the performance of African American and Hispanic students fell far behind their white counterparts on the ISAT exams. (Pl.'s Compl. ¶126). Further, in 2007, 25,500 Illinois public school students dropped out of high school, and over half were either African American or Hispanic. (Pl.'s Compl. ¶129). Further, research has shown that when school instructional expenditures are increased by as little as $1,000 to $2,200 per pupil, a positive impact has been measured through increased achievement on the ISAT. (Pl.'s Compl. ¶113).

In turn, the Plaintiffs assert five different causes of action in the five counts of their complaint. Count I asserts that the Defendants' school funding scheme, as enforced and applied, has a demonstrable, disparate and adverse impact on minority students in violation of the Illinois Civil Rights Act of 2003. (Pl.'s Compl. ¶15). In Count II, the Plaintiffs allege that the Defendants' decision to meet its educational funding duty primarily through local property taxes, with rates that differ from municipality to municipality, violates the Uniformity of Taxation provision of the Illinois Constitution. Count III alleges that the school funding scheme, as enforced and applied does not provide al schools with access to the resources they need to meet the ILS, and thus violates the Education Article of the Illinois Constitution. In Count IV and V the

Plaintiffs allege that the school funding system violates the Equal Protection Clause of the Illinois Constitution with respect to students of African American and/or Hispanic heritage (Count IV) and with respect to students who attend school in districts that have low property-wealth.

The Defendants filed this motion to dismiss the complaint under Rules 2-615 and 2-619. As discussed in more detail below, the Defendants allege that the Plaintiffs failed to sufficiently plead any of the asserted causes of action under Rule 2-615. Additionally, the Defendants argue that they are immune from suit for every count, with the exception of Count I as alleged against the Board of Education.

**II. Discussion**

A party seeking dismissal of a complaint pursuant to Section 2-615 and Section 2-619 may file the motions together as a single motion. 735 ILCS § 5/2-619.1. However, a combined motion must be made in parts. 735 ILCS § 5/2-619.1. Each part shall be limited to and must specify which section it is made under. 735 ILCS § 5/2-619.1. Each part must clearly show the points or grounds relied upon under the Section upon which it is based. 735 ILCS § 5/2-619.1.

**A. Section 2-615**

A Section 2-615 motion attacks the sufficiency of a complaint and raises the question of whether a complaint states a cause of action upon which relief can be granted. Fox v. Seiden, 382 Ill.App.3d 288, 294 (1st Dist. 2008). All well-pleaded facts must be taken as true and any inferences drawn should be drawn in favor of the non-movant, regardless of whether the motion to dismiss was brought under section 2-615 or 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-615, 2-619 (Lexis 2006)); Hammond v. S. I. Boo, L.L.C. (In re County Treasurer & Ex-Officio County Collector), 386 Ill.App.3d 906, 908 (1st Dist. 2008). Plaintiffs are not required to prove their case in the pleading stage; they merely are required to allege sufficient facts to state all the elements which are necessary to constitute each cause of action in their complaint. Visvardis v. Eric P. Ferleger, P.C., 375 Ill.App.3d 719, 724 (1st Dist. 2007). Because Illinois is a fact-pleading state, conclusions of law and factual allegations unsupported by specific facts are not deemed admitted. Baird & Warner Residential Sales, Inc. v. Mazzone, 384 Ill.App.3d 586, 590 (1st Dist. 2008). A 2-615 motion to dismiss should not be granted unless no set of facts could be proved that would entitle the plaintiff to relief. Beacham v. Walker, 231 Ill. 2d 51, 58 (2008).

1. Count I states a cause of action on which relief can be granted

The Defendants moved to dismiss Count I under Section 615, arguing that the Illinois Civil Rights Act does not invalidate the current school funding scheme, because the state legislature drafted both statutes. The Defendants also argue that the complaint does not state sufficient facts to support the cause of action identified in Count I. The plaintiffs respond that Count I effectively asserts a "disparate impact" claim, identical to

disparate impact claims under the Civil Rights Act successfully maintained against state actors in federal court.

The Civil Rights Act prohibits any unit of state, county, or local government from "utiliz[ing] criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin or gender." 740 ILCS 23/5(a)(2). The plaintiffs suggest that the pleading requirement for their disparate impact claim is an allegation that they suffered "injuries from the discriminatory effects of defendant's action." *See* Daniel v. Bd. of Educ. for Ill. Sch. Dist. U-46, 379 F. Supp. 2d 952, 963 (N.D. Ill. 2005). The court did not elaborate as to the reasoning behind its definition of a disparate impact claim under the Civil Rights Act in Daniel, and the court could not find (nor did the parties provide) a case in which an Illinois court used the same definition, or articulated a definition of the elements of a disparate impact claim under the Civil Rights Act.

