

10/105/14

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.

Myrnaena Davids et al.

Plaintiffs,

-against-

The State of New York et al.

Defendants,

-and--

Michael Mulgrew et al.,

Intervenor-Defendants.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type <input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> CPLR article 76 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 Q <input type="checkbox"/> 6 Other	H. Statutory <input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-I, 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 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 for the State of New York

County: Richmond

Dated: October 22, 2015

Entered: October 28, 2015

Judge (name in full): Phillip G. Minardo

Index No.: 101105/2014

Stage: ☒ Interlocutory ☐ Final ☐ Post-FinalTrial: ☐ 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:

2015-03922

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.

Intervenor-Defendants Seth Cohen, Daniel Delehanty, Ashli Skura Dreher, Kathleen Ferguson, Israel Martinez, Richard Ognibene Jr., Lonnelle R. Tuck, Karen E. Magee, Individually and as President of New York State United Teachers, appeal from the October 22, 2015 Decision and Order of Honorable Phillip G. Minardo in which he denied Intervenor-Defendants' Motion for Leave to Renew the Motion to Dismiss plaintiffs' Amended Complaints.

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.

Plaintiffs, in a consolidated action, seek a declaration that certain sections of the Education Law are in violation of the Education Article (Article XI, § 1) of the New York State Constitution. The issues raised in this appeal will include whether the plaintiffs' Amended Complaints are moot and non-justiciable as a result of the amendments to the laws challenged by plaintiffs that were enacted by the New York State Legislature on April 1, 2015.

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	Mymoena Davids, by her parent and natural guardian, Miamona Davids	Plaintiff	Plaintiff-Respondent
2	Eric Davids, by his parent and natural guardian, Miamona Davids	Plaintiff	Plaintiff-Respondent
3	Alexis Peralta, by her parent and natural guardian, Angela Peralta	Plaintiff	Plaintiff-Respondent
4	Stacy Peralta, by her parent and natural guardian, Angela Peralta	Plaintiff	Plaintiff-Respondent
5	Lenora Peralta, by her parent and natural guardian, Angela Peralta	Plaintiff	Plaintiff-Respondent
6	Andrew Henson, by his parent and natural guardian, Christine Hensen	Plaintiff	Plaintiff-Respondent
7	Adrian Colson, by his parent and natural guardian, Jacqueline Colson	Plaintiff	Plaintiff-Respondent
8	Darius Colson, by his parent and natural guardian, Jacqueline Colson	Plaintiff	Plaintiff-Respondent
9	Samantha Pirozzolo, by her parent and natural guardian, Sam Pirozzolo	Plaintiff	Plaintiff-Respondent
10	Franklin Pirozzolo, by his parent and natural guardian, Sam Pirozzolo	Plaintiff	Plaintiff-Respondent
11	Izalyah Ewers, by his parent and natural guardian, Kendra Oke	Plaintiff	Plaintiff-Respondent
12	John Keoni Wright	Plaintiff	Plaintiff-Respondent
13	Ginet Borrero	Plaintiff	Plaintiff-Respondent
14	Tauana Goins	Plaintiff	Plaintiff-Respondent
15	Nina Doster	Plaintiff	Plaintiff-Respondent
16	Carla Williams	Plaintiff	Plaintiff-Respondent
17	Mona Pradia	Plaintiff	Plaintiff-Respondent

18	Angeles Barragan	Plaintiff	Plaintiff-Respondent
19	Laurie Townsend	Plaintiff	Plaintiff-Respondent
20	Delaine Wilson	Plaintiff	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

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 - 1 1

Attorney/Firm Name: Jay Lefkowitz, Esq., of Counsel, Kirkland & Ellis, LLP

Address: 601 Lexington Avenue

City: New York

State: NY

Zip: 10022

Telephone No.: 212-448-4800

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):

1 2 - 2 0

Attorney/Firm Name: Steven L. Banks, Esq., Eric T. Schneiderman, Esq., Attorney General of the State of New York

Address: 120 Broadway, 24th Floor

City: New York

State: NY

Zip: 10271

Telephone No.: 212-416-8000

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):

2 1 - 2 3

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

Address: 100 Church Street

City: New York

State: NY

Zip: 10007

Telephone No.: 212-356-1000

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):

2 4 - 2 5

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

Address: 800 Troy-Schneckady 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):

2 7 - 3 4

Attorney/Firm Name: Charles G. Moerdler, Esq., 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):

2 6

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 C - Additional Party and Attorney Information

