STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

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Alejandro Cruz-Guzman, as guardian and next friend of his minor children; Me'Lea Connelly, as guardian and next friend of her minor children; Ke'Aundra Johnson, as guardian and next friend of her minor child; Izreal Muhammad, as guardian and next friend of his minor children; Roxxanne O'Brien, as guardian and next friend of her minor children; Diwin O'Neal Daley, as guardian and next friend of his minor children; Lawrence Lee, as guardian and next friend of his minor child; and One Family One Community, a Minnesota non-profit corporation,

Plaintiffs,

v.

State of Minnesota; Minnesota Department of Education; Dr. Brenda Casselius, Commissioner, Minnesota Department of Education[1]; Minnesota Senate; Minnesota House of Representatives

Defendants,

and

Higher Ground Academy; Mohamed Abdilli; Friendship Academy of the Arts; Sharmaine Russell; Paladin Career and Technical High School; Rochelle LaVanier

Defendants-Intervenors.

**ORDER DENYING PLAINTIFFS' MOTION FOR FOR PARTIAL SUMMARY JUDGMENT**

Judge Susan M. Robiner
Court File No. 27-CV-15-19117

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[1] Dr. Brenda Casselius is no longer the Commissioner of the Minnesota Department of Education but no one has submitted a proposed substitution.

The above-entitled matter came on for hearing on September 13, 2021 before the Honorable Susan M. Robiner, Judge of District Court, upon Plaintiffs' motion for partial summary judgment on their Education Clause claim. Daniel R. Shulman, Esq. and Richard C. Landon, Esq. appeared on behalf of Plaintiffs.[2] Kathryn M. Woodruff, Esq. and Kevin Finnerty, Esq. appeared on behalf of Defendants.[3] Jack Y. Perry, Esq. appeared on behalf of Defendants-Intervenors.[4] Based upon the arguments of counsel and all the files, records, and proceedings herein, the Court rules as set forth below.

**ORDER**

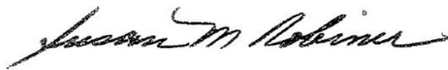
1. Plaintiffs' Motion for Partial Summary Judgment is **DENIED**;
2. The Court certifies the following question to the Minnesota Court of Appeals as important and doubtful requiring immediate appeal:

> Is the Education Clause of the Minnesota Constitution violated by a racially-imbalanced school system, regardless of the presence of *de jure* segregation or proof of a causal link between the racial imbalance and the actions of the state?

3. **THE STATUS HEARING CURRENTLY SET FOR DECEMBER 10 AT 8:45 AM IS CANCELLED DUE TO THE ANTICIPATED APPEAL OF THIS ORDER.**
4. The accompanying memorandum is incorporated herein.

**THERE BEING NO JUST REASON FOR DELAY, LET JUDGMENT BE ENTERED ACCORDINGLY AND FORTHWITH**

BY THE COURT:



Dated: December 6, 2021

Susan M. Robiner
Judge of District Court

[2] Plaintiffs are collectively referred to as "Plaintiffs."
[3] Defendants are collectively referred to as "Defendants" or "State."
[4] Defendant-Intervenors are collectively referred to as "Defendant-Intervenors."

## I. STATEMENT OF FACTS[5] UNDISPUTED FOR PURPOSES OF MOTION

1. Plaintiffs include primarily parents who have children in either the Minneapolis or St. Paul public school system.

2. Defendants are the State of Minnesota, the Commissioner of the Minnesota Department of Education, and the Department itself, the Minnesota Senate, and the Minnesota House of Representatives.

3. Defendant-Intervenors are three charter schools located in Minneapolis and St. Paul and parents of students who attend those charter schools. Two of the three charter school intervenors, Higher Ground Academy and Friendship Academy of the Arts, are over 90% "Black, not Hispanic" according to the Defendant-Intervenors' pleading.

4. Plaintiffs allege that Defendants have violated the Education Clause of the Minnesota Constitution, the Equal Protection Clause of the Minnesota Constitution, and the Due Process Clause of the Minnesota Constitution, as well as the Minnesota Human Rights Act,[6] by failing to provide an adequate education due to practices and policies that create racially and socio-economically segregated[7] public schools in the Minneapolis and St. Paul School Districts.

5. In this action, Plaintiffs seek injunctive relief, specifically a judicial determination that Defendants have violated the constitutional rights of the Plaintiff class guaranteed under the Education Clause, the Equal Protection Clause, and the Due Process Clause of the Minnesota Constitution, and to enjoin Defendants from further violations.

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[5] These facts are set forth for guidance. Other facts for which there is evidence in the record may be contained in the Court's analysis, pages 6–25.

[6] The Minnesota Human Rights Act claim was dismissed by Order dated July 7, 2016.

[7] The Court will use the term "segregated" when referring to Plaintiffs' allegations in order to accurately describe what Plaintiffs allege. It will use the term "imbalanced" otherwise, recognizing that the word "segregated" often connotes an intentional policy of separating races, or other protected classes.

6. In this motion, Plaintiffs seek a determination that Defendants have violated the Education Clause, and an order enjoining Defendants from further violations and directing Defendants to comply with the Education Clause.

