

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND: DCM PART 6

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MYMOENA DAVIDS, by her parent and natural guardian  
MIAMONA DAVIDS, ERIC DAVIDS, by his parent  
and natural guardian MIAMONA DAVIDS, ALE){!  
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, JCYZ 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

**NOTICE OF  
MOTION**

Index No. 101105/14

(Minardo, J.S.C.)

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.

-----) {

-----) {

JOHN KEONI WRIGHT; GINET BORRERO; **TAVANA**  
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,

- 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.

-----) {

**PLEASE TAKE NOTICE** that upon the Amended Verified Complaint filed by plaintiffs Mymoena Davids, Eric Davids, Miamona Davids, Alexis Peralta, Stacy Peralta, Lenora Peralta, Angela Peralta, Andrew Henson, Christine Henson, Adrian Colson, Darius Colson, Jacqueline Colson, Samantha Pirozzolo, Franklin Pirozzolo, Sam Pirozzolo, Izaiyah Ewers, and Kendra Oke in this consolidated action; the Wright Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief filed by plaintiffs John Keoni Wright, Ginet Borrero, Tauana Goins, Nina Doster, Carla Williams, Mona Pradia, Angeles Barragan, Laurie Townsend, and Delaine Wilson in this consolidated action; the Affirmation of Assistant Attorney General Steven L. Banks, dated May 27, 2015, and the exhibits annexed thereto; the Memorandum of Law in Support of State Defendants' Motion to Dismiss and/or For Leave to Renew, or, Alternatively, for a Stay of the Proceedings, dated May 27, 2015; and upon all other papers and proceedings herein, the undersigned on behalf of defendants THE STATE OF NEW YORK; THE BOARD

OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (also sued here as "THE NEW YORK STATE BOARD OF REGENTS"); and THE NEW YORK STATE EDUCATION DEPARTMENT (collectively the "State Defendants") will move this Court on the 11th day of August 2015, at 10:00 a.m., or as soon thereafter as counsel may be heard, at the Courthouse, 10 Richmond Terrace, Staten Island, New York, in DCM Part 6, for an order: (i) dismissing the respective consolidated amended complaints pursuant to CPLR Rule 3211(a)(2) for mootness and lack of justiciability; (ii) granting leave to renew State Defendants' prior motion to dismiss, pursuant to CPLR Rule 2221(e), on the ground that there have been changes in the law upon which the State Defendants' motion to dismiss should be granted, and upon granting leave to renew, dismissing the consolidated amended complaints; (iii) granting, if this action is not dismissed in its entirety, a stay of proceedings in this action, pursuant to CPLR § 2201, pending the outcome of the pending appeals of the Decision and Order, entered March 20, 2015; and (iv) granting such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the briefing schedule approved by the Court, opposition papers are to be served by June 26, 2015, and reply papers are to be served by July 7, 2015.



Dated: New York, New York  
May 27, 2015

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for State Defendants  
By:

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Assistant Attorney General  
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND: DCM PART 6

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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, JCYZ 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

AFFIRMATION OF  
ASSISTANT ATTORNEY  
GENERAL STEVEN L.  
BANKS IN SUPPORT OF  
STATE DEFENDANTS'  
MOTION TO DISMISS,  
FOR LEAVE TO RENEW,  
AND FOR A STAY

Index No. 101105/14

(Minardo, J.S.C.)

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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JOHN KEONI WRIGHT; GINET BORRERO; TAVANA  
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 -

PIFILIP 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.

-----) (

STEVEN L. BANKS, an attorney duly admitted to practice in the Courts of the State of  
New York, hereby affirms under penalty of perjury:

1. I am an Assistant Attorney General in the office of ERIC T. SCHNEIDERMAN,  
the Attorney General of the State of New York, attorney for defendants THE STATE OF NEW  
YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW  
YORK (also sued here as "The New York State Board of Regents"); and THE NEW YORK  
STATE EDUCATION DEPARTMENT (collectively the "State Defendants"). I submit this  
affirmation in support of State Defendants' combined motion to dismiss the amended complaints  
filed in this consolidated action, for leave to renew State Defendants' prior motion to dismiss,  
and, if this action is not dismissed, for a stay of all proceedings pending a decision on the  
pending appeals from the Decision and Order, entered March 20, 2015.

2. The following attachments are true and accurate copies of documents previously

filed in this action or in the public record that are cited in the accompanying memorandum of law.

3. Attached hereto as Exhibit A is a copy of the Amended Verified Complaint filed in this action by the Davids plaintiffs, dated July 24, 2014.

4. Attached hereto as Exhibit B is a copy of the Wright Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief, dated November 13, 2014.

5. Attached hereto as Exhibit C is a copy of Chapter 56 of the Laws of 2015.

6. Attached hereto as Exhibit D is a copy of the Budget Bill submitted by the Governor and dated January 21, 2015.

7. Because one branch of this combined motion seeks leave to renew the State Defendants' prior motion to dismiss, for ease of reference attached hereto are copies of the following, previously submitted motion papers.

8. Attached hereto as Exhibit E is a copy of the Notice of State Defendants' Motion to Dismiss, dated October 28, 2014.

9. Attached hereto as Exhibit F is a copy of the Memorandum of Law in Support of State Defendants' Motion to Dismiss the Consolidated Complaints, dated October 28, 2014.

10. Attached hereto as Exhibit G is a copy of the Affirmation of Assistant Attorney General Steven L. Banlcs in Support of State Defendants' Motion to Dismiss, dated October 28, 2014. Because copies of the amended complaints are separately attached as Exhibits A and B hereto, the complaints that were attached as exhibits to the October 28, 2014 affirmation are not included as part of Exhibit G.

11. Attached hereto as Exhibit H is a copy of Davids Plaintiffs' Memorandum of Law in Opposition to Defendants' and Intervenor-Defendants' Motions to Dismiss the Action, dated

December 5, 2014.

12. Attached hereto as Exhibit I is a copy of the Dauids Plaintiffs' Affirmation in Opposition to Defendants' and Intervenor-Defendants' Motions to Dismiss the Action, dated December 5, 2014. Because a copy of the Dauids plaintiffs' amended complaints is separately attached as Exhibit A hereto, the Dauids plaintiffs' amended complaint does not appear as part of Exhibit I.

13. Attached as Exhibit J is a copy of the Wright Plaintiffs' Memorandum of Law in Opposition to Defendants' and Intervenor-Defendants' Motions to Dismiss the Action, dated December 5, 2014.

14. Attached as Exhibit K is a copy of the Reply Memorandum of Law in Further Support of State Defendants' Motion to Dismiss the Consolidated Complaints, dated December 15, 2014.

15. Attached as Exhibit L is a copy of the Supplemental Affirmation of Assistant Attorney General in Support of State Defendants' Motion to Dismiss, dated December 15, 2014.

16. Attached as Exhibit M is a copy of the Decision and Order, entered March 20, 2015.

Dated: New York, New York  
May 27, 2015

**JC."**  
STEVEN L. BANKS  
Assistant Attorney General

Printed on Recycled Paper

# Exhibit A



SUPREME COURT OF THE STATE OF  
NEW YORK COUNTY OF RICHMOND

Index No.: 101105/14

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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 his parent and natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his parent and natural guardian KENDRA OKE,

Plaintiffs,

**VERIFIED AMENDED COMPLAINT**

-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.

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## **PRELIMINARY STATEMENT**

1. The New York Court of Appeals **has** recognized that a child's right to a "sound basic education" is a fundamental interest guaranteed by the New York Constitution. *Campaign for Fiscal Equity, Inc. v. State ("CFE I")*, 86 N.Y.2d 307, 315 (1995). The Court **has** "unanimous[ly] recognize[ed] . . . the importance of education in our democracy." *Campaign for Fiscal Equity, Inc. v. State ("CFE II")*, 100 N.Y.2d 893, 906 (2003). Education is necessary "to enable children to eventually function productively as civic participants capable of voting and serving on a jury." *CFE I*, 86 N.Y.2d at 317; *see also CFE II*, N.Y.2d at 905. And it is an "indispensable" part of preparing students "to compete for jobs that enable them to support themselves." *Id.* at 906. Indeed, the "problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before." *Id.* (internal citations and quotation marks omitted).

2. In addition, "the State has obligated itself constitutionally to ensure the availability of a 'sound basic education' to all its children." *CFE II*, 100 N.Y.2d at 902. The State "has ultimate responsibility for the schools" that cannot be delegated. *Id.* at 924.

3. New York's public school teachers play a vital role in providing New York students with the education to which they are entitled. "The first and surely most important input [in determining whether children are receiving a sound basic education] is teaching." *CFE II*, 100 N.Y.2d at 909. Recent studies have confirmed that the key determinant of educational effectiveness is teacher quality. *See, e.g.,* Raj Chetty et al., *The Long-Term Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood*, American Economic Review (forthcoming), available at [http://obs.rc.fas.harvard.edu/chetty/wl\\_9424.pdf](http://obs.rc.fas.harvard.edu/chetty/wl_9424.pdf). Students taught by effective teachers are more likely to attend college, attend higher-quality colleges, earn more,

live in higher socioeconomic status neighborhoods, save more for retirement, and are less likely to have children during their teenage years. *Id.*

4. Although the majority of teachers in New York are providing students with a quality education, some New York K-12 public school students are being taught by teachers who fail to provide their students with the knowledge and skills necessary to be meaningful civic participants and competitive job applicants. *CFE II*, 100 N.Y. at 905. The impact of these ineffective teachers on students is enormous. Even when they are well-intentioned, as most teachers are, such ineffective teachers have an enduring and negative effect on the lives of their students.

5. A "substantial cause," *CFE II*, 100 N.Y. at 903, of the continued employment of these ineffective teachers in the New York public school system is the continued enforcement of certain New York statutes (the "Challenged Statutes") that effectively prevent the removal of ineffective teachers from the classroom, and, in economic downturns, require layoffs of more competent teachers.<sup>1</sup> The Challenged Statutes prevent school administrators from prioritizing- or even meaningfully considering-the interests of their students in having effective teachers when making employment and dismissal decisions. By forcing these critical decisions to be made primarily or exclusively on grounds *other* than students' need for effective teachers, and therefore perpetuating the employment within the school system of a number of ineffective teachers who do not serve students' needs and who, in fact, have a substantially negative impact on students' education, these laws infringe upon New York students' fundamental right to a sound basic education.

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<sup>1</sup> The Challenged Statutes are New York Education Law Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014, 3020-a, and 3013(2).

6. For example, in New York City, the largest school district in the State with over 75,000 teachers, only 12 teachers were dismissed "for incompetent teaching" over the entire decade from 1997 to 2007--Only 1.2 teachers per year. See Katharine B. Stevens, *Firing Teachers: Mission Impossible*, N.Y. Daily News, Feb. 17, 2014, available at <http://www.nydailynews.com/opinion/firing-teachers-mission-impossible-article-1.1615003>. On information and belief, there were far more than 12 ineffective teachers in the New York City school district over that ten year period.

7. The Challenged Statutes are therefore unconstitutional. New York students taught by ineffective teachers who continue teaching as a result of the Challenged Statutes are denied the fundamental right to a sound basic education required by Article XI, § 1 of the New York Constitution. For these reasons, Plaintiffs ask this Court to declare the Challenged Statutes unconstitutional and to permanently enjoin their enforcement.

## **PARTIES**

8. Plaintiff Mymoena Davids is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Mymoena Davids is African-American and attends public school in New York City. Miamona Davids, is a single, unemployed mother, is the parent and natural guardian of Plaintiff Mymoena Davids and intends to file a petition with the court to act as guardian ad litem.

9. Plaintiff Eric Davids is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Eric Davids is African-American and attends public school in New York City. Miamona Davids, an unemployed single mother, is the parent and natural guardian of Plaintiff Eric Davids and intends to file a petition with the court to act as guardian ad litem.

10. Plaintiff Alexis Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Alexis Peralta attends public school in New York City. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Alexis Peralta and intends to file a petition with the court to act as *guardian ad litem*.

11. Plaintiff Stacy Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Stacy Peralta attends public school in New York City. Plaintiff Stacy Peralta has special needs. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Stacy Peralta and intends to file a petition with the court to act as *guardian ad litem*.

12. Plaintiff Lenora Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Lenora Peralta attends public school in New York City. Plaintiff Lenora Peralta attends public school in New York City. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Lenora Peralta and intends to file a petition with the court to act as *guardian ad litem*.

13. Plaintiff Andrew Henson is a child who resides in the State of New York and is guaranteed a sound basic education. Christine Henson is the parent and natural guardian of Plaintiff Andrew Henson and intends to file a petition with the court to act as *guardian ad litem*.

14. Plaintiff Adrian Colson is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Adrian Colson attends public school in New York City. Jacqueline Colson is the parent and natural guardian of Plaintiff Adrian Colson and intends to file a petition with the court to act as *guardian ad litem*.

15. Plaintiff Darius Colson is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Darius Colson attends public school in New York City. Jacqueline Colson is the parent and natural guardian of Plaintiff Darius Colson and intends to file a petition with the court to act as guardian ad /item.

16. Plaintiff Samantha Pirozzolo is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Samantha Pirozzolo attends public school in New York City. Sam Pirozzolo is the parent and natural guardian of Plaintiff Samantha Pirozzolo and intends to file a petition with the court to act as guardian ad /item.

17. Plaintiff Franklin Pirozzolo is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Franklin Pirozzolo attends public school in New York City. Sam Pirozzolo is the parent and natural guardian of Plaintiff Franklin Pirozzolo and intends to file a petition with the court to act as guardian ad litem.

18. Plaintiff Izaiyah Ewers is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Izaiyah Ewers attends public school in New York City. Kendra Oke is the parent and natural guardian of Plaintiff Izaiyah Ewers and intends to file a petition with the court to act as guardian ad litem.

19. Defendant the State of New York (the "State") is responsible for the operation, financing and administration of the New York State public school system.

20. Defendant Regents of the University of the State of New York ("Board of Regents") is an executive department of the State of New York. Its offices are located at State Education Building, 89 Washington Avenue, Room 110, Albany, New York 12234. Pursuant to

the power delegated to it by the New York Legislature, the Board of Regents determines educational policies, and promulgates rules to effectuate New York State education laws and policies. The Board of Regents presides over the New York Education Department and appoints a Commissioner of Education who is responsible for the direct management of the New York Education Department N.Y. Const. Art V, §4; N.Y. Education Law § 207.

21. Defendant the New York State Education Department (the "NYSED") is an executive agency of the State of New York. Its office is located at State Education Building, 89 Washington Avenue, Room 110, Albany, New York 12234. The Education Department implements the policies of the Board of Regents under the Commissioner's direction.

22. Defendant the City of New York (the "City") is responsible for the operation, financing and administration of the New York City public school system.

23. Defendant the New York City Department of Education ("NYCDOE") is an administrative agency of the City of New York. It has offices located at 65 Court Street, Brooklyn, New York, 11201.

