SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Docket Nos. 2015-03922 and 2015-12041

MYMOENA DAVIDS, her parent and natural guardian
MIAMONA DAVIDS,

Plaintiffs-Respondents,

– against –

THE STATE OF NEW YORK,

Defendant-Appellant,

MICHAEL MULGREW, as President of the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant-Appellant.

ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian ANGELA PERALTA, STACY PERALTA, by her parent and natural guardian ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by his parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs-Respondents,

– against –

THE NEW YORK STATE BOARD OF REGENTS, THE NEW YORK STATE EDUCATION DEPARTMENT, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, JOHN AND JANE DOES 1–100, XYZ ENTITIES 1–100,

Defendants-Appellants,

– and –

MICHAEL MULGREW, as President of the United Federation of Teachers, Local 2, American Federation of Teachers, SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, individually and as President of the New York State United Teachers, PHILIP A. CAMMARATA and MARK MAMBRETTI,

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– against –

THE BOARD OF REGENTS OF THE STATE OF NEW YORK, MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York, JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York,

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Intervenors-Defendants-Appellants.

PLEASE TAKE NOTICE, that upon the annexed affirmation of Wendy Lecker, dated (the "Lecker Affirmation"), and attached exhibits thereto, the Alliance for Quality Education, by and through its counsel, will move this Court,

at a term for motions to be held on the 29nd of April, 2016 , at the Appellate Division Courthouse, 45 Monroe Place, Brooklyn, New York, 11201, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order granting the Alliance for Quality Education leave to file a brief as amicus curiae in support of Defendants-Appellants and Interventor-Defendants-Appellants, a copy of which is attached as Exhibit A to the Lecker Affirmation.

PLEASE TAKE FURTHER NOTICE, that pursuant to N.Y. CPLR §2214, any opposition papers are to be served no later than April 22, 2016.

Dated: April 6, 2016

Respectfully Submitted,

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

AFFIRMATION

Docket Nos. 2015-03922 and 2015-12041

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Intervenors-Defendants-Appellants.

STATE OF CONNECTICUT)
)ss:
COUNTY OF FAIRFIELD)

WENDY LECKER, an attorney duly admitted to practice in the State of New York, hereby affirms under penalty of perjury as follows:

1. I am senior attorney at Education Law Center, counsel for the Alliance for Quality Education ("AQE"). I submit this affirmation in support of AQE's motion for leave to file an amicus brief on behalf of Defendants-Appellants and Intervenor-Defendants-Appellants.

2. Attached hereto as Exhibit A is a true and correct copy of a brief that AQE seeks leave to file as amicus curiae.

3. Pursuant to 22 N.Y.C.R.R. § 670.5(d)(1), attached hereto as Exhibit B is a true and correct copy of the Supreme Court's order denying the motions to dismiss the Plaintiffs Complaints in this matter from which the Defendants and Intervenor-Defendants appeal.

4. Pursuant to 22 N.Y.C.R.R. § 670.5(d)(2), attached hereto as Exhibit B are true and correct copies of the Notices of Appeal in this matter.

5. This appeal raises the important issue of whether the Supreme Court correctly held that a plaintiff can sufficiently claim that New York State is violating children's rights to a "sound basic education" under the Education Article

of the New York State Constitution without alleging specific facts to support the elements of an Education Article claim directly related to any particular New York school district. The ruling below has implications delineating the parameters of a viable Education Article claim and for future claims by school children challenging state action or inaction that may violate their rights to a sound basic education under the New York Constitution.

6. AQE is a statewide grassroots advocacy and community organizing coalition. AQE works with communities in New York City and across New York State to ensure a high quality public education for all students.

7. For over 16 years, AQE has advocated for adequate resources to ensure a "sound basic education," as mandated by the Court of Appeals decision in the landmark case, Campaign for Fiscal Equity v. State , 100 N.Y.2d 893 (2003)("CFE").

8. AQE is well positioned to be of assistance to this court because of its lengthy involvement with the issues surrounding a student's right to a sound basic education in New York State. AQE works directly with public school parents, teachers and community members in districts across New York and as such has witnessed firsthand the effects of resource deficiencies on a school's ability to deliver the opportunity for a "sound basic education." AQE has also conducted

research on school funding in New York and essential school resources. As a result of its extensive experience, AQE is keenly aware of the factors affecting the supply of qualified teachers in New York school districts.

9. This appeal illustrates the importance of the proper interpretation of the Court of Appeals decisions in CFE and other related cases establishing the contours of Education Article claims by public school children challenging State action or inaction which may violate their rights to a sound basic education. Without specific factual allegations of resource deficiencies in particular districts, of outputs in those districts, or of the requisite causal link between the inputs, outputs and state action or inaction, courts are unable to discern the true cause of educational deprivations that may occur in particular school districts. Consequently, courts run the risk of imposing rulings which further hamper school districts from providing the resources essential to the opportunity for a sound basic education by diverting attention and energies away from the resource deficiencies in such districts or worse, by imposing orders that serve to prevent districts from providing those resources.

10. The proposed Amicus Curiae brief, attached hereto as Exhibit A, supplements the Defendants' briefs by connecting the evidentiary standard regarding sound basic education claims with the specific challenges districts in

New York State face in recruiting and retaining sufficient qualified teachers, the sole education resource at issue on Plaintiffs' Complaints.

11. For these reasons, AQE respectfully seeks the Court's permission to file the attached amicus curiae brief.

Dated: April 6, 2016

Respectfully Submitted,

WENDY LECKER, ESQ.
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Attorneys for Amicus Curiae
Alliance for Quality Education

EXHIBIT A

To be Submitted by:
WENDY LECKER

New York Supreme Court
Appellate Division – Second Department

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(For Continuation of Caption See Reverse Side of Cover)

BRIEF FOR *AMICUS CURIAE* ALLIANCE FOR QUALITY EDUCATION IN SUPPORT OF DEFENDANTS-APPELLANTS AND INTERVENORS-DEFENDANTS-APPELLANTS

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Richmond County Clerk's Index No. 101105/14

ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian ANGELA PERALTA, STACY PERALTA, by her parent and natural guardian ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by his parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

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INTEREST OF AMICUS CURIAE

Founded in 2000, the Alliance for Quality Education (AQE) is a leading state-wide advocacy organization that works to ensure New York public school children the opportunity for a quality, equitable education. AQE advocates for quality teaching for all students, sufficient and equitable resources for all schools, parent and family engagement, positive school climates and access to high quality early childhood education, rigorous and well-rounded curriculum, and community schools with wraparound services for children and families. AQE is active in communities across New York and consequently is familiar with conditions in schools statewide. As a result of its involvement in local communities, AQE understands that there are many interconnected factors within and outside the school walls that affect the quality of education and that it is essential for children, especially those in high-poverty areas, have robust support in and out of school in order to promote effective learning. Adequate funding is a key component to ensuring that students have all the support they need to learn successfully, and teachers have the tools they need to help their students succeed.

QUESTION PRESENTED

Did the Supreme Court err in denying the Defendants' motions to dismiss the Complaints for failure to state a claim under Education Article (Article XI, §1) of the New York State Constitution?

Yes. The Complaints, on their face, fail to state a cause of action for a violation of the right to a sound basic education under the Education Article.

PRELIMINARY STATEMENT

Plaintiffs in these Complaints allege that New York laws governing tenure, terms of employment, discipline, evaluation and layoff procedures for public school teachers deny school children the opportunity for a sound basic education as guaranteed under the Education Article of the New York State Constitution. Under well-established New York precedent, plaintiffs must allege three basic elements to state a viable claim for a violation of the right to a sound basic education: glaring deficiencies in inputs or education resources; low and unacceptable student outcomes; and specific state action or inaction that is causally linked to the deficient inputs and low student outcomes. Further, it is also well established that such deficiencies must be systemic in a particular district or districts. Generalized allegations about statewide conditions will not suffice.

The Supreme Court below refused to dismiss the Complaints, ruling that:

> .....the facts alleged in the respective complaints are sufficient to state a cause of action for a judgment declaring that the challenged sections of the Education Law operate to deprive students of a 'sound basic education.'

Davids, et al. v. State, Index No.10115/14, Supreme Court, Richmond County, March 12, 2015 at 14 (Minardo, J). This decision is in plain error. The

Complaints clearly fail to allege sufficient facts – or indeed almost no facts – to support the three basic elements in any particular school district that are required to state a claim of a violation a sound basic education under the Education Article. Amicus, therefore, respectfully requests this Court reverse the decision below and dismiss the Complaints.