### A. Procedural Posture

7. On November 5, 2015, Plaintiffs served and filed their Complaint.

8. In December 2015, Defendant-Intervenors moved to intervene and by Order dated February 2, 2016, intervention was granted.

9. In March 2016, multiple motions were brought by the parties. Plaintiffs moved to dismiss Defendant-Intervenors' claims; Defendants moved to dismiss Plaintiffs' claims; and Defendant-Intervenors brought multiple dispositive and non-dispositive motions.

10. These motions were heard in April 2016 and ruled upon in July 2016.

11. In July 2016, the Court denied Plaintiffs' motion to dismiss Intervenors, denied Defendant-Intervenors' motions, and denied Defendants' motion to dismiss.

12. Defendants immediately appealed the order denying dismissal and in March 2017, the Minnesota Court of Appeals reversed the District Court on justiciability grounds.

13. The appellate opinion proceeded to the Minnesota Supreme Court and on July 25, 2018, the Minnesota Supreme Court reversed the Court of Appeals and held that Plaintiffs' claims were justiciable.

14. In November 2018, and as amended in January 2019, class certification was granted.

15. In March 2019, Defendant-Intervenors moved for summary judgment on their declaratory claim that the Charter School Act provisions exempting such schools from certain statutes and rules, including desegregation rules, was constitutional.

16. By Order dated June 11, 2019, the Court denied Defendant-Intervenors' motion for summary judgment.

17. After an extended period of alternative dispute resolution, Plaintiffs brought the instant motion for partial summary judgment seeking a determination that Defendants, and particularly the legislative Defendants, have violated the Education Clause of the Minnesota Constitution as a matter of law and undisputed fact.

## B. Summary of Material Undisputed Facts Related to the Education Clause Claim

18. Plaintiffs present data regarding the racial and socio-economic make-up of students in Minneapolis and St. Paul public schools and the overrepresentation of students of color in relation to the demographics of the districts for which they provide a public-school education. This disproportional representation will hereinafter be called "racial imbalance."

19. The existence of this racial make-up and imbalance against district demographics is not disputed.

20. In their Complaint, Plaintiffs identify many of Defendants' policies or practices that have allegedly contributed to the racial imbalance that is the subject of this action,[8] including:

a. The background surrounding and passage of a 1999 Minnesota Department of Education desegregation rule that replaced an earlier 1978 desegregation rule;

b. Creation of policies favoring neighborhood schools (Complaint ¶ 48(a));

c. The charter school exemption from the desegregation rules (Complaint ¶ 31);

d. Creation of school boundary lines (Complaint ¶ 27);

e. Creation of suburban attendance boundaries (Complaint ¶ 32);

f. Open enrollment (Complaint ¶ 28);

[8] Hereinafter, these policies and practices will be referred to as "challenged state action(s)."

g. Discipline and suspension policies (Complaint ¶ 34);

h. Disparate funding of schools (Complaint ¶ 48);

i. The formation of charter schools (as opposed to their exemption from desegregation rules) (Complaint ¶¶ 29–30); and

j. Misuse of state and federal funds intended to support desegregation. (Complaint ¶¶ 33, 48(d)).

21. Plaintiffs allege in their Complaint and argue in their motion that they need not present evidence of Defendants' intent to create the racial imbalance. (*See* Complaint ¶ 6; Plaintiffs' Initial Memo. at pp. 34–36, 38–39; *see infra* at 16-18). However, Plaintiffs do present evidence that they believe establishes that certain policies adopted by Defendants were intended to cause the racial imbalances. Specifically, Plaintiffs present evidence that certain state actors who facilitated the 1999 revision of the earlier 1978 Minnesota Department of Education Desegregation Rule acted with the knowledge or belief that the new rule would have a segregating effect on schools. This evidence also extends to the decision to exempt charter schools from the desegregation rule and Minneapolis's 1995 request to receive a waiver from certain applications of the 1978 desegregation rule.[9]

22. Plaintiffs present no evidence regarding intent with regard to other state actions that they refer to in their Complaint. Specifically, although the challenged state actions listed at Paragraphs 19(d)–19(j) above were alleged in their Complaint, Plaintiffs presented no affidavit evidence regarding intent *vel non* associated with these challenged state actions.

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[9] Plaintiffs also claim that in 2011 the Department of Education permitted the St. Paul school district to return to the neighborhood school model "with knowledge and notice that the result would be increased segregation and resegregation." (Plaintiffs' Initial Memo. at p. 30). But the cited exhibits do not support this claim and are not even addressed to or copied to the Department of Education.

23. Defendants dispute both that their policies were intended to cause racial imbalance and dispute whether they have indeed caused an inadequate education. They point out that Plaintiffs have failed to present any evidence establishing that Defendants' challenged state actions directly caused the racial imbalance at issue in this case.

24. As discussed *infra,* Plaintiffs assert that a causal link between challenged state actions and targeted schools' racial imbalance need not be proven to establish liability under the Education Clause and present no evidence related to causation.