24. Defendants, and those subject to their supervision, direction, and control, are responsible for the enforcement of the statutes challenged herein. Except where otherwise specified, the relief requested in this action is sought against each Defendant, as well as against each Defendant's officer's employees, and agents, and against all persons acting in cooperation with Defendant(s), under their supervision, at their direction, or under their control.

#### **JURISDICTION AND VENUE**

25. The New York State Supreme Court is the court of original jurisdiction in causes of action for declaratory judgment and injunctive relief for applications involving the interpretation and applicability of the New York State Constitution.

26. The New York State Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. CPLR Sec. 3001.

27. Venue lies in this court as Defendants' acts, decisions, and other material events have arisen within this judicial district. CPLR Sec. 506(b).

28. Similarly, at least one of the parties resides within Richmond County where this court is situated. CPLR Sec. 503(a).

### **STATEMENT OF FACTS**

#### **A. Teacher Quality Is The Key Determinant Of Educational Effectiveness**

29. Extensive research over the past 35 years supports one indisputable fact: Teachers matter. Teachers are a key determinant of the quality of education students receive and have a profound impact on students' lifetime achievement. In fact, teacher quality affects student success more than any other in-school factor. According to one of the nation's foremost education economists, "teachers near the top of the quality distribution can get an entire year's worth of additional learning out of their students compared to those near the bottom." As a result, students taught by effective teachers are more likely to attend college, attend higher-ranked colleges, earn higher salaries, reside in higher quality neighborhoods, and save for retirement.

30. Conversely, students taught by ineffective teachers-those in approximately the bottom five percent of educators in New York-suffer lifelong problems and fail to recover from this marked disadvantage. One recent study found that a student in New York who is taught by a single ineffective teacher misses out on *six or more months* of learning in a single school year and remains "stuck below grade level" for years to come. Another recent study found that



replacing an ineffective teacher with even an *average* teacher-not an above-average or superior teacher-would increase students' cumulative lifetime income by a total of \$1.4 million per classroom taught by that teacher.

31. In light of the substantial and enduring impact that teachers have on their students' achievement, removal of the ineffective teachers currently employed by the New York public school system would have a pronounced, life-altering impact on the performance of those students who would otherwise be taught by those teachers. It would therefore be in the interest of all New York public school students to ensure that ineffective teachers are promptly dismissed upon discovery of their ineffective performance.

**B. The Challenged Statutes Prevent New York School Administrators From Making Employment And Dismissal Decisions That Benefit Students**

32. Despite the profound impact teachers have on student achievement, most ineffective teachers are not dismissed for their poor performance, instead remaining as teachers in New York classrooms.

33. The Challenged Statutes make it nearly impossible for school administrators to dismiss ineffective teachers. Unable to remove these ineffective teachers from the New York school system, the statutes at issue instead compel school administrators to either leave the ineffective teachers in place or transfer them from school to school within the public school system, a phenomenon sometimes referred to as the "dance of the lemons." On information and belief, New York principals and school district administrators believe that attempting to dismiss ineffective teachers is futile and prohibitively resource-intensive, and that the dismissal process established by the Challenged Statutes is unlikely to result in dismissal of those teachers.

34. The continued employment of ineffective teachers in New York's public schools is a result of the Challenged Statutes and causes grave harm to New York's students. Those

statutes comprise a statutory scheme that makes dismissal nearly impossible or highly impractical once poor performers are identified and, when layoffs are necessary, forces districts to terminate teachers based on seniority alone, irrespective of their teaching effectiveness. This statutory scheme, enacted by the State of New York through its Legislature and enforced by Defendants, inevitably presents a total and fatal conflict with the right to a sound basic education guaranteed by the New York Constitution because it forces certain New York students to be educated by ineffective teachers who fail to provide them with the basic tools necessary to compete in the economic marketplace and participate in a democratic society.

35. In the absence of this statutory scheme, school administrators would have the ability to make employment and dismissal decisions that serve the interests of New York's students. School administrators could dismiss those teachers who are ineffective, retain only those teachers who are at least minimally effective, and reward and incentivize teachers who exhibit superior performance. The Challenged Statutes prevent school administrators from meaningfully considering their students' need for effective teachers when making teacher employment and dismissal decisions. On information and belief, in the absence of the Challenged Statutes, school administrators would make teacher employment and dismissal decisions based, in larger part and/or entirely, on their students' need for effective teachers.

#### New York's Dismissal Statutes

36. Unlike employees of private companies, public employees in New York must be afforded certain due process rights before being subject to termination or other adverse employment decisions. These due process rights must include notice of the proposed action, the reasons for the action, and the right to respond before the proposed discipline or termination can be made effective. *See Beck-Nichols v. Bianco*, 20 N.Y.3d 540, 559 (2013).

37. New York's statutory scheme, however, affords teachers "super" due process rights-an astounding array of additional rights and privileges, which are significantly greater in scope and content than due process rights-before they may be terminated for unsatisfactory performance. These rights and privileges are codified primarily in New York Education Law Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014, and 3020-a (the "Dismissal Statutes").

38. The Dismissal Statutes mandate that an inordinate number of hurdles be cleared before a district can dismiss an underperforming teacher. These hurdles result in a labyrinthine dismissal process requiring investigations, hearings, union grievances, administrative appeals, court challenges, and re-hearings--all of which can and often do take multiple years and cost hundreds of thousands of dollars.

39. Recent studies have found that the Dismissal Statutes effectively prevent New York school administrators from dismissing teachers for poor performance. One study concluded that the average cost of dismissing a teacher for ineffectiveness in New York is \$313,000, and takes an average of 830 days. *See* New York State School Boards Association, *Accountability for All* (March 2007), *available at* [http://www.nyssba.org/clientuploads/gr\\_3020a\\_reform.pdf](http://www.nyssba.org/clientuploads/gr_3020a_reform.pdf). The same study concluded that, between 1995 and 2006, just 547 teachers statewide--out of nearly 220,000 teachers total--were dismissed via the Dismissal Statutes, either because they were ineffective or for other reasons, such as misconduct. The dismissal process **has** not improved in the years since 2007. *See* Katharine B. Stevens, *Firing Teachers: Mission Impossible*, N.Y. Daily News, Feb. 17, 2014, *available at* <http://www.nydailynews.com/opinion/firing-teachers-mission-impossible-article-1.1615003>.

40. In light of the difficulty, complexity, cost, and length of time associated with the removal process under the Dismissal Statutes, dismissal proceedings are rarely initiated for unsatisfactory performance alone. Further, when the dismissal process is initiated based on teacher performance, it rarely results in dismissal.

41. When a school administrator believes a teacher to be ineffective, the Dismissal Statutes often require the administrator to leave the teacher in the classroom for one or more years, in order to attempt to provide the documentation of ineffective performance necessary to initiate and prevail in dismissal proceedings. Even after the dismissal process has been initiated, school administrators are often forced to leave ineffective teachers in the classroom throughout the dismissal process.

42. In the absence of the Dismissal Statutes, teachers would retain the same due process rights afforded to other New York public employees.

43. On information and belief, in the absence of the Dismissal Statutes, school administrators could and would dismiss ineffective teachers that, under the current system, they are compelled to leave in place. The Dismissal Statutes, alone and in conjunction with the other statutes at issue, ensure that a certain number of ineffective teachers who are unable to prepare students to compete in the economic marketplace or to participate in a democracy retain their employment in the New York school system, and substantially reduces the overall quality of the teacher workforce in New York public schools.

#### New York's Last-In First-Out ("LIFO") Statute

44. New York Education Law § 3013, subdivision (2) (the "LIFO Statute") mandates the selection criteria by which teachers are to be included in any district-wide layoff. The LIFO

Statute creates a seniority-based layoff system, irrespective of a teacher's performance, effectiveness, or quality.

45. The LIFO Statute requires that layoff notices be issued, and layoffs be conducted, in accordance with seniority. It states: "Whenever a trustee, board of trustee, board of education or board of cooperative educational services abolishes a provision under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued." N.Y. Educ. Law § 3013, subd. (2).

46. Seniority, defined as the number of years of teaching experience, is not an accurate predictor of teacher effectiveness, as recent studies have demonstrated. Yet the LIFO Statute mandates that the selection of teachers to be included in any layoff be governed exclusively by seniority. For all practical purposes, the LIFO Statute prevents teacher effectiveness from being taken into account-to any extent or degree-in connection with layoff decisions.

47. Layoffs conducted in accordance with the LIFO Statute force school administrators to lay off top-performing teachers with low seniority, and prevent school administrators from laying off low-performing teachers with high seniority, all to the great detriment of New York students. One recent study demonstrated that making layoff decisions based on teachers' seniority instead of teachers' performance costs students \$2.1 million in lifetime earnings per teacher laid off.

48. Layoffs of teachers in New York have occurred recently and are likely to recur in the near future. In 2011, for example, nearly 3 percent of New York teachers were laid off under the LIFO statute statewide-more than 7,000 teachers, including top performers.

49. On information and belief, in the absence of the LIFO Statute, school administrators forced to implement district-wide layoffs would select the teachers to be included in such layoffs based, in larger part or entirely, on the performance and effectiveness of those teachers and the outcomes of their students.

50. The LIFO Statute also hinders recruitment of new teachers by creating an environment in which newly and recently hired teachers face a heightened risk of receiving layoff notices and being laid off regardless of their performance.

51. The LIFO Statute, alone and in conjunction with the other statutes at issue, ensures that a certain number of ineffective teachers who are unable to prepare students to compete in the economic marketplace or to participate in a democracy retain employment in the New York school system, and substantially reduces the overall quality of the teacher workforce in New York public schools.

**E. The Challenged Statutes, Individually And Collectively, Violate New York Students' Right to A Sound Basic Education**

52. As a result of the Challenged Statutes, both individually and collectively, a certain number of ineffective teachers retain employment in the New York public school system despite their ineffective performance. In the absence of the Challenged Statutes, most, if not all, of these ineffective teachers would be dismissed for their poor performance. In addition, in the absence of the Challenged Statutes, school administrators would have the flexibility to attract teachers of superior performance to New York's public schools, retain high-performing teachers even during economic layoffs, and provide incentives to encourage teachers to become or remain high performers. Instead, the Challenged Statutes prevent school administrators from making employment and dismissal decisions that serve the interest of New York's students in having

effective teachers. Such a system **has** a substantially negative impact on the education that certain New York public school students receive.

53. Students taught by ineffective teachers are not "afford[ed] . . . the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants" or "prepare[s] [them] to compete for jobs that enable them to support themselves." *CFE II*, 100 N.Y.2d at 906, 908. As the Court of Appeals has held, "a high school level education is now all but indispensable" for students, yet students taught by ineffective teachers are less likely to graduate from high school. And even if they graduate, such students are less likely to have gained the knowledge expected of a high school graduate. To the contrary, students taught by ineffective teachers lose six or more months of learning in a single school year and never catch up to their peers. Moreover, these negative effects persist beyond high school, reducing students' college attendance rates, college graduation rates, and lifetime earnings. All of these negative effects constitute the denial of a sound basic education, in violation of the New York Constitution.

54. As students in New York public schools, each and every one of the Plaintiffs has been harmed, or is at substantial risk of being harmed, as a result of the Challenged Statutes.

### **CLAIMS FOR RELIEF**

#### **CLAIM ONE: VIOLATION OF EDUCATION ARTICLE (DISMISSAL STATUTES)**

55. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

56. All students in New York have a fundamental right to a sound basic education. *Campaign for Fiscal Equity, Inc. v. State ("CFE I")*, 86 N.Y.2d 307, 315 (1995).

57. The Dismissal Statutes violate the Education Article of the New York Constitution, art. XI, § 1.

58. The Dismissal Statutes violate the Education Article because they have a substantially negative impact on those New York public school students taught by ineffective teachers who, absent the Dismissal Statutes, would be dismissed for poor performance. The Dismissal Statutes deprive those students of a sound basic education.

**CLAIM TWO: VIOLATION OF EDUCATION ARTICLE  
(LIFO STATUTE)**

59. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

60. All students in New York have a fundamental right to a sound basic education. *Campaignfor Fiscal Equity, Inc. v. State ("CFE I")*, 86 N.Y.2d 307, 315 (1995).

61. The LIFO Statute violates the Education Article of the New York Constitution, art. XI, § 1.

62. The LIFO Statute violates the Education Article because it has a substantially negative impact on those New York public school students taught by more senior, ineffective teachers who would otherwise be laid off for poor performance, absent the LIFO Statute. It also has a substantially negative impact on those New York public school students who would have been taught by less senior, effective teachers, had those teachers not lost who lose their jobs because of the LIFO Statute. The LIFO Statute deprives those students of a sound basic education.

**CLAIM THREE: DECLARATORY RELIEF**

63. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.



64. An actual and justiciable controversy between the Plaintiffs and Defendants because Plaintiffs Defendants dispute, that Defendants' actions and inactions as described have violated the constitutional provisions cited herein.

Plaintiffs a declaration that the Dismissal Statutes and the LIFO Statute separately and u""rr" ,. violate the right to a sound education protected by the Education Article of the York Constitution.

## REQUEST FOR RELIEF

**WHEREFORE**, Plaintiffs respectfully pray for judgment against Defendants as follows:

1. Plaintiffs respectfully request that this Court enter a declaratory judgment stating that the Dismissal Statutes and the LIFO Statute, separately and together, violate the Education Article of the New York Constitution.

2. Plaintiffs respectfully request that this Court enter a permanent injunction enjoining the enforcement, application, or implementation of the Dismissal Statutes and the LIFO Statute.

3. Plaintiffs respectfully request that this Court enter a permanent injunction enjoining Defendants from implementing at any time in the future, by law or by contract, any system of teacher employment, retention and dismissal that is substantially similar to the framework implemented by the Challenged Statutes, in that it (1) vests in teachers greater protections against dismissal than the due process rights applicable to other New York state employees, or (2) prevents school administrators from meaningfully considering teacher effectiveness when making employment, retention and termination decisions about teachers.

4. Plaintiffs respectfully request that this Court retain continuing jurisdiction over this matter until such time as the Court has determined that Defendants have fully and properly complied with its Orders.

5. Award Plaintiffs reasonable costs, litigation expenses, and attorneys' fees.

6. Grant Plaintiffs such additional relief as may be just, proper and equitable.

Dated: July 24, 2014

Yours, etc.

Staten Island, New York

**JONATHAN W. TRIBIANO, PLLC**

JONATHAN W. TRIBIANO, **ESQ.**

Suite One

1811 Victory Boulevard,  
Staten Island, New York 10314  
Tel.: (718) 530-1445

VERIFICATION

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

SAM PIROZZOLO, being duly sworn, deposes and says: I am the parent and natural guardian of SAMANTHA PIROZZOLO and FRANKLIN PIROZZOLO, Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

By: SAM PIROZZOLO

Sworn to before me this  
C{!tth day of July 2014

C)(11.  
Notary Public

!LL



VERIFICATION

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

MIAMONA DAVIDS, being duly sworn, deposes and says: I am the parent and natural guardian of MYMOENA DAVIDS and ERIC DAVIDS. Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters there. I am not alleged to be based on information and belief, and as to those matters I believe it to be true.