STATEMENT OF FACTS

The Plaintiffs in the Davids Amended Complaint ("Davids Complaint") are eleven children who attend public schools in New York City, along with their parents/guardians. The Plaintiffs in the Wright Amended Complaint ("Wright Complaint") are seven children who attend New York City public schools, two who attend Rochester public schools, and one child who attends Albany public schools, along with their parents/guardians. The Plaintiffs challenge Education Law §§1102, 2509, 2510, 2573, 2585, 2588 2590, 2590(j), 3012, 3012-c, 3013, 3014, 3020, and 3020-a. These statutes govern tenure, terms of employment, discipline, evaluation and layoff procedures for public school teachers in New York. The Plaintiffs claim in both Complaints that, collectively, these statutes prevent school districts from dismissing "ineffective" teachers, thereby depriving children, ostensibly across the state, of their right to a "sound basic education" under the Education Article of the New York State Constitution.

The Complaints set forth no allegations regarding any systemic deficiency in

the quality of teachers in any particular school district. The Wright Complaint contains one anecdote of twins in the New York City schools, concluding, with no factual support, that one these children had an "ineffective" teacher for a year. Wright Complaint, ¶5. This Complaint also alleges that in 2010 through 2012, the Rochester school district laid off teachers and, in doing so, was required under New York law to retain teachers with more experience. The Complaint concludes, again with no factual support, that an unspecificed number of the Rochester teachers who were laid off were "effective," while an unspecified number of those retained were "ineffective." Wright Complaint ¶70.

Both Complaints make no allegations regarding student outcomes -- test scores, graduation rates or dropout rates -- in any particular school district. Rather, one complaint provides aggregate statewide average scores on the State English Language Arts (ELA) and Math tests for grades 3 though 8 for 2013-14. The Wright Complaint also alleges that one of the aforementioned twins reads at a level below that of her sibling. Wright Complaint, ¶5. The Complaints set forth no allegations linking the challenged statutes to any systemic deprivation of education inputs or outcomes in any particular New York school district.

The Complaints reference and attach selective studies pertaining to teacher evaluations. None of these student pertain to current conditions in any particular New York school district.

THE PROCEEDINGS BELOW

In October 2014, the Defendants State of New York, et al. ("Defendants") moved to dismiss both Complaints, which were consolidated by the lower court, contending, inter alia, that the Complaints failed to state a cause of action. In March 2015, the Supreme Court denied the motions to dismiss. The court below held that the Complaints were "sufficiently pleaded to avoid dismissal." Davids, et al. v. State, Index No.10115/14, Supreme Court, Richmond County, March 12, 2015, at 13 (Minardo, J).

In August 2015, the Defendants moved for leave to renew their motions to dismiss, on different grounds. In October 2015, the Supreme Court denied the motions for leave to renew. Defendants appealed to seek review of the Supreme Court's order denying their motions to dismiss.

ARGUMENT

I. THE TRIAL COURT ERRED IN HOLDING THE COMPLAINTS STATE A CAUSE OF ACTION UNDER THE EDUCATION ARTICLE

It is well-established law that, to state a viable cause of action, a complaint must allege specific facts to establish each element of plaintiffs claim. Clarson v. City of Long Beach, 132 A.D.3d 799, 800 (2d Dep't. 2015)(plaintiff required to allege every element of claim or complaint will be dismissed); Panish v.

Steinberg, 32 A.D.3d 383 (2d Dep't. 2006) (complaint dismissed when all elements not properly alleged). In deciding a motion to dismiss, a court must accept all facts alleged as true. However, "bare legal conclusions are not entitled to the benefit of the presumption of truth and are not accorded every favorable inference." Ruffino. v. New York City Transit Authority, 55 A.D.3d 817, 818 (2d Dep't. 2008); see also, Clarson v. City of Long Beach, 132 A.D.3d at 801 (conclusory allegations fail to state a claim); Elsky v. KM Ins. Brokers, 139 A.D.2d 691 (2d Dep't. 1988) (complaint fails where conclusory allegations lack factual support).

The Court of Appeals has ruled that a claim under the Education Article of the New York Constitution requires specific allegations of a deprivation of a sound basic education and causes of that deprivation attributable to State action or inaction. New York Civ. Liberties Union v. State, 4 N.Y.3d 175, 178 (2005). The deprivation of a sound basic education must be supported by allegations of both academic failure and the State's failure to provide minimally acceptable educational services or resources. Paynter v. New York, 100 N.Y.2d 434, 441 (2003) (holding that "allegations of academic failure alone, without allegations that the State somehow fails in its obligation to provide minimally acceptable educational services, are insufficient to state a cause of action under the

Education Article").

The Court of Appeals has further held that the deprivation of a sound basic education must be systemic and district-wide. New York Civ. Liberties Union v. State, 4 N.Y.3d at 181 (plaintiffs alleging deficiencies in twenty-seven schools across the state failed to allege district-wide failure, and complaint therefore properly dismissed); Campaign for Fiscal Equity v. State, 100 N.Y. 2d 893, 914 2003 ("CFE II") (finding proof that "tens of thousands of students" were in overcrowded classrooms "taught by unqualified teachers, without adequate facilities or equipment in New York City district established "a systemic failure"); Hussein v. State, 81 A.D. 3d 132, 136 (2011) (complaint withstood motion to dismiss because it was "replete with detailed data allegedly demonstrating, among other things, inadequate teacher qualifications, building standards and equipment" in all of plaintiffs' districts).

In the landmark Campaign for Fiscal Equity v. State ("CFE") rulings, the Court of Appeals delineated with specificity the three elements of a prima facie case under the Education Article. A plaintiff must allege facts that, if proven, would establish: (i) a systemic lack of the resources or "inputs" that are essential to provide the opportunity for a meaningful high school education in one or more designated school districts; (ii) unacceptable student outcomes in

those districts, as reflected in state assessment scores, high school graduation rates, drop-out rates, and other measures of a meaningful high school education; and, (iii) a causal link between the deprivation of essential inputs and sub-standard outputs and the challenged state action or inaction. CFE II, 100 N. Y.2d at 908. The facts alleged must point to specific deprivations actually occurring that, if proven, establish a systemic failure in particular school districts. CFE II, 100 N.Y.2d at 928 (courts address "actual cases and controversies, not abstract global issues").

It is also clear that aggregate statistics will not suffice to establish a claim under the Education Article. Rather, what is required are factual allegations relating to educational harm to students in specific districts. In 2007, this Court dismissed a complaint alleging deprivation of a sound basic education because it failed "to include any factual allegations which are specific to the four school districts represented by the remaining plaintiffs," concluding that:

> Without factual data or statistical support specifically pertaining to the four remaining districts, or other information regarding whether these districts are actually experiencing the problems reflected by the aggregate statistics, it is impossible to determine whether the remaining plaintiffs are actually aggrieved.

New York Association of Small City School Districts v. State, 4 A.D.2d 648, 652 (3rd Dep't. 2007). Thus, it is well established that, to survive a motion to dismiss, a complaint must allege specific facts to causally link the challenged

state action or inaction with the the systemic deprivation of essential resources and low student outcomes in particular school disricts, and not mere anecdotes, aggregate statewide statistics, or general research studies.

A. The Complaints Fail to Allege Deficiencies in Essential Resources

As stated above, a core element of an Education Article claim is allegations of a systemic deprivation in specific school districts of the essential resources, or inputs, identified in the CFE rulings.

In CFE, the Court of Appeals delineated a template of resources essential for a sound basic education, to be fleshed out by fact-finding by the trial court. Campaign for Fiscal Equity v. State, ("CFE I") 86 N.Y.2d 307, 317 (1995). These essential resources are: (i) "minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn;" (ii) "minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks;" and (iii) "minimally adequate teaching of reasonaby up to date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas." CFE I, 86 N.Y.2d at 317.

Following this template, the CFE trial court enumerated specific categories of resources essential to a sound basic education, including: (i)

sufficient numbers of qualified teachers, principals and other personnel; (ii) appropriate class sizes; (iii) adequate and accessible school buildings; (iv) sufficient books and other school resources; (v) suitable curricula; (vi) an expanded platform of programs to help at-risk students; (vii) adequate resources for students with extraordinary needs; and (viii) a safe, orderly environment. Campaign for Fiscal Equity v. State, 187 Misc.2d 1, 39-45 (Supreme Court, N.Y. Co, 2001) ("CFE Trial Ct."),

In CFE II, the Court of Appeals ruled that the trial court properly "fleshed out" the template from CFE I, and reinstated the trial court's finding of facts, which had been reversed by the Appellate Division. CFE II, 100 N.Y.2d at 902, 913.