This court recognizes the disparate impact claim identified in Daniel, but it emphasizes that a plaintiff must plead facts sufficient to satisfy Illinois's more stringent fact-pleading requirements to bring his or her claim within the scope of the specific terms enunciated in the text of Civil Rights Act. *See* Vernon v. Schuster, 179 Ill. 2d 338, 344 (1997). Therefore, to assert a valid disparate impact claim under the Civil Rights Act, a plaintiff must plead sufficient facts to allege: (1) membership in a protected class; and (2) a causal link between the use of criteria or methods of administration by units of State, county or local government and the plaintiff's injuries. *See* Powell v. Ridge, 189 F.3d 387, 393 (3rd Cir. 1999).

Moreover, plaintiffs are not required to prove their case in the pleading stage; they merely are required to allege sufficient facts to state all the elements which are necessary to constitute each cause of action in their complaint. Visvardis, 375 Ill.App.3d at 724. To state a claim under the Civil Rights Act, the plaintiffs must allege that, as a member of a protected class, they suffered injury from the discriminatory effect of the Defendants' acts. In this case, the plaintiffs pled facts necessary to meet that standard.

The Plaintiffs pled facts showing that the school funding system adopted and implemented by the Defendants has the effect of subjecting African American and Hispanic students to discrimination because they attend schools in "Majority Minority Districts." The complaint states that the Defendants' implementation of the current school funding system rests too heavily on local property taxes, and as a result, the Defendants provide substantially lower dollar amounts per-student than the amount recommended by the Educational Funding Advisory Board. (Pl.'s Compl. ¶¶ 41, 45, 47, 50, 52, 56, 57).

The complaint also alleges that because local property taxes account for a disproportionate amount of the funding scheme, students who attend schools located in property-poor communities do not receive an equal educational opportunity, noting that Illinois ranks 49th in the nation in the size of the per-pupil funding disparity between its lowest and highest poverty districts. (Pl.'s Compl. ¶¶60-62). The complaint alleges that

this disparity exists despite the fact that low property wealth areas generally pay much higher property tax rates than areas with higher property wealth, and yet they still generate less local funding for their schools. In 2005 the school districts with the top five equalized assessed valuation ("EAV") per pupil ranged from around $1.2 million to $1.8 million, while the bottom five districts ranged from around $7,000 to a little more than $24,000 EAV per pupil. (Pl.'s Compl. ¶¶63, 69). The complaint states that the school districts in the bottom EAV range are disproportionately MMD's, taking the Illinois School District Unit 188, in Brooklyn, IL, as just one example, the complaint states that the Brooklyn District ranked 386th out of a total 395 consolidated school districts in EAV per pupil in 2007, that 97% of Brooklyn's students came from low income households and that almost 100% of its students are members of ethnic minority groups. (Pl.'s Compl. ¶¶70, 71). On the basis of these facts, and three specific illustrations of funding disparities, in the complaint the Plaintiffs allege that the funding system has a disparate and discriminatory impact on African American and Hispanic students. (Pl.'s Compl. ¶¶72, 75-95).

The Defendants advocate two arguments against a finding that the complaint states a valid disparate impact claim under the Civil Rights Act. The first argument centers on the Defendants' interpretation of an Illinois Appellate Court decision addressing the Civil Rights Act. In Illinois Native American Bar Ass'n (INABA) v. Univ. of Illinois, the court found that the Civil Rights Act only provides a state court forum for disparate-impact discrimination previously recognized under Title VI of the Federal Civil Rights Act of 1964, and does not create any new substantive rights. Illinois Native American Bar Ass'n (INABA) v. Univ. of Illinois, 368 Ill.App.3d 321 (1st Dist. 2006). The Defendants interpret INABA as a limitation of the types of claims available under the Civil Rights act, arguing that the opinion forecloses the disparate impact claim asserted by the Plaintiffs. The Plaintiffs respond that this interpretation misses the point of their claim. The Plaintiffs assert that their disparate-impact claim does not involve an implication that the Civil Rights Act created any new rights; rather that it is a well established type of the disparate-impact claim recognized by the federal courts.

