

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.,

Defendants,

-and-

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

Intervenor-Defendants.

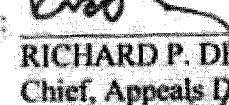
**NOTICE OF APPEAL**

Index No. 101105/14

PLEASE TAKE NOTICE that defendants, City of New York and New York  
City Department of Education, hereby appeals to the Appellate Division of the Supreme Court,  
Second Department, from the decision and order (one paper) of the Honorable Philip G.  
Minardo, herein dated October 22, 2015, entered in the office of the Clerk of Richmond County  
on October 28, 2015.

Dated: New York, New York  
December 2, 2015

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

By:   
RICHARD P. DIARING  
Chief, Appeals Division

APPELLATE DIVISION OF THE SUPREME COURT

2015 DEC 3 - 3:20 PM

RICHMOND COUNTY CLERK

TO: STROOCK & STROOCK & LAVAN LLP  
Attorneys for Intervenor-Defendant Michael Mulgrew  
as President of the United Federation of Teachers  
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(212) 806-5400

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(718) 530-1445

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Attorneys for Plaintiffs / Wrights  
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(212) 446-4800

ERIC T. SHNEIDERMAN  
Attorney General of the State of New York  
Attorney for Defendants / State of New York and  
New York State Education Department and  
New York State Board of Regents  
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New York, New York 10271  
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(518) 213-6000

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

CLERK  
County of Richmond

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

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

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

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.		<b>For Court of Original Instance</b>	
MYMEONA 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> <div style="text-align: center;">- and -</div> MICHAEL MUGREW, et al.  <div style="text-align: right;">Intervenor-Defendants.</div>		<div style="text-align: center; padding-top: 20px;"> <b>For Appellate Division</b> </div>	
<b>Case Type</b> <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		<b>Filing Type</b> <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.			
<b>A. Administrative Review</b> <input type="checkbox"/> 1 Freedom of Information Law <input type="checkbox"/> 2 Human Rights <input type="checkbox"/> 3 License s <input type="checkbox"/> 4 Public Employment <input type="checkbox"/> 5 Social Services <input type="checkbox"/> 6 Other <b>B. Business &amp; Other Relationships</b> <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 <b>C. Contracts</b> <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	<b>D. Domestic Relations</b> <input type="checkbox"/> 1 Adoption <input type="checkbox"/> 2 Attorney's Fees <input type="checkbox"/> 3 Children – Support <input type="checkbox"/> 4 Children – Custody/Visitation <input type="checkbox"/> 5 Children – Terminate Parental Rights <input type="checkbox"/> 6 Children – Abuse/Neglect <input type="checkbox"/> 7 Children – JD/PINS <input type="checkbox"/> 8 Equitable Distribution <input type="checkbox"/> 9 Exclusive Occupancy of Residency <input type="checkbox"/> 10 Expert's Fees <input type="checkbox"/> 11 Maintenance/Alimony <input type="checkbox"/> 12 Marital Status <input type="checkbox"/> 13 Paternity <input type="checkbox"/> 14 Spousal Support <input type="checkbox"/> 15 Other <b>E. Miscellaneous</b> <input type="checkbox"/> 1 Constructive Trust <input type="checkbox"/> 2 Debtor & Creditor <input checked="" type="checkbox"/> 3 Declaratory Judgment <input type="checkbox"/> 4 Election Law <input type="checkbox"/> 5 Notice of Claim <input checked="" type="checkbox"/> 6 Other	<b>F. Prisoners</b> <input type="checkbox"/> 1 Discipline <input type="checkbox"/> 2 Jail Time Calculation <input type="checkbox"/> 3 Parole <input type="checkbox"/> 4 Other <b>G. Real Property</b> <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 <b>H. Statutory</b> <input type="checkbox"/> 1 City of Mount Vernon Charter §§ 120, 127-f, or 129 <input type="checkbox"/> 2 Eminent Domain Procedure Law § 207 <input type="checkbox"/> 3 General Municipal Law § 712 <input type="checkbox"/> 4 Labor Law § 220 <input type="checkbox"/> 5 Public Service Law §§ 128 or 170 <input checked="" type="checkbox"/> 6 Other	<b>I. Torts</b> <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>J. Wills &amp; Estates</b> <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

## Appeal

## Paper Appealed From (check one only):

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

Court: New York State Supreme Court

County: Richmond County

Dated: October 22, 2015

Entered: October 28, 2015

Judge (name in full): Philip G. Minardo

Index No.: Consolidated 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:

## Original Proceeding

Commenced by: Order to Show Cause Notice of Petition ☐ Writ of Habeas Corpus Date Filed: January 23, 2014

Statute authorizing commencement of proceeding in the Appellate Division:

## Proceeding Transferred Pursuant to CPLR 7804(g)

Court:

County:

Judge (name in full):

Order of Transfer Date:

## CPLR 5704 Review of Ex Parte Order

Court:

County:

Judge (name in full):

Dated:

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

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

Appeal of Decision and Order entered October 28, 2015 in which the Hon. Philip G. Minardo, J.S.C. denied the motion of the Intervenor-Defendants New York City Department of Education and City of New York ("City Defendants") for an order (1) pursuant to Rule 3211(a)(2) New York Civil Practice Law and Rules ("CPLR") dismissing the consolidated actions for mootness, lack of justiciability, and prematurity, and (2) pursuant to CPLR 2221(e) granting leave to renew City Defendants' prior motion to dismiss, and upon renewal, dismissing the above-captioned consolidated actions on the grounds that there have been changes in law upon which City Defendants' prior motion to dismiss should have been granted.