In CFE, the complaint survived a motion to dismiss because the plaintiffs supported their allegations "with fact-based claims of inadequacies in physical facilities, curricula, numbers of qualified teachers, availability of textbooks, library books, etc." CFE I 89 N.Y.2d at 319. Similarly, the complaint alleging a violation of the Education Clause in New York's "small cities" school districts withstood a motion to dismiss because plaintiffs presented "detailed data" of deficiencies in teaching, facilities, equipment and other inputs in each of the named districts. Hussein v. State, 81 A.D. 3d at 136. In sharp contrast, the Court

of Appeals in Paynter upheld the dismissal of the plaintiffs' complaint under the Education Article because they did not allege deficiencies in any of the CFE-enumerated essential resouces or inputs. Paynter v. State, 100 N.Y.2d at 441.

The Complaints on this appeal are replete with broad and sweeping assertions that one -- arguably one and only one -- of the essential CFE inputs – qualified teachers – may be deficient generally across New York due to the operation of the challenged state statutes. However, the Complaints fail to allege any facts regarding systemic deficiencies in the sufficiency or quality of teachers in any particular school district. In the Wright Complaint, Plaintiffs make conclusory allegations that the teacher tenure statute "confers permanent employment on ineffective teachers," Wright Complaint ¶34, and that "most ineffective teachers are not denied tenure." Wright Complaint ¶37. Yet the Complaint contains no factual allegations regarding any teachers – let alone a single teacher – that may be "ineffective" in any particular school district. The Complaint even fails to define "ineffective" or provide any measure used to determine whether a teacher is "effective" or not.

The Wright Complaint also makes conclusory allegations that the state disciplinary statute keeps "ineffective" teachers in schools, Wright Complaint, ¶65, but offers no specific facts about any such teachers in any district. The

Complaint does mention one district – Rochester – and asserts that when the district laid off teachers in 2010, 2011 and 2012, the state senority statute resulted in the retention of "ineffective" teachers. Wright Complaint ¶ 70. Here again, the Complaint relies on a conslusory statement, not grounded in any facts, that "ineffective teachers" were retained while "effective" teachers were laid off. The entire Complaint is devoid of any facts connecting the operation of the state statute to any systemic deficiency in the sufficiency or quality of teachers in Rochester or any other district.

Similary, the Davids Complaint, brought on behalf of New York City school children, does not allege any facts regarding a systemic, district-wide deficiency in qualified teachers. The Complaint alleges that the state teacher tenure law may hypothetically lead to retaining teachers who are "ineffective." Davids Complaint, ¶52. The Complaint also contains no factual allegations of a systemic deficiency in teacher quality in New York City or any other district.

The Wright Complaint contains only the vague allegation that one child had an effective teacher while her sibling had an ineffective teacher during one school year. However, this allegation is based on the the conclusory assumption that the teacher must have been ineffective solely because one of the children is several reading levels apart from her sibling. Wright Complaint, ¶5. Clearly, one

threadbare allegation pertaining to one child, in one school, for one year, is nowhere near what is required to sufficiently plead deficiencies in educational resources that are systemic and district-wide. New York Civ. Liberties Union v. State, 4 N.Y.3d at 181; Campaign for Fiscal Equity v. State, 100 N.Y. 2d at 914; New York Association of Small City School Districts v. State, 4 A.D.3d at 652. By failing to allege facts regarding the actual conditions in any district, both Complaints utterly fail to address the element of systemic input deficiencies, a pivotal prong of an Education Article claim.

B. The Complaints Fail to Allege Low Outcomes

The CFE rulings make clear that test scores alone will not suffice regarding the "outputs" prong of an Education Article claim. CFE I, 89 N.Y.2d 307, 317 (1995) (finding that test results "should also be used cautiously as there are a myriad of factors which have a causal bearing" on those results"). Accordingly, the CFE trial court considered both test results and also measures of school completion, *i.e.,* on-time graduation, diploma types and drop-out rates. CFE Trial Ct., 187 Misc.2d at 60-68. The Court of Appeals adopted these findings. CFE II, 100 N. Y.2d at 914-19.

The bare allegations pertainint to student outcomes in the Complaints are, without queston, deficient. The Davids Complaint cites no student outcome data

whatsoever. The Complaint concludes, absent any facts, that the plaintiff children have been "harmed" or are "at substantial risk of being harmed" simply because they attend New York public schools. Davids Complaint ¶54. The Wright Complaint merely alleges that one year of average test scores in the grades 3-8 State ELA and Math tests statewide are low. Wright Complaint ¶41. As has been held, aggregate statistics are wholly insufficient to state a claim under the Education Article, as it is impossible to determine from these statistics whether plaintiffs in any specific districts are aggrieved. New York Association of Small City School Districts v. State, 4 A.D.3d at 652.

Moreover, the statistical allegations of deficient outcomes in the Complaints are not only in the aggregate, they are statewide, not pertinent to any district. Neither Complaint alleges any other output measure aside from these aggregate, statewide test scores. There are no allegations regarding school completion, i.e. dropouts and graduation rates, for any specific district. Notably, although one of the causes of action in the Wright Complaint relates to Rochester, there are no allegations of deficient outputs from that district. The allegations regarding student ouputs in both Complaints are clearly too thin – almost non-existent -- to support a claim of systemic failure in any district.

C. The Complaints Fail to Allege Causation

An Education Article claim also requires plaintiffs to allege, with respect to a particular district or districts, that the deficiencies in inputs and low outputs are causally linked to the challenged state action or inaction. CFE II, 100 N.Y. 2d at 919; Paynter v. New York, 100 N.Y.2d at 440 (failure of the system- deficient inputs leading to deficient outputs- must be causally connected to state action). Failure to plead causation is fatal to a sound basic education claim. New York Civ. Liberties Union v. State, 4 N.Y.3d at 179.

As discussed above, the Complaints fail to allege systemic deficiencies in inputs and low outputs in any specific district. Thus, Complaints do not – nor could they – allege that the challenged state statutes are the cause of an Education Article violation in any specific district. Moreover, as with the input and output elements, the references in the complaints to causation are merely conclusory. For example, the Davids Complaint repeats that the state tenure laws "have a substantial negative impact on the education that certain public school students receive." Davids Complaint ¶ 52. Yet the complaint fails to identify any specific instance in a district where the state tenure law even contributed to, let alone was a cause of, systemic resource deficits that, in turn, resulted in low student outcomes.

The Wright Complaint is equally devoid of any factual allegations that might, when taken on their face, establish causation. In their first cause of action, the Complaint states generally that the tenure laws "fail to provide all children in New York with a sound basic education." Wright Complaint ¶78. Once again, the Complaint fails to allege any facts that establish a causal connection between the state tenure law and deficiencies in inputs and low outcomes in any specific district. There is no allegation anywhere in the Complaint that the tenure laws are the cause of systemic deficits in the availability of qualified teachers in any district and that, as a consequence, student outcomes are unacceptably low.

The second cause of action in the Wright Complaint repeats the identical conclusion as the first, this time as to the state disciplinary law. The complaint baldly asserts that the disciplinary statutes "fail to provide all children in New York with a sound basic education by preventing dismissal of ineffective teachers." Wright Complaint ¶81 . Yet again, the complaint contains not a scintilla of evidence of deficiencies in the sufficiency of qualified teachers in any district, nor any resultant low student outcomes. In the third cause of action, the Complaint does name one district, Rochester, with regard to the state seniorty statute but, again, fails to allege a link between the seniority statute and a

systemic deficiency in teacher quality in the district. Wright Complaint ¶84.

It is clear that, on their face, the Complaints are wholly lacking in allegatons of specific facts from a school district or districts regarding all three requisite elements of a sound basic education claim. Accordingly, the Complaints fail to state a cause of action under the Education Article.

II. THE COURT BELOW IGNORES THE CFE-ESTABLISHED LINK BETWEEN SUFFICIENT QUALIFIED TEACHERS AND ADEQUATE FUNDING

In refusing to dismiss the consolidated complaints, the Supreme Court below mischaracterizes the landmark CFE ruling regarding both the nature of the teacher shortage and the cause of that shortage at issue in that litigation. In CFE, the Court of Appeals upheld the trial court's finding that inadequate funding was the cause of low student outcomes and the systemic deficiencies in essential resources, including a shortage of qualified teachers, in New York City. The Court also ruled that additional funding would enable the New York City district to hire more teachers and improve student outcomes. Further, this ruling is supported by a growing body of research demonstrating that increased school funding allows districts to obtain essential resources, leading to improve student outcomes.