By: \_\_\_\_\_

MIAMONA DAVIDS

Sworn to before me this  
"1" day of July 2014

Syahan Peguero  
Notary Public

SYAHAN PEGUERO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01PE6245440  
Qualified in Bronx County  
My Commission Expires July 25, 2015

VERIFICATION

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

CHRISTINE HENSON, being duly sworn, deposes and says: I am the parent and natural guardian of ANDREW HENSON, Plaintiff in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and I know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

By: \_\_\_\_\_  
CHRISTINE HENSON

Sworn to before me this  
day, of July 2014

*Cheryl* et al.

Notary Public

SYAHAN PERUERO  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 01P162S4.40  
Qualified in Bronx county  
My Commission expires July 25, 2015

## VERIFICATION

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

KENDRA OKE, being duly sworn, deposes and says: I am the parent and natural guardian of IZAR YAH EWERS, Plaintiff in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it

RA OKE

Sworn to before me this  
"21" day of July 2014

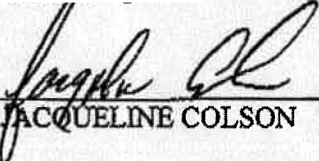
Syahan Peguero  
Notary Public

SYAHAN PEGUERO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01PE6245440  
Qualified in Richmond County  
My Comm. Expires July 25, 2015

VERIFICATION

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

JACQUELINE COLSON, being duly sworn, deposes and says: I am the parent and natural guardian of ADRIAN COLSON and DARIDS COLSON, Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters the deponent believes it to be true.

By:   
JACQUELINE COLSON

Sworn to before me this  
11th day of July 2014

 Notary Public

SVAHAN PEGUERO  
NOTARY PUBLIC STATE OF NEW YORK  
No. 01P6248440  
Qualified in RICHMOND county  
My Commission Expires July 25, 2015

# Exhibit b



SUPREME COURT FOR        STATE OF NEW YORK  
COUNTY OF RICHMOND

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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 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 his 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,

Intervenors-Defendants,

- and -

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants.

Index No.: 101105-2014

*Wright* Plaintiffs' Amended  
Complaint for  
Declaratory and Injunctive  
Relief

Hon. Justice Minardo

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JOHN KEONI WRIGHT; GINET BORRERO; TAUANA GOINS;  
NINA 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., LONNETIE R. TUCK, and KAREN E. MAGEE,  
Individually and as President of the New York State United Teachers,

Intervenors-Defendants,

- and -

PHILIPA 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.

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## **PRELIMINARY STATEMENT**

1. The New York Constitution guarantees all children in the State a sound basic education. Yet in any given school year, New York schoolchildren are at risk of being assigned to an ineffective teacher.

2. A child's teacher is the single most influential school-based variable in the adequacy of the child's education, and a teacher's quality is a critical determinant of a student's educational success. For the all-too-many New York children taught by an ineffective teacher, the damage to their educational advancement is significant and long-lasting.

3. The status quo in New York's education system is neither tolerable nor unavoidable. It is the product of outdated laws that protect ineffective teachers well above what due process requires and at the direct expense of their students' constitutional rights. These laws hamstring school administrators from making employment decisions based on student need and obstruct them from restoring the quality of the New York public education system. Cumulatively, these laws make it nearly impossible to dismiss and discipline teachers with a proven track record of ineffectiveness or misconduct. Plaintiffs, and other New York State schoolchildren, are the primary victims of this failing system.

4. Plaintiff John Keoni Wright's twin daughters, Kaylah and Kyler are New York public school students whose divergent experiences at school exemplify the direct effects that a teacher's quality has on a child's education. Kaylah and Kyler share nearly everything in common, including their birth date and home life. But one variable separates their life experiences and futures: last year, Kyler was assigned to an ineffective teacher.

5. The effects are apparent. In one year alone, the difference in the twins' teachers caused measurable differences in their educational progress. Kaylah excelled with the benefit of an effective teacher, while Kyler fell behind and is still struggling to catch up with her twin. In terms of reading skills alone, Kaylah and Kyler are now reading several levels apart. The gulf between Kaylah's and Kyler's learning illustrates what is a matter of common sense. An ineffective teacher can leave a student ill-equipped to advance, or even to stay apace of those alike in all respects except the quality of their teacher.

6. This suit challenges the constitutionality, in whole or in part, of Education Laws §§ 2509, 2510, 2573, 2585, 2588, 2590, 3012, 3013, 3020, and 3020(a) (the "Challenged Statutes"). The Challenged Statutes confer permanent employment, prevent the removal of ineffective teachers from the classroom, and mandate that layoffs be based on seniority alone, rather than effectiveness. These Statutes prevent students like Kyler Wright and the other plaintiffs from obtaining the sound basic education guaranteed under Article XI, § 1 of the New York Constitution (the "Education Article").

7. This suit seeks to strike down the legal impediments that prevent New York's schools from providing a sound basic education to all of their students, as guaranteed by the New York Constitution. Plaintiffs seek a declaration that the Challenged Statutes violate the constitutional rights of New York schoolchildren and a permanent injunction to prevent their future enforcement.

### **JURISDICTION AND VENUE**

is proper in the County of Albany pursuant to the Civil Practice Law and Rules 503(a) and 505(a) because the Defendants' principal offices are located in the County of Albany.

9. The Supreme Court has jurisdiction to hear this case and grant declaratory judgment and appropriate injunctive relief pursuant to Civil Practice Law and Rules 3001 and 3017(b).

### **PARTIES**

#### **Plaintiffs**

10. Plaintiff John Keoni Wright sues on his own behalf and on behalf of his minor children, Kaylah and Kyler Wright, students who attend P.S. 158, a Brooklyn school in the New York City School District.

11. Plaintiff Ginete Borrero sues on her own behalf and on behalf of her minor child, Raymond Diaz, Jr., a student who attends L.S. 171, a Brooklyn school in the New York City School District.

12. Plaintiff Tauana Goins sues on her own behalf and on behalf of her minor child, Tanai Goins, a student who attends P.S. 106, a Queens school in the New York City School District.

13. Plaintiff Nina Doster sues on her own behalf and on behalf of her minor children, Patience and King McFarlane, students who attend P.S. 140, a Queens school in the New York City School District.

14. Plaintiff Carla Williams sues on her own behalf and on behalf her minor child, Jada Williams, a student who previously attended Community School No. 3 in the Rochester City School District and now attends World of Inquiry No. 58 in the Rochester City School District.

15. Plaintiff Mona Pradia sues on her own behalf and on behalf of minor child, Adia-Jendayi Pradia, a student who previously attended Audubon School No. 333 in the Rochester City School District and now attends Nonnan Howard School, paid for by the Rochester City School District.

16. Plaintiff Angeles Barragan sues on her own behalf and on behalf of her minor child, Natalie Mendoza, a student who attends P.S. 94, Kings College Elementary School, a Bronx school in the New York City School District

a) Plaintiff Laurie Townsend sues on her own behalf and on behalf of her minor child, Nakia Townsend, a student who attends P.S. 101, a Queens school in the New York City School District.

b) Plaintiff DeLaine Wilson sues on her own behalf and on behalf of her minor child, Meta Wilson, a student who attends Albany High School in the Albany City School District.

### **Defendants**

17. Defendant the State of New York (the "State") is responsible for the educational system in New York.

18. Defendant Regents of the University of the State of New York ("Board of Regents") is an executive department of the State of New York. The Board of Regents is

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empowered the New York Legislature to determine educational policy and promulgate rules to New York education law and policies.

19. Defendant Merry H. Tisch is the Chancellor of the Board of Regents. As Chancellor, Ms. is the head of the Board of Regents and presides over Regents meetings and appoints its members. N.Y. Educ. L. § 203; 8 NYCRR 3.1(a). She is sued in her official capacity.

20. Defendant John B. King, Jr. is the Commissioner of Education and President of the University of the State of New York. As Commissioner, Mr. King has the obligation and authority to supervise and monitor all public schools and to assure that educational services are being provided in New York as required by law and regulation. N.Y. Educ. L. §§ 302-03, 305(2), 308. He is sued in his official capacity.

21. Collectively, the defendants are legally responsible for the operation of the New York State educational system and are required to ensure that its operation complies with relevant state and federal constitutional requirements.

## **BACKGROUND**

22. The Education Article provides 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." N.Y. Const. Art. XI, § 1. Article XI guarantees all students in New York a sound basic education. A sound basic education is the key to a promising future, preparing children to realize their potential, be productive citizens, and contribute to society.

The [redacted] fails to meet its constitutional obligation when it provides deficient inputs to adequately educate its students. Students are entitled to adequate teaching by effective personnel because teachers are the core “input” of a sound basic education.

The New York Legislature enacted the Challenged Statutes. Through enforcement by the Defendants, the Challenged Statutes confer permanent employment, prevent the removal of ineffective teachers, and result in layoffs of effective teachers in favor of effective, more senior teachers. Under the existing tenure laws, teachers are granted essentially permanent employment before their effectiveness can be determined. The current dismissal and disciplinary laws for tenured teachers make it nearly impossible to remove ineffective teachers from the classroom once they are prematurely tenured.

25. Because of the Challenged Statutes, New York schoolchildren are taught by ineffective teachers who otherwise would not remain in the classroom. These laws prevent school administrators from dismissing and disciplining teachers who do not meet the most basic standards of adequacy and effectiveness, and from making employment decisions driven by their students' constitutional right to a sound basic education.

26. The State's promotion and retention of ineffective teachers, through its promulgation and enforcement of the Challenged Statutes, violates the New York Constitution.

#### **I. TEACHER EFFECTIVENESS IS A NECESSARY INPUT TO A SOUND BASIC EDUCATION.**

27. Effective teachers are the most important factor in student performance. Recent studies have confirmed what the Court of Appeals recognized over ten years ago: teachers "are



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the first and surely the most important input" in creating an adequate education. *Campaign for Fiscal Equality, Inc. v. State (CFE II)*, 100 N.Y.2d 909 (2003).

28. The key determinant of educational effectiveness is teacher quality. (See, e.g., Ex. 1, Chetty et al., Nat'l Bureau of Econ. Research, *The Long-Term Impacts of Teachers: Teacher Value-Added and Student Outcomes in Adulthood* (2011).)

29. In the short-term, effective teachers provide tangible educational results in the form of higher test scores and higher graduation rates. (Ex. 2, Bill & Melinda Gates Found., *Ensuring Fair and Reliable Measures of Effective Teaching: Culminating Findings from the MET Project's Three-Year Study* (2013); Ex. 3, Eric A. Hanushek, *Valuing Teachers: How Much Is a Good Teacher Worth?*, Education Next, Summer 2011, at 42.)

30. In the long-term, students taught by effective teachers are given a strong foundation from which to advance and achieve. These students are less likely to become teenage parents and more likely to progress in their education, attending college and matriculating at colleges of higher quality. They are more likely to earn more money throughout their lives, live in neighborhoods of higher socioeconomic status, and save more money for retirement. (See Ex. 1, Chetty et al., *supra*.)

31. Teacher quality affects student success more than any other in-school factor. High-quality instruction from effective teachers helps students overcome the traditional barriers demographics impose, (see Ex. 4, Steven G. Rivkin et al., *Teachers, Schools, and Academic Achievement*, 73 *Econometrica* 417, 419 (2005)), and may have the greatest positive effect on low-performing students and minorities, (see Ex. 5, Daniel Aaronson et al., *Teachers and Student Achievement in the Chicago Public High Schools*, 25 *J. Lab. Econ.* 95, 126-128 (2007)).

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If schools were to replace the least effective teachers, it add enonnous to the future earnings of students and the U.S. economy as a whole. 3, Hanushek, at 43-44.)

33. In light of the substantial and enduring effect that teachers have on their students' achievement, the ability to remove ineffective teachers employed by the New York public school system would improve the lives and better the futures of the students who would otherwise be assigned to those teachers. Yet Challenged Statutes deprive New York students of a sound basic education, providing no true means for administrators to remove teachers with a track record of ineffectiveness, and causing too many students to remain in the classroom with ineffective teachers.

## **II. THE TEACHER TENURE STATUTES CONFER PERMANENT EMPLOYMENT ON INEFFECTIVE TEACHERS.**

34. Sections 2509, 2573, 3012 and 3012-c (the "Permanent Employment Statutes"), alone and in conjunction with the other statutes at issue, ensure that ineffective teachers unable to provide students with a sound basic education are granted virtually permanent employment in the New York public school system and near-total immunity from termination.

35. New York Education Law § 3012(2)<sup>1</sup> provides that "at the expiration of the probationary tenn of a person appointed for such tenn, subject to the conditions of this section, the superintendent of schools shall make a written report to the board of education or the trustees of a common school district recommending for appointment on tenure those persons who have

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Section 3012 applies to certain school districts, including common school districts and/or school districts employing fewer than eight teachers, other than city school districts. Section 2509 applies the same law to school districts of cities with less than 125,000 inhabitants. Section 2573 applies the same law to school districts of cities with 125,000 inhabitants or more.

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been found competent, efficient and satisfactory, consistent with any applicable rules of the board of regents adopted pursuant to section 3012(b) or this article.”

Tenure confers extraordinary benefits and protections, but it is out of the ordinary for a teacher to be denied tenure. The default is to grant teachers tenure and the process is a formality, rather than an appraisal of teacher performance. (*See* Ex 6, Ann Duffett et al., Educ. Sector, *Waiting to Be Won Over: Teachers Speak on the Profession, Unions, and Reform* 3 (2008).)

37. In 2007, 97 % of tenure-eligible New York City teachers received tenure. Even with recent reforms meant to strengthen the evaluation system, few teachers are denied tenure. In 2011 and 2012, while some teachers had their probationary periods extended, only 3 % of tenure-eligible teachers were denied tenure outright. (*See* Ex. 7, Susanna Loeb et al., *Performance Screens for School Improvement: The Case of Teacher Tenure Reform in New York City* (2014).) These numbers indicate that most ineffective teachers are not denied tenure.

38. New York school districts typically grant tenure to new teachers after a probationary period of three years, and after only two years of performance review. The statute's prescribed methods for evaluating effectiveness before granting tenure are deficient and three years is inadequate to assess whether a teacher has earned the lifelong benefits of tenure.

39. Pursuant to New York Education Law § 3012-c(1), New York State implemented the Annual Professional Performance Review (the "APPR") to evaluate teachers and principals. A teacher's review is meant to be a significant factor in employment decisions, including tenure, retention, and termination. N.Y. Educ. Law. § 3012-c(1).

