

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,

**NOTICE OF APPEAL**

Index No. 101105/14

-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.

-----X  
**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

ZACHARY W. CARTER  
Corporation Counsel of the City  
of New York  
Attorney for City of New York and the New  
York City Department of Education  
100 Church Street  
New York, New York 10007  
(212) 356-2500

By:   
FRANCIS F. CAPUTO  
Deputy Chief, Appeals Division

TO:

JONATHAN W. TRIBIANO, PLLC.,  
Attorney for Plaintiffs in *Dauids v State*,  
1811 Victory Boulevard, Suite One,  
Staten Island, New York 10314.  
(718) 530-1445

ERIC T. SCHNEIDERMAN,  
Attorney General of the State of New York,  
Attorney for State Defendants,  
120 Broadway, 24<sup>th</sup> Floor,  
New York, New York 10271.  
(212) 416-8621

STROOCK & STROOCK & LAVAN LLP.,  
Attorneys for Intervenor-Defendant Michael Mulgrew,  
as President of the United Federation of Teachers,  
180 Maiden Lane,  
New York, New York 10038.  
(212) 806-5400

KIRKLAND & ELLIS, LLP.,  
Attorneys for the Plaintiffs in *Wright v State*,  
601 Lexington Avenue,  
New York, New York 10022.  
(212) 446-4800

RICHARD E. CASAGRANDE, ESQ.,  
Attorney for Intervenor-Defendant New York State United Teachers,  
800 Troy-Schenectady Road,  
Latham, New York 12110-2455.  
(518) 213-6000

ARTHUR P. SCHEUERMANN, ESQ.,  
Attorney for Intervenor-Defendants  
Cammarata and Mambretti,  
School Administrators Association of New York State,  
8 Airport Park Boulevard,  
Latham, New York 12110.  
(518) 782-0600

CLERK  
County of Richmond

*Supreme Court of the State of New York*  
*Appellate Division : Second Judicial Department*

**Form A – Request for Appellate Division Intervention – Civil**

See § 670.3 of the rules of this court for directions on the use of this form (22 NYCRR 670.3).

<p><b>Case Title:</b> Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.</p> <p style="text-align: center;">MYMEONA DAVIDS, et al.,  Plaintiffs,  - against -  THE STATE OF NEW YORK, et al.,  Defendants.</p>	<p style="text-align: center;"><b>For Court of Original Instance</b></p> <hr/> <p style="text-align: center;">Date Notice of Appeal Filed</p> <hr/> <p style="text-align: center;"><b>For Appellate Division</b></p>
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<b>Case Type</b>	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<b>Filing Type</b>	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration		<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding	

**Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.**

<p><b>A. Administrative Review</b></p> <input type="checkbox"/> 1 Freedom of Information Law <input type="checkbox"/> 2 Human Rights <input type="checkbox"/> 3 Licenses <input type="checkbox"/> 4 Public Employment <input type="checkbox"/> 5 Social Services <input type="checkbox"/> 6 Other	<p><b>D. Domestic Relations</b></p> <input type="checkbox"/> 1 Adoption <input type="checkbox"/> 2 Attorney's Fees <input type="checkbox"/> 3 Children – Support <input type="checkbox"/> 4 Children – Custody/Visitation <input type="checkbox"/> 5 Children – Terminate Parental Rights <input type="checkbox"/> 6 Children – Abuse/Neglect <input type="checkbox"/> 7 Children – JD/PINS <input type="checkbox"/> 8 Equitable Distribution <input type="checkbox"/> 9 Exclusive Occupancy of Residency <input type="checkbox"/> 10 Expert's Fees <input type="checkbox"/> 11 Maintenance/Alimony <input type="checkbox"/> 12 Marital Status <input type="checkbox"/> 13 Paternity <input type="checkbox"/> 14 Spousal Support <input type="checkbox"/> 15 Other	<p><b>F. Prisoners</b></p> <input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other	<p><b>I. Torts</b></p> <input type="checkbox"/> 1 Assault, Battery, False Imprisonment <input type="checkbox"/> 2 Conversion <input type="checkbox"/> 3 Defamation <input type="checkbox"/> 4 Fraud <input type="checkbox"/> 5 Intentional Infliction of Emotional Distress <input type="checkbox"/> 6 Interference with Contract <input type="checkbox"/> 7 Malicious Prosecution/Abuse of Process <input type="checkbox"/> 8 Malpractice <input type="checkbox"/> 9 Negligence <input type="checkbox"/> 10 Nuisance <input type="checkbox"/> 11 Products Liability <input type="checkbox"/> 12 Strict Liability <input type="checkbox"/> 13 Trespass and/or Waste <input type="checkbox"/> 14 Other
<p><b>B. Business &amp; Other Relationships</b></p> <input type="checkbox"/> 1 Partnership/Joint Venture <input type="checkbox"/> 2 Business <input type="checkbox"/> 3 Religious <input type="checkbox"/> 4 Not-for-Profit <input type="checkbox"/> 5 Other	<p><b>E. Miscellaneous</b></p> <input type="checkbox"/> 1 Constructive Trust <input type="checkbox"/> 2 Debtor & Creditor <input checked="" type="checkbox"/> 3 Declaratory Judgment <input type="checkbox"/> 4 Election Law <input type="checkbox"/> 5 Notice of Claim <input checked="" type="checkbox"/> 6 Other	<p><b>G. Real Property</b></p> <input type="checkbox"/> 1 Condemnation <input type="checkbox"/> 2 Determine Title <input type="checkbox"/> 3 Easements <input type="checkbox"/> 4 Environmental <input type="checkbox"/> 5 Liens <input type="checkbox"/> 6 Mortgages <input type="checkbox"/> 7 Partition <input type="checkbox"/> 8 Rent <input type="checkbox"/> 9 Taxation <input type="checkbox"/> 10 Zoning <input type="checkbox"/> 11 Other	<p><b>J. Wills &amp; Estates</b></p> <input type="checkbox"/> 1 Accounting <input type="checkbox"/> 2 Discovery <input type="checkbox"/> 3 Probate/Administration <input type="checkbox"/> 4 Trusts <input type="checkbox"/> 5 Other
<p><b>C. Contracts</b></p> <input type="checkbox"/> 1 Brokerage <input type="checkbox"/> 2 Commercial Paper <input type="checkbox"/> 3 Construction <input type="checkbox"/> 4 Employment <input type="checkbox"/> 5 Insurance <input type="checkbox"/> 6 Real Property <input type="checkbox"/> 7 Sales <input type="checkbox"/> 8 Secured <input type="checkbox"/> 9 Other	<p><b>H. Statutory</b></p> <input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-f, or 129 <input type="checkbox"/> 2 Eminent Domain Procedure Law § 207 <input type="checkbox"/> 3 General Municipal Law § 712 <input type="checkbox"/> 4 Labor Law § 220 <input type="checkbox"/> 5 Public Service Law §§ 128 or 170 <input checked="" type="checkbox"/> 6 Other		

## Appeal

Paper Appealed From (check one only):

- |  |   |   |   |
|--|---|---|---|
| <input type="checkbox"/> Amended Decree      | <input type="checkbox"/> Determination          | <input checked="" type="checkbox"/> Order   | <input type="checkbox"/> Resettled Order  |
| <input type="checkbox"/> Amended Judgment    | <input type="checkbox"/> Finding                | <input type="checkbox"/> Order & Judgment   | <input type="checkbox"/> Ruling           |
| <input type="checkbox"/> Amended Order       | <input type="checkbox"/> Interlocutory Decree   | <input type="checkbox"/> Partial Decree     | <input type="checkbox"/> Other (specify): |
| <input checked="" type="checkbox"/> Decision | <input type="checkbox"/> Interlocutory Judgment | <input type="checkbox"/> Resettled Decree   |   |
| <input type="checkbox"/> Decree              | <input type="checkbox"/> Judgment               | <input type="checkbox"/> Resettled Judgment |   |

Court: Supreme Court

County: Richmond

Dated: March 17, 2015

Entered: March 20, 2015 (notice of entry received March 25, 2015)

Judge (name in full): Philip G. Mindardo

Index No.: Consolidated Index No. 101105/2014

Stage:  Interlocutory    Final    Post-Final

Trial:  Yes    No   If Yes:  Jury    Non-Jury

### Prior Unperfected Appeal Information

Are any unperfected appeals pending in this case?  Yes    No. If yes, do you intend to perfect the appeal or appeals covered by the annexed notice of appeal with the prior appeals?  Yes    No. Set forth the Appellate Division Cause Number(s) of any prior, pending, unperfected appeals:

### Original Proceeding

Commenced by:  Order to Show Cause    Notice of Petition    Writ of Habeas Corpus   Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

### Proceeding Transferred Pursuant to CPLR 7804(g)

Court:

County:

Judge (name in full):

Order of Transfer Date:

### CPLR 5704 Review of Ex Parte Order

Court:

County:

Judge (name in full):

Dated:

**Description of Appeal, Proceeding or Application and Statement of Issues**

**Description:** If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of the proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Appeal of Decision and Order entered March 20, 2015 (notice of entry received March 25, 2015), in which the Hon. Philip G. Minardo, J.S.C. denied the defendants' motion to dismiss the consolidated actions.

**Amount:**

**Issues:**

The Court should have dismissed the consolidated actions because the Court lacks subject matter jurisdiction (lack of justiciability), the complaints in the consolidated actions fail to state a cause of action upon which relief may be granted (complaints fail to state an Education Article claim and challenged statutes are constitutional), and the Court should not proceed in the absence of persons who should have been joined (i.e., all NYS school districts that rely on the challenged statutes and/or collectively bargained agreements to manage their school districts, and at a minimum, the Rochester and Albany city school districts, which are named in the complaints).

Leave this space blank.

Issues Continued:

Use Form B for Additional Appeal Information

**Party Information**

**Instructions:** Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Examples of a party's original status include: plaintiff, defendant, petitioner, respondent, claimant, defendant, third-party plaintiff, third-party defendant, and intervenor. Examples of a party's Appellate Division status include: appellant, respondent, appellant-respondent, respondent-appellant, petitioner, and intervenor.

No.	Party Name	Original Status	Appellate Division Status
1	Mymeona Davids, by her parent/guardian, Miamona Davids	Plaintiff	Respondent
2	Eric Davids, by his parent/guardian, Miamona Davids	Plaintiff	Respondent
3	Alexis Peralta, by her parent/guardian, Angela Peralta	Plaintiff	Respondent
4	Stacy Peralta, by her parent/guardian, Angela Peralta	Plaintiff	Respondent
5	Lenora Peralta, by her parent/guardian, Angela Peralta	Plaintiff	Respondent
6	Andrew Henson, by his parent/guardian, Christine Henson	Plaintiff	Respondent
7	Adrian Colson, by his parent/guardian, Jacqueline Colson	Plaintiff	Respondent
8	Darius Colson, by his parent/guardian, Jacqueline Colson	Plaintiff	Respondent
9	Samantha Pirozzolo, by her parent/guardian, Sam Pirozzolo	Plaintiff	Respondent
10	Franklin Pirozzolo, by his parent/guardian, Sam Pirozzolo	Plaintiff	Respondent
11	Izaiyah Ewers, by his parent/guardian, Kendra Oke	Plaintiff	Respondent
12	State of New York	Defendant	Appellant
13	NYS Board of Regents	Defendant	Appellant
14	NYS Education Department	Defendant (Davids only)	Appellant
15	City of New York	Defendant (Davids only)	Appellant
16	NYC Department of Education	Defendant (Davids); Defendant-Intervenor (Wright)	Appellant
17	Michael Mulgrew, as UFT President	Defendant-Intervenor	Appellant
18	Seth Cohen	Defendant-Intervenor	Appellant
19	Daniel Delehanty	Defendant-Intervenor	Appellant
20	Ashli Skura Dreher	Defendant-Intervenor	Appellant

## Attorney Information

**Instructions:** Fill in the names of the attorneys or firms of attorneys for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided.

