

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. :
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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 - :

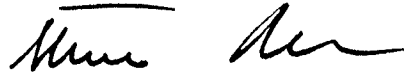
PHILIP A. CAMMARATA and MARK MAMBRETTI, :

	:
Intervenors-Defendants,	:
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- 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

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, ASHLEI 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.¹ 3580 - 008
3581 - 009
3593 - 010
3595 - 011
3598 - 012

RICHMOND COUNTY CLERK
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DIVISION OF CLERK COUNTY

¹The motions have been consolidated for purposes of disposition.

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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 Intervenor-Defendants' Motions to Dismiss,
with Exhibits and Memorandum of Law,
(dated December 5, 2014) _____ 7

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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

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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.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".

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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.¹

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

¹ 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*, - 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.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,

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).

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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. 12, 2015*

GRANTED

MAR 17 2015

STEPHEN J. FIALA

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).

Case Title: 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.		For Court of Original Instance <div style="border: 1px solid black; height: 40px; margin-top: 10px;"></div> <p style="text-align: right; font-size: small;">Date Notice of Appeal Filed</p>						
MYMOENA DAVIDS, et al., <div style="text-align: right;">Plaintiffs,</div> <div style="text-align: center;">-against-</div> THE STATE OF NEW YORK, et al., <div style="text-align: right;">Defendants.</div>		For Appellate Division <div style="border: 1px solid black; height: 80px; margin-top: 10px;"></div>						
JOHN KEONI WRIGHT, et al., <div style="text-align: right;">Plaintiffs,</div> <div style="text-align: center;">-against-</div> THE STATE OF NEW YORK, et al., <div style="text-align: right;">Defendants.</div>								
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> Case Type <input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding </td> <td style="width: 33%; vertical-align: top;"> Filing Type <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding </td> </tr> <tr> <td colspan="3"> <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review </td> </tr> </table>			Case Type <input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	Filing Type <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review		
Case Type <input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration	<input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	Filing Type <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceeding						
<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR 5704 Review								
Nature of Suit: Check up to five of the following categories which best reflect the nature of the case.								
A. Administrative Review <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	D. Domestic Relations <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 Residence <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	F. Prisoners <input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other G. Real Property <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	I. Torts <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					
B. Business & Other Relationships <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	E. Miscellaneous <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 type="checkbox"/> 6 Other	H. Statutory <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 type="checkbox"/> 6 Other	J. Wills & Estates <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					
C. Contracts <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								

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 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 County

Dated: March 12, 2015

Entered: March 20, 2015

Judge (name in full): Hon. Philip G. Minardo

Index No.: 101105/14

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.

The Decision and Order denied defendants' respective motions to dismiss the complaints filed in this consolidated declaratory judgment action, with the exception that the Court granted that part of State Defendants' motion to dismiss which sought to dismiss the claims against Merryl H. Tisch, Chancellor of the Board of Regents of the University of the State of New York, and against John B. King, Jr., former Commissioner of Education.

Amount: If an appeal is from a money judgment, specify the amount awarded. \$

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review.

Did the trial court err in declining to dismiss a complaint that did not adequately allege a violation of the Education Article of the New York Constitution under relevant case law?

Issues Continued:

Did the trial court commit error when it declined to dismiss complaints that seek to declare statutory law to be unconstitutional, where the allegations in the complaints, even if deemed to be true, fail to establish that no set of circumstances exists under which the statute would be valid?

Did the trial court commit error when it declined to dismiss plaintiffs' facial challenge to the constitutionality of New York State statutes extending tenure protection to public school teachers, where the Court of Appeals has already identified a rational basis for tenure protection?

Did the trial court commit error when it declined to dismiss a declaratory judgment action challenging the constitutionality of statutes that do not affect any of the plaintiffs?

Did the trial court commit error when it declined to dismiss claims brought by plaintiffs who lacked standing to assert such claims?

Did the trial court commit error when it declined to dismiss claims that are not justiciable?