40. the APPR, teachers receive a numerical score every year that is transposed into one of four ratings: "Highly Effective," "Effective," "Developing," or "Ineffective." Each school district negotiates the specific terms of their APPR which must comply with § 3012-c. State-developed measures of student achievement, such as test results, must form twenty percent of a teacher's rating. Another twenty percent must be based on locally selected measures of student achievement. Locally determined evaluation methods, such as classroom observations by administrative staff, form the remaining sixty percent. Rather than impose a uniform definition of what constitutes conduct unworthy of tenure, the Permanent Employment Statutes have invited variable and superficial definitions of ineffective teaching that do not ensure tenure is awarded only to effective teachers.

41. The APPR does not adequately identify teachers who are truly "Developing" or "Ineffective." For example, teachers are not rated ineffective even when their students consistently **fail** state exams. In 2012, only 1 % of teachers were rated "Ineffective."<sup>2</sup> At the same time, 91.5 % of New York teachers were rated "Highly Effective" or "Effective," even though only 31 % of students taking the English Language Arts and Math standardized tests met the standard for proficiency. (Ex. 8, Cathy Woodruff, *Why Are Most Teachers Rated Effective When Most Students Test Below Standards?*, N.Y. St. Sch. Bds. Ass'n, (Dec. 16, 2013), <http://www.nyssba.org/news/2013-11-21/12/on-board-online-december-16-2013/why-are-most-teachers-rated-effective-when-most-students-test-below-standards/>.)

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The data excludes New York City teachers because the city and teachers' union were unable to agree on a plan for the teacher evaluation system. (Ex. 9, Geoff Decker, *Few Teachers Across New York State Earned Low Ratings Last Year*, Chalkbeat, (Oct. 22, 2013), <http://ny.chalkbeat.org/2013/10/22/few-teachers-across-new-york-state-earned-low-ratings-last-year/#.U3oacPldXgU>.) On information and belief, the New York City data would be similar to the overall New York State data.

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Similarly, of the New York City teachers eligible for tenure from 2010-11 to 2012-2013, only 2.3 % received a final rating of "Ineffective" (302 teachers), even though 8 % of the teachers had low attendance (more than twenty absences over prior two years) and 12 % of teachers had low value added. (*See* Ex. 7, Loeb et al., *supra*.) These discrepancies indicate that the APPR does not operate as a rubber stamp for tenure and is not a meaningful check within the tenure process.

43. The APPR's deficient and superficial means of assessing teacher effectiveness is the most highly predictive measure of whether a teacher will be awarded tenure. (*See id.*)

44. The few teachers receiving an "Ineffective" or "Developing" rating are not the only ineffective teachers in the New York public school system. It is less likely that so few teachers are ineffective than that the ratings of many ineffective teachers are inflated and the ineffective performance by teachers is roundly ignored. The ratings do not identify pedagogically incompetent teachers, including teachers unable to control their classroom, who fail to provide instruction, prepare lesson plans, or distribute homework, and teachers indifferent to their students' educational advancement.

45. Of the miniscule percentage of ineffective teachers actually rated as such, not all are denied tenure. Between 2010 and 2013, close to 1 % were approved for tenure and 18.2 % had their probationary periods extended. (*See id.*) In addition, teachers have the right to appeal an Ineffective rating<sup>3</sup> and tenure cannot be denied to a probationary teacher while an APPR appeal about the teacher's performance is pending. N.Y. Educ. Law § 3012-c(5). Moreover,

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Most districts also allow tenured, as well as non-tenured, teachers to appeal a Developing rating. (*See* Ex. 10, Alexander Colvin et al., Scheinman Inst. on Conflict Resolution, *APPR Teacher Appeals Process Report* (2014).)

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administrators renew probationary teachers final probationary despite any performance concerns. 11, Communities for Teaching Excellence, *Earned, Not Given: Transforming Teacher Tenure* 3 (201

46. A teacher's long-term effectiveness cannot be determined with any degree of confidence during the first two or three years of teaching. Most studies indicate that teacher effectiveness is typically established by the fourth year of teaching. (*Id.* at 5.) After that, effective teachers tend to remain relatively effective, and ineffective teachers remain relatively ineffective. Deciding tenure after a three-year probationary period confers permanent employment on many teachers who will be ineffective for the rest of their teaching career.

47. The statute's notification requirements make it effectively impossible to consider a teacher's third-year APPR before a tenure determination is made, even if a teacher is found to be ineffective in the third year of his or her probationary period. Section 3012 requires the superintendent of school to notify in writing "each person who is not to be recommended" for tenure of that decision no later than sixty days before the expiration of his or her probationary period. N.Y. Educ. Law § 3012(2). Typically, however, a teacher's probationary term ends before the third-year APPR is reported, at the end of the school year. (*See* Ex. 12, Warren H. Richmond III, *Evaluation Law Could Limit Ability to Terminate Probationary Teachers*, N.Y.L.J., May 16, 2013, at 2.) The final APPR rating may not be provided until September 1 of the following school year. N.Y. Educ. Law § 3012-c(2)(c)(2). A tenure determination, therefore, may be made on the basis of only two years of APPR reviews, and without regard to an ineffectiveness determination in the third year.

48. Once a teacher receives tenure, he or she is guaranteed continued employment in limited enumerated circumstances and only after a disciplinary hearing pursuant to section 3020(a).

### **III. THE DISCIPLINARY STATUTES KEEP INEFFECTIVE, TENURED TEACHERS IN THE SCHOOL SYSTEM.**

49. Once a teacher receives tenure, he or she cannot be removed except for just cause, and in accordance with the disciplinary process prescribed by § 3020-a. N.Y. Educ. Law § 3020(1) (§ 3020-a and § 3020 hereinafter collectively referred to as the "Disciplinary Statutes"). The following causes may constitute reason to remove or discipline a teacher: insubordination, immoral character or conduct unbecoming of a teacher, inefficiency, incompetency, physical or mental disability, or neglect of duty, or a failure to maintain required certification. N.Y. Educ. Law § 3012(2).

50. As applied, the Disciplinary Statutes result in the retention of ineffective teachers. The Disciplinary Statutes impose dozens of hurdles to dismiss or discipline an ineffective teacher, including investigations, hearings, improvement plans, arbitration processes, and administrative appeals. On top of these procedural obstacles, the standard for proving just cause to terminate a teacher is nigh impossible to satisfy. The statutorily mandated hearings are "consuming and expensive hurdles that make the dismissal of chronically ineffective, tenured teachers almost impossible." (Ex. 11, Communities for Teaching Excellence, *supra*, at 5.)

51. The Disciplinary Statutes make it prohibitively expensive, time-consuming, and effectively impossible to dismiss an ineffective teacher who has already received tenure. Because of the difficulty, cost, and length of time associated with removal, the number of

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ineffective teachers who remain employed is far higher than the number of those disciplined or terminated.

Disciplinary proceedings are rarely initiated. It is well known that "because of the cumbersome, lengthy, and costly due process protections [tenure] affords, many school districts rarely attempt to fire                      effect granting them permanent employment." (*Id.* at 2.)

53. As an initial matter, administrators are deterred from giving an Ineffective rating. On information and belief, principals and other administrators may be inclined to rate teachers artificially high because of the lengthy appeals process for an ineffectiveness rating and because they must partake in the development and execution of a teacher improvement plan ("TIP") for Developing and Ineffective teachers. N.Y. Educ. Law § 3012-c(4). The TIP must be mutually agreed upon by the teacher and principal and must include "needed areas of improvement, a timeline for achieving improvement, the manner in which improvement will be assessed, and, where appropriate, differentiated activities to support a teacher's or principal's improvement in those areas." *Id.*

54. Section 3020-a imposes a three-year limit for bringing charges against a teacher. But before administrators may initiate proceedings to discipline or terminate an ineffective or incompetent teacher, they must meticulously build a trove of evidence that includes extensive observation, detailed documentation, and consultation with the teacher. On information and belief, it may be difficult for school districts to collect enough evidence for a 3020-a hearing within the three-year period. This laborious and complicated process deters administrators from trying to remove ineffective teachers from the classroom. (*See* Ex. 13, John Stossel, *How to Fire*



an *Incompetent Teacher*, Reason (Oct 2006), <http://cloudfront-assets.reason.com/assets/db/12639308918768.pdf>.)

55. On information belief, principals and administrators would be more likely to use the 3020-a process to discipline or dismiss a teacher if it was less time-consuming and more effective. A 2009 survey found that 48 % of districts surveyed considered bringing 3020-a charges at once, but did not. The districts stated multiple reasons for not filing charges, including that the process was too cumbersome, too expensive, that their case was not strong enough, or that the employee resigned. (See Ex. 14, Patricia Gould, *3020-a Process Remains Slow, Costly*, N.Y. St. Sch. Bds. Ass'n (May 11, 2009), <http://www.nyssba.org/index.php?src=news&refuo=853&category=On%20Board%20online%20May%2011%202009>.)

56. Once an administrator clears the hurdles to file charges, termination can result only after a 3020-a hearing. Despite statutory time limits, from 2004-2008, 3020-a disciplinary proceedings took an average of 502 days, from the time charges were brought until a final decision. (See Ex. 15, *3020-a Teacher Discipline Reform*, N.Y. State Sch. Bds. Ass'n, [http://www.nyssba.org/index.php?src=gendocs&ref=f=3020-a%20Teacher%20Discipline%20Reform&category=advocacy\\_legislation](http://www.nyssba.org/index.php?src=gendocs&ref=f=3020-a%20Teacher%20Discipline%20Reform&category=advocacy_legislation).)<sup>4</sup>

57. Incompetency proceedings, which may include charges such as inability to control a class and failure to prepare required lesson plans, take even longer. From 1995-2006, incompetency proceedings in New York took an average of 830 days, costing \$313,000 per teacher. (*Id.*)

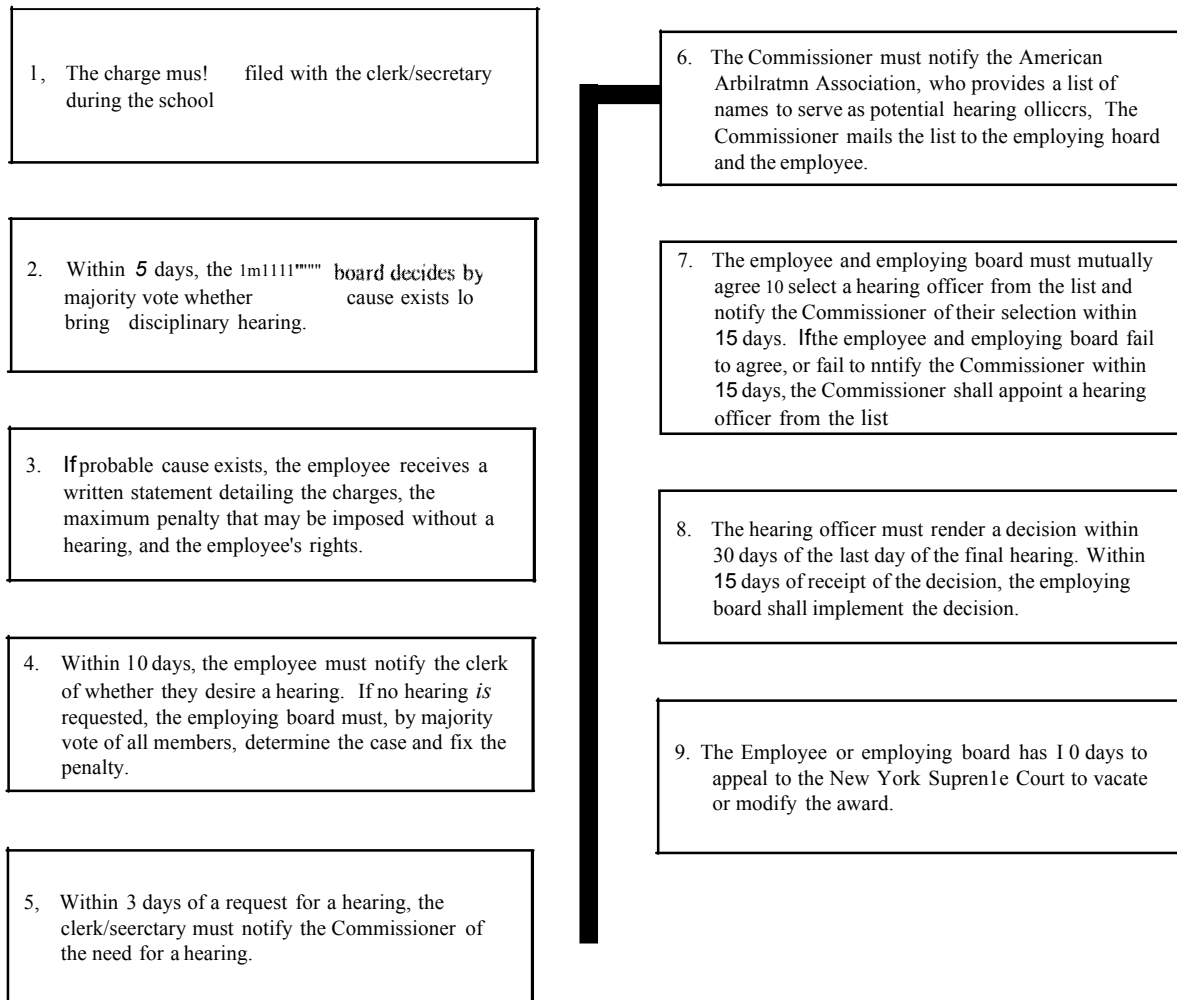
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The statistics in paragraphs 56-57 exclude New York City, which has an alternate disciplinary process.

Two consecutive Ineffective ratings constitute a pattern of ineffective teaching or performance, subjecting a teacher to an expedited § 3020-a hearing. N.Y. Educ. Law § 3020-a(3)(c)(i-a)(A). But few teachers receive two consecutive Ineffective ratings to trigger an expedited process.

While charges are pending, ineffective teachers continue to be paid even if they are suspended. Unless a teacher is convicted of certain felony crimes, the teacher "may be suspended pending a hearing on the charges and the final determination thereof" *with pay*. N.Y. Educ. Law § 3020-a(2)(b).

60. The Disciplinary Statutes require the following procedure to discipline a teacher:



61. Section 3020(1) incorporates the "alternate disciplinary procedures contained in a collective bargaining agreement." N.Y. Educ. Law § 3020(1). This means that the Statute allows its procedural requirements to be modified by contract. In practice, the collective bargaining agreements make it even more difficult to remove ineffective teachers and add conditions that delay the process even further. For example, in New York City the arbitrator must be jointly selected with the union, which effectively grants the union the power to veto

arbitrators on the refusal to appoint hearing officers contributes to the massive backlog of disciplinary cases in New York City.