A. The Supreme Court Mischaracterized the CFE Ruling on Sufficient Qualified Teachers

Without any foundation in fact, the Complaints equate seniority and experience with ineffective teachers. They claim that the challenged statutes protect experienced teachers, concluding that the statute requires districts to retain ineffective -- by which they mean experienced – teachers, while dismissing effective -- by which they mean newly hired -- teachers. The ostensible goal of the Complaints is to encourage teacher turnover and the hiring of new, inexperienced teachers. However, as stated above, the complaints do not allege any facts indicating that experienced teachers in any district are ineffective and consequently a cause of low student outcomes.

The Supreme Court accepted Plaintiffs' conclusory assumption that experienced teachers are necessarily ineffective and, in doing so, mischaracterized the Court of Appeals holding in CFE II. The Supreme Court stated that:

> .....these statutes are alleged to permit ineffective teachers with greater seniority to be retained without any consideration of the needs of the students." The Court continued that the seniority laws "hinder the recruitment and retention of new teachers, a failure which was cited by the Court of Appeals (albeit on other grounds) as having a negative impact on the constitutional imperative (Campaign for Fiscal Equity, Inc. v. State of New York,100 NY2d at 909 -911).

Davids, et al. v. State, Index No.10115/14, Supreme Court, Richmond County,

March 12, 2015 at 8 (Minardo, J). However, the precise deficit related to teacher quality in CFE was not the failure to retain new teachers. Rather, it was just the opposite. As the Court of Appeals found – based on the trial record -- schools with the most disadvantaged students "have the least experienced teachers, the most uncertified teachers, the lowest-salaried teachers, and the highest rates of teacher turnover." CFE II, 100 N.Y.2d at 910. The robust facts in CFE established that New York City children were not afforded access to experienced, certified teachers, and that this deficiency contributed to the low student outcomes. CFE II, 100 N.Y.2d at 910. Thus, contrary to the Supreme Court below, the finding in CFE was that New York City schools with the most disadvantaged students had the least senior teachers, and that teachers with experience were an asset, not a deficit.

B. The Supreme Court Ignores the Link Between Qualified Teachers and Inadequate Funding

In CFE, the Court of Appeals found that the cause of the deficiencies in sufficient, qualified teachers – and other essential resources -- in New York City was the State's failure to provide adequate funding. CFE II, 100 N.Y.2d at 919. The Court explicitly linked the lack of funding with the inability of New York City to provide this essential resource, ruling that "better funded schools would hire and retain more certified teachers," and that this in turn would improve

student outcomes. CFE II, 100 N.Y. 2d at 919. Indeed, the seminal holding in CFE is that the lack of adequate funding through the State financing mechanism caused the deficits in essential resources -- including sufficient qualified teachers -- and low student outcomes in New York City. CFE II, 100 N.Y. 2d at 914 (holding that inadequate funding was a cause of the "systemic failure" in the New York City district of both outputs and inputs). Further, the establishment of this causal link led the Court to order the State to enact school funding reform. CFE II, 100 N.Y. 2d at 930.

In CFE, the Court of Appeals did not order statewide school funding reform because the proofs at trial pertained only to New York City; the Court, however, invited the State to enact statewide funding reform if it so chose. CFE II, 100 N.Y.2d at 928. In 2007, the State did just that by enacting the Foundation Aid Formula, Chapter 57 of N.Y. Laws of 2007. This formula required an additional $5.5. billion to be provided in state education aid, to be phased in over four years. New York State Division of Budget, Description of 2007-08 New York State School Aid Programs, p. 6. https://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708schoolaid/0708EnactedBudget_schoolaid.pdf

Although the State began to phase in the additional formula funding in the

first two years, in 2009-10, the State froze Foundation Aid. New York State Division of Budget, Description of 2009-10 New York State School Aid Programs, p. 2. https://www.budget.ny.gov/pubs/archive/fy0910archive/enacted0910/schoolaid/2009-10NewYorkStateSchoolAidPrograms.pdf. In 2010-11, the State began cutting Foundation Aid. New York State Division of Budget, Description of 2010-11 New York State School Aid Programs,p.2. https://www.budget.ny.gov/pubs/archive/fy1011archive/enacted1011/1011schoolAid/2010-11_DescriptionSchoolAidPrograms.pdf. To date, the State is behind by $4.8 billion in Foundation Aid statewide. See Marcou O'Malley (2016), *No Appetite to Educate: Stacking the Deck Against Children in Poverty*, Alliance for Quality Education, p. 8. http://www.aqeny.org/wp-content/uploads/2016/02/No-appetite-to-educate_-stacking-the-deck-against-children-in-poverty-final-1.pdf. Further, there is compelling evidence, consistent with the CFE ruling, that inadequate funding continues to cause teacher shortages in districts across the state. In February, it was reported that, as a result of school funding cuts, New York has nearly 13,000 fewer educators than it did five years ago and that districts are having difficulty filling vacant positions. See Joseph Spector *NY's Teacher Ranks Continue to Plummet, Journal News*, February 14, 2016

available at http://www.lohud.com/story/news/education/2016/02/14/new-york-teacher-ranks/80392932/ A key cause of the inability to fill vacancies is district inability to offer competitive wages. See Keshia Clukey, *As Teacher Shortage Looms, State Rethinks How It Recruits and Treats Its Teachers, Politico New York*, March 7, 2016 available at http://www.capitalnewyork.com/article/albany/2016/03/8592899/shortage-looms-state-rethinks-how-it-recruits-and-treats-its-teachers. Inadequate school funding remains a particularly daunting obstacle to teacher quality in low-wealth, high-poverty districts. In New York, the spending gap between wealthy and poor districts is almost $10,000. Marcou O'Malley (2016), *No Appetite to Educate: Stacking the Deck Against Children in Poverty*, Alliance for Quality Education, p. 5. http://www.aqeny.org/wp-content/uploads/2016/02/No-appetite-to-educate_-stacking-the-deck-against-children-in-poverty-final-1.pdf. This spending disparity affects the ability of poorer districts to pay competitive wages to teachers and thereby attract and retain qualified teachers. Baker (2014) *School Funding Fairness in New York State: An Update*, p. 5. http://www.aqeny.org/wp-content/uploads/2012/03/School-Funding-Fairness-in-New-York-State-An-Update-for-2013-14.pdf). Moreover, the research has shown that teacher turnover harms student achievement, and that the turnover rate in high-poverty schools is 50% higher

than in low-poverty schools. Ronfeldt, et al (2013) *How Teacher Turnover Harms Student Achievement*, American Education Research Journal. https://cepa.stanford.edu/sites/default/files/4.full_.pdf

C. Adequate School Funding is a Key Ingredient for Providing Sufficient, Qualified Teachers

In CFE, the Court of Appeals found that increased funding would enable New York City to recruit and retain more qualified teachers which, in turn would yield better student outcomes. CFE II , 100 N.Y. 2d at 919. A growing body of research supports these contentions. Recent large-scale, longitudinal studies have found that school finance reform enables districts to increase spending on essential education resources. Jackson, et al. (2014) *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, And Adult Outcomes*, Nat. Bur. of Econ. Rsch. (NBER) Working Paper 20118. This increased spending in turn results in improved student outcomes. Lafortune, et al. (2016) *School Finance Reform and the Distribution of Student Achievement,* Nat. Bur. of Econ. Rsch. (NBER) Working Paper 22011; Jackson, et al. (2014) *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, And Adult Outcomes*, Nat. Bur. of Econ. Rsch. (NBER) Working Paper 20118; see also, Baker, *Does Money Matter in Education 2d Edition*, Albert Shanker Institute. https://docs.google.com/viewerng/viewer?url=http://

www.shankerinstitute.org/sites/shanker/files/moneymatters_edition2.pdf; Guryan, (2001) *Does Money Matter? Regression-Discontinuity Estimates from Education Finance Reform in Massachusetts.* Nat. Bur. of Econ. Rsch. (NBER) Working Paper 8269.