## II. CONCLUSIONS OF LAW

### A. Standard for Summary Judgment

Pursuant to Rule 56 of the Minnesota Rules of Civil Procedure as well as settled case law, summary judgment shall be awarded where there are no genuine issues of material fact and a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. A trial court shall not decide any issues of disputed fact in deciding summary judgment. However, any party challenging summary judgment may not rely upon speculation but must present specific facts that would foreclose summary judgment. *Anderson v. Liberty Lobby Inc*., 477 U.S. 242, 256 (1986).

Summary judgment is not designed to deny a party his or her right to a full hearing on the merits of any fact issue. Rather summary judgment is an extraordinary remedy—a "blunt instrument" to be employed "only where it is perfectly clear that no issue of fact is involved." *Poplinski v. Gislason*, 397 N.W.2d 412, 414 (Minn. Ct. App. 1986), *rev. denied* (Minn. Feb. 18, 1987) (citing *Donnay v. Boulware*, 144 N.W.2d 711, 716 (1966)). The Court, therefore, proceeds with caution when deciding summary judgment motions.

### B. Plaintiffs' Education Clause Claim

This lawsuit alleges that Defendants, all state actors, have violated the Equal Protection, Due Process, and Education Clauses of the Minnesota Constitution by their actions leading to the current racial imbalance and academic-outcome imbalance[10] in the Minneapolis and St. Paul Public School Districts. This motion relates only to Plaintiffs' claim that Minnesota's Education Clause has been violated and only to the claim of racial imbalance as discussed *infra*.

Article XIII, Section 1, the Education Clause of the Minnesota Constitution states:

> The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.

There has been very limited case law regarding the Education Clause. However, the salient case law related to the clause can be summarized succinctly:

- The clause establishes a right to a general, uniform, system of public schools. Minn. Const. Art. XIII, § 1;
- The clause imposes a duty upon the government rather than a limitation on its powers. *Curryer v. Merril,* 25 Minn. 1, 6–7 (1878);
- This right includes the right to a qualitatively adequate education such that will equip a student to discharge his/her duties as a citizen of the republic. *Cruz-Guzman v. State*, 916 N.W.2d 1, 12 (Minn. 2018); *Skeen v. State*, 505 N.W.2d 299, 310 (Minn. 1993), citing *Board of Educ. of Sauk Centre,* 17 Minn. 412, 416 (1871) (identifying the purpose of the Education Clause);

[10] For purposes of this Order, the Court will largely refrain from using the term "segregation" or its variants. When the term is used, it will denote *de jure* segregation unless otherwise noted.

- This is a fundamental right as that term is understood in constitutional jurisprudence. *Skeen v. State*, 505 N.W.2d 299, 313-14 (Minn. 1993);
- The issue of whether the clause has been violated by state actors such as Defendants legislature and Department of Education is justiciable. *Cruz-Guzman*, 416 N.W.2d at 12.

Plaintiffs contend that they do not need to prove intent in order to establish a violation of the Education Clause. Therefore, they argue that they prevail on their Education Clause claim even if there are material issues of fact regarding intent to create the challenged racial imbalance. They further argue, that if intent to cause the racial imbalance must be shown, they have done so as a matter of undisputed fact.

Defendants challenge Plaintiffs' legal analysis, asserting that both intent and causation must be established and further that there are disputed issues of material fact on the critical issues of intent and causation.

The Court will first summarize below the positions of the Parties and then address the issues raised by this motion.

**i. Plaintiffs' Argument Regarding Education Clause Liability**

Plaintiffs' argument, at least for purposes of this motion, is a syllogism. They contend that since the *Cruz-Guzman* Court stated that "It is self-evident that a segregated system of public schools is not 'general,' 'uniform,' 'thorough,' or 'efficient,'"[11] and since schools in the Minneapolis and St. Paul districts *are* segregated, (by which Plaintiffs mean racially imbalanced), Plaintiffs have established an Education Clause violation – without any requirement of establishing intent or that there is a causal relationship between Defendants' challenged state actions and the

[11] 916 N.W.2d at 10, n. 6.

racially imbalanced status. (*See, generally*, Plaintiffs' Initial Memo. at pp. 38–39; Plaintiffs' Complaint at ¶ 6).

Plaintiffs then anticipate Defendants' arguments related to an intent requirement. Their response to the argument that intent must be established is four-fold:

1. The Education Clause creates a mandate, i.e., an affirmative duty, and not a prohibition. Therefore, intent should not be relevant. (Plaintiffs' Initial Memo. at pp. 34–36, 39);

2. The dictionary definition of "segregation" does not require intent. (Plaintiffs' Initial Memo. at p. 34);

3. Scholars do not believe intent should be considered. (Plaintiffs' Initial Memo. at p. 35); and

4. Minnesota's educational policy prior to 1999 did not require intentional segregation to attack racial imbalance. (Plaintiffs' Initial Memo. at pp. 35–36).

Plaintiffs do not address the issue of causation in their initial memorandum. In their reply brief, they argue that since segregation *is* the Education Clause violation, they have established injury and "no further inquiry" regarding causation is necessary. (Plaintiffs' Reply brief at p. 6).

