



General Assembly and implemented by the Indiana State Board of Education violates the constitutional guarantees set for in the Indiana Constitution, Article I, Section 23, Equal Privileges and Immunities Clause, Article I, Section 12, Due Process Clause, and Article VIII, Section I, Education Clause.

The defendants seek dismissal of the complaint on a number of grounds including, lack of standing, improper inclusion of parties, violation of separation of powers and lack of justiciability.

#### Standard for Review

A complaint should not be dismissed unless it is apparent that plaintiff would not be entitled to relief under any set of facts. *King v. S.B.*, 837 N.E.2d, 965, 966 (Ind. 2005). In making this determination, the Court must accept the allegations set forth in the complaint as true drawing every reasonable inference in favor of the plaintiffs. *Newman v. Deiter*, 702 N.E.2d 1093, 1097 (Ind. Ct. App. 1998).

Constitutional validity challenges are contemplated and proper under declaratory judgment actions. *City of Hammond v. Red Top Trucking Co.*, 409 N.E.2d 655 (Ind. 1980). While courts may be the guardian of the constitution, they must be mindful that they are nevertheless a court and not a supreme legislature. *Boehm v. Town of St. John*, 675 N.E.2d 318, 322 (Ind. 1996).

#### Standing and Proper Parties

The complaint alleges that plaintiffs are students who currently attend public school in Indiana. Plaintiffs assert they are being deprived of any realistic prospect of academic and professional success because of the low quality education they are receiving and the inadequate system used to finance that education. In order to obtain declaratory relief, the person bringing

the action must have a substantial interest in the relief sought. *Hibler v. Conseco Inc.*, 744 N.E.2d 1012, 1023 (Ind. Ct. App. 2001). The plaintiffs in this action have a substantial interest in the relief sought and have private standing. Parents and children have found to have standing when challenging governmental actions as contrary to the Education Clause. *Nagy v. Evansville-Vanderburgh Sch. Corp.*, 844 N.E.2d 481 (Ind. 2006). Plaintiffs having demonstrated private standing precludes the need to address public standing in this Order

The defendants argue in part this matter should be dismissed because they cannot provide any meaningful relief to the plaintiffs. Plaintiffs must demonstrate that the unlawful conduct complained of is fairly traceable to the defendant and likely to be redressed by the relief sought. *Alexander v. PSB Lending Corp.*, 800 N.E.2d 984, 989 (Ind. Ct. App. 2003). The duty imposed in the Education Clause is upon the General Assembly, not the named defendants in this case. The General Assembly with its constitutional mandate may delegate to state agencies and executive branch officials the authority to make major policy decisions in the form of rules and regulations. *State Bd. Of Tax Comm'rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 251 (Ind. 2001). When a state agency makes major policy decisions under a grant of authority from the legislature, those policy decisions are deemed to be those of the General Assembly. See *Nagy*, 844 N.E.2d at 491-92.

The declaratory relief sought by plaintiffs seeks to void the current public school funding formula used in the State of Indiana. The facts alleged and law demonstrates the General Assembly had delegated in part, the function carrying out calculating this school funding formula to the defendant, Indiana State Board of Education. In contrast, the facts and law alleged do not demonstrate such a delegation to the other named defendants. Accordingly, this Court hereby

GRANTS the defendants Motion to Dismiss as to the defendants, Mitch Daniels, Governor of the State of Indiana and Co-Chair of the Education Roundtable, Suellen K. Reed, in her capacity of Indiana State Superintendent of Public Instruction and Co-Chair of the Education Roundtable.

Defendants cite *Sendak v. Allen*, 330 N.E.2d 333 (Ind. Ct. App. 1975) and other cases for the proposition that the Indiana State Board of Education should be dismissed for the plaintiffs failure to name individual board members as defendants. While the cases cited by the defendants suggest the State of Indiana may not be sued in its sovereignty, these cases do not appear to preclude bringing suit against a governmental organization such as the Indiana State Board of Education. In addition, the clear language of Indiana Trial Rule 19(F)(1) directs claims against governmental organizations be brought by naming the governmental organization.

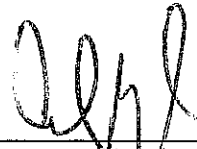
#### Standing and Redressability

In order for an action to go forward, the remedy sought must likely redress the unlawful conduct. *Alexander v. PBS Lending Corp.*, 800 N.E.2d 984, 989 (Ind. Ct. App. 2003).

Redressability must be likely rather than purely speculative. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Upon this premise the plaintiffs' complaint must fail. The complaint alleges a constitutional failure of the school funding formula as a basis for relief. A closer examination of plaintiffs' claim seems to be in reality, dissatisfaction with how the formula is weighed and implemented by the State Board of Education, not the formula itself. This examination coupled with the Court's duty to maintain and recognize the separation of powers doctrine leads to the conclusion that redressability is speculative in this case. Accordingly, the Court now GRANTS the defendants' Motion to Dismiss as to the remaining defendants.

Dated: January 29, 2007



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Cale J. Bradford, Judge  
Marion Superior Court  
Civil Division, Room 1

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