Jackson, et al, found that increased instructional spending, including increasing teacher salaries and hiring more teachers, lead to large positive effects, especially for poor students. Such effects include: a 23% increase in high school graduation, an additional year in overall educational attainment, a 25% increase in adult earnings and a 20% reduction in the incidence of adult poverty. Jackson, et al. at pp.42,44. Increasing teacher salaries improves recruitment and retention of teachers. Baker, *Does Money Matter in Education 2d Edition*, Albert Shanker Institute, p. 6 https://docs.google.com/viewerng/viewer?url=http://www.shankerinstitute.org/sites/shanker/files/moneymatters_edition2.pdf. Moreover, increased spending improves the conditions in which teachers work, such as reducing class size. Jackson, et al. at p. 42. These improvements thereby improving teacher recruitment and retention. Baker, *Does Money Matter in Education 2d Edition*, Albert Shanker Institute, p. 11. https://docs.google.com/viewerng/viewer?url=http://www.shankerinstitute.org/sites/shanker/files/moneymatters_edition2.pdf. The preferred policy change that lie

at the core of the consolidated complaints in this appeal -- altering or modifying state teacher tenure, senority and layoff rules -- could well lead to eroding teacher quality by increasing teacher turnover in poor districts already suffering from instability in the teacher workforce. It also may well exacerbate the lack of experienced teachers in these districts, an essential resource deficit identified in CFE as a contributing factor to low student outcomes. CFE II , 100 N.Y. at 909. By contrast, the CFE rulings, and the overwhelming weight of research, demonstrates that school finance reforms that ensure adequate and equitable funding is a proven method for building a stable, quality teaching force in New York's school districts, which in turn yields higher student outcomes.

Conclusion

For the reasons stated above, Amicus Curiae respectfully requests that the Court reverse the Supreme Court ruling and dismiss the consolidated complaints for failure to state a cause of action.

Dated: April 6, 2016

Respectfully Submitted,

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Certificate of Compliance
Pursuant to 22 NYCRR 670.10.3(f)

The foregoing brief was prepared on a computer. A proportionally spaced typeface was used, as follows:

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EXHIBIT B

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMEONA DAVIDS, by her parent and natural guardian, MIAMONA DAVIDS, *et al.*, and JOHN KEONI WRIGHT, *et al.*,

Plaintiffs,

- against -

THE STATE OF NEW YORK, *et al.*,

Defendants,

- and -

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers; PHILIP A. CAMMARATA, MARK MAMBRETTI, and THE NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendants.

Index No.: 101105/2014

JUSTICE: Hon. Philip G. Minardo

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a copy of a decision and order entered in this action on the 20th day of March, 2015, in the office of the Clerk of the County of Richmond.

Dated: March 24, 2015

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

DCM PART 6

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, *et al.*, and JOHN KEONI WRIGHT, *et al.*,

Plaintiffs,

-against-

THE STATE OF NEW YORK, *et al.*,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers; PHILIP A. CAMMARATA, MARK MAMBRETTI, and THE NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendants.

HON. PHILIP G. MINARDO

DECISION & ORDER

Index No. 101105/14

Motion Nos.[1] 3580 - 008
3581 - 009
3593 - 010
3595 - 011
3598 - 012

[1]The motions have been consolidated for purposes of disposition.

MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

The following papers numbered 1 to 12 were fully submitted on the 14th day of January, 2015.

Papers Numbered

Notice of Motion to Dismiss by Defendant THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF EDUCATION, with Exhibits and Memorandum of Law, (dated October 28, 2014) 1

Notice of Motion to Dismiss by Intervenor-Defendant MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, with Exhibits and Memorandum of Law, (dated October 28, 2014) 2

Notice of Motion to Dismiss by Intervenor-Defendants PHILIP CAMMARATA and MARK MAMBRETTI, with Exhibits and Memorandum of Law, (dated October 23, 2014) 3

Notice of Motion to Dismiss by Intervenor-Defendants SETH COHEN, *et al.*, with Exhibits and Memorandum of Law, (dated October 27, 2014) 4

Notice of Motion to Dismiss by Defendants STATE OF NEW YORK, *et al.*, with Affirmation and Supplemental Affirmation of Assistant Attorney General Steven L. Banks, Exhibits and Memorandum of Law, (dated October 28, 2014) 5

Affirmation in Opposition of Plaintiffs MYOMENA DAVIDS, *et al.* to Defendants and Intervenor-Defendants' Motions to Dismiss, with Exhibits and Memorandum of Law, (dated December 5, 2014) 6

Affirmation in Opposition by Plaintiffs JOHN KEONI WRIGHT, *et al.*, to Defendants and Intervenors-Defendants' Motions to Dismiss, with Exhibits and Memorandum of Law, (dated December 5, 2014) 7

MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

Upon the foregoing papers, the above-enumerated motions to dismiss the complaint pursuant to CPLR 3211(a)(2), (3), (7), and (10), by the defendants and intervenor-defendants in each action are denied, as hereinafter provided.

This consolidated action, brought on the behalf of certain representative public school children in the State and City of New York, seeks, *inter alia*, a declaration that various sections of the Education Law with regard to teacher tenure, teacher discipline, teacher layoffs and teacher evaluations are violative of the Education Article (Article XI, §1) of the New York State Constitution. The foregoing provides, in relevant part, that "[t]he 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." (NY Const. Art. XI, §1). As construed by plaintiffs, the Education Article guarantees to all students in New York State a "sound basic education", which is alleged to be the

key to a promising future, insofar as it adequately prepares students with the ability to realize their potential, become productive citizens, and contribute to society. More specifically, plaintiffs argue that the State is constitutionally obligated to, *e.g.* systemically provide its pupils with the opportunity to obtain "the basic literacy, calculating, and verbal skills necessary to enable [them] to eventually function productively as civic participants capable of voting and serving on a jury" (Campaign for Fiscal Equity, Inc. v. State of New York (86 NY2d 307, 316), *i.e.*, "to speak, listen, read and write clearly and effectively in English, perform basic mathematical calculations, be knowledgeable about political, economic and social institutions and procedures in this country and abroad, or to acquire the skills, knowledge, understanding and attitudes necessary to participate in democratic self-government" (*id.* at 319). More recently, the Court of Appeals has refined the constitutionally-mandated minimum to require the teaching of skills that enable students to undertake civic responsibilities meaningfully; to function productively as civic participants (Campaign for Fiscal Equity, Inc. v. State of New York, 8 NY3d 14, 20-21). Plaintiffs further argue that the Court of Appeals has recognized that the Education Article requires adequate teaching by effective personnel as the "most important" factor in the effort to provide children with a "sound basic education" (*see* Campaign for Fiscal Equity, Inc. v. State of New York, 100 NY2d 893, 909). With this as background, plaintiffs maintain that certain identifiable sections of the Education Law foster the continued, permanent employment of ineffective teachers, thereby falling out of compliance with the constitutional mandate that students in New York be provided with a "sound basic education". Finally, it is claimed that the judiciary has been vested with the legal and moral authority to ensure that this constitutional mandate is honored (*see* Campaign for Fiscal Equity, Inc. v. State of New York, 100 NY2d 902).

MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

At bar, the statutes challenged by plaintiffs as impairing compliance with the Education Article include Education Law §§1102(3), 2509, 2510, 2573, 2588, 2590-j, 3012, 3013(2), 3014, and 3020. To the extent relevant, these statutes provide, *inter alia*, for (1) the award of, *e.g.*, tenure of public school teachers after a probationary period of only three years; (2) the procedures required to discipline and/or remove tenured teachers for ineffectiveness; and (3) the statutory procedure governing teacher lay-offs and the elimination of a teaching positions.[2] In short, it is claimed that these statutes, both individually and collectively, have been proven to have a negative impact on the quality of education in New York, thereby violating the students' constitutional right to a "sound basic education" (*see* NY Const, Art. XI, §1).

As alleged in the respective complaints, sections §§2509, 2573, 3012 and 3012(c) of the Education Law, referred to by plaintiffs as the "permanent employment statutes", formally provide, *inter alia*, for the appointment to tenure of those probationary teachers who have been found to be competent, efficient and satisfactory, under the applicable rules of the board of regents adopted pursuant to Education Law §3012(b) of this article. However, since these teachers are typically granted tenure after only three years on probation, plaintiffs argue that when viewed in conjunction with the statutory provisions for their removal, tenured teachers are virtually guaranteed lifetime employment regardless of their in-class performance or effectiveness. In this regard, it is alleged by plaintiffs that three years is an inadequate period of time to assess whether a teacher has demonstrated or earned the right to avail him or herself of the lifelong benefits of tenure. Also

2. The present statutes require that probationary teachers be furloughed first, and the remaining positions be filled on a seniority basis, *i.e.*, the teachers with the greatest tenure being the last to be terminated. For ease of reference, this manner of proceeding is known as "last-in, first-out" or "LIFO".

drawn into question are the methods employed for evaluating teachers during their probationary period.

