

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHN and BREANNA WOOLARD, on  
their own behalf and on  
behalf of their minor  
children A.W., E.W., and  
O.W., et al.,

Plaintiffs,

v.

TONY THURMOND, in his  
official capacity as  
Superintendent of Public  
Instruction, et al.,

Defendants.

No. 2:23-cv-02305-JAM-JDP

**ORDER GRANTING DEFENDANTS'  
MOTIONS TO DISMISS AND  
DISMISSING PLAINTIFFS' COMPLAINT  
IN ITS ENTIRETY**

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

The facts of the case, summarized below, are taken from the  
Complaint (Compl., ECF No. 1) and assumed to be true for purposes  
of these motions:

1. Plaintiffs are parents or legal guardians of children  
who were enrolled in California charter school's Blue Ridge  
Academy ("Blue Ridge") and Visions in Education ("Visions")  
(collectively, "the charter schools") (Compl. ¶¶ 16-18);
2. The charter schools are tuition free and under the  
jurisdiction of local school districts (Compl. ¶ 2);
3. The charter schools offer publicly funded independent

1 study programs (Compl. ¶¶ 2, 3);

2 4. The charter schools employ credentialed teachers that  
3 supervise the independent study programs (Compl. ¶¶ 35, 42-44;  
4 Exh. A to Compl., Blue Ridge Parent-Student Handbook, ECF No. 1  
5 at 4);

6 5. The supervising teachers at the charter schools ensure  
7 that the independent study programs meet state guidelines (Compl.  
8 ¶¶ 36, 42);

9 6. The charter schools do not allow the parents or  
10 guardians to access public funds to purchase non-secular  
11 (religious) materials for the independent study programs (Compl.  
12 ¶¶ 49, 53);

13 7. Periodically, the supervising teachers review student-  
14 work (Compl. ¶¶ 36, 44); and

15 8. Students will not receive credit if their student-work  
16 is non-secular (Compl. ¶ 6).

17 Plaintiffs filed suit against numerous parties within  
18 California's public education sector. See generally Compl.  
19 Plaintiffs argue the exclusion of non-secular materials excludes  
20 Plaintiffs from an otherwise generally available government  
21 benefit of accessing public funds to purchase curriculum for  
22 homeschooling. Compl. ¶ 9. Plaintiffs argue this exclusion  
23 violates their First Amendment rights under the free exercise and  
24 free speech clauses. Id. All defendants who have appeared now  
25 move to dismiss.<sup>1</sup> See Motions ("Mot.'s") to Dismiss, ECF Nos.

---

26  
27 <sup>1</sup> The motions were determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearings were  
scheduled for April 9, 2024.

1 24, 35, 36, 37, 39.

2 The motions present various grounds for dismissal, however,  
3 all five (5) defendants move pursuant to Federal Rules of Civil  
4 Procedure Rule 12(b)(6). See id. Four (4) of the motions  
5 address at least one common ground: Plaintiffs have not properly  
6 alleged that their First Amendment constitutional rights were  
7 infringed upon. See ECF Nos. 24, 35, 37, 39. For the reasons  
8 set forth below, the Court agrees.

9 II. OPINION

10 A. Legal Standard

11 A Rule 12(b)(6) motion challenges the sufficiency of a  
12 complaint for "failure to state a claim upon which relief can be  
13 granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to  
14 dismiss [under 12(b)(6)], a complaint must contain sufficient  
15 factual matter, accepted as true, to state a claim for relief  
16 that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
17 662, 678 (2009) (internal quotation marks and citation omitted).  
18 Plausibility requires "factual content that allows the court to  
19 draw a reasonable inference that the defendant is liable for the  
20 misconduct alleged." Id. While "detailed factual allegations"  
21 are unnecessary, the complaint must allege more than  
22 "[t]hreadbare recitals of the elements of a cause of action,  
23 supported by mere conclusory statements." Id. Conclusory  
24 allegations are not to be considered in the plausibility  
25 analysis. Id. at 679 ("While legal conclusions can provide the  
26 framework of a complaint, they must be supported by factual  
27 allegations."). When a plaintiff fails to "state a claim upon  
28 which relief can be granted," the Court must dismiss the case.