In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Zachary W. Carter, Corporation Counsel of the City of New York City

Address: 100 Church Street

City: New York State: New York Zip: 10007 Telephone No.: 212-356-2500

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

	15	16																	
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Attorney/Firm Name: Eric T. Schneiderman, Attorney General of the State of New York

Address: 120 Broadway, 24<sup>th</sup> floor

City: New York State: New York Zip: 10271 Telephone No.: 212 416-8621

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

	12	13	14																
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Attorney/Firm Name: Jonathan W. Tribiano, PLLC

Address: 1811 Victory Blvd., Suite One

City: Staten Island State: New York Zip: 10314 Telephone No.: 718-530-1445

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

	1	2	3	4	5	6	7	8	9	10 & 11									
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Attorney/Firm Name: Strook & Strook & Lavan LLP

Address: 180 Maiden Lane

City: New York State: NY Zip: 10038 Telephone No.: 212-806-5400

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

	17																		
--	----	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Attorney/Firm Name: Kirkland & Ellis LLP

Address: 601 Lexington Avenue

City: New York State: NY Zip: 10022 Telephone No.: 212-446-4800

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

	28	29	30	31	32	33	34	35	36										
--	----	----	----	----	----	----	----	----	----	--	--	--	--	--	--	--	--	--	--

Attorney/Firm Name: Richard Casagrande, Esq., New York State United Teachers

Address: 800 Troy-Schenectady Rd.

City: Latham State: NY Zip: 12110-2455 Telephone No.: 518-213-6000

Attorney Type:  Retained  Assigned  Government  Pro Se  Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or from Form C):

	18	19	20	21	22	23	24	25											
--	----	----	----	----	----	----	----	----	--	--	--	--	--	--	--	--	--	--	--

Use Form C for Additional Party and/or Attorney Information

The use of this form is explained in § 670.3 of the rules of the Appellate Division, Second Department (22 NYCRR 670.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention [Form A, this document], (2) any required Additional Appeal Information Forms [Form B], (3) any required Additional Party and Attorney Information Forms [Form C], (4) the notice of appeal or order granting leave to appeal, (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken, and (6) a copy of the decision or decisions of the court of original instance, if any.

*Supreme Court of the State of New York*

*Appellate Division : Second Judicial Department*

## Form B – Additional Appeal Information

**Use this Form For Each Additional Paper Covered by the Notice of Appeal to be filed with Form A**

Paper Appealed From (check one only):

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> Amended Decree   | <input type="checkbox"/> Determination          | <input type="checkbox"/> Order              | <input type="checkbox"/> Resettled Order  |
| <input type="checkbox"/> Amended Judgment | <input type="checkbox"/> Finding                | <input type="checkbox"/> Order & Judgment   | <input type="checkbox"/> Ruling           |
| <input type="checkbox"/> Amended Order    | <input type="checkbox"/> Interlocutory Decree   | <input type="checkbox"/> Partial Decree     | <input type="checkbox"/> Other (specify): |
| <input type="checkbox"/> Decision         | <input type="checkbox"/> Interlocutory Judgment | <input type="checkbox"/> Resettled Decree   |   |
| <input type="checkbox"/> Decree           | <input type="checkbox"/> Judgment               | <input type="checkbox"/> Resettled Judgment |   |

Court: Supreme Court

County: Richmond

Dated: 3-17-15

Entered: 3-20-15 (Notice of Entry served 3/25/15)

Judge (name in full): Philip G. Minardo

Index No.: Consol. Index No. 101105/2014

Stage:  Interlocutory  Final  Post-Final

Trial:  Yes  No If Yes:  Jury  Non-Jury

### Description of Appeal

**Description:** Briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied.

Appeal of Decision and Order entered March 20, 2015 (notice of entry received March 25, 2015), in which the Hon. Philip G. Minardo, J.S.C. denied the defendants' motion to dismiss the consolidated actions.

**Amount:** If the appeal is from a money judgment, specify the amount awarded.

**Issues:** Specify the issues proposed to be raised on the appeal.

The Court should have dismissed the consolidated actions because the Court lacks subject matter jurisdiction (lack of justiciability), the complaints in the consolidated actions fail to state a cause of action upon which relief may be granted (complaints fail to state an Education Article claim and challenged statutes are constitutional), and the Court should not proceed in the absence of persons who should have been joined (i.e., all NYS school districts that rely on the challenged statutes and/or collectively bargained agreements to manage their school districts, and at a minimum, the Rochester and Albany city school districts, which are named in the complaints).