Amount: N/A

**Issues:** Whether the Supreme Court erred when it denied Intervenor-Defendants' motion to dismiss where recent legislation amending the challenged statutes mooted the case and Plaintiffs' claims are, *inter alia*, non-justiciable, unripe, and fail to state a claim.

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/guardian, Miamona Davids	Plaintiff	Respondent
2	Eric Davids, by his parent/guardian, Miamona Davids	Plaintiff	Respondent
3	Alexis Peralta, by her parent/guardian, Angela Peralta	Plaintiff	Respondent
4	Stacy Peralta, by her parent/guardian, Angela Peralta	Plaintiff	Respondent
5	Lenora Peralta, by her parent/guardian, Angela Peralta	Plaintiff	Respondent
6	Andrew Henson, by his parent/guardian, Christine Henson	Plaintiff	Respondent
7	Adrian Colson, by his parent/guardian, Jacqueline Colson	Plaintiff	Respondent
8	Darius Colson, by his parent/guardian, Jacqueline Colson	Plaintiff	Respondent
9	Samantha Pirozzolo, by her parent/guardian, Sam Pirozzolo	Plaintiff	Respondent
10	Franklin Pirozzolo, by his parent/guardian, Sam Pirozzolo	Plaintiff	Respondent
11	Izayah Ewers, by his parent/guardian, Kendra Oke	Plaintiff	Respondent
12	State of New York	Defendant	Appellant
13	NYS Board of Regents	Defendant	Appellant
14	NYS Education Department	Defendant (Davids only)	Appellant
15	City of New York	Defendant	Appellant
16	NYC Department of Education	Defendant (Davids); Intervenor-Defendant (Wright)	Appellant
17	Michael Mulgrew, as UFT President	Intervenor-Defendant	Appellant
18	Seth Cohen	Intervenor-Defendant	Appellant
19	Daniel Delehanty	Intervenor-Defendant	Appellant
20	Ashi Skura Dreher	Intervenor-Defendant	Appellant



## Attorney Information

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

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

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

Address: 100 Church St.

City: New York

State: New York

Zip: 10007

Telephone No.: 212-356-2500

Attorney Type: ☐ Retained ☐ Assigned ☒ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number[s] from table above or Form C): NYC Dept of Ed; NYC

15

16

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

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

City: New York

State: New York

Zip: 10271

Telephone No.: (212) 416-8821

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

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14

Attorney/Firm Name: Johnathan W. Tribiano, PLLC

Address: 1811 Victory Blvd, Suite One,

City: Staten Island

State: New York

Zip: 10314

Telephone No.: 718-530-1445

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

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

1

2

3

4

5

6-11

Attorney/Firm Name: Stroock &amp; Stroock &amp; Lavan LLP

Address: 180 Maiden Lane

City: New York

State: NY

Zip: 10038

Telephone No.: 212-806-5400

Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

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

17

Attorney/Firm Name: Kirkland &amp; Ellis LLP

Address: 601 Lexington Avenue

City: New York

State: NY

Zip: 10022

Telephone No.: 212-446-4800

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

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

28

29

30

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33-36

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

Address: 800 Troy-Schenectady Rd.

City: Latham

State: NY

Zip: 12110-2455

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 C):

18

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23-25

## Use Form C for Additional Party and/or Attorney Information

The use of this form is explained in § 870.3 of the rules of the Appellate Division, Second Department (22 NYCRR 870.3). If this form is to be filed for an appeal, place the required papers in the following order: (1) the Request for Appellate Division Intervention [Form A, this document], (2) any required Additional Appeal Information Forms [Form B], (3) any required Additional Party and Attorney Information Forms [Form C], (4) the notice of appeal or order granting leave to appeal, (5) a copy of the paper or papers from which the appeal or appeals covered in the notice of appeal or order granting leave to appeal is or are taken, and (6) a copy of the decision or decisions of the court of original instance, if any.