**ii. The State's Argument Regarding Education Clause Liability**

The State argues that "segregative intent" is required if Plaintiff are going to "use the Education Clause as a vehicle to import an Equal Protection claim." (Defendants' Opposition Memo. at p. 9). Moreover, they fundamentally disagree that a certain racial balance is required by the Education Clause arguing that it is unworkable, leads to absurd results, and improperly invades the realm of education policy. (*See* Defendants' Opposition Memo. at pp. 11–17). The State further argues that when the *Cruz-Guzman* Court cited Equal Protection jurisprudence in examining the

Education Clause, it was signaling that it was also borrowing the intent requirement. (Defendants' Opposition Memo. at pp. 10–11). It further argued that when the *Cruz-Guzman* Court used the word "segregation" it imported the meaning that the term is given in Equal Protection jurisprudence – i.e. *de jure* segregation – which requires a showing that Defendants intended to cause the resulting imbalance. (*Id*). Finally, the State argues that Plaintiffs have failed to put on any evidence that the policies that they are challenging have actually caused the racial imbalance that they consider a constitutional violation, (Defendants' Opposition Memo. at pp. 17-18), and that they will present rebuttal evidence in their expert submissions which are not yet due.

#### iii. Defendant-Intervenors' Argument Regarding Education Clause Liability

Defendant-Intervenors also argue that the *Cruz-Guzman* Court signaled that this Court must follow federal Equal Protection jurisprudence by relying upon Equal Protection case law. (Defendant-Intervenors' Opposition Memo. at p. 6). They also argue that the *Cruz-Guzman* Court warned against becoming involved in educational policymaking and that any ruling to the effect that "the state's interest in 'integration' constitutionally trumps (or invalidates) the state's interest in parental choice" would impermissibly invade educational policymaking. (Defendant-Intervenors' Opposition Memo. at p. 8). Defendant-Intervenors, like Defendants, argue that the factual record is materially disputed as to the issues of intent and causation and that summary judgment is premature relying upon Minn. R. Civ. P. 56.04. (Defendant-Intervenors' Memo. at 18–19).

### C. The Elements of an Education Clause Violation

This Court will first address the proper legal elements of an Education Clause claim, incorporating its response to the parties' arguments which are summarized above. It will also

address the issue of whether the record is sufficiently undisputed and favorable to Plaintiffs as to warrant summary judgment.

**i. Minnesota Education Law Precedent**

In identifying the elements of an Education Clause violation, the Court is operating with very little binding precedent. However, the analysis begins with such precedent.

The Minnesota Courts has analyzed the Education Clause in very few cases: *See, e.g., Curryer v. Merrill*, 25 Minn. 1 (1878); *Board of Educ. of Sauk Center v. Moore*, 17 Minn. 412 (1871); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993); *Cruz-Guzman v. State*, 916 N.W.2d 1 (Minn. 2018); and *Forslund v. State,* 924 N.W.2d 25 (Minn. Ct. App. 2019) (*Forslund* II)). *Skeen*, *Cruz-Guzman*, and *Forslund II,* particularly shed light on the elements of an Education Clause violation and are discussed below.

In *Skeen*, 52 school districts, largely from outer ring suburbs of the Twin Cities, sued the Department of Education alleging that the state's educational finance system violated the Education Clause by not providing uniform funding to their detriment. Twenty-four school districts, largely from inner ring suburbs and the Iron Range, intervened as defendants.

The trial court concluded that the funding system was unconstitutional, holding that the wealth-based disparities among districts violated the Education Clause and the Equal Protection clause of the state constitution. The Court of Appeals certified the case to the Minnesota Supreme Court.

The *Skeen* Court briefly considered the legislative history of the clause but found no guidance regarding how to interpret the phrase "general and uniform." *Id*. at 309 ("nowhere in these proposals [i.e., the earliest proposals containing the phrase] is the phrase 'general and uniform system' described"). It concluded that earlier cases supported a broad interpretation to

serve the purpose of the clause, namely "to insure a regular method throughout the state whereby all may be enabled to acquire an education which will fit them to discharge intelligently their duties as citizens of the republic." *Id.* at 310 (quoting *Sauk Centre v. Moore*, 17 Minn. 412, 416 (1871)). The Court also relied on an early case, *Curryer v. Merrill*, to affirm that the clause imposed an affirmative duty on the legislature and was not merely a grant of power. *Id*. at 309, citing *Curryer v. Merrill*, 25 Minn. 1, 6–7 (1878).

The Court discussed several cases from other jurisdictions interpreting both "general and uniform" and "thorough and efficient." Notably, it cited with approval *Pauley v. Kelly* for its qualitative definition of "thorough and efficient":

> [D]evelopment in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such a music, theater, literature, and the visual arts; and (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society.

*Skeen*, 505 N.W.2d at 310–11 (quoting *Pauley v. Kelly*, 255 S.E.2d 859, 877 (1979)).

The *Skeen* Court ultimately held that the educational funding scheme was not unconstitutional, concluding that the phrase "general and uniform" did not require that funding be equal across the state so long as the scheme met the basic educational needs of the students. Since the *Skeen* plaintiffs never argued that their students were suffering from an inadequate education as a result of the funding inequities, their Education Clause claim failed.