In support of these allegations, plaintiffs rely on studies which have shown that it is unusual for a teacher to be denied tenure at the end of the probationary period, and that the granting of tenure in most school districts is more of a formality rather than the result of any meaningful appraisal of their performance or ability. For statistical support, plaintiffs argue, *e.g.*, that in 2007, 97% of tenure-eligible teachers in the New York City school districts were awarded tenure, and that recent legislation intended to implement reforms in the evaluation process have had a minimal impact on this state of affairs. In addition, they note that in 2011 and 2012, only 3% of tenure-eligible teachers were denied tenure.

With regard to the methods for evaluating teacher effectiveness prior to an award of tenure, plaintiffs maintain that the recently-implemented Annual Professional Performance Review ("APPR"), now used to evaluate teachers and principals is an unreliable and indirect measure of teacher effectiveness, since it is based on students' performance on standardized tests, other locally selected (*i.e.*, non-standardized) measures of student achievement, and classroom observations by administrative staff, which are clearly subjective in nature. On this issue, plaintiffs note that 60% of the scored review on an APPR is based on this final criterion, making for a non-uniform, superficial and deficient review of effective teaching that generally fails to identify ineffective teachers. As support of this postulate, plaintiffs refer to studies that have shown that in 2012, only 1% of teachers were rated "ineffective" in New York (as compared to the 91.5% who were rated as "highly effective" or "effective"), while only 31% of students taking the standardized tests in English Language Arts and Math met the minimum standard for proficiency. As a further example,

plaintiffs allege that only 2.3% of teachers eligible for tenure between 2010 and 2013 received a final rating of "ineffective", even though 8% of teachers had low attendance, and 12% received low "value added" ratings. Notably, these allegations are merely representative of the purported facts pleaded in support of plaintiffs' challenge to the tenure laws, and are intended simply to illustrate the statutes' reliance on some of the more superficial and artificial means of assessing teacher effectiveness, leading to an award of tenure without a sufficient demonstration of merit. Each of the above are alleged to operate to the detriment of New York students.[3]

With regard to plaintiffs' challenge to those sections of the Education Laws which address the matter of disciplining or obtaining the dismissal of a tenured teacher, it is alleged that they, too, operate to deny children their constitutional right to a "sound basic education". As pleaded, these statutes are claimed to prevent school administrators in New York from dismissing teachers for poor performance, thereby forcing the retention of ineffective teachers to the detriment of their students. Among other impediments, these statutes are claimed to afford New York teachers "super" due process rights before they may be terminated for unsatisfactory performance by requiring an inordinate number of procedural steps before any action can be taken. Among the barriers cited are the lengthy investigation periods, protracted hearings, and antiquated grievance procedures and appeals, all of which are claimed to be costly and time-consuming, with no guaranty that an underperforming teacher will actually be dismissed. As a result, dismissal proceedings are alleged to be rare when based on unsatisfactory performance alone, with scant chance of success. According to plaintiffs, the cumbersome nature of dismissal proceedings operates as a strong disincentive for

[3] Also worthy of note in this regard is plaintiffs' allegation that most of the teachers unable to satisfactorily complete probation are asked to extend their probation term.

administrators attempting to obtain the dismissal of ineffective teachers, the result of which is that their retention is virtually assured.

Pertinent to this cause of action, plaintiffs rely upon the results of a survey indicating that 48% of districts which had considered bringing disciplinary charges at least once, declined to do so. In addition, it was reported that between 2004 and 2008, each disciplinary proceeding took an average of 502 days to complete, and between 1995 and 2006, dismissal proceedings based on allegations of incompetence took an average of 830 days to complete, at a cost of $313,000 per teacher. It is further alleged that more often than not these proceedings allow the ineffective teachers to return to the classroom, which deprives students of their constitutional right to a "sound basic education".

Finally, plaintiffs allege that the so-called "LIFO" statutes (Education Law §§2585, 2510, 2588 and 3013) violate the Education Article of the New York State Constitution in that they have failed, and will continue to fail to provide children throughout the State with a "sound basic education". In particular, plaintiffs maintain that the foregoing sections of the Education Laws create a seniority-based layoff system which operates without regard to a teacher's performance, effectiveness or quality, and prohibits administrators from taking teacher quality into account when implementing layoffs and budget cuts. In combination, these statutes are alleged to permit ineffective teachers with greater seniority to be retained without any consideration of the needs of the students, who are collectively disadvantaged. It is also claimed that the LIFO statutes hinder the recruitment and retention of new teachers, a failure which was cited by the Court of Appeals (albeit on other grounds) as having a negative impact on the constitutional imperative (Campaign for Fiscal Equity, Inc. v. State of New York, 100 NY2d at 909-911).

MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

In moving to dismiss the complaints, defendants and intervenor-defendants (hereinafter collectively referred to as the "movants") singly and jointly, seek dismissal of the complaints on the grounds (1) that the courts are not the proper forum in which to bring these claims, *i.e.*, that they are nonjusticiable; (2) that the stated grievances should be brought before the state legislature; and (3) that the courts are not permitted to substitute their judgment for that of a legislative body as to the wisdom and expediency of legislation (*see e.g.* Matter of Retired Pub Empl Assoc, Inc. v. Cuomo, – Misc3d –, 2012 NY Slip Op 32979 [U][Sup Ct Albany Co]). In brief, it is argued that teacher tenure and the other statutes represent a "legislative expression of a firm public policy determination that the interest of the public in the education of our youth can best be served by [the present] system [which is] designed to foster academic freedom in our schools and to protect competent teachers from the abuses they might be subjected to if they could be dismissed at the whim of their supervisors" (Ricca v Board of Edu, 47 NY2d 385, 391). Thus, it is claimed that the policy decisions made by the Legislature are beyond the scope of the Judicial Branch of government.

It is further claimed that if these statutes violated the Education Article of the Constitution, the Legislature would have redressed the issue long ago. To the contrary, tenure laws have been expanded throughout the years, and have been amended on several occasions in order to impose new comprehensive standards for measuring a teacher's performance, by, e.g, measuring student achievement, while fulfilling the principal purpose of these statutes, *i.e.*, to protect tenured teachers from official and bureaucratic caprice. In brief, it is movants' position that "lobbying by litigation" for changes in educational policy represents an incursion on the province of the Legislative and Executive branches of the government, and is an improper vehicle through which to obtain changes in education policy. Accordingly, while conceding that there may be some room for judicial

encroachment, educational policy is said to rest with the Legislature.

Movants also argue that the complaints fail to state a cause of action. In this regard, it is claimed that in order to state a valid cause of action under Article XI, a plaintiff must allege two elements: (1) the deprivation of a sound basic education, and (2) causes attributable to the State (*see* New York Civ Liberties Union v. State of New York, 4 NY3d 177, 178-179). Moreover, the crux of a claim under the Education Article is said to be the failure of the state to "provide for the maintenance and support" of the public school system (Paynter v. State of New York, 100 NY2d 434, 439 [internal quotation marks omitted]; New York State Assn of Small City School Dists Inc. v. State of New York, 42 AD3d 648, 652). Here, it is claimed that the respective complaints are devoid of any facts tending to show that the failure to offer a "sound basic education" is causally connected to the State, rather than, as claimed, administered locally.

The movants also argue that the State's responsibility under the Education Article is to provide minimally adequate funding, resources, and educational supports to make basic learning possible, *i.e.* the requisite funding and resources to make possible "a sound basic education consist[ing] of the basic literacy, calculating and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury" (Paynter v. State of New York, 100 NY2d at 439-440). On this analysis, it is alleged to be the ultimate responsibility of the local school districts to regulate their curriculae in order to effect compliance with the Education Article while respecting "constitutional principle that districts make the basic decision on ... operating their own schools" (New York Civ Liberties Union v. State of New York, 4 NY3d at 182). Thus, it is the local districts rather than the State which is responsible for recruiting, hiring, disciplining and otherwise managing its teachers. For example, the APPR,

implemented to measure the effectiveness of teachers and principals, reserves 80% of the evaluation criteria for negotiation between the local school district and its relevant administrator and unions. Movants argue that these determinations do not constitute state action.