The Plaintiffs interpretation of INABA is correct in light of the circumstances of this case. In INABA the plaintiffs, members of the University of Illinois's chapter of the Native American Bar Association, attempted to challenge a state statute authorizing the University of Illinois to use the symbol and personification of a fictional character named "Chief Illiniwek" as its mascot. INABA, 368 Ill.App.3d at 323-24. The bar association argued that the statute was facially discriminatory and thus conflicted with the Civil Rights Act. Id. The Appellate Court found that the Illinois General Assembly expressly sanctioned the Chief Illiniwek statute, and held that the Civil Rights Act did not provide an avenue for the Bar Association's facial challenge to that law. Id., at 328.

In this case, the complaint provides a straightforward challenge of the alleged disparate impact produced by the Defendants' adoption, implementation, enactment and enforcement of the school funding system. Thus understood, the plaintiff's claims are distinguishable from the claims dismissed in INABA.

The Defendants next argue that the Civil Rights Act cannot invalidate the Defendants' school funding system under well recognized rules of statutory construction. Because the Illinois General Assembly enacted both the Civil Rights Act and the statutes creating the school funding system, the Defendants argue that the State could not have intended to violate the Civil Rights Act through its annual re-enactment of the school funding system. The Defendants rely on the well recognized rule of statutory interpretation that two statutes in conflict must be reconciled, if possible. *See* Barragan v. Caco Design Corp., 216 Ill.2d 435, 441-42 (2005).

The flaw in this argument is that it assumes a conflict between the statutes. In order for statutes to be reconciled, they must first be in conflict. *See* Id. As the court observed in INABA, "In order for two statutes to be in irreconcilable conflict, they must relate to the same subject." INABA, 368 Ill.App.3d AT 328; *citing* Mikusch, 138 Ill. 2d at 248. The language and purpose of these statutes reveal that one protects the rights of individuals harmed by the discriminatory effect of a State act, while the other describes, enacts, and provides the method of administration for one of those acts. In other words, the second statute is a subject of the first. There could be conflict between these statutes if the Civil Rights Act described state funding for schools, or if the school funding statutes provided protections for civil rights. They do not. Therefore, they do not conflict with one another.

That conclusion is supported by the basic rules of statutory interpretation. The cardinal rule of statutory construction is to determine a statute's meaning by legislative intent. Moore v. Green, 219 Ill. 2d 470, 479-80 (2006). Legislative intent, in turn, appears from the plain language of the statutes in question, as well as from the purpose of the statutes, the problems that they target, and the goals that they seek to achieve. Id.; *citing* in Re Lieberman, 201 Ill. 2d 300, 308 (2002). The court could not find a conflict between these statutes in either the plain language of the statutes themselves, or from their respective purposes, targets or goals. Section (a)(2) of the Civil Rights Act provides plaintiffs with the ability to assert disparate-impact claims against units of state government.

2. Count II does not state a cause of action

The Defendants moved to dismiss Count II under Section 615, arguing that the complaint does not state a valid claim for relief based on the Uniform Taxation Clause of the Illinois Constitution. The complaint advances a novel theory of relief, and in turn, presents the court with a question of first impression. The Plaintiffs allege that the current funding system operates through taxes levied on property in local school districts, and that the rates of taxation vary from one school district to another. The Plaintiffs contend that this system violates the Illinois constitutional requirement that taxes on real property be levied uniformly. *See* IL Const. Art. IX § 4(a). The Plaintiffs reason that providing an education is a state-wide government function and that any tax levied in order to fund that purpose should also be levied state-wide; meaning that the disparities between the property tax rates in individual school districts violate the uniformity of taxation provision. In order for claim to sufficiently plead that a tax-scheme is

unconstitutional under the Uniform Taxation Clause it must allege a disparate rate of taxation or valuation for similar properties within a particular taxing district. Kankakee County Bd. of Review v. Prop. Tax Appeal Bd., 131 Ill.2d 1 (1989); Rodgers v. Whitley, 282 Ill.App.3d 741, 751 (1st Dist. 1996). Thus the Plaintiff's argument raises an issue of first impression: what is the particular "taxing district" when the State or one of its sub-units levies a tax on real property in order to fund public education?