Additional Party Information

No.	Party Name	Original Status	Appellate Division Status
21	The State of New York	Defendant	none
22	The New York State Board of Regents	Defendant	none
23	The New York State Education Department	Defendant	none
24	The City of New York	Defendant	none
25	The New York City Department of Education	Defendant	none
26	Michael Mulgrew, as President of the United Federation of Teachers	Intervenor-Defendant	none
27	Seth Cohen	Intervenor-Defendant	Intervenor-Defendant Appellant
28	Daniel Delehanty	Intervenor-Defendant	Intervenor-Defendant Appellant
29	Ashli Skura Dreher	Intervenor-Defendant	Intervenor-Defendant Appellant
30	Kathleen Ferguson	Intervenor-Defendant	Intervenor-Defendant Appellant
31	Israel Martinez	Intervenor-Defendant	Intervenor-Defendant Appellant
32	Richard Ognibene, Jr.	Intervenor-Defendant	Intervenor-Defendant Appellant

Additional Attorney Information

Attorney/Firm Name: Adam Ross, Esq., United Federation of Teachers

Address: 52 Broadway, 14th Floor

City: New York

State: NY

Zip: 10004 Telephone No.: 212-777-7500

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):

2 6

Attorney/Firm Name: Arthur P. Scheuermann, Esq., School Administrators Association of NYS

Address: 8 Airport Park Boulevard

City: Latham

State: NY

Zip: 12110 Telephone No.: 212-782-0600

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):

3 5 3 6

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):

[illegible]

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	33. Lonnelle R. Tuck	Intervenor-Defendant	Intervenor-Defendant Appellant
22	34. Karen E. Magee, Individually and as President of New York State United Teachers	Intervenor-Defendant	Intervenor-Defendant Appellant
23	35. Philip A. Cammarata	Intervenor-Defendant	none
24	36. Mark Mambretti	Intervenor-Defendant	none
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

[illegible]

**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.

ORIGINAL

NOTICE OF APPEAL

HON. PHILIP G. MINARDO
DCM PART 6

Index No. 101105/14

PLEASE TAKE NOTICE that the Intervenor-Defendants SETH COHEN, DANIEL
DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ,
RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and
as President of the New York State United Teachers, hereby appeal to the Appellate Division,
Second Department of the Supreme Court of the State of New York, from the Decision and Order
of the Court dated October 22, 2015, which denied the Intervenor-Defendants' Motion for Leave to
Renew the Motion to Dismiss plaintiffs' Amended Complaints, and entered by the Clerk of the Court
on October 28, 2015, and Notice of Entry being served via First Class Mail on November 4, 2015,

which was received by counsel for said Intervening-Defendants on November 5, 2015. This appeal is taken from the entire Decision and Order, with the exception of the portion of the Order staying all further proceedings pending the determination of the Appellate Division. A copy of the Decision and Order with Notice of Entry is annexed hereto.

Dated: New York, New York
November 19, 2015

Respectfully submitted,

RICHARD E. CASAGRANDE

By:



WENDY M. STAR

Of Counsel

*Attorney for Intervenor-Defendants Seth
et al.*

Cohen

TO: Jonathan W. Tribiano, PLLC
1811 Victory Boulevard
Staten Island, NY 10314
Counsel for Plaintiffs

Kirkland & Ellis LLP
Jay Lefkowitz, Esq., of Counsel
Devora W. Allon, Esq. of Counsel
601 Lexington Avenue
New York, NY 10022
Counsel for Plaintiffs

Eric T. Schneiderman, Esq.
Attorney General of the State of New York
Steven L. Banks, Esq.
Monica Connell, Esq.
Christine Ryan, Esq.
Asst. Attorney General
120 Broadway, 24th Floor
New York, NY 10271
Counsel for State Defendants

Zachary Carter, Esq. Corporation Counsel of the City of New York
Janice Birnbaum, Esq., Senior Counsel
Maxwell Leighton, Esq., Senior Counsel
100 Church Street
New York, NY 10007
Counsel for Defendants City of New York and New York City Department of Education

Stroock, Stroock & Lavan LLP
Charles G. Moerdler, Esq.
Alan M. Klinger, Esq.
180 Maiden Lane
New York, NY 10038-4982
Counsel for Intervenor-Defendant Michael Mulgrew, as President of the United Federation of Teachers

Adam Ross, Esq.
United Federation of Teachers
52 Broadway, 14th Floor
New York, NY 10004
Counsel for Intervenor-Defendant Michael Mulgrew, as President of the United Federation of Teachers

Arthur P. Scheuermann, Esq.
School Administrators Assoc. of NYS
8 Airport Park Blvd.
Latham, NY 12110
Counsel for Intervenor-Defendants Cammarata and Mambretti

RICHMOND COUNTY CLERK
2015 OCT 28 P 2:14
OFFICE OF LAW & EQUITY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

DCM PART 6

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

Plaintiffs,

HON. PHILIP G. MINARDO

-against-

DECISION & ORDER

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

Defendants,

Index No. 101105/14

-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.