*Supreme Court of the State of New York*

*Appellate Division : Second Judicial Department*

## Form C – Additional Party and Attorney Information

### Additional Party Information

No.	Party Name	Original Status	Appellate Division Status
21	Kathleen Ferguson	Defendant-Intervenor	Appellant
22	Israel Martinez	Defendant-Intervenor	Appellant
23	Richard Ognibene, Jr.	Defendant-Intervenor	Appellant
24	Lounette R. Tuck	Defendant-Intervenor	Appellant
25	Karen E. Magee, Individuall and as NYSUT President	Defendant-Intervenor	Appellant
26	Philip A. Cammarata	Defendant-Intervenor	Appellant
27	Mark Mambretti	Defendant-Intervenor	Appellant
28	John Keoni Wright	Plaintiff	Respondent
29	Ginet Borrero	Plaintiff	Respondent
30	Tauana Goins	Plaintiff	Respondent
31	Nina Doster	Plaintiff	Respondent
32	Carla Williams	Plaintiff	Respondent
33	Mona Pradia	Plaintiff	Respondent
34	Angeles Barraban	Plaintiff	Respondent
35	Laurie Townsend	Plaintiff	Respondent
36	Delaine Wilson	Plaintiff	Respondent

### Additional Attorney Information

Attorney/Firm Name: Arthur P. Scheuermann, Esq., School Administrators Association of NYS																		
Address: 8 Airport Park Blvd.																		
City: Latham			State: NY			Zip: 12110			Telephone No.: 518-213-6488									
Attorney Type: <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice																		
Party or Parties Represented (set forth party number[s] from table above or from Form A):										26	27							
Attorney/Firm Name:																		
Address:																		
City:			State:			Zip:			Telephone No.:									
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice																		
Party or Parties Represented (set forth party number[s] from table above or from Form A):																		
Attorney/Firm Name:																		
Address:																		
City:			State:			Zip:			Telephone No.:									
Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice																		
Party or Parties Represented (set forth party number[s] from table above or from Form A):																		

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.

DCM PART 6

HON. PHILIP G. MINARDO

DECISION & ORDER

Index No. 101105/14

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

RICHMOND COUNTY CLERK  
2015 MAR 20 P 2:58  
DIVISION OF LAW & POLICY

<sup>1</sup>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 14<sup>th</sup> 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 Plaintiff JOHN KEONI WRIGHT, et al., to Defendants and Intervenor-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.

Reply Memorandum of Law by Defendant THE CITY OF NEW YORK and THE NEW YORK CITY DEPARTMENT OF EDUCATION, (dated December 16, 2014)	8
Reply Memorandum of Law by Intervenor-Defendant MICHAEL MULGREW, as President Of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of Teachers, AFL-CIO, (dated December 15, 2014)	9
Reply Memorandum of Law by Intervenor-Defendants PHILIP CAMMARATA and MARK MAMBRETTI, (dated December 15, 2014)	10
Reply Memorandum of Law by Intervenor-Defendants SETH COHEN, et al., (dated December 15, 2014)	11
Reply Memorandum of Law by Defendants STATE OF NEW YORK, et al., (dated December 15, 2014)	12

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

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

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).

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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.<sup>2</sup> 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

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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".

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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,

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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.<sup>1</sup>

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

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<sup>1</sup> 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.



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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).

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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

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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 Distrs 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,

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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

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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*, 12 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

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severed and dismissed, the balance of the motions are denied.<sup>4</sup>

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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<sup>4</sup> 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).

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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

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subject areas" (Campaign for Fiscal Equity, Inc. v. State of New York, 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



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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

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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

SUPREME COURT OF 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 and MARK MAMBRETTI, and THE NEW YORK CITY DEPARTMENT OF EDUCATION,  
Intervenor-Defendants.

**NOTICE OF APPEAL**

**ZACHARY W. CARTER**

*Corporation Counsel of the City of New York  
Attorney for Defendants City of New York and  
New York City Department of Education  
100 Church Street  
New York, New York 10007*

*Of Counsel: Richard P. Dearing  
Tel: (212) 356-2500  
Law Manager No.2014-026935*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2015*

*..... Esq.*

*Attorney for.....*

THE CITY OF NEW YORK  
LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NEW YORK 10007

Appeals

Do Not Discard

KIRKLAND & ELLIS, LLP,  
601 Lexington Avenue  
New York, New York 10022



FIRST CLASS

\$ 000.98