Article IX section 4(a) of the Illinois Constitution provides: "Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." IL Const., Art. IX, § 4(a). The Illinois General Assembly defined the term "taxing district" in the Property Tax Code as "any unit of local government, school district or community college district with the power to levy taxes." 35 ILCS 200/1-150 (Lexis 2006); *see* 35 ILCS 200/1-10 *et seq.* As observed above, to sufficiently plead that a tax-scheme is unconstitutional under the Uniform Taxation Clause a complaint must allege a disparate rate of taxation or valuation for similar properties within a particular taxing district. Kankakee County Bd. of Review, 131 Ill.2d 1; Rodgers, 282 Ill.App.3d at 751. The Uniform Taxation Clause requires uniformity in a taxing district for both the valuation of property and the tax rate applied to that property. *See* Kankakee County Bd. of Review, 131 Ill.2d 1; Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 401 (1960); DuPage County Bd. of Review v. Property Tax Appeal Bd., 284 Ill.App.3d 649, 652 (2nd Dist. 1996).

The Plaintiffs use a simple syllogism to advance their argument that, the current funding scheme violates the Uniform Taxation Clause. The Plaintiffs argue that in the instance of taxes levied to fund public schools, the particular taxing district is the State, rather than local school districts. The Plaintiffs suggest that to determine what the appropriate taxing district is, the court need only look to the purpose of the tax itself, and that "A state purpose must be accomplished by state taxation, a county purpose by county taxation" and so on. Bd. of Ed. v. Haworth, 274 Ill. 538 (1916); (Pl.'s Resp. p.11-12). Next the Plaintiffs assert that it is the State's responsibility to provide public education, and taxes that raise the revenue to do so therefore have a State purpose. *See* Ill. Const. Art. X § 1; Nelson v. Jackson Highland Bldg. Corp., 400 Ill. 533, 536 (1948); Proviso Tp. High School v. Oak Park & River Forest Tp. High School, 322 Ill. 217, 219-20 (1926). Thus, the Plaintiffs argue, the particular taxing district is the State as far as taxes that fund the public schools are concerned. Therefore, the Plaintiffs conclude that the tax rates determined by the current, locally-assessed, system of school funding whereby property in Chicago is taxed at a rate of 2.583%, property in Kane County is taxed at a rate of 3.424219%, property in Peoria is taxed at a rate of 4.46054%, and property in East St. Louis is taxed at a rate of 7.5410% sufficiently allege that property tax rates are not uniform across the State in violation of the Uniform Taxation Clause. (Pl.'s Compl. ¶157).

The Plaintiffs acknowledge the novelty of this theory, and rely on a case decided by the New Hampshire Supreme Court for persuasive support of their reasoning. In Claremont School District v. Governor, the New Hampshire Supreme Court held that varying property tax rates used to finance public education across the State violated the

New Hampshire constitution's prohibition on unreasonable and disproportionate taxation. Claremont School Dist. v. Governor, 142 N.H. 462, 471, 703 A.2d 1353, 1357 (1997). Part II, Art. 5 of the New Hampshire Constitution provides that the legislature my impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state" and requires that "all taxes be proportionate and reasonable – that is, equal in valuation and uniform in rate." Id., at 468. In New Hampshire "the test to determine whether a tax is equal and proportional is to inquire whether the taxpayer's property was valued at the same per cent of its true value as all the taxable property in the taxing district." Id.; *citing* Bow v. Farrand, 77 N.H. 451, 451-52, 92 A. 926, 926 (1915). The New Hampshire Supreme Court determined that in defining a tax, and thus a taxing district, requires a determination of the purpose behind the tax. Id., at 468-69. The court determined that the purpose of the school tax was overwhelmingly a state purpose and held that the taxing district was the state of New Hampshire as a whole. Id., 469-70. The court reasoned: "Although the taxes levied by local school districts are local in the sense that they are levied upon property within the district, the taxes are in fact State taxes that have been authorized by the legislature to fulfill the requirements of the New Hampshire Constitution." Id., 469. The Plaintiffs urge the court to use the same reasoning and come to the same conclusion in this case.

The court cannot accept Plaintiff's well-reasoned argument, or adopt the analysis used in Claremont, because the Illinois General Assembly has already defined a taxing district in the school funding context. The Uniform Taxation Clause provides that : "Except as otherwise provided in this Section, taxes upon real property shall be levied uniformly by valuation ascertained as the General Assembly shall provide by law." IL Const., Art. IX, § 4(a). In 1994, the Illinois General Assembly defined the term "taxing district" in the Property Tax Code as "any unit of local government, school district or community college district with the power to levy taxes." 35 ILCS 200/1-150 (Lexis 2006); *see* 35 ILCS 200/1-10 *et seq.* That language replaced the General Assembly's previous definition of "taxing district" in the Property Tax Code which read: "Counties, townships, incorporated cities, towns and villages, schools, road, park, sanitary, mosquito abatement, forest preserve, public health, fire protection, river conservancy, tuberculosis sanitarium, and any other municipal corporations or districts." It appears that the question of how to appropriately define a taxing district in the school funding context was answered in 1994. The General Assembly specifically chose to define a "taxing district" in part as a "school district . . . with the power to levy taxes." This fact, provides the answer to the question posed by the Plaintiff's claim and distinguishes this case from the Claremont decision.