In addition, movants argue that both complaints fail to state a cause of action because they are riddled with vague and conclusory allegations regarding their claim that the tenure and other laws combine to violate the Education Article, basing their causes of action on (1) alleged "specious statistics" regarding the number of teachers receiving tenure, (2) the alleged cost of terminating teachers for ineffectiveness, (3) inconclusive surveys of school administrators on the reasons why charges often are not pursued, and (4) a showing that the challenged statutes result in a denial of a "sound basic education". According to the movants, none of these allegations are sufficient to establish the unconstitutionality of the subject statutes, *i.e.*, that there exists no rational and compelling bases for the challenged probationary, tenure and seniority statutes.

Also said to be problematic are plaintiffs' conclusory statements that students in New York are somehow receiving an inadequate education due to the retention of ineffective educators because of the challenged statutes. Moreover, while plaintiffs argue that public education is plagued by an indeterminate number of "ineffective teachers", they fail to identify any such teachers; the actual percentage of ineffective educators; or the relationship between the presence of these allegedly ineffective teachers and the failure to provide school children with a minimally adequate education. Accordingly, movants claim that merely because some of the 250,000 teachers licensed to teach in New York may be ineffective, is not a viable basis for eliminating these basic safeguards for the remaining teachers. In brief, movants maintain that aside from vague references to ineffective teachers and "cherry-picked" statistics without wider significance, the plaintiffs have done little to

demonstrate that the alleged problem is one of constitutional dimension.

Movants also argue that the action should be dismissed for the failure to join necessary parties as required by CPLR 1001 and 1003. In this regard, it is claimed that since the relief which plaintiffs seek would affect all school districts across the state, this Court should either order the joinder of every school district statewide, or dismiss the action. In addition, the movants argue that plaintiffs have failed to allege injury-in-fact, and that the claims which they do make are either not ripe or fail to plead any imminent or specific harm. More importantly, the complaints fail to take into account the recent amendments to these statutes, which are claimed to render all of their claims moot (*see generally* Hussein v. State of New York, 81 AD3d 132). In the alternative, it is alleged that the subject statutes are meant, *inter alia*, to protect school district employees from arbitrary termination rather than the general public or its students (*but see* Chiara v. Town of New Castle, – AD3d –, 2015 NY Slip Op 00326, *21-22 [2d Dept]).

Finally, defendants the STATE of NEW YORK, the BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK, MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York; and JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York, argue that complaints as against them should be dismissed since they were not involved in the enactment of the challenged statutes and cannot grant the relief requested by plaintiff.

The motions to dismiss are granted to the extent that the causes of action against MERRYL H. TISCH and JOHN B. KING, in their official capacities as Chancellor and Commissioner are

severed and dismissed, the balance of the motions are denied.[4]

The law is well settled that when reviewing a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, a court "must accept as true the facts as alleged in the complaint and any submissions in opposition to the motion, accord plaintiffs the benefit of every possible favorable inference and [without expressing any opinion as to whether the truth of the allegations can be established at trial], determine only whether the facts as alleged fit within any cognizable legal theory" (Sokoloff v. Harriman Estates Dev. Corp., 96 NY2d 409, 414; *see* Sanders v. Winship, 57 NY2d 391, 394). Accordingly, "the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations [can be] discerned which taken together manifest any cause of action cognizable at law the motion ... will fail" (Guggenheimer v. Ginzburg, 43 NY2d 268, 275). However, where evidentiary material is considered on the motion, "the criterion [becomes] whether the proponent of the pleading has a cause of action, not whether he [or she] has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and, unless it can be said that no significant dispute exists regarding it", the motion must be denied (*id*.). Here, it is the opinion of this Court that the complaints are sufficiently pleaded to avoid dismissal.

The core of plaintiffs' argument at bar is that school children in New York State are being denied the opportunity for a "sound basic education" as a result of teacher tenure, discipline and seniority laws (*see* Education Laws §§2573, 3012, 1103(3), 3014, 3012, 3020, 2510, 2585, 2588,

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[4] Claims against municipal officials in their official capacities are really claims against the municipality and are therefore, redundant when the municipality is also named as a defendant (*see* Frank v. State of NY Off. of Mental Retardation & Dev. Disabilities, 86 AD3d 183, 188).

3013). While the papers submitted on the motions to dismiss undoubtedly explain that the primary purpose of these statutes is to provide employment security, protect teachers from arbitrary dismissal, and attract and keep younger teachers, when afforded a liberal construction, the facts alleged in the respective complaints are sufficient to state a cause of action for a judgment declaring that the challenged sections of the Education Law operate to deprive students of a "sound basic education" in violation of Article XI of the New York State Constitution, *i.e.*, that the subject tenure laws permit ineffective teachers to remain in the classroom; that such ineffective teachers continue to teach in New York due to statutory impediments to their discharge; and that the problem is exacerbated by the statutorily-established "LIFO" system dismissing teachers in response to mandated lay-offs and budgetary shortfalls. In opposition, none of the defendants or intervenor-defendants have demonstrated that any of the material facts alleged in the complaints are untrue.

It is undisputed that the Education Article requires "[t]he legislature [to] provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." (NY Const. Art. XI, §1). Moreover, this Article has been held to guarantee all students within the state a "sound basic education", which is recognized by all to be the key to a promising future, preparing children to realize their potential, become productive citizens, and contribute to society. In this regard, it is the state's responsibility to provide minimally adequate funding, resources, and educational supports to make basic learning possible, *i.e.*," the basic literacy, calculating and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury" (Paynter v. State of New York, 100 NY2d at 440), which has been judicially recognized to entitle children to "minimally adequate teaching of reasonably up-to-date basic curricula ... by sufficient personnel adequately trained to teach those

subject areas" (Campaign for Fiscal Equity, Inc. v. State of NewYork, 86 NY2d at 317). Further, it has been held that the state may be called to account when it fails in its obligation to meet minimum constitutional standards of educational quality (*see* New York Civ Liberties Union v. State of New York, 4 NY3d at 178), which is capable of measurement, as alleged, by, *inter alia*, sub-standard test results and falling graduation rates (*id.*) that plaintiffs have attributed to the impact of certain legislation.

More to the point, accepting as true plaintiffs' allegations of serious deficiencies in teacher quality; its negative impact on the performance of students; the role played by subject statutes in enabling ineffective teachers to be granted tenure and in allowing them to continue teaching despite ineffective ratings and poor job performance; a legislatively prescribed rating system that is inadequate to identify the truly ineffective teachers; the direct effect that these deficiencies have on a student's right to receive a "sound basic education"; plus the statistical studies and surveys cited in support thereof are sufficient to make out a prima facie case of constitutional dimension connecting the retention of ineffective teachers to the low performance levels exhibited by New York students, *e.g.*, a lack of proficiency in math and english (*see* Campaign for Fiscal Equity, Inc. v. State of New York, 100 NY2d at 910). Once it is determined that plaintiffs may be entitled to relief under any reasonable view of the facts stated, the court's inquiry is complete and the complaint must be declared legally sufficient (*see* Campaign for Fiscal Equity, Inc. v. State of New York, 86 NY2d at 318).

The Court also finds the matter before it to be justiciable since a declaratory judgment action is well suited to, *e.g.*, interpret and safeguard constitutional rights and review the acts of the other branches of government, not for the purpose of making policy decisions, but to preserve the constitutional rights of its citizenry (*see* Campaign for Fiscal Equity, Inc. v. State of New York, 100

NY2d at 931).

With regard to the issue of standing, in the opinion of this Court, the individually-named plaintiffs clearly have standing to assert their claims as students attending various public schools within the State of New York who have been or are being injured by the deprivation of their constitutional right to receive a "sound basic education", which injury, it is claimed will continue into the future so long as the subject statutes continue to operate in the manner stated. Further details regarding the individual plaintiffs' purported injuries can certainly be ascertained during discovery. Moreover, since these children are the intended beneficiaries of the Education Article, in the opinion of this Court, they are clearly within the zone of protected interest.

Only recently have the courts recognized the right of plaintiffs to seek redress and not have the courthouse doors closed at the very inception of an action where the pleading meets the minimal standard to avoid dismissal (*see* Campaign for Fiscal Equity, Inc. v. State of New York, 86 NY2d at 318). This Court is in complete agreement with this sentiment and will not close the courthouse door to parents and children with viable constitutional claims (*see* Hussein v. State of New York, 19 NY3d 899). Manifestly, movants' attempted challenge to the merits of plaintiffs' lawsuit, including any constitutional challenges to the sections of the Education Law that are the subject of this lawsuit, is a matter for another day, following a further development of the record.

