

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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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.

DCM PART 6

HON. PHILIP G. MINARDO

DECISION & ORDER

Index No. 101105/14

Motion Nos.<sup>1</sup> 1996 - 013  
2012 - 014  
2110 - 015  
2111 - 016  
2186 - 017

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<sup>1</sup>These motions have been consolidated for purposes of disposition.

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The following papers numbered 1 to 12 were fully submitted on the 25<sup>th</sup> day of August, 2015.

	Papers Numbered
Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants 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 May 27, 2015) _____	1
Notice of Motion to Dismiss and/or Renew by Defendants THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF EDUCATION, with Exhibits and Memorandum of Law, (dated May 27, 2015) _____	2
Notice of Motion to Dismiss and/or Renew by Defendants STATE OF NEW YORK, et al., with Affirmation and Supplemental Affirmation of Assistant Attorney General Steven L.Banks, with Exhibits and Memorandum of Law, (dated May 27, 2015) _____	3
Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants SETH COHEN, et al., with Exhibits and Memorandum of Law, (dated May 26, 2014) _____	4
Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants PHILIP CAMMARATA and MARK MAMBRETTI with Exhibits and Memorandum of Law, (dated MAY 26, 2015) _____	5
Affirmation in Opposition by Plaintiffs JOHN KEONI WRIGHT, et al., to Defendants and Intervenor-Defendants' Motions to Dismiss and/or Renew, with Exhibits and Memorandum of Law (dated June 26, 2015) _____	6
Affirmation in Opposition of Plaintiffs MYOMENA DAVIDS, et al., to Defendants and Intervenor-Defendants' Motion to Dismiss and/or Renew, with Exhibits and Memorandum of Law, (dated December 5, 2014) _____	7

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Reply Memorandum of Law by Intervenors-Defendants MICHAEL MULGREW, as President Of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, (dated July 7, 2015)	8
Reply Affirmation by Defendants THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF EDUCATION, (dated July 7, 2015)	9
Reply Affirmation by Intervenors-Defendants PHILIP CAMMARATA and MARK MAMBRETTI, (dated July 1, 2015)	10
Reply Memorandum of Law by Intervenors-Defendants SETH COHEN, <i>et al.</i> , (dated July 7, 2015)	11
Reply Memorandum of Law by Defendants STATE OF NEW YORK, , <i>et al.</i> , (dated July 7, 2015)	12

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Upon the foregoing papers, the motions by defendants and intervenor-defendants for, *inter alia*, dismissal of the complaints and/or leave to renew their prior motions for like relief are decided as follows.

The parties' familiarity with the facts is presumed from their participation in this litigation and the exhaustive Decision and Order of this Court entered on March 20, 2015.

In this action for a judgment declaring, singly and in combination, various sections of the Education Law as violative of Art. XI, §1 of the New York State Constitution<sup>2</sup> (hereinafter the Education Article), this Court previously denied defendants' and intervenor-defendants' several motions to dismiss the complaints on various grounds which the Court found to be without merit.

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<sup>2</sup> To the extent relevant, this article guarantees to all of the students within the State of New York a "sound basic education".

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Defendants and intervenor-defendants subsequently appealed that determination to the Appellate Division, Second Department, where it has yet be to calendared for oral argument. At or about the same time, the State Legislature undertook to amend certain sections of the Education Law challenged by plaintiffs, which prompted defendants and intervenor-defendants to file a second round of motions to dismiss on the ground that this action of the Legislature rendered the complaints moot and/or nonjusticiable. In the alternative, defendants and intervenor-defendants moved for leave to renew their prior motions based on “new facts not offered on the prior motions” or “a change in the law” (CPLR 2221[e][2]), both of which plaintiffs strenuously opposed. Oral argument was held on August 25, 2015, at which time decision was reserved.

Except to the extent hereinafter provided, the motions are denied.

In principal part, movants assert the same grounds for dismissal rejected by the Court in its prior determination. To this extent, the present motions to dismiss are essentially motions for leave to reargue and, as such, are improperly “based on matters of fact not offered on the prior motion(s)” (CPLR 2221[d][2]), *e.g.*, the aforementioned legislative amendments. Accordingly, these motions are denied. Neither is the Court persuaded that the above amendments operated to render the prior motions nonjusticiable or moot, or to deprive this Court of subject matter jurisdiction (*see* CPLR 3211[a][2]; Matter of Newton v. Town of Middletown, 31 AD3d 1004, 1005-1006).

Moreover, while the introduction of “new facts” or “a change in the law” may serve as the basis for a renewal motion under CPLR 2221(e)(2), the motion will nevertheless be denied where, as here, neither of the foregoing “would change the prior determination” of the court (*id.*). In this case, the legislature’s marginal changes affecting, *e.g.*, the term of probation and/or the disciplinary proceedings applicable to teachers, are insufficient to achieve the required result.

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Nonetheless, given the extensive nature of discovery likely to be required in this case, it is only proper that all further proceedings in this matter should be stayed pending the determination of the Appellate Division.

Accordingly, it is

SO ORDERED.

/s/ Philip G. Minardo  
J.S.C.

Dated: October 22, 2015