Nevertheless, the Plaintiffs argue that the Property Tax Code's definition of taxing districts is insufficient. The Plaintiffs characterize this language not as a definition, but merely as a "recognition" that units of local government, like school districts, are taxing districts. (Pl.'s Resp. at p. 12). This language is contained explicitly within Article 1 of the Property Tax Code, titled: "Short Title and Definitions" however, which provides, "Definitions. The words and phrases in this Article, when used in this Code, are defined as follows:" suggesting that the General Assembly specifically

intended to define the term "taxing district." The Plaintiffs next observe that the Definitions do not preclude an inclusion of the State as a whole. While this is true, it is also irrelevant.

The General Assembly defined the entities that can be considered "taxing districts" under the property code, local school districts among them. In light of this, the specific local school districts are the particular "taxing districts" at issue in this case. If the State of Illinois could correctly be considered the relevant taxing district in this case, then the complaint would properly allege a violation of the Uniformity of Taxation Clause. The complaint sufficiently alleges a disparity in the rate of taxation of property from one school district to another. (*See* Pl.'s Compl. ¶157). The complaint does not allege, however, that there is a disparity in the valuation or rate of taxation of property within individual school districts. Therefore, Count II of the complaint does not state a claim for relief under the Uniform Taxation Clause of the Illinois Constitution. The Defendants' motion to dismiss is granted as to Count II.

3. Count III does not state a cause of action

The Defendants assert that Count III should be dismissed because it is foreclosed under the doctrine of *stare decisis*. Count III alleges that the Defendants' current funding system violates Article X Section 1 of the constitution which provides:

> A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.
>
> The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.
>
> The State has the primary responsibility for financing the system of public education. Ill. Const. Art. X §1.

Specifically, the Defendants argue that the Supreme Court's decision in Committee for Educational Rights v. Edgar, 174 Ill.2d 1 (1996) forbids complaints seeking injunctive relief based on Illinois' constitutional requirement to provide a "high quality" education to all Illinois students. The Plaintiffs reply that when the State adopted statewide learning standards and assessment tests, as well as a process of determining the baseline cost of a high quality education, the circumstances underlying the Edgar decision changed, thereby obviating the demands of the doctrine of *stare decisis*.

Put simply, the doctrine of *stare decisis* requires lower courts to follow the decisions of higher courts. O'Casek v. Children's Home & Aid Soc'y, 229 Ill.2d 421, 440 (2008). The doctrine's purpose is to ensure that "the law will not merely change erratically, but will develop in a principled and intelligible fashion." Id., at 439-40; *quoting* Chicago Bar Ass'n v. Illinois State Bd. of Elections, 161 Ill.2d 502, 510 (1994). *Stare decisis* is not an inexorable command, however. Iseberg v. Gross, 227 Ill.2d 78, 95

(2007). Prior decisions may be overruled, but they should not be overruled absent "good cause" or "compelling reasons." People v. Colon, 225 Ill.2d 125, 146 (2007). Good cause exists when following the settled rule is likely to result in serious detriment prejudicial to public interests or when that rule is unworkable or badly reasoned. Id. A compelling reason to deviate from the straight path of *stare decisis* would be the special justification provided when a court must bring its decision into agreement with experience and newly ascertained facts. Iseberg, 227 Ill.2d at 95; *citing* Vasquez v. Hillery 474 U.S. 254, 265-66 (1984), Chicago Bar Ass'n, 161 Ill.2d at 510.

In Edgar the Supreme Court affirmed the dismissal of a complaint alleging that the system of funding public schools primarily through local property tax violated the language in Article X Section 1 that "the State shall provide for an efficient system of high quality public educational institutions and services. Edgar, 174 Ill.2d at 32. The court reasoned that "the question of educational quality is inherently one of policy involving philosophical and practical considerations that call for the exercise of legislative and administrative discretion." Id., at 29. The court observed that, "What constitutes a 'high quality' education, and how it may best be provided, cannot be ascertained by any judicially discoverable or manageable standards." Id., at 28. The court concluded that "the question of whether the educational institutions and services in Illinois are 'high quality' is outside the sphere of the judicial function."