## Supreme Court of the State of New York

## Appellate Division : Second Judicial Department

**Form B – Additional Appeal Information**

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

## Paper Appealed From (check one only):

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

Court: New York State Supreme Court

County: Richmond County

Dated: October 22, 2015

Entered: October 28, 2015

Judge (name in full): Philip G. Minardo

Index No.: Consolidated Index No. 101105/2014

Stage: ☒ Interlocutory ☐ Final ☐ Post-FinalTrial: ☐ Yes ☒ No If Yes: ☐ Jury ☐ Non-Jury

## Description of Appeal

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

Appeal of Decision and Order entered October 28, 2015 in which the Hon. Philip G. Minardo, J.S.C. denied the motion of the Intervenor-Defendants New York City Department of Education and City of New York ("City Defendants") for an order (1) pursuant to Rule 3211(a)(2) New York Civil Practice Law and Rules ("CPLR") dismissing the consolidated actions for mootness, lack of justiciability, and prematurity, and (2) pursuant to CPLR 2221(e) granting leave to renew City Defendants' prior motion to dismiss, and upon renewal, dismissing the above-captioned consolidated actions on the grounds that there have been changes in law upon which City Defendants' prior motion to dismiss should have been granted.

Amount: N/A

Issues: Whether the Supreme Court erred when it denied Intervenor-Defendants' motion to dismiss where recent legislation amending the challenged statutes mooted the case and Plaintiffs' claims are, *inter alia*, non-justiciable, unripe, and fail to state a claim.

V2 6/15/2010

Form B – RADI – Civil

## Supreme Court of the State of New York

## Appellate Division : Second Judicial Department

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

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

**Additional Attorney Information**

Attorney/Firm Name: Arthur P. Scheuermann, Esq. School Administrators Ass'n of NYS

Address: 8 Airport Park Blvd.

City: Latham

State: NY

Zip: 12110

Telephone No.: 518-213-8488

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):

26 27

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 – RAD – Civil



Office of the Richmond County Clerk - Page 1 of 3 11/2/2015 1:45:29 PM

RICHMOND COUNTY CLERK  
OCT 28 P 2:14  
2015 OCT 28 P 2:14

**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 OGIBENE, JR., LONNETTE R. TUCK,  
and KAREN E. MAGEE, individually and as President  
of the New York State United Teachers; PHILIP A.  
CAMMARATA, MARK MAMURETTI, and THE  
NEW YORK CITY DEPARTMENT OF EDUCATION.

Intervenor-Defendants.

DCM PART 6

HON. PHILIP G. MINARDO

DECISION & ORDER

Index No. 101105/14

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

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

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

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

Papers  
Numbered

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

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

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

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

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

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

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

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

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

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

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

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

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(c)(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.

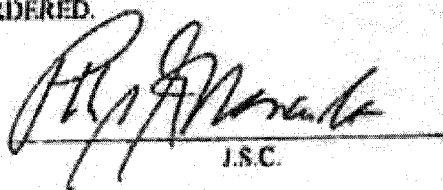
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MYMOENA DAVIDS, et al. v. THE STATE OF NEW YORK, et al.

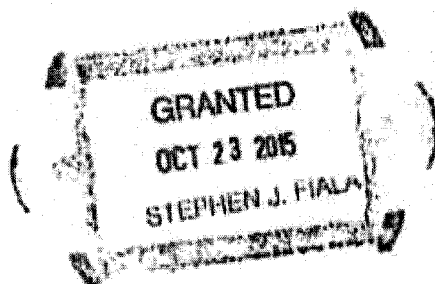
Nonetheless, given the extensive nature of discovery likely to be required in this case, it is only proper that all further proceedings in this matter should be stayed pending the determination of the Appellate Division.

Accordingly, it is

SO ORDERED.

  
J.S.C.

Dated: Oct 22, 2015





**AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL**

**STATE OF NEW YORK, COUNTY OF NEW YORK, SS:**

April Wright, being duly sworn, deposes and says:

That on the 2 day of December, 2015, she served the annexed Notice of Appeal

upon

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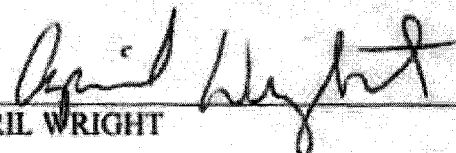
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being the address within the State theretofore designated by her for that purpose, by depositing a copy of the same, enclosed in a prepaid wrapper in a post office box situated at 100 Church Street in the Borough of Manhattan, City of New York, regularly maintained by the Government of the United States in said City.

  
APRIL WRIGHT

Sworn to before me this  
2 day of December, 2015

  
NOTARY PUBLIC

**CHERYL WHITE**  
Commissioner of Deeds  
City of New York No. 2-13542  
Certificate Filed in New York County  
Commission Expires January 1, 2017

Index No. 101105/14

**SUPREME COURT OF THE STATE OF NEW  
YORK COUNTY OF RICHMOND**

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

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.,

Defendants,

-and-

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

Intervenor-Defendants.

**NOTICE OF APPEAL**

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NYCLIS No. 2014-026935*

*Due and timely service is hereby admitted.*

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