Importantly for our purposes, *Skeen* was not an adequacy-of-education case. *Skeen* plaintiffs conceded that they were receiving an adequate education despite the challenged funding mechanisms. As a result, *Skeen* does not explore the elements of an adequacy-of-education claim. Nevertheless, the decision does presume that a violation would require proof that the challenged state action (in *Skeen,* the financing system) actually caused an inadequate educational system. *Id*. at 312.

The 2018 *Cruz-Guzman* decision primarily addressed the justiciability issue – i.e. whether "claims alleging that the State has failed to provide students with an adequate education are justiciable." 916 N.W.2d at 7–9. It held that such claims were justiciable without any discussion of the constituent elements of such claims. *Id.*

That said, the parties all place emphasis on footnote 6 in arguing their respective positions on the ingredients of an Education Clause claim. Plaintiffs argue that the footnoted reference to segregated schools self-evidently not being general, uniform, thorough, or efficient eliminates any requirement to prove intent and *sub silentio* eliminates any argument that they establish causation.

This Court concludes that this is an over-interpretation of footnote 6. First, to state the obvious, the footnote was contained in a justiciability analysis in an opinion that never addressed the substantive elements of an Education Clause claim and was never asked to. *See Cruz-Guzman,* 916 N.W.2d at 7, n.3 ("the merits of appellants' claims are not before us"). Second, the reference to segregated schools was followed by a citation to *Brown v. Board of Education*, 347 U.S. 483 (1954). *Brown* addressed *de jure*, state-sponsored intentional segregation. There is no logical support for concluding that the *Cruz-Guzman* Court was using the term "segregation" more broadly than *Brown* and its progeny – i.e. state-sponsored intentional segregation.

Defendants also overinterpret footnote 6 of the *Cruz-Guzman* opinion. Both the State Defendants and Defendant-Intervenors argue that the reference to *Brown* requires that this Court import the intentionality requirements from Equal Protection jurisprudence contained in *Brown*'s progeny. *See, e.g.*, *Washington v. Davis*, 426 U.S. 229, 240 (1976) ("school desegregation cases have also adhered to the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose . . .. The essential element of *De jure* segregation is 'a current condition of segregation resulting from intentional state action.'"). Yet, the *Cruz-Guzman* Court never stated or even suggested that this Court should be bound by federal Equal Protection precedent in construing a *state constitutional clause that has no federal analog*. Consequently, this Court rejects the arguments advanced by Defendants and Defendant-Intervenors that it must necessarily apply Equal Protection jurisprudence, and specifically the intent requirement summarized in *Washington v. Davis, supra,* as it attempts to discern the proper elements of Minnesota's Education Clause violation.

This Court concludes that the *Cruz-Guzman* opinion plays a very limited role in fleshing out the substantive elements of an Education Clause violation. Its chief contribution is to confirm that the state constitutional right to an education is a qualitative right to an adequate education and that *Skeen's* holding to that effect was not *dicta*. *Cruz-Guzman*, 916 N.W.2d at 11–12, and n. 7; *Skeen,* 916 N.W.2d at 315.

*Forslund v. State of Minnesota*, *Forslund II* is the most recently published opinion on the Education Clause. There, public school parents sought to invalidate certain statutes related to teacher tenure as violations of the Education Clause. The appellate court explicitly addressed the elements of an Education Clause claim. It held that "to establish a violation of the Education Clause, a plaintiff must demonstrate that the legislature has failed or is failing to provide an

adequate education." 924 N.W.2d at 34–35. It further concluded that where the claim is based on more than one variable, "a plaintiff needs to prove facts to establish that those variables are actually resulting in an inadequate education." *Id*.

While this opinion does not address intent at all, it expressly addresses causation. It holds that a plaintiff must establish that the challenged policy, rule, or statute actually causes a constitutionally inadequate education. *Id*.

#### ii. The Role of Intent

The *Forslund II* decision contemplates that any successful Education Clause claim will require that the plaintiff identify the specific state action(s) ("variable(s)" in *Forslund* II nomenclature) allegedly responsible for the inadequate education and then prove that that variable causes an inadequate education. *Forslund* II does not hold that a plaintiff must prove that an action was taken intending to deprive students of an adequate education. Yet, Defendants and Defendant-Intervenors continue to insist that intent is required for an Education Clause case, at least when it involves racial imbalance. Consequently, this Court will consider Defendants' and Defendant-Intervenors' arguments regarding intent.

As discussed above, Defendants and Defendant-Intervenors assert that Equal Protection jurisprudence should apply in analyzing the Education Clause elements. They argue that references to Equal Protection cases in the *Cruz-Guzman* opinion indicate that the Minnesota Supreme Court intended that such jurisprudence should apply to an Education Clause requirement.

This argument fails. The *Cruz-Guzman* Court did not apply Equal Protection precedent to interpret or opine upon the substantive elements of a claim under Minnesota's Education Clause. The Court analyzed the narrow issue of justiciability. The only federal cases cited were *Marbury v. Madison* and *Brown v. Board of Education* and both were cited purely for the purpose of

illustrating justiciability. 916 N.W.2d at 9–10. Additionally, this Court does not consider it sound reasoning to pronounce that using a state constitutional right to advance a segregation challenge is merely an attempt to "import an Equal Protection claim" and should therefore be subject to Equal Protection jurisprudence. The Education Clause guarantees a set of rights to this state's citizens that are not contained in the federal constitution or any federal law. Those rights should not rise or fall on the federal jurisprudence that develops around a wholly different right contained in a wholly different constitution.