The complaint alleges that the Defendants established statewide learning standards and performance assessment tests as well as a means to determine the baseline cost of education per pupil. The General Assembly created the Illinois Learning Standards (ILS) in 1996, a benchmark measurement of "what students must know and be able to do" in Illinois. (*See* Pl.'s Compl. ¶¶ 100-102, 162). Further, the Defendants now administer two assessment tests, the Illinois State Assessment Test ("ISAT") and the Prairie State Achievement Examination ("PSAE") to determine whether students in Illinois public schools are meeting the benchmarks defined in the ILS. (*See* Pl.'s Compl. ¶¶ 121, 125, 127). The General Assembly also passed several laws integrating the ILS within the broader federal mandates created by the No Child Left Behind Act, requiring schools to meet or exceed the ILS or face the intervention encouraged under federal law. *See e.g.*, 105 ILCS 5/2-3.25(f)(2). The Plaintiffs argue that the ILS and its related tools of implementation provide the court with a set of defined standards to determine whether or not the Defendants' school funding scheme meets the requirements of Article X Section 1 to "provide for high quality educational institutions and services."

The ILS and EFAB provide the tools to evaluate whether or not Illinois provides its students with a high quality education, but they do not change the bedrock principle that the courts are the incorrect place to conduct that evaluation. Education in Illinois has changed since Edgar and it will continue to change in the future. The rule from Edgar keeps the power to evaluate and change education policy in the hands of the people's elected representatives, and thus the rule is not likely to result in any serious detriment prejudicial to the public's interests. As the Supreme Court stated in Lewis E. v. Spagnolo, the Edgar decision "did not limit itself to whether the courts could define a "high quality" education but, rather, considered the broadly stated issue of whether the

quality of education is capable of or properly subject to measurement by the courts concluding that questions relating to the quality of education are solely for the legislative branch to answer. Lewis E. v. Spagnolo, 186 Ill.2d 198, 208 (1999). The Plaintiffs urge this court to use the ILS and other standards to answer the question of whether or not the current funding system provides a constitutionally adequate quality education to the public school students of Illinois. Article X Section 1 and the ILS describe the goals of education policy in Illinois. If those goals have not been met, as the Plaintiffs persuasively argue here, it is the role of the legislature, and not the courts, to address the failings of the Illinois public education system.

The doctrine of *stare decisis* controls the outcome of this motion. The Plaintiffs have not presented good cause or compelling reasons to deviate from the rule articulated in Edgar. The rule in Edgar is not unworkable or badly reasoned, it is based on the bedrock notion of the separation of powers and a definition of the separate roles of the judicial and legislative branches. Following the rule in Edgar will not result in serious detriment prejudicial to the public's interests, because a solution to the problems facing Illinois public schools should emerge from a robust debate between the people of Illinois and their elected representatives, rather than the vacuum of one judicial proceeding. The fact that the legislature articulated non-binding education standards is not a compelling reason to re-examine the rule from Edgar because those standards are a statement of education policy rather than a judicially enforceable legal duty. Therefore, the plaintiffs cannot assert a cause of action under Article X Section 1 of the Illinois Constitution, because under the Supreme Court's decision in Edgar no such cause of action exists. The Defendants' motion to dismiss Count III is granted, with prejudice.

4. Count IV does not state a claim for relief under the Equal Protection Clause

The Defendants moved to dismiss Count IV, arguing that it was improperly pled. In particular, the Defendants observe that the Plaintiffs have challenged a statute that is facially neutral with respect to race, and the complaint therefore fails to state a cause of action under the Equal Protection Clause. The Defendants are correct that the school funding statutes are completely neutral on their face regarding the issue of race. *See* 150 ILCS 5/1-1 *et. seq.*

A facially neutral law violates the Equal Protection Clause when it has a discriminatory purpose. *See* Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 279 (1979). In this context, the phrase "discriminatory purpose . . . implies that the decision-maker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effects upon an identifiable group." Id. As the Defendants observe, there are numerous students of all races and nationalities in both affluent and non-affluent school districts in Illinois, and the complaint does not allege that the existing school finance system was deliberately designed to disadvantage one racial or ethnic group.