These proceedings are not only long, they are futile. When administrators do pursue disciplinary action, few 3020-a proceedings result in termination, *even when an arbitrator determines that the teacher is ineffective, incompetent, or has engaged in misconduct*. In a study of New York 3020-a proceedings from 1997-2007, only twelve teachers were dismissed for incompetent teaching. (Ex. 16, Katharine B. Stevens, *Firing Teachers: Mission Impossible*, N.Y. Daily News (Feb. 17, 2014), <http://www.nydailynews.com/opinion/firing-teachers-mission-impossible-article-1.1615003>.)

63. On information and belief, dismissals are so rare not because there are no incompetent teachers, but because the Permanent Employment and Disciplinary Statutes make it impossible to fire them.

64. Thus, if administrators are ever able to comply with the myriad procedural requirements that precede disciplinary action, they then confront a burden of proof that is nearly insurmountable. In order to terminate a teacher, administrators must not only validate the charges, but also prove that the school has undertaken sufficient remediation efforts, that all remediation efforts have failed, and that they will continue to fail indefinitely. *See, e.g., deSouza v. Dep't of Educ.*, 28 Misc. 3d 120l(A) (N.Y. Sup. 2010).

65. The result of these proceedings is that ineffective teachers return to the classroom, and students are denied the adequate education that is their right.

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#### IV. THE LIFO STATUTES REQUIRE THE STATE TO RETAIN MORE SENIOR TEACHERS AT THE EXPENSE OF MORE EFFECTIVE TEACHERS.

66. When school districts conduct layoffs that the teacher workforce, New York Education Law § mandates that the last teachers hired the first teachers fired (the "Last In First Out" or "LIFO" Statute).<sup>5</sup> Under the LIFO Statute, "[w]henever a board of education abolishes a position under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued." N.Y. Educ. Law § 2585(3).

67. New York is one of only ten states to conduct layoffs on the basis of seniority alone, irrespective of a teacher's performance, effectiveness, or quality. (Ex. 17, *Vergara v. California*, No. BC484642 (Cal. Super. Ct. June 10, 2014).)

68. Under the LIFO Statute, school districts conducting layoffs must fire, junior high-performing teachers. While these teachers are lost to the classroom, senior, low-perfonning, and more highly-paid teachers continue to provide poor instruction to their students.

69. Seniority is not an accurate predictor of teacher effectiveness. Studies demonstrate that a teacher's effectiveness generally levels off of returns to experience after five to seven years. (Ex. 18, Allison Atteberry et al., *Do First Impressions Matter? Improvement in Early Career Teacher Effectiveness* 4 (CALDER, Working Paper No. 90, 2013).) Yet the LIFO Statute requires that seniority, which has little correlation to a teacher's effectiveness, be the sole factor in layoffs.

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Section 2585 applies to school districts of cities with 125,000 inhabitants or more, such as Rochester City School District. Section 2510(1)-(2) applies the same law to school districts of cities with less than 125,000 inhabitants. Section 2588 applies to school districts of cities with over 1,000,000 inhabitants, such as New York City.

In recent years, various school districts in New York, including the Rochester City School District, have implemented district-wide layoffs due to budgetary constraints. In Rochester, the district laid 116 teachers in 2010, 400 teachers in 2011, and teachers in 2012. Pursuant to the LIFO Statute, school administrators discontinued the employment of top-performing teachers with lower seniority, and retained low-performing teachers with greater seniority.

71. Under a seniority-based layoff system, school districts must fire more teachers to satisfy budgetary constraints because newer teachers are paid less. The higher the number of layoffs, the greater the detriment suffered by schools and students.

72. Seniority-based layoffs affect children at struggling schools the most, because lower-performing schools generally have a disproportionate number of newly-hired teachers.

73. The LIFO Statute hinders recruitment of talented personnel because newly-hired teachers face a heightened risk of being laid off, regardless of their abilities and performance.

74. Layoffs determined on the basis of teacher effectiveness, rather than seniority alone, would result in a more effective workforce. If New York City had conducted seniority-based layoffs between 2006 and 2009, none of the New York City teachers that received an Unsatisfactory<sup>6</sup> rating during those years would have been laid off. In the absence of the LIFO Statute, school administrators conducting layoffs would consider teacher performance, a higher number of effective teachers would be retained, and fewer children would suffer the loss of an

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New York changed their rating system in 2010, from rating teachers as 'Satisfactory' or 'Unsatisfactory,' to 'Highly Effective,' 'Effective,' 'Developing,' and 'Ineffective.'

effective teacher. (Ex. 19, Donald Boyd et al., *Teacher Layoffs: An Illustration of Seniority Versus Measures of Effectiveness*, 6 Educ. Finance & Pol. 439 (2011).)

LIFO Statute, both alone and in conjunction with the Challenged Statutes, ensures that a number of ineffective teachers unable to provide students with a sound basic education retain employment in the New York school system.

Cumulatively, the State's enforcement of the Challenged Statutes forces schools to retain ineffective teachers and violates New York students' right to a sound basic education.

### **FIRST CAUSE OF ACTION**

77. Plaintiffs repeat and re-allege each and every allegation set forth in Paragraphs 1 through 76 as though fully set forth herein at length.

78. The Permanent Employment Statute violates the Education Article of the New York Constitution because it has failed, and continues to fail to provide all children in New York State with a sound basic education.

79. Teacher effectiveness cannot be determined within three years. The teachers who obtain tenure may fail to provide students with an effective education, but are guaranteed lifetime employment and compensation.

### **SECOND CAUSE OF ACTION**

80. Plaintiffs repeat and re-allege each and every allegation set forth in Paragraphs 1 through 76 as though fully set forth herein at length.

81. The Disciplinary Statutes violate Education Article of the New York Constitution ""-""u"" they fail to provide all children in New York State with a sound basic education by preventing the dismissal of ineffective teachers.

82. Principals are unlikely to take action to attempt to dismiss or discipline an ineffective teacher. Because disciplinary proceedings are time-consuming, costly, and unlikely to result in the removal of teachers, ineffective teachers are kept in the classroom.

### **THIRD CAUSE OF ACTION**

83. Plaintiffs repeat and re-allege each and every allegation set forth in Paragraphs 1 through 76 as though fully set forth herein at length.

84. The LIFO Statute violates the Education Article of the New York Constitution because it has failed, and will continue to fail to provide children throughout the Rochester City School District with a sound basic education.

85. LIFO prohibits administrators from taking teacher quality into account when conducting layoffs so that ineffective, more senior teachers are retained and effective teachers are fired.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that this Court enter a judgment against Defendants as follows:

As to each Count, a declaratory judgment, that the Challenged Statutes violate the New York Constitution in the manner alleged above.



## Exhibit 1



As to        Count, preliminary and pennant injunctions enjoining Defendants from implementing or enforcing the Challenged Statutes.

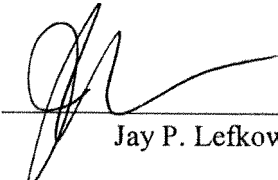
Award plaintiffs all costs and expenses incurred in bringing this action, including reasonable attorney's fees and costs;

Such other        available under New York law that may be considered appropriate under the circumstances, and further relief as this Court deems just and proper.

Dated: New York, New York  
November 13, 2014

Kirkland & Ellis LLP

By: \_\_\_\_\_

  
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# Exhibit

## c

## LAWS OF NEW YORK, 2015

## CHAPTER 56

AN ACT to amend the education law, in relation to contracts for excellence, apportionment of school aid, total foundation aid and the gap elimination adjustment restoration, the teachers of tomorrow teacher recruitment and retention program and waivers from certain duties; to amend the state finance law, in relation to moneys appropriated from the commercial gaming revenue fund; to amend chapter 756 of the laws of 1992, relating to funding a program for work force education conducted by the consortium for worker education in New York city, in relation to reimbursements for the 2015-2016 school year; to amend chapter 756 of the laws of 1992, relating to funding a program for work force education conducted by the consortium for worker education in New York city, in relation to withholding a portion of employment preparation education aid and in relation to extending the effectiveness of such chapter; to amend chapter 169 of the laws of 1994 relating to certain provisions related to the 1994-95 state operations, aid to localities, capital projects and debt service budgets; to amend chapter 82 of the laws of 1995, amending the education law and other laws relating to state aid to school districts and the appropriation of funds for the support of government; to amend section 7 of chapter 472 of the laws of 1998 amending the education law relating to the lease of school buses by school districts; to amend chapter 147 of the laws of 2001 amending the education law relating to conditional appointment of school district, charter school or BOCES employees; to amend chapter 425 of the laws of 2002 amending the education law relating to the provision of supplemental educational services, attendance at a safe public school and the suspension of pupils who bring a firearm to or possess a firearm at a school, in relation to the effectiveness thereof; to amend chapter 101 of the laws of 2003 amending the education law relating to implementation of the No Child Left Behind Act of 2001, in relation to extending the expiration of certain provisions of such chapters; to amend part A of chapter 57 of the laws of 2013 relating to school district eligibility for an increase in apportionment of school aid and implementation of standards for conducting annual professional performance reviews to determine teacher and principal effectiveness, in relation to funds appropriated in the 2014-15 school year; allocates school bus driver training grants to school districts and boards of cooperative education services; allows for eligible school districts to receive special apportionments for salary expenses; allows for eligible school districts to receive special apportionments for public pension accruals; allows any moneys appropriated to the state education department to be suballocated to other state departments or agencies and/or shall be made available for specific payment of aid; allows the city school district of the city of Rochester to purchase services as a non-component school district; to amend chapter 121 of the laws of 1996 relating to authorizing the Roosevelt union free school district to finance deficits by the issuance of serial bonds, in relation to certain apportionments; specifies amounts of state funds set aside for each school district for the purpose of the development, maintenance

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

or expansion of magnet schools or magnet school programs; prohibits moneys appropriated for the support of public libraries to be used for library construction; to amend the general municipal law, in relation to authorized withdrawals; and to repeal certain provisions of the education law relating thereto (Part A); intentionally omitted (Part B); to amend the education law, in relation to creating the New York state get on your feet loan forgiveness program (Part C); intentionally omitted (Part D); intentionally omitted (Part E); to amend the banking law, in relation to creating a standard financial aid award letter (Part F); intentionally omitted (Part G); intentionally omitted (Part H); to amend the social services law, in relation to increasing the standards of monthly need for aged, blind and disabled persons living in the community (Part I); to amend the education law, in relation to certain contracts with the office of children and family services; to amend the education law, in relation to the possession of a gun on school grounds by a student; to amend the executive law, in relation to persons in need of supervision or youthful offenders; to amend part K of chapter 57 of the laws of 2012, amending the education law, relating to authorizing the board of cooperative educational services to enter into contracts with the commissioner of children and family services to provide certain services, in relation to making such provisions permanent (Part J); to amend the social services law, in relation to state reimbursement and subsidies for the adoption of children (Part K); to amend the social services law, the surrogate's court procedure act, the family court act, the public health law and the executive law, in relation to implementing provisions required by the federal preventing sex trafficking and strengthening families act (Part L); to utilize reserves in the mortgage insurance fund for various housing purposes (Part M); intentionally omitted (Part N); to amend the labor law, in relation to authorized absences by healthcare professionals who volunteer to fight the Ebola virus disease overseas; and providing for the repeal of such provisions upon expiration thereof (Part O); to amend the labor law, the workers' compensation law and chapter 784 of the laws of 1951, constituting the New York state defense emergency act, in relation to eliminating certain fees charged by the department of labor; and to repeal certain provisions of the labor law and the workers' compensation law relating thereto (Part P); to amend the education law, in relation to requiring experiential learning as a requirement for graduation (Part Q); to amend part U of chapter 57 of the laws of 2005 relating to the New York state higher education capital matching grant program for independent colleges, in relation to the New York state higher education matching grant program for independent colleges and the effectiveness thereof (Part R); to amend the labor law, in relation to the project notification fee imposed for asbestos removal (Part S); to amend chapter 141 of the laws of 1994, amending the legislative law and the state finance law relating to the operation and administration of the legislature, in relation to extending such provisions (Part T); to amend the state finance law, in relation to the creation of the SUNY DSRIP escrow fund (Part U); to amend the education law, in relation to the tuition assistance program for students with disabilities (Part V); to amend the education law, in relation to the investment of contributions to a family tuition account (Part W); to amend the education law, in relation to the allocation of funds from the foster youth college success initiative (Part X); to amend the education law, in relation to the offering of associate of occupational studies degrees by commu-

nity colleges (Part Y); to amend the education law, in relation to establishing the New York state achievement and investment in merit scholarship (Part Z); to amend the labor law and the tax law, in relation to a program to provide tax incentives for employers employing at risk youth (Part AA); to amend the environmental conservation law, the tax law and the general municipal law, in relation to eligibility for participation in the brownfield cleanup program, assignment of the brownfield redevelopment tax credits and brownfield opportunity areas; to amend part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, in relation to tax credits for certain sites; to amend the environmental conservation law, in relation to hazardous waste generator fees and taxes; to amend the environmental conservation law and the state finance law, in relation to the environmental restoration program; to amend the environmental conservation law, in relation to limitations on liability; to amend the public authorities law, in relation to certain environmental restoration projects; and to repeal certain provisions of the environmental conservation law and the tax law relating thereto (Part BB); to amend the public officers law, the legislative law, the election law and the retirement and social security law, in relation to reporting and disclosure; and to repeal subdivision 2 of section 5 of the legislative law relating to per diem and travel expenses (Part CC); to amend part A of chapter 399 of the laws of 2011, relating to establishing the public integrity reform act of 2011, in relation to the joint commission on public ethics (Part DD); and to amend the education law, in relation to establishing the New York state masters-in-education teacher incentive scholarship program (Subpart A); to amend the education law, in relation to admission requirements for graduate-level teacher education programs (Subpart B); to amend the education law, in relation to institution deregistration and suspension, teacher registration and continuing teacher education requirements (Subpart C); to amend the education law, in relation to the appointment of teachers, principals, administrators, supervisors and all other members of the teaching and supervising staff of school districts (Subpart D); to amend the education law, in relation to annual performance reviews of classroom teachers and building principals (Subpart E); relating to testing reduction reports (Subpart F); to amend the education law, in relation to disciplinary procedures for ineffective teaching or performance by building principal or teacher and to streamlined removal procedures for teachers rated ineffective (Subpart G); and to amend the education law, in relation to takeover and restructuring failing schools (Subpart H) (Part EE)

Became a law April 13, 2015, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2015-2016 state fiscal year. Each component is wholly contained within a Part identified as Parts A through EE. The effective date for each particular

provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section three of this act sets forth the general effective date of this act.