Consequently, this Court will not impose an intent requirement at this juncture on this basis without further guidance from the appellate courts. However, as discussed below, this Court has concluded that intentional segregation, i.e. *de jure* segregation, must be established before an Education Clause violation can be found because to do otherwise on this record would create an Equal Protection violation and violate the Supremacy Clause.

The Court first considers what Plaintiffs are asking this Court to do by this motion. They are asking the Court to find an Education Clause violation based on the presence of racial imbalance *alone*. To repeat, that is the only wrong they are litigating in this particular motion. If this is the only wrong, then the only properly tailored remedy is a remedy that redistributes students by race within the targeted school systems to eliminate the racial imbalance. That remedy, in the absence of a finding of intentional state-sponsored segregation, violates the Equal Protection clause of the 14th Amendment because it is necessarily race-conscious. This issue was settled in *Parents Involved in Community Schools v. Seattle School Dist. 1*, 551 U.S. 701, 725–33 (2007).[12] There, the Seattle school district used race as a "tie-breaker" for school assignments. The district court and an *en banc* panel of the Ninth Circuit upheld the race-conscious assignment system but

[12] *Grutter v. Bollinger*, also held that "outright racial balancing" is "patently unconstitutional." 539 U.S. 306, 330 (2003).

the United States Supreme Court reversed. It referred to explicitly race-based classifications as "pernicious," (551 U.S. at 721), and found that no compelling government interest supported their use.

As the *Parents Involved* case illustrates, any race-conscious remedy for Plaintiffs' Education Clause violation could only avoid a successful Equal Protection challenge if it survived strict scrutiny. *Grutter*, 539 U.S. at 333–34 (citing *Shaw v. Hunt*, 517 U.S. 899, 908 (1996)). And if the compelling government interest originates in a state interpreting its state constitution broadly to require racial balance in its schools *without a showing of de jure segregation*, then that state is interpreting its constitution in a manner that violates the Equal Protection clause and thereby violates the Supremacy Clause. Such a compelling state interest will not succeed.

It does not matter that Plaintiffs insist that they are not asking this Court to impose any remedy but merely asking the Court to declare a violation has occurred, enjoin it, and direct Defendants to "comply." (Plaintiffs' Initial Memo. at p. 50). As stated above, Plaintiffs argue that racial imbalance alone establishes an Education Clause violation. Therefore, whether explicitly or implicitly, Plaintiffs are asking this Court to order Defendants to eliminate the challenged racial imbalances. This Court has concluded that it cannot issue such an order in the absence of *de jure* segregation; because without *de jure* segregation, a race-conscious remedy would place Defendants squarely in front of the propeller blade of an Equal Protection claim.

**iii. The Factual Record Regarding Intent**

The factual record is wholly inadequate to establish intentional *de jure* segregation by Defendants as a matter of undisputed material fact. There is no evidence at all regarding intent *vel non* related to most of the challenged state actions: e.g., the initial creation of charter schools; the creation of district and attendance boundaries; open enrollment; discipline and suspension policies;

alleged discriminatory spending, etc. *See supra* at p. 5. The only evidence of intent relates to the revisions to the state's desegregation rule in 1999 and within that evidence, evidence related to the charter school exemption and a 1995 waiver received by the Minneapolis schools. *See supra* at 6, Finding No. 21. However, this evidence is both too limited and disputed. First, it is too limited. The Court would be overreaching if it found that the attitudes or comments by two individuals[13] established the segregative intent of an entire state department, especially where, as here, the challenged state action, a rule, went through a multi-year formal rulemaking process with input from scores of persons, and obligatory public comment, notice and hearing. Moreover, the 1999 rule had to be approved by an administrative law judge who did so finding that "the Department's motivation in proposing the proposed rule scheme was its desire to comply with existing federal standards." Affidavit of Daniel Shulman (Shulman Aff.), Ex. 69[14] at Finding of Fact No. 17. Indeed, the ALJ decision discusses the decision to define segregation as arising from intentional acts. It is clear from this discussion that the decision to not address *de facto* segregation arose from a genuine and reasonable legal conclusion that *de facto* segregation did not violate the constitution. *See* Shulman Aff., Ex. 69 at Findings of Fact 34-35. Notably, even Plaintiffs concede that one of the targeted state actors, Assistant Attorney General Lavorato, was advising against a draft of the new rule that prohibited and sought to remedy *de facto* segregation because she believed that it would run afoul of the Equal Protection clause of the 14th Amendment. (*See* Plaintiffs' Initial Memo. at pp. 28–29). That is not resounding evidence of segregative intent.

Second, Defendants dispute the factual evidence of intent. They have presented some countervailing evidence and made the valid point that their deadline for submitting expert

[13] Plaintiffs focus on the comments and conduct of Robert Wedl, former Assistant Commissioner and later Commissioner of the Minnesota Department of Education, and former Assistant Attorney General Cindy Lavorato.
[14] Office of Administrative Hearing, Report of the Administrative Law Judge, In the Matter of the Proposed Adoption of Rules Regarding Desegregation, dated March 19, 1999.

testimony has not yet come. Since Plaintiffs' motion is supported by expert submissions, it is proper for the Court to allow Defendants to support counterarguments with expert testimony, and to therefore conclude that summary judgment is not proper pursuant to Minn. R. Civ. P. 56.04.[15]

**iv. Causation**

The next issue is whether causation is an element of an Education Clause claim.