The Plaintiffs did not respond to this argument in their submission to the court, and only briefly touched on it in oral argument, asserting that the complaint ties the

system of local funding to systemic discrimination in housing. The passing reference in the complaint to historically discriminatory housing practices perpetuated by any number of forces and actors is far too tenuous to bear the inference urged by the Plaintiffs. Further, the only mention that the Defendants' purposefully discriminated on the basis of race is the wholly conclusory allegation that the Defendants "willful[ly]" violated the Equal protection clause. (Pl.'s Compl. ¶176). Thus, the complaint does not allege that when it re-authorized the school funding plan the General Assembly purposefully discriminated against the residents of school districts who may have suffered racially-discriminatory housing practices in the past. The school funding plan is racially-neutral and the complaint does not allege that the school financing system had a racially-discriminatory purpose. Therefore, Count IV fails to state a claim under the Equal Protection Clause and the Defendants' motion to dismiss is granted on Count IV.

5. Count V does not state a claim for relief under the Equal Protection Clause

The Defendants argue that Count V should be dismissed by referring again to the Edgar decision, where the Supreme Court affirmed the dismissal of a similar claim for relief by looking to U.S. Supreme Court Precedent. In San Antonio Independent School District v. Rodriguez the U.S. Supreme Court held that wealth is not a suspect classification and that education is not a fundamental right. Rodgriguez, 411 U.S. 1 (1973). Thus, in order for a state funding system, like the system in Illinois to be found unconstitutional under the Equal Protection clause for alleged discrimination against students in low-property wealth school districts, the plaintiffs must plead that the system fails rational basis review. Edgar, 174 Ill.2d at 40. That review is extremely deferential and provides that the challenged classification need only be rationally related to a legitimate state goal and if any state of facts can reasonably be conceived to justify the classification, it must be upheld. Id., at 37. Thus, the Plaintiffs here had to plead that the school funding system is not rationally related to a state goal.

They failed to do so. The complaint contains only conclusory allegations, stating that the funding scheme was created with the intent to discriminate against students attending school in low-property wealth districts. (Pl.'s Compl. ¶¶180-184). The Edgar court found that using local property taxes to fund public schools was not irrationally related to the purpose of retaining local control over schools, even if the disproportionate wealth in different school districts produced variance in the resources available from one district to another. Edgar, 174 Ill.2d at 39. The Plaintiffs argued that by virtue of the ILS, ISAT, PSAE, No Child Left Behind and the EFAB, the State has wrested local control from the individual districts. Though the complaint established the existence of the ILS, ISAT, PSAE and EFAB, the complaint failed to connect those tests with any decrease in local control, or even to mention local control. Therefore, the complaint failed to state a cause of action in Count V and the Defendants' motion to dismiss that count is granted.

**B. Section 2-619**

Unlike a Section 2-615 motion to dismiss, a Section 2-619 motion to dismiss admits the legal sufficiency of the complaint. 735 ILCS § 5/2-619 (Lexis 2006). The

purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation. Henry v. Gallagher (In re Estate of Gallagher), 383 Ill.App.3d 901, 903 (1st Dist. 2008). Although a Section 2-619 motion to dismiss admits the legal sufficiency of the complaint, it raises defects, defenses, or some other affirmative matter, appearing on the face of the complaint or established by external submissions, which defeats the plaintiff's claim. Ball v. County of Cook, 385 Ill.App.3d 103, 107 (1st Dist. 2008). A section 2-619 motion to dismiss and a motion for summary judgment are similar in that they both allow for the dismissal of a complaint on the basis of issues of law or easily proven facts. Martinez v. Gutmann Leather, LLC, 372 Ill.App.3d 99, 101 (1st Dist. 2007). Section 2-619(a)(1) requires dismissal where the Court does not have jurisdiction over the claims asserted in the complaint. 735 ILCS § 5/2-619(a)(1).