Motion Nos.¹ 1996 - 013
2012 - 014
2110 - 015
2111 - 016
2186 - 017

Intervenor-Defendants.

¹These motions have been consolidated for purposes of disposition.

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

The following papers numbered 1 to 12 were fully submitted on the 25th day of

August, 2015.

Papers
Numbered

Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants MICHAEL
MULGREW, as President of the UNITED FEDERATION OF TEACHERS,
Local 2, American Federation of Teachers, AFL-CIO,
with Exhibits and Memorandum of Law,
(dated May 27, 2015) _____ 1

Notice of Motion to Dismiss and/or Renew by Defendants THE CITY OF NEW YORK
and THE NEW YORK CITY DEPARTMENT OF EDUCATION,
with Exhibits and Memorandum of Law,
(dated May 27, 2015) _____ 2

Notice of Motion to Dismiss and/or Renew by Defendants STATE OF NEW YORK,
et al., with Affirmation and Supplemental Affirmation of Assistant Attorney General
Steven L. Banks,
with Exhibits and Memorandum of Law,
(dated May 27, 2015) _____ 3

Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants SETH COHEN, et al.,
with Exhibits and Memorandum of Law,
(dated May 26, 2014) _____ 4

Notice of Motion to Dismiss and/or Renew by Intervenor-Defendants PHILIP
CAMMARATA and MARK MAMBRETTI
with Exhibits and Memorandum of Law,
(dated MAY 26, 2015) _____ 5

Affirmation in Opposition by Plaintiffs JOHN KEONI WRIGHT, et al., to Defendants
and Intervenor-Defendants' Motions to Dismiss and/or Renew,
with Exhibits and Memorandum of Law
(dated June 26, 2015) _____ 6

Affirmation in Opposition of Plaintiffs MYOMENA DAVIDS, et al., to Defendants and
Intervenor-Defendants' Motion to Dismiss and/or Renew,
with Exhibits and Memorandum of Law,
(dated December 5, 2014) _____ 7

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

Reply Memorandum of Law by Intervenor-Defendants MICHAEL MULGREW, as President
Of the UNITED FEDERATION OF TEACHERS, Local 2, American Federation of
Teachers, AFL-CIO.
(dated July 7, 2015) _____ 8

Reply Affirmation by Defendants THE CITY OF NEW YORK and THE NEW
YORK CITY DEPARTMENT OF EDUCATION,
(dated July 7, 2015) _____ 9

Reply Affirmation by Intervenor-Defendants PHILIP CAMMARATA and MARK
MAMBRETTI,
(dated July 1, 2015) _____ 10

Reply Memorandum of Law by Intervenor-Defendants SETH COHEN, et al.,
(dated July 7, 2015) _____ 11

Reply Memorandum of Law by Defendants STATE OF NEW YORK, et al.,
(dated July 7, 2015) _____ 12

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

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

In this action for a judgment declaring, singly and in combination, various sections of the Education Law as violative of Art. XI, §1 of the New York State Constitution¹ (hereinafter the Education Article), this Court previously denied defendants' and intervenor-defendants' several motions to dismiss the complaints on various grounds which the Court found to be without merit.

¹ To the extent relevant, this article guarantees to all of the students within the State of New York a "sound basic education".

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

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

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

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

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

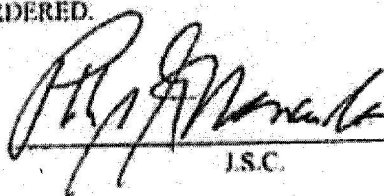
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MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

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

Accordingly, it is

SO ORDERED.



J.S.C.

Dated: Oct 23, 2015



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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

Plaintiffs,

- against -

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

Defendants,

-and-

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

Intervenor-Defendant,

-and-

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

Intervenor-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI,
Intervenor-Defendants.