#### PART A

Section 1. Paragraph e of subdivision 1 of section 211-d of the education law, as amended by section 1 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

e. Notwithstanding paragraphs a and b of this subdivision, a school district that submitted a contract for excellence for the two thousand eight--two thousand nine school year shall submit a contract for excellence for the two thousand nine--two thousand ten school year in conformity with the requirements of subparagraph (vi) of paragraph a of subdivision two of this section unless all schools in the district are identified as in good standing and provided further that, a school district that submitted a contract for excellence for the two thousand nine--two thousand ten school year, unless all schools in the district are identified as in good standing, shall submit a contract for excellence for the two thousand eleven--two thousand twelve school year which shall, notwithstanding the requirements of subparagraph (vi) of paragraph a of subdivision two of this section, provide for the expenditure of an amount which shall be not less than the product of the amount approved by the commissioner in the contract for excellence for the two thousand nine--two thousand ten school year, multiplied by the district's gap elimination adjustment percentage and provided further that, a school district that submitted a contract for excellence for the two thousand eleven--two thousand twelve school year, unless all schools in the district are identified as in good standing, shall submit a contract for excellence for the two thousand twelve--two thousand thirteen school year which shall, notwithstanding the requirements of subparagraph (vi) of paragraph a of subdivision two of this section, provide for the expenditure of an amount which shall be not less than the amount approved by the commissioner in the contract for excellence for the two thousand eleven--two thousand twelve school year and provided further that, a school district that submitted a contract for excellence for the two thousand twelve--two thousand thirteen school year, unless all schools in the district are identified as in good standing, shall submit a contract for excellence for the two thousand thirteen--two thousand fourteen school year which shall, notwithstanding the requirements of subparagraph (vi) of paragraph a of subdivision two of this section, provide for the expenditure of an amount which shall be not less than the amount approved by the commissioner in the contract for excellence for the two thousand twelve--two thousand thirteen school year and provided further that, a school district that submitted a contract for excellence for the two thousand thirteen--two thousand fourteen school year, unless all schools in the district are identified as in good standing, shall submit a contract for excellence for the two thousand fourteen--two thousand fifteen school year which shall, notwithstanding the requirements of subparagraph (vi) of paragraph a of subdivision two of this section, provide for the expenditure of an amount which shall be not less than the amount approved by the commis-

sioner in the contract for excellence for the two thousand thirteen--two thousand fourteen school year; and provided further that, a school district that submitted a contract for excellence for the two thousand fourteen--two thousand fifteen school year, unless all schools in the district are identified as in good standing, shall submit a contract for excellence for the two thousand fifteen--two thousand sixteen school year which shall, notwithstanding the requirements of subparagraph (vi) of paragraph a of subdivision two of this section, provide for the expenditure of an amount which shall be not less than the amount approved by the commissioner in the contract for excellence for the two thousand fourteen--two thousand fifteen school year. For purposes of this paragraph, the "gap elimination adjustment percentage" shall be calculated as the sum of one minus the quotient of the sum of the school district's net gap elimination adjustment for two thousand ten--two thousand eleven computed pursuant to chapter fifty-three of the laws of two thousand ten, making appropriations for the support of government, plus the school district's gap elimination adjustment for two thousand eleven--two thousand twelve as computed pursuant to chapter fifty-three of the laws of two thousand eleven, making appropriations for the support of the local assistance budget, including support for general support for public schools, divided by the total aid for adjustment computed pursuant to chapter fifty-three of the laws of two thousand eleven, making appropriations for the local assistance budget, including support for general support for public schools. Provided, further, that such amount shall be expended to support and maintain allowable programs and activities approved in the two thousand nine--two thousand ten school year or to support new or expanded allowable programs and activities in the current year.

§ 1-a. Paragraph d of subdivision 2 of section 2-d of the education law is REPEALED.

§ 2. The closing paragraph of subdivision 5-a of section 3602 of the education law, as amended by section 8 of part A of chapter 57 of the laws of 2013, is amended to read as follows:

For the two thousand eight--two thousand nine school year, each school district shall be entitled to an apportionment equal to the product of fifteen percent and the additional apportionment computed pursuant to this subdivision for the two thousand seven--two thousand eight school year. For the two thousand nine--two thousand ten through two thousand ~~[fourteen]~~ fifteen--two thousand ~~[fifteen]~~ sixteen school years, each school district shall be entitled to an apportionment equal to the amount set forth for such school district as "SUPPLEMENTAL PUB EXCESS COST" under the heading "2008-09 BASE YEAR AIDS" in the school aid computer listing produced by the commissioner in support of the budget for the two thousand nine--two thousand ten school year and entitled "SA0910".

§ 3. Subdivision 12 of section 3602 of the education law, as amended by section 10 of part A of chapter 57 of the laws of 2013, is amended to read as follows:

12. Academic enhancement aid. A school district that as of April first of the base year has been continuously identified as a district in need of improvement for at least five years shall, for the two thousand eight--two thousand nine school year, be entitled to an additional apportionment equal to the positive remainder, if any, of (a) the lesser of fifteen million dollars or the product of the total foundation aid base, as defined by paragraph j of subdivision one of this section, multiplied by ten percent (0.10), less (b) the positive remainder of (i)



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the sum of the total foundation aid apportioned pursuant to subdivision four of this section and the supplemental educational improvement grants apportioned pursuant to subdivision eight of section thirty-six hundred forty-one of this article, less (ii) the total foundation aid base.

For the two thousand nine--two thousand ten through two thousand fourteen--two thousand fifteen school years, each school district shall be entitled to an apportionment equal to the amount set forth for such school district as "EDUCATION GRANTS, ACADEMIC EN" under the heading "2008-09 BASE YEAR AIDS" in the school aid computer listing produced by the commissioner in support of the budget for the two thousand nine--two thousand ten school year and entitled "SA0910", and such apportionment shall be deemed to satisfy the state obligation to provide an apportionment pursuant to subdivision eight of section thirty-six hundred forty-one of this article.

For the two thousand fifteen--two thousand sixteen year, each school district shall be entitled to an apportionment equal to the amount set forth for such school district as "ACADEMIC ENHANCEMENT" under the heading "2014-15 ESTIMATED AIDS" in the school aid computer listing produced by the commissioner in support of the budget for the two thousand fourteen--two thousand fifteen school year and entitled "SA141-5", and such apportionment shall be deemed to satisfy the state obligation to provide an apportionment pursuant to subdivision eight of section thirty-six hundred forty-one of this article.

§ 4. The opening paragraph of subdivision 16 of section 3602 of the education law, as amended by section 11 of part A of chapter 57 of the laws of 2013, is amended to read as follows:

Each school district shall be eligible to receive a high tax aid apportionment in the two thousand eight--two thousand nine school year, which shall equal the greater of (i) the sum of the tier 1 high tax aid apportionment, the tier 2 high tax aid apportionment and the tier 3 high tax aid apportionment or (ii) the product of the apportionment received by the school district pursuant to this subdivision in the two thousand seven--two thousand eight school year, multiplied by the due-minimum factor, which shall equal, for districts with an alternate pupil wealth ratio computed pursuant to paragraph b of subdivision three of this section that is less than two, seventy percent (0.70), and for all other districts, fifty percent (0.50). Each school district shall be eligible to receive a high tax aid apportionment in the two thousand nine--two thousand ten through two thousand twelve--two thousand thirteen school years in the amount set forth for such school district as "HIGH TAX AID" under the heading "2008-09 BASE YEAR AIDS" in the school aid computer listing produced by the commissioner in support of the budget for the two thousand nine--two thousand ten school year and entitled "SA0910". Each school district shall be eligible to receive a high tax aid apportionment in the two thousand thirteen--two thousand fourteen [~~school year and the two thousand fourteen--two thousand fifteen~~] through two thousand fifteen--two thousand sixteen school [~~year~~] years equal to the greater of (1) the amount set forth for such school district as "HIGH TAX AID" under the heading "2008-09 BASE YEAR AIDS" in the school aid computer listing produced by the commissioner in support of the budget for the two thousand nine--two thousand ten school year and entitled "SA0910" or (2) the amount set forth for such school district as "HIGH TAX AID" under the heading "2013-14 ESTIMATED AIDS" in the school aid computer listing produced by the commissioner in support of the executive budget for the 2013-14 fiscal year and entitled "BT131-4".

§ 5. The opening paragraph of subdivision 10 of section 3602-e of the education law, as amended by section 21 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

Notwithstanding any provision of law to the contrary, for aid payable in the two thousand eight--two thousand nine school year, the grant to each eligible school district for universal prekindergarten aid shall be computed pursuant to this subdivision, and for the two thousand nine--two thousand ten and two thousand ten--two thousand eleven school years, each school district shall be eligible for a maximum grant equal to the amount computed for such school district for the base year in the electronic data file produced by the commissioner in support of the two thousand nine--two thousand ten education, labor and family assistance budget, provided, however, that in the case of a district implementing programs for the first time or implementing expansion programs in the two thousand eight--two thousand nine school year where such programs operate for a minimum of ninety days in any one school year as provided in section 151-1.4 of the regulations of the commissioner, for the two thousand nine--two thousand ten and two thousand ten--two thousand eleven school years, such school district shall be eligible for a maximum grant equal to the amount computed pursuant to paragraph a of subdivision nine of this section in the two thousand eight--two thousand nine school year, and for the two thousand eleven--two thousand twelve school year each school district shall be eligible for a maximum grant equal to the amount set forth for such school district as "UNIVERSAL PREKINDERGARTEN" under the heading "2011-12 ESTIMATED AIDS" in the school aid computer listing produced by the commissioner in support of the enacted budget for the 2011-12 school year and entitled "SA111-2", and for two thousand twelve--two thousand thirteen[, ~~two thousand thirteen two thousand fourteen and two thousand fourteen two thousand fifteen~~] through two thousand fifteen--two thousand sixteen school years each school district shall be eligible for a maximum grant equal to the greater of (i) the amount set forth for such school district as "UNIVERSAL PREKINDERGARTEN" under the heading "2010-11 BASE YEAR AIDS" in the school aid computer listing produced by the commissioner in support of the enacted budget for the 2011-12 school year and entitled "SA111-2", or (ii) the amount set forth for such school district as "UNIVERSAL PREKINDERGARTEN" under the heading "2010-11 BASE YEAR AIDS" in the school aid computer listing produced by the commissioner on May fifteenth, two thousand eleven pursuant to paragraph b of subdivision twenty-one of section three hundred five of this chapter, and provided further that the maximum grant shall not exceed the total actual grant expenditures incurred by the school district in the current school year as approved by the commissioner.

§ 5-a. Subdivision 4 of section 3602 of the education law, as amended by section 3 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

4. Total foundation aid. In addition to any other apportionment pursuant to this chapter, a school district, other than a special act school district as defined in subdivision eight of section four thousand one of this chapter, shall be eligible for total foundation aid equal to the product of total aidable foundation pupil units multiplied by the district's selected foundation aid, which shall be the greater of five hundred dollars (\$500) or foundation formula aid, provided, however that for the two thousand seven--two thousand eight through two thousand eight--two thousand nine school years, no school district shall receive total foundation aid in excess of the sum of the total foundation aid

base for aid payable in the two thousand seven--two thousand eight school year computed pursuant to subparagraph (i) of paragraph j of subdivision one of this section, plus the phase-in foundation increase computed pursuant to paragraph b of this subdivision, and provided further that for the two thousand twelve--two thousand thirteen school year, no school district shall receive total foundation aid in excess of the sum of the total foundation aid base for aid payable in the two thousand eleven--two thousand twelve school year computed pursuant to paragraph j of subdivision one of this section, plus the phase-in foundation increase computed pursuant to paragraph b of this subdivision, and provided further that for the two thousand thirteen--two thousand fourteen school year and thereafter, no school district shall receive total foundation aid in excess of the sum of the total foundation aid base computed pursuant to paragraph j of subdivision one of this section, plus the phase-in foundation increase computed pursuant to paragraph b of this subdivision and provided further that total foundation aid shall not be less than the product of the total foundation aid base computed pursuant to paragraph j of subdivision one of this section and the due-minimum percent which shall be, for the two thousand twelve--two thousand thirteen school year, one hundred and six-tenths percent (1.006) and for the two thousand thirteen--two thousand fourteen school year for city school districts of those cities having populations in excess of one hundred twenty-five thousand and less than one million inhabitants one hundred and one and one hundred and seventy-six thousandths percent (1.01176), and for all other districts one hundred and three-tenths percent (1.003), and for the two thousand fourteen--two thousand fifteen school year one hundred and eighty-five hundredths percent (1.0085), and for the two thousand fifteen--two thousand sixteen school year, one hundred thirty-seven hundredths percent (1.0037), subject to allocation pursuant to the provisions of subdivision eighteen of this section and any provisions of a chapter of the laws of New York as described therein, nor more than the product of such total foundation aid base and one hundred fifteen percent, and provided further that for the two thousand nine--two thousand ten through two thousand eleven--two thousand twelve school years, each school district shall receive total foundation aid in an amount equal to the amount apportioned to such school district for the two thousand eight--two thousand nine school year pursuant to this subdivision. Total aidable foundation pupil units shall be calculated pursuant to paragraph g of subdivision two of this section. For the purposes of calculating aid pursuant to this subdivision, aid for the city school district of the city of New York shall be calculated on a citywide basis.

a. Foundation formula aid. Foundation formula aid shall equal the remainder when the expected minimum local contribution is subtracted from the product of the foundation amount, the regional cost index, and the pupil need index, or: (foundation amount x regional cost index x pupil need index)- expected minimum local contribution.

(1) The foundation amount shall reflect the average per pupil cost of general education instruction in successful school districts, as determined by a statistical analysis of the costs of special education and general education in successful school districts, provided that the foundation amount shall be adjusted annually to reflect the percentage increase in the consumer price index as computed pursuant to section two thousand twenty-two of this chapter, provided that for the two thousand eight--two thousand nine school year, for the purpose of such adjustment, the percentage increase in the consumer price index shall be

deemed to be two and nine-tenths percent (0.029), and provided further that the foundation amount for the two thousand seven--two thousand eight school year shall be five thousand two hundred fifty-eight dollars, and provided further that for the two thousand seven--two thousand eight through two thousand fifteen--two thousand sixteen school years, the foundation amount shall be further adjusted by the phase-in foundation percent established pursuant to paragraph b of this subdivision.

(2) The regional cost index shall reflect an analysis of labor market costs based on median salaries in professional occupations that require similar credentials to those of positions in the education field, but not including those occupations in the education field, provided that the regional cost indices for the two thousand seven--two thousand eight school year and thereafter shall be as follows:

| Labor Force Region | Index |
|--------------------|-------|
| Capital District   | 1.124 |
| Southern Tier      | 1.045 |
| Western New York   | 1.091 |
| Hudson Valley      | 1.314 |
| Long Island/NYC    | 1.425 |
| Finger Lakes       | 1.141 |
| Central New York   | 1.103 |
| Mohawk Valley      | 1.000 |
| North Country      | 1.000 |

(3) The pupil need index shall equal the sum of one plus the extraordinary needs percent, provided, however, that the pupil need index shall not be less than one nor more than two. The extraordinary needs percent shall be calculated pursuant to paragraph w of subdivision one of this section.