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	Mymoena Davids	Plaintiff	Respondent
2	Eric Davids	Plaintiff	Respondent
3	Alexis Peralta	Plaintiff	Respondent
4	Stacy Peralta	Plaintiff	Respondent
5	Lenora Peralta	Plaintiff	Respondent
6	Andrew Henson	Plaintiff	Respondent
7	Adrian Colson	Plaintiff	Respondent
8	Darius Colson	Plaintiff	Respondent
9	Samantha Pirozzolo	Plaintiff	Respondent
10	Franklin Pirozzolo	Plaintiff	Respondent
11	Izaiyah Ewers	Plaintiff	Respondent
12	John Keoni Wright	Plaintiff	Respondent
13	Ginet Borrero	Plaintiff	Respondent
14	Tauana Goins	Plaintiff	Respondent
15	Nina Doster	Plaintiff	Respondent
16	Carla Williams	Plaintiff	Respondent
17	Mona Pradia	Plaintiff	Respondent
18	Angeles Barragan	Plaintiff	Respondent
19	Laurie Townsend	Plaintiff	Respondent
20	Delaine Wilson	Plaintiff	Respondent

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: Jonathan W. Tribiano, PLLC

Address: 1811 Victory Boulevard, Suite One

City: Staten Island

State: NY

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

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):

12, 13, 14, 15, 16, 17, 18, 19, 20

Attorney/Firm Name: ERIC T. SCHNEIDERMAN, Attorney General of the State of New York

Address: 120 Broadway, 24th Floor

City: New York

State: NY

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):

21, 22, 23

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

Address: 100 Church Street

City: New York

State: NY

Zip: 10007

Telephone No.: 212-356-2085

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):

24, 25

Attorney/Firm Name: Stroock & Stroock & 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):

26

Attorney/Firm Name: Richard E. Casagrande, Esq.

Address: 800 Troy-Schenectady Road

City: Latham

State: NY

Zip: 12110

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):

27, 28, 29, 30, 31, 32, 33, 34

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.

Form C - Additional Party and Attorney Information**Additional Party Information**

No.	Party Name	Original Status	Appellate Division Status
21	State of New York	Defendant	Appellant
22	Bd. of Regents of the Univ. of the State of N.Y.	Defendant	Appellant
23	State Education Department	Defendant	Appellant
24	City Of New York	Defendant	Respondent
25	New York City Department of Education	Defendant	Respondent
26	Michael Mulgrew, President of UFT	Intervenor-Defendant	Respondent
27	Seth Cohen	Intervenor-Defendant	Respondent
28	Daniel Delehanty	Intervenor-Defendant	Respondent
29	Ashli Skura Dreher	Intervenor-Defendant	Respondent
30	Kathleen Ferguson	Intervenor-Defendant	Respondent
31	Israel Martinez	Intervenor-Defendant	Respondent
32	Richard Ognibene, Jr.	Intervenor-Defendant	Respondent

Additional Attorney Information

Attorney/Firm Name: Arthur P. Scheuermann

Address: 8 Airport Park Boulevard

City: Latham

State: NY

Zip: 12110 Telephone No.: 518-782-0600

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 A):

35, 36

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No.:

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 A):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No.:

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 A):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No.:

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 A):

Form C - Additional Party and Attorney Information**Additional Party Information**

No.	Party Name	Original Status	Appellate Division Status
33	X1 Lonnelle R. Tuck	Intervenor-Defendant	Respondent
34	X2 Karen E. Magee	Intervenor-Defendant	Respondent
35	X3 Philip A. Cammarata	Intervenor-Defendant	Respondent
36	X4 Mark Mambretti	Intervenor-Defendant	Respondent
25			
26			
27			
28			
29			
30			
31			
32			

Additional Attorney Information

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No.:

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 A):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No.:

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 A):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No.:

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 A):

Attorney/Firm Name:

Address:

City:

State:

Zip:

Telephone No.:

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 A):

MYMOENA DAVIDS, by her parent and natural guardian MIAMONA DAVIDS, ERIC DAVIDS, by his parent and natural guardian MIAMONA DAVIDS, 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, Intervenor-Defendant.

- and -

SETH COHEN, et al., -and-

PHILIP A. CAMMARATA AND MARK MAMBRETTI,
Intervenors-Defendants.

JOHN KEONI WRIGHT; et al.,

Plaintiffs,

- against -

THE STATE OF NEW YORK; et al.,

Defendants,

- and -

SETH COHEN, et al., -and-

PHILIP A. CAMMARATA AND MARK MAMBRETTI,
Intervenor-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.

NOTICE OF APPEAL

ERIC T. SCHNEIDERMAN, Attorney General of the State of New York

ATTORNEY FOR STATE DEFENDANTS

BY: STEVEN L. BANKS, Assistant Attorney General

120 Broadway, 24TH Floor, New York, New York 10271

Tel. No.: (212) 416-8621; Fax No.: 212-416-6009 (Not for Service of Papers)

Due Service of a copy of the within is admitted this _____ day of _____ 2015