1 Fed. R. Civ. P. 12(b)(6).

2 B. Judicial Notice

3 A court may take judicial notice of a fact that is not  
4 subject to reasonable dispute if it is either (1) generally  
5 known within the trial court's territorial jurisdiction or  
6 (2) can be accurately and readily determined from sources whose  
7 accuracy cannot reasonably be questioned. Fed. R. Ev. 201(b).

8 Here, each motion to dismiss is accompanied by a separate  
9 request for judicial notice. See Req.'s for Judicial Notice  
10 ("RJN") ECF No.'s 24-2, 35-2, 36-3, 37-2, 39-2. The Charter  
11 Renewal Petitions of Visions and Blue Ridge are attached as  
12 exhibits to Defendant Superintendent Thurmond's request for  
13 judicial notice. Exh.'s A, D to Def. Thurmond's RJN, ECF No.  
14 35-2. The petitions are matters of public record and not  
15 subject to reasonable dispute. Lee v. City of L.A., 250 F.3d  
16 668, 689 (9th Cir. 2001); J. C. v. Cambrian Sch. Dist., No. 12-  
17 cv-03513-WHO, 2014 U.S. Dist. LEXIS 7319, at \*12 (N.D. Cal. Jan.  
18 21, 2014) (district court taking judicial notice of charter  
19 school petition). The Court takes judicial notice of the  
20 petitions.

21 The Court did not rely on facts contained in the other  
22 requests for judicial notice in deciding the instant motions.  
23 The Court denies all non-petition requests as moot. See Sikhs  
24 for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088,  
25 1091 n.1 (N.D. Cal. 2015).

26 C. Analysis

27 1. California's Public School System

28 Under the California Constitution, the California

1 Legislature is required to organize and fund a free public  
2 school system. Cal. Const. Art. IX §§ 5, 6. This public school  
3 system encompasses all public schools in the state as well as  
4 the districts and agencies that maintain them. Id. California  
5 state charter schools (“charter schools”), which operate  
6 independently from the existing school district structure, are  
7 included in California’s free public school system. Cal. Ed.  
8 Code § 47601. One requirement for all of California’s public  
9 schools, including charter schools, is that they remain  
10 nonsectarian (non-religious) in all their programs and  
11 operations. Id.; Cal. Const. Art. IX, § 8; Wilson v. State Bd.  
12 of Educ., 75 Cal. App. 4th 1125, 1143, (1999) (“Charter  
13 petitioners must affirm that their school will be nonsectarian  
14 in its programs and operations.”).

15 The California Education Code (“Education Code”) permits a  
16 charter school to receive funding for both classroom and  
17 nonclassroom-based instruction. Cal. Ed. Code §§ 47612.5(d),  
18 (e). Nonclassroom-based instruction includes independent study  
19 programs, also characterized as home study programs. Id.; Cal.  
20 Ed. Code § 51747.3(a) (“[I]ndependent study . . . whether  
21 characterized as home study or otherwise . . .”).

22 Pursuant to the Education Code, a charter school’s  
23 independent study program is required to be coordinated,  
24 evaluated, and supervised by an employee of the charter school  
25 with teaching credentials or with an emergency teaching or  
26 specialist permit. Cal. Ed. Code § 51747.5(a). The Education  
27 Code also requires that the courses be taught under the general  
28 supervision of a credentialed teacher who is a certified

1 employee of either the charter school or a separate local  
2 educational agency. Cal. Ed. Code § 51749.5(a)(3).

3 The supervising teacher's general supervision requires,  
4 among other things, continued oversight of the study design,  
5 implementation plan, allocation of resources, and evaluation of  
6 student progress. Cal. Code Regs. Tit. 5, § 11700(b). The  
7 supervising teacher selects the methods of studies to reach the  
8 educational objectives. Cal. Code Regs. Tit. 5, § 11700(f). The  
9 student, parent or guardian, supervising teacher, and  
10 supervising employee are required to sign a written agreement  
11 prior to the commencement of the program that includes the  
12 objectives, methods of study, and methods used for evaluating  
13 student-work. Cal. Ed. Code §§ 51747(g)(2), (g)(9)(A). With  
14 respect to resources, charter schools are required to provide  
15 appropriate materials and services necessary to achieve the  
16 objectives in the written agreement. Cal. Ed. Code §§ 51746,  
17 51747(g)(3); Cal. Code Regs. Tit. 5, § 11700(i).