As identified *supra*, Plaintiffs have challenged many state actions that they argue contribute to the current racial imbalance. However, they have presented no evidence to establish that the challenged state actions have caused the racial imbalance or segregation present in schools within the Minneapolis and Saint Paul school districts. Instead, they state succinctly that "[w]hen Plaintiffs show segregation, they show injury. No further inquiry is necessary. Causation is established." (Plaintiffs' Reply Memo. at p. 6).

This response by Plaintiffs, contained in their Reply Memorandum, responds to the State's argument that Plaintiffs failed to present any evidence of a causal link between segregation and an academically inadequate education assuming, as the State does, that Plaintiffs must prove that racial imbalance necessarily results in an academically inadequate education. (*See* Plaintiffs' Reply Memo. at p. 6, and n. 4 (requiring plaintiffs to prove a causal link between segregation and an inadequate education improperly ignores that segregation itself creates an inadequate education); *see* State Memo. in Opposition at p.17). Yet, Plaintiffs' motion does not trigger the need to prove such link between racial imbalance and poor test outcomes because the premise of Plaintiffs' entire motion is that the injury, the inadequacy, *is* the racial imbalance.

The Court, accepting the premise built into Plaintiffs' motion, then considers the following issue: must Plaintiffs prove a causal link between the challenged state action(s) (the "input(s)" to

[15] Defendants and Defendant-Intervenors both filed the required affidavit pursuant to Minn. R. Civ. P. 56.04.

use the terminology of New York opinions *infra*) and the racial imbalance? Plaintiffs have presented no evidence to establish that the challenged state actions, i.e. inputs, separately or operating in concert, directly cause the racial imbalance present in the identified schools. Hence, if causation is required to establish an Education Clause case based on racial imbalance in the school, then Plaintiffs' summary judgment motion fails completely.

A New York Court recently ruled upon an Education Clause case under its state constitution and addressed the issue of causation. *See Maisto v. State*, 196 A.D.3d 104, 149 N.Y.S.3d 599 (2021). This case is useful because, like the case at bar, it is an adequacy-of-education case, rather than the more common funding cases brought under state education clauses. In *Maisto*, the Court was analyzing New York's Education Clause: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." N.Y. Const. art. XI, § 1. It opined that:

> Establishing a violation of the Education Article requires a multi-part showing. First, a litigant must demonstrate that defendant has provided inadequate inputs – such as physical facilities, instrumentalities of learning and teaching instruction – which has, in turn, led to deficient outputs, such as poor test results and graduation rates (*see New York Civ. Liberties Union v. State of New York,* 4 N.Y.3d 175, 181, 791 N.Y.S.2d 507, 824 N.E.2d 947 [2005]; *Campaign for Fiscal Equity v. State of New York,* 100 N.Y.2d at 908–909, 769 N.Y.S.2d 106, 801 N.E.2d 326; *Campaign for Fiscal Equity v. State of New York,* 86 N.Y.2d at 317, 631 N.Y.S.2d 565, 655 N.E.2d 661). Next, "a causal link between the present funding system and any proven failure to provide a sound basic education" must be shown (*Campaign for Fiscal Equity v. State of New York,* 86 N.Y.2d at 318, 631 N.Y.S.2d 565, 655 N.E.2d 661). Such a nexus may be established "by a showing that increased funding can provide better teachers, facilities and instrumentalities of learning[,] ... together with evidence that such improved inputs yield better student performance" (*Campaign for Fiscal Equity v. State of New York,* 100 N.Y.2d at 919, 769 N.Y.S.2d 106, 801 N.E.2d 326 [internal citation omitted]).

196 A.D.3d at 111–12, 149 N.Y.S.3d at 604–05. The *Maisto* Court relied upon, *inter alia*, *New York C.L. Union v. State*, 4 N.Y.3d 175, 824 N.E.2d 947 (2005). There, the highest appellate court of New York held that

> [A]n Education Article claim requires two elements: the deprivation of a sound basic education and causes attributable to the State. As our case law makes clear, even gross educational inadequacies are not, standing alone, enough to state a claim under the Education Article. Plaintiffs' failure to sufficiently plead causation by the State is fatal to their claim.

4 N.Y.3d at 178–79, 824 N.E.2d at 949.

This Court rejects Plaintiffs' assertion that the existence of the claimed injury (here, racial imbalance) displaces the need to prove causation. It is antithetical to basic legal principles. Individual causes of action for constitutional violations are in the nature of tort claims. *Carey v. Piphus*, 435 U.S. 247, 254–55 (1978). The law of torts serves to redistribute the costs of an injury from the injured party to the person properly to blame. A causal link between the injury and the tortfeasor's action is a root principle. It is not fair to exact damages from a tortfeasor unless they are to blame; i.e. they caused the injury. And in the unusual circumstance where an injured party is entitled to equitable specific relief, it would make no sense to demand that a tortfeasor change or stop certain behaviors unless it were shown that those behaviors contributed to the injury. The same is true here.