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

Plaintiffs,

- against -

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

Defendants

-and-

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

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants,

-and-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendant,

-and-

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

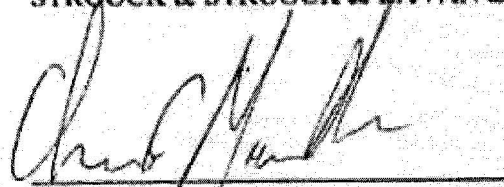
Intervenor-Defendant.

----- X

PLEASE TAKE NOTICE, that the attached is a true and accurate copy of the Decision and Order of the Supreme Court, Richmond County (Honorable Philip J. Minardo, J.S.C.), dated October 22, 2015 and duly filed and entered in the Office of the Clerk of Richmond County on October 28, 2015.

November 4, 2015

STROOCK & STROOCK & LAVAN LLP



Charles G. Moerdler
Alan M. Klinger
180 Maiden Lane
New York, New York 10038
(212) 806-5400

-and-

Adam S. Ross, Esq.
United Federation of Teachers
52 Broadway
New York, NY 10004

Co-Counsel for Intervenor-Defendant UFT

TO:

JONATHAN W. TRIBIANO, ESQ.
1811 Victory Boulevard
Staten Island, New York 10314
Counsel for Davids Plaintiffs
jwtribiano@jwtesq.com

JAY P. LEFKOWITZ, ESQ.
Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Counsel for Wright Plaintiffs
lefkowitz@kirkland.com

STEVEN L. BANKS, ESQ.
Assistant Attorney General of the State of New York
120 Broadway, 24th Floor
New York, New York 10271
*Counsel for Defendants State of New York and New York State Education Department
and New York State Board of Regents*
steven.banks@ag.ny.gov

JANICE BIRNBAUM, ESQ.
Corporation Counsel of the City of New York
100 Church Street
New York, New York 10007
Counsel for Defendants City of New York and New York City Department of Education
jbirnbaum@law.nyc.gov

RICHARD E. CASSAGRANDE, ESQ.
800 Troy-Schenectady Road
Latham, New York 12110-2455
Counsel for Proposed Intervenor-Defendants New York State United Teachers
rcasagra@nysutmail.org

ARTHUR P. SCHEUERMANN, ESQ.
Office of General Counsel
School Administrators Association of New York State
8 Airport Park Boulevard
Latham, New York 12110
Counsel for Defendant School Administrators Association of New York State
ascheuermann@saanys.org

**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**,

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.,

-and-

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

Intervenor-Defendants.

NOTICE OF APPEAL

RICHARD E. CASAGRANDE
Attorney for Intervenor-Defendants Seth Cohen, et al.
Office and Post Office Address, Telephone
52 Broadway, 9th Floor
New York, NY 10004-1614
212-533-6300



Office of General Counsel
Richard E. Casagrande
General Counsel

Albany

James D. Bilk
Assistant General Counsel

Robert T. Reilly
Associate General Counsel

Michael S. Travinski
Associate General Counsel

New York

Claude L. Hersh
Assistant General Counsel

Lena M. Ackerman
Associate General Counsel

November 19, 2015

Via Hand Delivery

Hon. Stephen J. Fiala
Richmond County Clerk
130 Stuyvesant Place - 2nd Floor
Staten Island, New York 10301

Re: Davids, Mymoena et al. v. State of New York, et al.
Our File No. 258495-N100
Richmond County Index No. 101105/14

Dear Clerk:

We represent Intervenor-Defendants Seth Cohen, Daniel Delehanty, Ashli Skura Dreher, Kathleen Ferguson, Israel Martinez, Richard Ognibene Jr., Lonnelle R. Tuck, and Karen E. Magee, Individually and as President of New York State United Teachers, in the above-referenced matter. Enclosed please find an original and a copy of a Notice of Appeal in this matter.


Also, in accordance with the rules of procedure of the Appellate Division, Second Department, enclosed please find two (2) additional copies of the Notice of Appeal attached to the Request for Appellate Division Intervention Form A and Request for Appellate Division Intervention Form C (for additional parties). Additionally enclosed is the filing fee and an Affidavit of Service.

Thank you for your attention to this matter.

Very truly yours,

RICHARD E. CASAGRANDE

By:


WENDY M. STAR
Of Counsel

WMS/cv
enc.