(4) The expected minimum local contribution shall equal the lesser of (i) the product of (A) the quotient arrived at when the selected actual valuation is divided by total wealth foundation pupil units, multiplied by (B) the product of the local tax factor, multiplied by the income wealth index, or (ii) the product of (A) the product of the foundation amount, the regional cost index, and the pupil need index, multiplied by (B) the positive difference, if any, of one minus the state sharing ratio for total foundation aid. The local tax factor shall be established by May first of each year by determining the product, computed to four decimal places without rounding, of ninety percent multiplied by the quotient of the sum of the statewide average tax rate as computed by the commissioner for the current year in accordance with the provisions of paragraph e of subdivision one of section thirty-six hundred nine-e of this part plus the statewide average tax rate computed by the commissioner for the base year in accordance with such provisions plus the statewide average tax rate computed by the commissioner for the year prior to the base year in accordance with such provisions, divided by three, provided however that for the two thousand seven--two thousand eight school year, such local tax factor shall be sixteen thousandths (0.016), and provided further that for the two thousand eight--two thousand nine school year, such local tax factor shall be one hundred fifty-four ten thousandths (0.0154). The income wealth index shall be calculated pursuant to paragraph d of subdivision three of this section, provided, however, that for the purposes of computing the expected minimum local contribution the income wealth index shall not be less than sixty-five percent (0.65) and shall not be more than two hundred percent (2.0) and provided however that such income wealth index shall not be

more than ninety-five percent (0.95) for the two thousand eight--two thousand nine school year, and provided further that such income wealth index shall not be less than zero for the two thousand thirteen--two thousand fourteen school year. The selected actual valuation shall be calculated pursuant to paragraph c of subdivision one of this section. Total wealth foundation pupil units shall be calculated pursuant to paragraph h of subdivision two of this section.

b. Phase-in foundation increase. (1) The phase-in foundation increase shall equal the product of the phase-in foundation increase factor multiplied by the positive difference, if any, of (i) the product of the total aidable foundation pupil units multiplied by the district's selected foundation aid less (ii) the total foundation aid base computed pursuant to paragraph j of subdivision one of this section.

(2) (i) Phase-in foundation percent. The phase-in foundation percent shall equal one hundred thirteen and fourteen onehundredths percent (1.1314) for the two thousand eleven--two thousand twelve school year, one hundred ten and thirty-eight hundredths percent (1.1038) for the two thousand twelve--two thousand thirteen school year, one hundred seven and sixty-eight hundredths percent (1.0768) for the two thousand thirteen--two thousand fourteen school year, one hundred five and six hundredths percent (1.0506) for the two thousand fourteen--two thousand fifteen school year, and one hundred two and five tenths percent (1.0250) for the two thousand fifteen--two thousand sixteen school year.

(ii) Phase-in foundation increase factor. For the two thousand eleven--two thousand twelve school year, the phase-in foundation increase factor shall equal thirty-seven and one-half percent (0.375) and the phase-in due minimum percent shall equal nineteen and forty-one hundredths percent (0.1941), for the two thousand twelve--two thousand thirteen school year the phase-in foundation increase factor shall equal one and seven-tenths percent (0.017), for the two thousand thirteen--two thousand fourteen school year the phase-in foundation increase factor shall equal (1) for a city school district in a city having a population of one million or more, five and twenty-three hundredths percent (0.0523) or (2) for all other school districts zero percent, for the two thousand fourteen--two thousand fifteen school year the phase-in foundation increase factor shall equal (1) for a city school district of a city having a population of one million or more, four and thirty-two hundredths percent (0.0432) or (2) for a school district other than a city school district having a population of one million or more for which (A) the quotient of the positive difference of the foundation formula aid minus the foundation aid base computed pursuant to paragraph j of subdivision one of this section divided by the foundation formula aid is greater than twenty-two percent (0.22) and (B) a combined wealth ratio less than thirty-five hundredths (0.35), seven percent (0.07) or (3) for all other school districts, four and thirty-one hundredths percent (0.0431), and for the two thousand fifteen--two thousand sixteen school year the phase-in foundation increase factor shall equal: (1)

for a city school district of a city having a population of one million or more, thirteen and two hundred seventy-four thousandths percent (0.13274); or (2) for districts where the quotient arrived at when dividing (A) the product of the total aidable foundation pupil units multiplied by the district's selected foundation aid less the total foundation aid base computed pursuant to paragraph j of subdivision one of this section divided by (B) the product of the total aidable foundation pupil units multiplied by the district's selected foundation aid is greater than nineteen percent (0.19), and where the district's combined

wealth ratio is less than thirty-three hundredths (0.33), seven and seventy-five hundredths percent (0.0775); or (3) for any other district designated as high need pursuant to clause (c) of subparagraph two of paragraph c of subdivision six of this section for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand seven--two thousand eight school year and entitled "SA0708", four percent (0.04); or (4) for a city school district in a city having a population of one hundred twenty-five thousand or more but less than one million, fourteen percent (0.14); or (5) for school districts that were designated as small city school districts or central school districts whose boundaries include a portion of a small city for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand fourteen--two thousand fifteen school year and entitled "SA1415", four and seven hundred fifty- one thousandths percent (0.04751); or (6) for all other districts one percent (0.01), and for the two thousand sixteen--two thousand seventeen school year and thereafter the commissioner shall annually determine the phase-in foundation increase factor subject to allocation pursuant to the provisions of subdivision eighteen of this section and any provisions of a chapter of the laws of New York as described therein.

b-1. Notwithstanding any other provision of law to the contrary, for the two thousand seven--two thousand eight school year and thereafter, the additional amount payable to each school district pursuant to this subdivision in the current year as total foundation aid, after deducting the total foundation aid base, shall be deemed a state grant in aid identified by the commissioner for general use for purposes of section seventeen hundred eighteen of this chapter.

c. Public excess cost aid setaside. Each school district shall set aside from its total foundation aid computed for the current year pursuant to this subdivision an amount equal to the product of: (i) the difference between the amount the school district was eligible to receive in the two thousand six--two thousand seven school year pursuant to or in lieu of paragraph six of subdivision nineteen of this section as such paragraph existed on June thirtieth, two thousand seven, minus the amount such district was eligible to receive pursuant to or in lieu of paragraph five of subdivision nineteen of this section as such paragraph existed on June thirtieth, two thousand seven, in such school year, and (ii) the sum of one and the percentage increase in the consumer price index for the current year over such consumer price index for the two thousand six--two thousand seven school year, as computed pursuant to section two thousand twenty-two of this chapter. Notwithstanding any other provision of law to the contrary, the public excess cost aid setaside shall be paid pursuant to section thirty-six hundred nine-b of this part.

d. For the two thousand fourteen--two thousand fifteen and two thousand fifteen--two thousand sixteen school ~~[year]~~ years a city school district of a city having a population of one million or more may use amounts apportioned pursuant to this subdivision for afterschool programs.

§ 5-b. Paragraph g of subdivision 17 of section 3602 of the education law, as added by section 2 of part A of chapter 56 of the laws of 2014, is amended and a new paragraph h is added to read as follows:

~~[(g)]~~ g. The gap elimination adjustment restoration amount for the two thousand fifteen--two thousand sixteen school year ~~[and thereafter shall equal the product of the gap elimination percentage for such district~~



~~and the gap elimination adjustment restoration allocation established pursuant to subdivision eighteen of this section.]~~ for a school district shall be computed based on data on file with the commissioner and in the database used by the commissioner to produce an updated electronic data file in support of the enacted budget for the two thousand fifteen--two thousand sixteen state fiscal year and entitled "SA151-6" and shall equal the sum of tiers one through four plus the sum of minimums A, B, and C.

(i) "Tier one" shall equal the product of thirty dollars (\$30.00) multiplied by the extraordinary needs count computed pursuant to paragraph s of subdivision one of this section multiplied by the concentration factor, where the concentration factor shall be the sum of one plus the quotient arrived at when dividing (1) the difference of the extraordinary needs percent computed pursuant to paragraph w of subdivision one of this section less four-tenths (0.4) divided by (2) nine hundred two thousandths (0.902), provided, however, that such concentration factor shall not be less than one.

(ii) "Tier two" shall be the product, for districts with a change in enrollment of greater than two percent, of six hundred dollars (\$600.00), and for all other districts with a change in enrollment greater than zero but less than two percent, five hundred dollars (\$500.00) multiplied by the change in enrollment, where the change in enrollment shall be the positive difference, if any, of the base year public school district enrollment as computed pursuant to subparagraph two of paragraph n of subdivision one of this section for the base year less public school district enrollment for the two thousand thirteen--two thousand fourteen school year.

(iii) "Tier three" shall be the product of twenty-two dollars and fifty cents (\$22.50) multiplied by the free and reduced price lunch percent computed pursuant to paragraph p of subdivision one of this section multiplied by the base year public school district enrollment as computed pursuant to subparagraph two of paragraph n of subdivision one of this section for the base year.

(iv) "Tier four" shall be the product of three hundred dollars (\$300.00) multiplied by the limited English proficient count computed pursuant to paragraph o of subdivision one of this section multiplied by the extraordinary needs percent computed pursuant to paragraph w of subdivision one of this section multiplied by the sum of one and the LEP growth percent, where the LEP growth percent shall be the quotient arrived at by dividing the positive difference, if any, of the limited English proficient count for the base year less such count for the year prior to the base year divided by such count for the year prior to the base year.

(v) "Minimum A" shall be the minimum A percent multiplied by the gap elimination adjustment for the base year, where the minimum A percent shall be the greater of (1) for a city school district of a city having a population of one million or more twenty-nine and forty-five hundredths percent (0.2945), or (2) for a city school district of a city having a population of one hundred twenty-five thousand or more but less than one million and a combined wealth ratio of less than five-tenths (0.5) eighty percent (0.80), or (3) for all other districts with a combined wealth ratio less than one and eight-tenths (1.8) thirty-five and six-tenths percent (0.356), or (4) for all other districts thirty percent (0.30).

(vi) "Minimum B" shall be for districts designated as average need pursuant to clause (c) of subparagraph two of paragraph c of subdivision

six of this section for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand seven--two thousand eight school year and entitled "SA0708" and with a combined wealth ratio of less than seventy-eight hundredths (0.78), twenty-six and fifteen hundredths percent (0.2615) multiplied by the gap elimination adjustment for the base year.

(vii) "Minimum C" shall be for districts designated as high need pursuant to clause (c) of subparagraph two of paragraph c of subdivision six of this section for the school aid computer listing produced by the commissioner in support of the enacted budget for the two thousand seven--two thousand eight school year and entitled "SA0708", other than those city school districts of a city having a population of one hundred twenty-five thousand or more, forty-three percent (0.43) multiplied by the gap elimination adjustment for the base year.

(viii) Provided however, that no GEA restoration shall be more than the product of ninety-eight percent (0.98) multiplied by the gap elimination adjustment for the base year.

h. The gap elimination adjustment restoration amount for the two thousand sixteen--two thousand seventeen school year and thereafter shall equal the product of the gap elimination percentage for such district and the gap elimination adjustment restoration allocation established pursuant to subdivision eighteen of this section.

§ 6. The opening paragraph of section 3609-a of the education law, as amended by section 4 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

For aid payable in the two thousand seven--two thousand eight school year through the [~~two thousand thirteen two thousand fourteen~~] two thousand fifteen--two thousand sixteen school year, "moneys apportioned" shall mean the lesser of (i) the sum of one hundred percent of the respective amount set forth for each school district as payable pursuant to this section in the school aid computer listing for the current year produced by the commissioner in support of the budget which includes the appropriation for the general support for public schools for the prescribed payments and individualized payments due prior to April first for the current year plus the apportionment payable during the current school year pursuant to subdivision six-a and subdivision fifteen of section thirty-six hundred two of this part minus any reductions to current year aids pursuant to subdivision seven of section thirty-six hundred four of this part or any deduction from apportionment payable pursuant to this chapter for collection of a school district basic contribution as defined in subdivision eight of section forty-four hundred one of this chapter, less any grants provided pursuant to subparagraph two-a of paragraph b of subdivision four of section ninety-two-c of the state finance law, less any grants provided pursuant to subdivision six of section ninety-seven-nnnn of the state finance law, less any grants provided pursuant to subdivision twelve of section thirty-six hundred forty-one of this article, or (ii) the apportionment calculated by the commissioner based on data on file at the time the payment is processed; provided however, that for the purposes of any payments made pursuant to this section prior to the first business day of June of the current year, moneys apportioned shall not include any aids payable pursuant to subdivisions six and fourteen, if applicable, of section thirty-six hundred two of this part as current year aid for debt service on bond anticipation notes and/or bonds first issued in the current year or any aids payable for full-day kindergarten for the current year pursuant to subdivision nine of section thirty-six hundred



two of this part. The definitions of "base year" and "current year" as set forth in subdivision one of section thirty-six hundred two of this part shall apply to this section. For aid payable in the two thousand fourteen--two thousand fifteen school year, reference to such "school aid computer listing for the current year" shall mean the printouts entitled "SA141-5". For aid payable in the two thousand fifteen--two thousand sixteen school year, reference to such "school aid computer listing for the current year" shall mean the printouts entitled "SA151-6".

§ 7. The education law is amended by adding a new section 3609-h to read as follows:

§ 3609-h. Moneys apportioned to school districts for commercial gaming grants pursuant to subdivision six of section ninety-seven-nnnn of the state finance law, when and how payable commencing July first, two thousand fourteen. Notwithstanding the provisions of section thirty-six hundred nine-a of this part, apportionments payable pursuant to subdivision six of section ninety-seven-nnnn of the state finance law shall be paid pursuant to this section. The definitions of "base year" and "current year" as set forth in subdivision one of section thirty-six hundred two of this part shall apply to this section.

1. The moneys apportioned by the commissioner to school districts pursuant to subdivision six of section ninety-seven-nnnn of the state finance law for the two thousand fourteen-two thousand fifteen school year and thereafter shall be paid as a commercial gaming grant, as computed pursuant to such subdivision, as follows:

a. For the two thousand fourteen--two thousand fifteen school year, one hundred percent of such grant shall be paid on the same date as the payment computed pursuant to clause (v) of subparagraph three of paragraph b of subdivision one of section thirty-six hundred nine-a of this article.

b. For the two thousand fifteen--two thousand sixteen school year and thereafter, seventy percent of such grant shall be paid on the same date as the payment computed pursuant to clause (ii) of subparagraph three of paragraph b of subdivision one of section thirty-six hundred nine-a of this article, and thirty percent of such grant shall be paid on the same date as the payment computed pursuant to clause (v) of subparagraph three of paragraph b of subdivision one of section thirty-six hundred nine-a of this article.

2. Any payment to a school district pursuant to this section shall be general receipts of the district and may be used for any lawful purpose of the district.