The balance of the arguments tendered in support of dismissal, including the joinder of other parties, have been considered and rejected.

Accordingly, it is

ORDERED that the motion (No. 3598 - 012) of defendant-intervenors MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New

York, and JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York is granted; and it is further

ORDERED that the causes of action against said individuals are hereby severed and dismissed; and it is further

ORDERED that the balance of the motions are denied; and it is further

ORDERED that the clerk shall enter judgment accordingly.

ENTER,

J.S.C.

Dated: MAR. 17, 2015

GRANTED

MAR 17 2015

STEPHEN J. FIALA

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, *et al.*, and JOHN KEONI WRIGHT, *et al.*,

Plaintiffs,

-against-

THE STATE OF NEW YORK, *et al.*,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers; PHILIP A. CAMMARATA, MARK MAMBRETTI, and THE NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendants.

NOTICE OF APPEAL

HON. PHILIP G. MINARDO
DCM PART 6

Index No. ~~1011 5/14~~ 1011 05/14

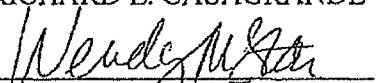
PLEASE TAKE NOTICE that the Intervenor-Defendants SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers, hereby appeal to the Appellate Division, Second Department of the Supreme Court of the State of New York, from the Decision and Order of the Court dated March 12, 2015 which denied the Intervenor-Defendants Motion to Dismiss, and entered by the Clerk of the Court on March 20, 2015, and Notice of Entry being served via FedEx Express Priority-Overnight Mail on March 24, 2015, which was received by counsel for said

Intervening-Defendants on March 25, 2015. This appeal is taken from the entire Decision and Order with the exception of the portion of the Determination and Order granting the motion to dismiss on behalf of Defendants Merryl H. Tisch and John B. King. A copy of the Decision and Order with Notice of Entry is annexed hereto.

Dated: New York, New York
March 30, 2015

Respectfully submitted,

RICHARD E. CASAGRANDE

By: 

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SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, *et.al.*, and JOHN KEONI WRIGHT, *et. al.*,

Plaintiffs,

-against-

THE STATE OF NEW YORK, *et. al.*,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, SETH COHEN, DANIEL DELEHANTY, ASHIL SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBEBE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers; PHILLIP A. CAMMARATA, MARK MAMBRETTI, and THE NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendants.

NOTICE OF APPEAL

HON. PHILIP G. MINARDO
DCM PART 6

Index No. 101105/14

PLEASE TAKE NOTICE that the Intervenor-Defendants PHILIP A. CAMMARATA and MARK MAMBRETTI, hereby appeal to the Appellate Division, Second Department of the Supreme Court of the State of New York, from the Decision and Order of the Court dated March 12, 2015 which denied the Intervenor-Defendants' Motion to Dismiss, and entered by the Clerk of the Court on March 20, 2015, and Notice of Entry being served via FedEx Express Priority-Overnight Mail on March 24, 2015, which was received by counsel for said Intervening-Defendants on March 25, 2015. This appeal is taken from the entire Decision and Order with the

exception of the portion granting the motion to dismiss on behalf of Defendants Merryl H. Tisch and John B. King. A copy of the Decision and Order with Notice of Entry is annexed hereto.

Dated: Latham, New York
April 14, 2015

Respectfully Submitted,

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----------x

MYMEONA DAVIDS, by her parent and natural guardian, MIAMONA DAVIDS, et al., and JOHN KEONI WRIGHT, et al.,

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers, PHILIP A. CAMMARATA and MARK MAMBRETTI, and THE NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendants.

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NOTICE OF APPEAL

Index No. 101105/14

PLEASE TAKE NOTICE that defendants City of New York and New York City Department of Education hereby appeal to the Appellate Division of the Supreme Court, Second Department, from the decision and order (one paper) of the Hon. Philip G Minardo, herein dated March 12, 2015 and entered in the office of the Clerk of Richmond County on or about March 24, 2015. This appeal is taken from each and every part of said decision and order (one paper) as well as from the whole thereof.

Dated: New York, New York
April 22, 2015

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By: Francis F. Caputo
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CLERK
County of Richmond

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: DCM PART 6

----------X

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian ANGELA PERALTA, STACY PERALTA, by her parent and natural guardian ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs,

- against -

THE STATE OF NEW YORK, THE NEW YORK STATE BOARD OF REGENTS, THE NEW YORK STATE EDUCATION DEPARTMENT, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, JOHN AND JANE DOES 1-100, XYZ ENTITIES 1-100,

Defendants,

- and -

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant,

- and -

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON,

NOTICE OF APPEAL

Consolidated
Index No. 101105/14

(Minardo, J.S.C.)

ISRAEL MARTINEZ, RICHARD OGNIBENE, JR.., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

- and -

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants.

JOHN KEONI WRIGHT; GINET BORRERO; TAUANA GOINS; NINA DOSTER; CARLA WILLIAMS; MONA PRADIA; ANGELES BARRAGAN; LAURIE TOWNSEND; DELAINE WILSON;

Plaintiffs,

- against -

THE STATE OF NEW YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK; MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York; JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York;

Defendants,

- and -

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

- and -

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants,

- and -

NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendant,

- and -

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant.

----------X

PLEASE TAKE NOTICE that the defendants STATE OF NEW YORK, BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (s/h/a/ "The New York State Board of Regents"), and NEW YORK STATE EDUCATION DEPARTMENT (hereinafter referred to collectively as the "State Defendants"), hereby appeal to the Appellate Division, Second Department, from the Decision and Order of the Supreme Court, Richmond County (Minardo, J.S.C.), dated March 12, 2015, and entered March 20, 2015, a copy of which is annexed hereto. This appeal is taken from the entire Decision and Order, and each and every part thereof, with the exception of the portion of the Decision and Order granting the motion to dismiss on behalf of defendants Merryl H. Tisch and John B. King, Jr.

Dated: New York, New York
April 22, 2015

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMEONA DAVIDS, by her parent and natural guardian, MIAMONA DAVIDS, ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, ALEXIS PERALTA, by her parent and natural guardian, STACY PERALTA, by her parent and natural guardian, ANGELA PERALTA, LENORA PERALTA, by her parent and natural guardian ANGELA PERALTA, ANDREW HENSON, by his parent and natural guardian CHRISTINE HENSON, ADRIAN COLSON, by his parent and natural guardian JACQUELINE COLSON, DARIUS COLSON, by his parent and natural guardian, JACQUELINE COLSON, SAMANTHA PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, by her parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs,

- against -

THE STATE OF NEW YORK, THE NEW YORK STATE BOARD OF REGENTS, THE NEW YORK STATE EDUCATION DEPARTMENT, THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION, JOHN AND JANE DOES 1-100, XYZ ENTITIES 1-100,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants.

Consolidated Index No. 101105/14
(DCM Part 6)
(Minardo, J.S.C.)

NOTICE OF APPEAL

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JOHN KEONI WRIGHT; GINET BORRERO; TAUANA GOINS; NINA DOSTER; CARLA WILLIAMS; MONA PRADIA; ANGELES BARRAGAN;

Plaintiffs,

- against –

THE STATE OF NEW YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK; MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York; JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York;

Defendants

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants,

-and-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendant,

-and-

MICHAEL MULGREW, as President of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO,

Intervenor-Defendant.

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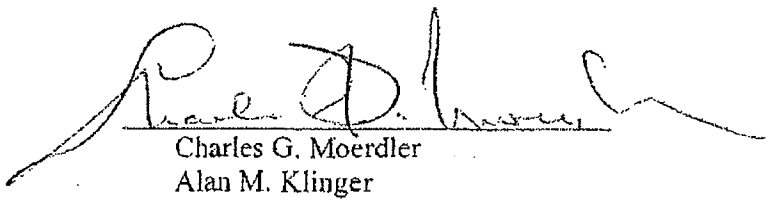
PLEASE TAKE NOTICE, that Intervenor-Defendant Michael Mulgrew, as President of the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO, hereby appeals to the Supreme Court of the State of New York, Appellate Division, Second Department, from the Decision and Order dated March 12, 2015 (and entered March 20, 2015), a copy of which is annexed hereto, denying Intervenor-Defendant's Motion to Dismiss the Complaints. Defendant appeals from each and every part of said Order and from the whole thereof, with the exception of the portion of the Order dismissing Defendants Meryl H. Tisch and John B. King.

April 23, 2015

STROOCK & STROOCK & LAVAN LLP



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