18 Independent study courses must be annually certified by the  
19 charter schools. Cal. Ed. Code §§ 51745.5(4)(a). To achieve  
20 certification, the courses must be of the "same rigor,  
21 educational quality, and intellectual challenge substantially  
22 equivalent to in-person instruction and equivalent classroom-  
23 based courses and shall be aligned to all relevant local and  
24 state content standards." Id. Since independent study courses  
25 are required to comply with California state standards, they  
26 must, among other things, remain nonsectarian. Cal. Const. Art.  
27 IX, § 8; Cal. Ed. Code § 47601; Cal. Ed. Code §§ 51745.5(4)(a).

28 ///



1 agreement and select curriculum that meets California State  
2 Standards. Id. at 40, 37-38, 78; Compl. ¶¶ 28, 66. The  
3 credentialed teachers and parents have the option to choose  
4 either a personalized curriculum or a prescribed curriculum that  
5 is pre-qualified by Visions. Exh. A to Def. Thurmond's RJN at  
6 40.

7 Credentialed teachers and parent educators purchase the  
8 selected curriculum materials through the student's independent  
9 curriculum budget, which is funded through state funds. Id. at  
10 38, 41. No funds are transferred directly to the parents.  
11 Visions' Mot., ECF No. 37 at 11; Opp'n to Visions' Mot., ECF No.  
12 46 at 8.

13 Throughout the school year, the teachers "assess student  
14 achievement as measured by [California State Standards]." Id.  
15 at 38. Whether personalized or pre-qualified, Visions requires  
16 all curriculum in the Home School Academy be nonsectarian. Id.  
17 at 5, 97, 104.

18 b. Blue Ridge's Policies and Practices

19 Blue Ridge is a tuition free public charter school in  
20 southern California and enrolls students from Los Angeles,  
21 Ventura, and Kern Counties. Compl. ¶ 24; Exh. D to Def.  
22 Thurmond's RJN at 92. Blue Ridge's homeschool model provides a  
23 "[nonclassroom-based], Independent Study program" where students  
24 are educated through individualized curricula, aligned with  
25 California State Standards, and are supported by credentialed  
26 teachers. Id. at 55, 69, 121. The supervising teacher works  
27 with the student and their family to develop a master agreement  
28 and create a "flexible and appropriate learning plan for the



1 school year" with curriculum pre-approved by the school. Id. at  
2 7, 62, 121.

3 Each student at Blue Ridge has a curriculum budget, funded  
4 through state funds, to cover the materials in their learning  
5 plan. Id. at 24, 62. Blue Ridge allows a family to refer  
6 vendors to the school for additional curriculum materials,  
7 however, these vendors must first be approved by Blue Ridge.  
8 Id. at 224. The vendor must follow all applicable school  
9 policies and guidelines. Id. at 224, 226. Further, families  
10 cannot directly purchase or obligate Blue Ridge to purchase any  
11 educational items without Blue Ridge's approval. Id. at 224.

12 Students submit work and assessments to the credentialed  
13 teachers on an ongoing basis. Id. at 66, 215. Blue Ridge  
14 requires all curriculum, including those from referred vendors,  
15 be nonsectarian. Id. at 4, 130, 224, 226.