NYClegal178058

52 Broadway, 9th Floor ■ New York, N.Y. 10004 ■ (212) 533-6300

New York State United Teachers
Affiliated with • AFT • NEA • AFL-CIO



c: Jonathan W. Tribiano, PLLC
1811 Victory Boulevard
Staten Island, NY 10314
Counsel for Plaintiffs

Kirkland & Ellis LLP
Jay Lefkowitz, Esq., of Counsel
Devora W. Allon, Esq., of Counsel
601 Lexington Avenue
New York, NY 10022
Counsel for Plaintiffs

Eric T. Schneiderman, Esq.
Attorney General of the State of New York
Steven L. Banks, Esq.
Monica Connell, Esq.
Christine Ryan, Esq.
Asst. Attorney General
120 Broadway, 24th Floor
New York, NY 10271
Counsel for State Defendants

Zachary Carter, Esq. Corporation Counsel of the City of New York
Janice Birnbaum, Esq., Senior Counsel
Maxwell Leighton, Esq., Senior Counsel
100 Church Street
New York, NY 10007
Counsel for Defendants City of New York and New York City Department of Education

Stroock, Stroock & Lavan LLP
Charles G. Moerdler, Esq.
Alan M. Klinger, Esq.
180 Maiden Lane
New York, NY 10038-4982
Counsel for Intervenor-Defendant Michael Mulgrew, as President of the United Federation of Teachers

Adam Ross, Esq.
United Federation of Teachers
52 Broadway, 14th Floor
New York, NY 10004
Counsel for Intervenor-Defendant Michael Mulgrew, as President of the United Federation of Teachers

Arthur P. Scheuermann, Esq.
School Administrators Assoc. of NYS
8 Airport Park Blvd.
Latham, NY 12110
Counsel for Intervenors-Defendants Cammarata and Mambretti

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

CYNTHIA VILLANUEVA, being duly sworn, deposes and says, I am not a party to the action, am over 18 years of age and on November 19, 2015, I served one copy of the annexed **NOTICE OF APPEAL** in the following manner:

By mailing same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Jonathan W. Tribiano, PLLC
1811 Victory Boulevard
Staten Island, NY 10314
Counsel for Plaintiffs

Kirkland & Ellis LLP
Jay Lefkowitz, Esq., of Counsel
Devora W. Allon, Esq. of Counsel
601 Lexington Avenue
New York, NY 10022
Counsel for Plaintiffs

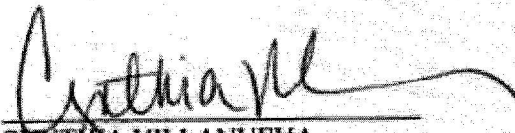
Eric T. Schneiderman, Esq.
Attorney General of the State of New York
Steven L. Banks, Esq.
Monica Connell, Esq.
Christine Ryan, Esq.
Asst. Attorney General
120 Broadway, 24th Floor
New York, NY 10271
Counsel for State Defendants

Zachary Carter, Esq. Corporation Counsel of the
City of New York
Janice Birnbaum, Esq., Senior Counsel
Maxwell Leighton, Esq., Senior Counsel
100 Church Street
New York, NY 10007
*Counsel for Defendants City of New York and
New York City Department of Education*

Stroock, Stroock & Lavan LLP
Charles G. Moerdler, Esq.
Alan M. Klinger, Esq.
180 Maiden Lane
New York, NY 10038-4982
*Counsel for Intervenor-Defendant Michael
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of Teachers*

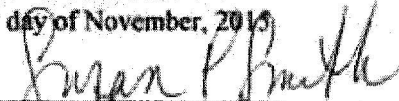
Adam Ross, Esq.
United Federation of Teachers
52 Broadway, 14th Floor
New York, NY 10004
*Counsel for Intervenor-Defendant Michael
Mulgrew, as President of the United
Federation of Teachers*

Arthur P. Scheuermann, Esq.
School Administrators Assoc. of NYS
8 Airport Park Blvd.
Latham, NY 12110
*Counsel for Intervenors-Defendants Cammarata
and Mambretti*


CYNTHIA VILLANUEVA

Sworn to before me this

19th day of November, 2015


NOTARY PUBLIC

SUSAN P. SMITH
Notary Public, State of New York
No. 01SM0006088
Qualified in Richmond County
Commission Expires

11/20/18

DOCUMENT # 9937632

60-NOTICE OF APPEAL
3922/15

11/20/2015 09:35:19 A.M.

RECEIPT: 53820 FEE: \$65.00
RICHMOND COUNTY CLERK

COURT DESK	
TYPE:	NA
APPROVED:	NO
DATE:	11/20/15