Instructively, tort law does relax the causation requirement when *res ipsa loquitur* is established. But the relaxation, usually in the form of a rebuttable presumption, is available only where the instrumentality causing harm is in the exclusive control of the defendant, eliminating other potential causes. *See Mahowald v. Minnesota Gas Co.*, 344 N.W.2d 856, 862 (Minn. 1984). Here, there are many potential alternative or contributory causal agents. Plaintiffs themselves, in their expert submissions, discuss some of the intransigent contributors to racially-imbalanced schools, including housing and poverty patterns, and in the case of charter school enrollment and open enrollment, the fact that parents opt into these schools, eliminating the control of the state to determine the racial make-up of the student applicant pool.

In short, there is no consensus on what causes non-diverse, racially-imbalanced schools. Most would likely agree that the "cause" is a Hydra-headed monster that includes the actions and decisions of Defendants as well as actions and decisions beyond Defendants' control. In light of the bedrock role that causation plays in our legal system and given the need to direct our best efforts where they will make a difference because we know there is a causal link, this Court concludes that an Education Clause violation must establish that any challenged state action(s) must directly cause the racially-imbalanced school environment. And in the absence of such evidence, summary judgment is not available. This is a requirement separate from the intent requirement discussed *supra*.

**D. <u>Immediate Appeal and Conclusion</u>**

In this motion, Plaintiffs have *not* advanced their theory, still present in their pleadings, that racially-imbalanced schools result in such poor academic outcomes that they violate the state's Education Clause. Instead, they proceed on their alternative theory that the existence of racial imbalance alone violates the Education Clause - regardless of any effect on academic outcomes, regardless of the State's role in creating the imbalance, and regardless of the State's intent.

This legal position rests upon very little, if any, precedent. First, it is wholly unsupported by Equal Protection jurisprudence. While *Brown v. Board of Education* is known in the legal community and in popular culture as having overruled *Plessy v. Ferguson* and put the lie to the notion of "separate but equal," subsequent case law has clarified that the Equal Protection clause of the 14$^{th}$ Amendment applies only to state-sponsored intentional segregation.

Second, assuming as this Court does, that Equal Protection case law should not control Plaintiff's Education Clause theory, there is no Minnesota Education Clause precedent on point. Plaintiffs rely exclusively on footnote 6 of the *Cruz-Guzman* opinion and the Court does not find

that argument persuasive. *See supra* at 14. This Court has had to rule on Plaintiffs' motion with no appellate guidance.

Minnesota Rule of Civil Appellate Procedure 103.03 provides that appeals may be taken:

> (b) from an order which grants, refuses, dissolves or refuses to dissolve, an injunction;
>
> . . . [or]
>
> (i) if the trial court certifies that the question presented is important and doubtful, from an order which denies a motion to dismiss for failure to state a claim upon which relief may be granted or from an order which denies a motion for summary judgment.

Both provisions apply here. The Court has refused to grant Plaintiffs' injunctive relief (i.e., to enjoin Defendants from violating the Education Clause) thereby providing Plaintiffs grounds for immediate appellate relief. Additionally, this Court, for the reasons set forth above, certifies the following question presented by Plaintiffs, as important and doubtful requiring immediate appellate review:

> Is the Education Clause of the Minnesota Constitution violated by a racially-imbalanced school system[16], regardless of the presence of *de jure* segregation or proof of a causal link between the racial imbalance and the actions of the state?

A district court is permitted to certify important and doubtful questions for immediate appellate review following the denial of summary judgment. Minn. R. Civ. App. P. 103.03(i). A question that is doubtful "need not be one of first impression, but it should be one on which there is substantial ground for a difference of opinion." *Jostens, Inc. v. Federated Mut. Ins. Co.,* 612 N.W.2d 878, 885 (Minn. 2000). Here, as is clear from the history of this case, there is substantial and well-grounded differences of opinion. A question is considered "important" if it will have

[16] The Court recognizes that it has not defined "racially-imbalanced"; that Plaintiffs have offered three variant definitions, and that Defendants have opined that any definition of racial imbalance invades the province of educational policy. The Court need not address this issue at this stage, especially in light of immediate appellate review, and declines to do so.

statewide impact, is likely to be reversed, will end lengthy proceedings, and will generate significant harm if there is a wrong ruling at the district court level. *Id.* at 884; *Fedziuk v. Comm'r of Pub. Safety*, 696 N.W.2d 340, 344 (Minn. 2005); *see also N.H. v. Anoka-Hennepin School District No. 11*, 950 N.W.2d 553, 559 (Minn. Ct. App 2020). Here, this Court is reluctant to handicap its likelihood of reversal except to note that it was reversed by the Court of Appeals previously in this case. Moreover, the question relates to the state constitution which necessarily creates statewide impact. There is also the strong possibility that requiring proof of intent will end these proceedings given the profound difficulty in successfully proving intent. Such an outcome, if erroneous, would generate significant harm. For these reasons, the Court certifies the above-stated question as important and doubtful.

S.M.R.