16 c. Visions and Blue Ridge Comply With California Law  
17 Governing Public Charter Schools and  
18 Nonclassroom-Based Instruction

19 Based on the above, both charter schools appear to comply  
20 with, and Plaintiffs do not dispute whether they comply with,  
21 California laws governing public charter schools and  
22 nonclassroom-based instruction. Cal. Ed. Code §§ 47601,  
23 47612.5(d)(1). Both schools are tuition free and funded by the  
24 State. Cal. Const. Art. IX §§ 5, 6. Both schools' independent  
25 study programs are overseen by a credentialed teacher. Cal. Ed.  
26 Code § 51747.5(a); Cal. Code Regs. Tit. 5, § 11700(f). Both  
27 schools require a master agreement prior to the start of  
28 instruction between credentialed teachers and the parents or

1 guardians that identifies the objectives, methods of study, and  
2 resources available. Cal. Ed. Code §§ 51747(g)(2), (g)(9)(A).  
3 Both schools purchase with state funds all necessary materials  
4 to complete the home study programs. Cal. Ed. Code §§ 51746,  
5 51747(g)(3); Cal. Code Regs. Tit. 5, § 11700(i). Both schools'  
6 curricula are aligned with California State Standards. Cal. Ed.  
7 Code §§ 51745.5(4)(a). Both schools require all materials and  
8 operations to remain secular. Educ. Code § 47605(e)(1); Cal.  
9 Const. Art. IX, § 8; Wilson, 75 Cal. App. 4th at 1143.

10 3. Plaintiffs' Do Not Have The Right Under  
11 California Law To Independently Choose  
12 Instructional Materials

13 Plaintiffs desire, as "parent educators", to purchase  
14 faith-based curricula that meets state educational standards.  
15 Compl. ¶ 88. Plaintiffs argue the state funds are an otherwise  
16 available public benefit that is being denied solely because the  
17 desired curriculum is religious. Id. ¶¶ 85, 86. Plaintiffs  
18 state:

19 Independent study programs are designed to allow  
20 families to design and choose instructional materials  
21 that respond to each pupil's unique educational needs,  
22 interests, aptitudes, and abilities. Excluding parent-  
23 selected and parent-directed faith-based instruction  
24 from these programs solely because of their religious  
25 character denies religious families equal access to the  
26 benefits of these personalized learning experiences.

27 Id. ¶ 89. Upon review of California law, as well as the charter  
28 schools' policies and practices, the Court finds Plaintiffs'

1 argument to be without merit. Supra §§ ii., iii.

2 Although a parent may be the curriculum decisionmaker in a  
3 private homeschool setting, Plaintiffs have elected to enroll  
4 their students in public homeschool programs. The policies and  
5 practices of Visions and Blue Ridge make it clear that  
6 curriculum materials in these programs are strictly monitored.  
7 Neither charter school allows parents or guardians to be the  
8 unilateral decisionmaker of a student's curriculum, regardless  
9 of whether the materials are secular. The teachers work with  
10 parents or guardians and students to develop personalized  
11 learning plans that align with state standards. Plaintiffs were  
12 aware of these practices and procedures when developing their  
13 master agreements with the charter schools. Visions and Blue  
14 Ridge's publicly funded independent study programs do not, and  
15 cannot under California law, provide a private choice of  
16 curriculum.

17 4. California Law Preventing Plaintiffs To  
18 Unilaterally Choose Nonsecular Curriculum Is  
19 Constitutional

20 The First Amendment provides, "Congress shall make no law  
21 respecting an establishment of religion, or prohibiting the free  
22 exercise thereof; or abridging the freedom of speech . . .".  
23 U.S. Const. Amend. I.

24 The state action of failing to provide requested religious  
25 curriculum is not an infringement on Plaintiffs' freedom of  
26 exercise. As confirmed in Plaintiffs' own cited case, Carson v.  
27 Makin, states are allowed to provide a strictly secular  
28 education in its public schools. Carson v. Makin, 142 S. Ct.

1 1987, 1992 (2022). A strictly secular education does not  
2 substantially burden the Plaintiffs' practice of religion.  
3 Mohamed Sabra v. Maricopa Cty. Cmty. Coll. Dist., 44 F.4th 867,  
4 890 (9th Cir. 2022). Finding otherwise would compel the state  
5 to "conduct its own affairs in ways that an individual believes  
6 will further their own religious practice." Bowen v. Roy, 476  
7 U.S. 693, 699-700 (1986).