The Defendants argue that the court lacks jurisdiction to hear Counts II through V of this case against both defendants, and Count I against the State itself, under the doctrine of sovereign immunity. The sovereign immunity of the State of Illinois is established through state statute and requires that, with limited exceptions[1]—none of which apply in this case—"the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (Lexis 2006); Smith v. Jones, 113 Ill.2d 126, 132 (1986). Further, a state agency or department of state government is considered part of the State under the statutory definition of sovereign immunity. *See* Foley v. Am. Fed. of State, County and Municipal Employees, 199 Ill.App.3d 6, 14 (1st Dist. 1999). The determination of whether the counts in question were brought against the State, and would thus be barred by sovereign immunity does not depend on the identity of the formal parties, but rather on the issues raised and the relief sought. Cortright v. Doyle, 898 N.E.2d 1153, 1158 (1st Dist. 2008); Senn Park Nursing Center v. Miller, 104 Ill. 2d 169, 186 (1984). If a judgment for the plaintiffs could operate to control the actions of the State or subject it to liability, the action is effectively against the State and is barred by sovereign immunity. Westshire Retirement & Healthcare Ctr. v. Department of Pub. Aid, 276 Ill.App.3d 514, 520 (1st Dist. 1995). For example, if the requested relief would interfere with the performance of state government functions, or with the control of the State over its own resources, then sovereign immunity would preclude suit. *See* People v. Philip Morris, 198 Ill.2d 87, 96 (2001).

The relief the Plaintiffs seek in this case invokes the doctrine of sovereign immunity denying the court's jurisdiction over Counts II through V as to the State and the Board of Education. In Counts II through V the Plaintiffs seek preliminary and permanent injunctive relief preventing the State from implementing the current funding system, and in Counts III through V the Plaintiffs additionally request that the court require the State to reform the funding system to ensure that each school receives the funding it deserves. (*See* Pl.'s Compl. ¶ 159, 169, 177, 185). The requested relief would

[1] Those exceptions are provided for by the State's statutory structure, *see* Illinois Public Labor Relations Act, 5 ILCS 5-315/1 *et seq.*, Court of Claims Act 705 ILCS 505/1 *et seq.*, State Officials and Employees Ethics Act 5 ILCS 430/1-1 *et seq.*, Section 1.5 of the State Immunity Act 745 ILCS 5/0.01 *et seq.* (suits by former, current or prospective state employees under federal law), and the Clean Coal FutureGen for Illinois Act, 20 ILCS 1107/1 *et seq.*

place two court sponsored mandates on the Illinois General Assembly, as well as the Board of Education, first to simply cease the work of funding Illinois public schools and second to immediately engage in legislative and regulatory action to change the way the funding system works. That mandate would touch not only the legislative and administrative functions of state government, but the state's purse-strings by demanding a re-allocation of resources. Thus, the relief sought would interfere with both the performance of government functions, and with the control of the State over its own resources. The doctrine of sovereign immunity therefore precludes suit against both the State itself and the Board of Education for Counts II through V.

The Defendants admit that sovereign immunity does not preclude the court's jurisdiction over Count I against the Board of Education. The State argues that it is also immune from Count I (in addition to Counts II through V), because the Civil Rights act does not contain an explicit waiver of sovereign immunity for the State itself, but only for units of State, county, or local government. Observing that a waiver of sovereign immunity "must be express and unequivocal" the State argues that because the Civil Rights Act is limited to units of state government, rather than the State itself, sovereign immunity applies to Count I. *See* Brewer v. Bd. of Tr. of Univ. of Ill., 339 Ill.App.3d 1074, 1079 (4th Dist. 2003). The Plaintiffs respond that, the Civil Rights Act was intended to be construed liberally and urge the court should look to legislative history to determine whether the legislature intended to waive sovereign immunity under the Civil Rights Act. *See* Bd. of Trustees of Cmty. College Dist. No. 508 v. Human Rights Comm'n, 88 Ill.2d 22, 26 (1981); Farrell v. State, 52 Ill. Ct. Cl. 275, 299 (1997). As noted above, legislative intent is best determined from the plain language of the statute. Moreover, sovereign immunity requires an explicit statement in a statute that it no longer applies for it to be considered waived. Since the Civil Rights Act does not provide an explicit waiver of the State's sovereign immunity, but only the sovereign immunity held by units of state, county and local government, the State cannot be made a party to a Civil Rights Act claim under the doctrine of Sovereign immunity. Therefore, the Defendants' motion to dismiss is granted as to Counts II through V for both defendants and is also granted as to Count I for the State itself.

**Conclusion**

I. The Court grants in part and denies in part the Defendants' motion to dismiss the complaint under 735 ILCS 5/2-615. The motion is granted as to Counts II, III, IV and V. The motion is denied as to Count I.

II. The court grants the Defendants' motion to dismiss the complaint under 735 ILCS 5/2-619 as to both Defendants for Counts II through V and as to the State for Count I.

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ENTER,

ENTERED
JUDGE MARTIN S. AGRAN - 1630
APR 15 2009
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

_____
Judge Judge's No