8 The state action is also not a violation of Plaintiffs'  
9 freedom of speech because a public school's curriculum is a form  
10 of government speech, not speech of a teacher, parent, or  
11 student. Pleasant Grove City v. Sumnum, 555 U.S. 460, 467  
12 (2009) ("The Free Speech Clause restricts government regulation  
13 of private speech; it does not regulate government speech.");  
14 Downs v. L.A. Unified Sch. Dist., 228 F.3d 1003, 1012, 1015 (9th  
15 Cir. 2000) (holding content on a public school's bulletin boards  
16 is the government's and public school's speech, not private  
17 speech) ("[C]urriculum is only one outlet of a school district's  
18 expression of its policy."); Riley's Am. Heritage Farms v.  
19 Elsasser, 32 F.4th 707, 728 (9th Cir. 2022) (stating school  
20 curriculum is a school district's speech); Nampa Classical Acad.  
21 v. Goesling, 447 F. App'x 776, 778 (9th Cir. 2011) (unpublished  
22 decision holding because charter schools are government  
23 entities, the curriculum is the government's speech, not the  
24 teachers, parents, or students).

25 Plaintiffs attempt to analogize three recent United States  
26 Supreme Court decisions in support of their contention that they  
27 are being categorically excluded from an otherwise available  
28 public benefit, in violation of their First Amendment rights.

1 Compl. ¶¶ 98-99 (citing Trinity Lutheran Church of Columbia,  
2 Inc. v. Comer, 582 U.S. 449 (2017); Espinoza v. Mont. Dep't of  
3 Revenue, 140 S. Ct. 2246 (2020); Carson, 142 S. Ct. 1987).

4 These three cases, however, concern state programs in which a  
5 state was offering public benefits in the form of grants, tax  
6 credits, or tuition assistance to private schools and students  
7 seeking a private education. See Trinity Lutheran, 582 U.S. at  
8 453; Espinoza, 140 S. Ct. at 2251; Carson, 142 S. Ct. at 1993.  
9 The private schools and students were denied public benefits  
10 only because of the schools' religious nature. See generally  
11 Trinity Lutheran, 582 U.S. 449; Espinoza, 140 S. Ct. 2246;  
12 Carson, 142 S. Ct. 1987. Private schools and students seeking a  
13 private education with no religious affiliation, however, were  
14 able to receive the public grants. Id. These principles are  
15 not implicated here. This case involves California's laws and  
16 regulations for state funded public schools, not private  
17 schools. There are no "public benefits" in the form of grants  
18 or otherwise that the state is excluding Plaintiffs from.

19 The facts in this case plainly do not implicate Plaintiffs'  
20 First Amendment rights. Plaintiffs' arguments are without merit  
21 under California law and their Complaint must be dismissed.

22 5. Maricopa School District Defendants Can Also Be  
23 Dismissed Under The Same Legal Theory

24 Unlike the other defendants, the Maricopa School District  
25 defendants do not move to dismiss on the grounds that Plaintiffs  
26 failed to properly allege any First Amendment violations.  
27 Maricopa Mot., ECF No. 36-1. Plaintiffs' claims against the  
28 Maricopa School District defendants, however, rely on the same

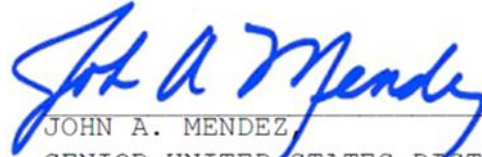
1 theories as the claims against the other defendants. Since  
2 Plaintiffs had the opportunity to litigate these theories in  
3 their oppositions to the other four (4) motions, the Court sua  
4 sponte dismisses the claims against the Maricopa School District  
5 defendants on the same grounds. See Compl.; Fed. R. Civ. P.  
6 12(b)(6); Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th  
7 Cir. 1987).

8 III. ORDER

9 For the reasons set forth above, the Court GRANTS  
10 Defendants' motions to dismiss, ECF Nos. 24, 35, 36, 37, 39, and  
11 Plaintiffs' Complaint is DISMISSED WITH PREJUDICE in its  
12 entirety.

13 IT IS SO ORDERED.

14 Dated: June 7, 2024

15  
16 

17 JOHN A. MENDEZ  
18 SENIOR UNITED STATES DISTRICT JUDGE  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28