§ 7-a. Clause (c) of subparagraph 5 of paragraph e of subdivision 6 of section 3602 of the education law, as amended by section 4-a of part A of chapter 56 of the laws of 2014, is amended to read as follows:

(c) At the end of each ten year segment of an assumed amortization established pursuant to subparagraphs two, three and four of this paragraph, or in the [~~two thousand fifteen -- two thousand sixteen~~] two thousand sixteen--two thousand seventeen school year in the case of assumed amortizations whose ten year segment ends prior to such school year, the commissioner shall revise the remaining scheduled semiannual payments of the outstanding principal and interest of such assumed amortization, other than the outstanding principal and interest of refunding bonds where the district can demonstrate to the commissioner that it is precluded by state or federal law, rule or regulation from refinancing such outstanding principal and interest, based on the interest rates applicable for the current year if the difference of the interest rate

upon which the existing assumed amortization is based minus such interest rate applicable for the current year is equal to or greater than one quarter of one-one hundredth. Provided however, in the case of assumed amortization whose ten year segment ended prior to the [~~two thousand fifteen--two thousand sixteen~~] two thousand sixteen--two thousand seventeen school year the next ten year segment shall be deemed to commence with the [~~two thousand fifteen--two thousand sixteen~~] two thousand sixteen--two thousand seventeen school year. The department shall notify school districts of projects subject to the provisions of this clause by no later than December first next preceding the school year in which the assumed amortization is scheduled to be revised pursuant to this clause.

§ 7-b. Subdivision 4 of section 3627 of the education law, as amended by section 7 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

4. Notwithstanding any other provision of law to the contrary, any expenditures for transportation provided pursuant to this section in the two thousand thirteen--two thousand fourteen and two thousand fourteen--two thousand fifteen school year and thereafter and otherwise eligible for transportation aid pursuant to subdivision seven of section thirty-six hundred two of this article shall be considered approved transportation expenses eligible for transportation aid, provided further that for the two thousand thirteen--two thousand fourteen and two thousand fourteen--two thousand fifteen school year such aid shall be limited to eight million one hundred thousand dollars and for the two thousand fifteen--two thousand sixteen school year and thereafter such aid shall be limited to twelve million six hundred thousand dollars. And provided further that such expenditures eligible for aid under this section shall supplement not supplant local expenditures for such transportation in the two thousand twelve--two thousand thirteen school year.

§ 8. Paragraph b of subdivision 2 of section 3612 of the education law, as amended by section 5 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

b. Such grants shall be awarded to school districts, within the limits of funds appropriated therefor, through a competitive process that takes into consideration the magnitude of any shortage of teachers in the school district, the number of teachers employed in the school district who hold temporary licenses to teach in the public schools of the state, the number of provisionally certified teachers, the fiscal capacity and geographic sparsity of the district, the number of new teachers the school district intends to hire in the coming school year and the number of summer in the city student internships proposed by an eligible school district, if applicable. Grants provided pursuant to this section shall be used only for the purposes enumerated in this section. Notwithstanding any other provision of law to the contrary, a city school district in a city having a population of one million or more inhabitants receiving a grant pursuant to this section may use no more than eighty percent of such grant funds for any recruitment, retention and certification costs associated with transitional certification of teacher candidates for the school years two thousand one--two thousand two through [~~two thousand fourteen--two thousand fifteen~~] two thousand fifteen--two thousand sixteen.

§ 9. Subdivision 6 of section 4402 of the education law, as amended by section 9 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

6. Notwithstanding any other law, rule or regulation to the contrary, the board of education of a city school district with a population of one hundred twenty-five thousand or more inhabitants shall be permitted to establish maximum class sizes for special classes for certain students with disabilities in accordance with the provisions of this subdivision. For the purpose of obtaining relief from any adverse fiscal impact from under-utilization of special education resources due to low student attendance in special education classes at the middle and secondary level as determined by the commissioner, such boards of education shall, during the school years nineteen hundred ninety-five--ninety-six through June thirtieth, two thousand [~~fifteen~~] sixteen of the [~~two thousand fourteen--two thousand fifteen~~] two thousand fifteen--two thousand sixteen school year, be authorized to increase class sizes in special classes containing students with disabilities whose age ranges are equivalent to those of students in middle and secondary schools as defined by the commissioner for purposes of this section by up to but not to exceed one and two tenths times the applicable maximum class size specified in regulations of the commissioner rounded up to the nearest whole number, provided that in a city school district having a population of one million or more, classes that have a maximum class size of fifteen may be increased by no more than one student and provided that the projected average class size shall not exceed the maximum specified in the applicable regulation, provided that such authorization shall terminate on June thirtieth, two thousand. Such authorization shall be granted upon filing of a notice by such a board of education with the commissioner stating the board's intention to increase such class sizes and a certification that the board will conduct a study of attendance problems at the secondary level and will implement a corrective action plan to increase the rate of attendance of students in such classes to at least the rate for students attending regular education classes in secondary schools of the district. Such corrective action plan shall be submitted for approval by the commissioner by a date during the school year in which such board increases class sizes as provided pursuant to this subdivision to be prescribed by the commissioner. Upon at least thirty days notice to the board of education, after conclusion of the school year in which such board increases class sizes as provided pursuant to this subdivision, the commissioner shall be authorized to terminate such authorization upon a finding that the board has failed to develop or implement an approved corrective action plan.

§ 10. Intentionally omitted.

§ 11. Subparagraph (i) of paragraph a of subdivision 10 of section 4410 of the education law is amended by adding a new clause (C) to read as follows:

(C) Notwithstanding any other provision of law, rule or regulation to the contrary, on or before the two thousand sixteen--two thousand seventeen school year and thereafter, to be phased-in over no more than four years from such starting year, the commissioner, subject to the approval of the director of the budget, shall establish regional tuition rates for special education itinerant services based on average actual costs in accordance with a methodology established pursuant to subdivision four of section forty-four hundred five of this article.

§ 12. Section 97-nnnn of the state finance law is amended by adding a new subdivision 6 to read as follows:

6. a. Moneys appropriated from the fund for the two thousand fourteen--two thousand fifteen and two thousand fifteen--two thousand sixteen school years, for the purposes of providing aid pursuant to

paragraph a of subdivision three of this section shall be apportioned and paid by the education department on or after April first, two thousand fifteen.

b. Each school district eligible to receive total foundation aid pursuant to section thirty-six hundred two of the education law shall receive a commercial gaming grant in an amount equal to the product of the amount of the appropriation of such commercial gaming grants for the current state fiscal year multiplied by the district's commercial gaming ratio. The "commercial gaming ratio" shall be equal to the quotient of the moneys apportioned for such district pursuant to section thirty-six hundred nine-a of the education law as set forth in the school aid computer listing produced by the commissioner in support of the enacted state budget for the current school year, divided by the sum of such moneys apportioned for all school districts as set forth in such school aid computer listing in support of the enacted state budget for the current school year.

Moneys to be appropriated from the fund in any state fiscal year, commencing on and after April first, two thousand fifteen, for the purposes of providing aid pursuant to this subparagraph shall be apportioned and paid by the education department pursuant to section thirty-six hundred nine-h of the education law.

§ 13. Subdivision b of section 2 of chapter 756 of the laws of 1992, relating to funding a program for work force education conducted by the consortium for worker education in New York city, as amended by section 12 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

b. Reimbursement for programs approved in accordance with subdivision a of this section [~~for the 2011-2012 school year shall not exceed 62.9 percent of the lesser of such approvable costs per contact hour or twelve dollars and fifteen cents per contact hour, reimbursement~~] for the 2012--2013 school year shall not exceed 63.3 percent of the lesser of such approvable costs per contact hour or twelve dollars and thirty-five cents per contact hour, reimbursement for the 2013--2014 school year shall not exceed 62.3 percent of the lesser of such approvable costs per contact hour or twelve dollars and sixty-five cents per contact hour, [and] reimbursement for the 2014--2015 school year shall not exceed 61.6 percent of the lesser of such approvable costs per contact hour or [eight] thirteen dollars per contact hour, and reimbursement for the 2015--2016 school year shall not exceed 60.7 percent of the lesser of such approvable costs per contact hour or thirteen dollars and forty cents per contact hour where a contact hour represents sixty minutes of instruction services provided to an eligible adult. Notwithstanding any other provision of law to the contrary, [~~for the 2011-2012 school year such contact hours shall not exceed one million seven hundred one thousand five hundred seventy (1,701,570) hours; whereas~~] for the 2012--2013 school year such contact hours shall not exceed one million six hundred sixty-four thousand five hundred thirty-two (1,664,532) hours; whereas for the 2013--2014 school year such contact hours shall not exceed one million six hundred forty-nine thousand seven hundred forty-six (1,649,746) hours; whereas for the 2014--2015 school year such contact hours shall not exceed one million six hundred twenty-five thousand (1,625,000) hours; whereas for the 2015--2016 school year such contact hours shall not exceed one million five hundred ninety-nine thousand fifteen (1,599,015). Notwithstanding any other provision of law to the contrary, the apportionment calculated for the city school district of the city of New York pursuant to subdi-

vision 11 of section 3602 of the education law shall be computed as if such contact hours provided by the consortium for worker education, not to exceed the contact hours set forth herein, were eligible for aid in accordance with the provisions of such subdivision 11 of section 3602 of the education law.

§ 14. Section 4 of chapter 756 of the laws of 1992, relating to funding a program for work force education conducted by the consortium for worker education in New York city, is amended by adding a new subdivision t to read as follows:

t. The provisions of this subdivision shall not apply after the completion of payments for the 2015--2016 school year. Notwithstanding any inconsistent provisions of law, the commissioner of education shall withhold a portion of employment preparation education aid due to the city school district of the city of New York to support a portion of the costs of the work force education program. Such moneys shall be credited to the elementary and secondary education fund local assistance account and shall not exceed thirteen million dollars (\$13,000,000).

§ 15. Section 6 of chapter 756 of the laws of 1992, relating to funding a program for work force education conducted by the consortium for worker education in New York city, as amended by section 14 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

§ 6. This act shall take effect July 1, 1992, and shall be deemed repealed on June 30, ~~2015~~ 2016.

§ 15-a. Paragraph a-1 of subdivision 11 of section 3602 of the education law, as amended by section 14-a of part A of chapter 56 of the laws of 2014, is amended to read as follows:

a-1. Notwithstanding the provisions of paragraph a of this subdivision, for aid payable in the school years two thousand--two thousand one through two thousand nine--two thousand ten, and two thousand eleven--two thousand twelve through ~~[two thousand fourteen--two thousand fifteen]~~ two thousand fifteen--two thousand sixteen, the commissioner may set aside an amount not to exceed two million five hundred thousand dollars from the funds appropriated for purposes of this subdivision for the purpose of serving persons twenty-one years of age or older who have not been enrolled in any school for the preceding school year, including persons who have received a high school diploma or high school equivalency diploma but fail to demonstrate basic educational competencies as defined in regulation by the commissioner, when measured by accepted standardized tests, and who shall be eligible to attend employment preparation education programs operated pursuant to this subdivision.

§ 16. Subdivision 1 of section 167 of chapter 169 of the laws of 1994, relating to certain provisions related to the 1994-95 state operations, aid to localities, capital projects and debt service budgets, as amended by section 15 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

1. Sections one through seventy of this act shall be deemed to have been in full force and effect as of April 1, 1994 provided, however, that sections one, two, twenty-four, twenty-five and twenty-seven through seventy of this act shall expire and be deemed repealed on March 31, 2000; provided, however, that section twenty of this act shall apply only to hearings commenced prior to September 1, 1994, and provided further that section twenty-six of this act shall expire and be deemed repealed on March 31, 1997; and provided further that sections four through fourteen, sixteen, and eighteen, nineteen and twenty-one through twenty-one-a of this act shall expire and be deemed repealed on March 31, 1997; and provided further that sections three, fifteen, seventeen,

twenty, twenty-two and twenty-three of this act shall expire and be deemed repealed on March 31, ~~[2016]~~ 2017.

§ 17. Subdivisions 22 and 24 of section 140 of chapter 82 of the laws of 1995, amending the education law and other laws relating to state aid to school districts and the appropriation of funds for the support of government, as amended by section 16 of part A of chapter 56 of the laws of 2014, are amended to read as follows:

(22) sections one hundred twelve, one hundred thirteen, one hundred fourteen, one hundred fifteen and one hundred sixteen of this act shall take effect on July 1, 1995; provided, however, that section one hundred thirteen of this act shall remain in full force and effect until July 1, ~~[2015]~~ 2016 at which time it shall be deemed repealed;

(24) sections one hundred eighteen through one hundred thirty of this act shall be deemed to have been in full force and effect on and after July 1, 1995; provided further, however, that the amendments made pursuant to section one hundred twenty-four of this act shall be deemed to be repealed on and after July 1, ~~[2015]~~ 2016;

§ 18. Section 7 of chapter 472 of the laws of 1998, amending the education law relating to the lease of school buses by school districts, as amended by section 26 of part A of chapter 57 of the laws of 2013, is amended to read as follows:

§ 7. This act shall take effect September 1, 1998, and shall expire and be deemed repealed September 1, ~~[2015]~~ 2017.

§ 19. Section 12 of chapter 147 of the laws of 2001, amending the education law relating to conditional appointment of school district, charter school or BOCES employees, as amended by section 18 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

§ 12. This act shall take effect on the same date as chapter 180 of the laws of 2000 takes effect, and shall expire July 1, ~~[2015]~~ 2016 when upon such date the provisions of this act shall be deemed repealed.

§ 20. Section 4 of chapter 425 of the laws of 2002, amending the education law relating to the provision of supplemental educational services, attendance at a safe public school and the suspension of pupils who bring a firearm to or possess a firearm at a school, as amended by section 19 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

§ 4. This act shall take effect July 1, 2002 and shall expire and be deemed repealed June 30, ~~[2015]~~ 2016.

§ 21. Section 5 of chapter 101 of the laws of 2003, amending the education law relating to implementation of the No Child Left Behind Act of 2001, as amended by section 20 of part A of chapter 56 of the laws of 2014, is amended to read as follows:

§ 5. This act shall take effect immediately; provided that sections one, two and three of this act shall expire and be deemed repealed on June 30, ~~[2015]~~ 2016.

§ 21-a. Subdivision 2 of section 1 of part A of chapter 57 of the laws of 2013 relating to school district eligibility for an increase in apportionment of school aid and implementation of standards for conducting annual professional performance reviews to determine teacher and principal effectiveness, is amended to read as follows:

2. Notwithstanding any inconsistent provision of law, no school district shall be eligible for an apportionment of general support for public schools from the funds appropriated for the 2013-14 school year and ~~[thereafter]~~ 2014-15 school year in excess of the amount apportioned to such school district in the base year unless such school district has submitted documentation that has been approved by the commissioner of



education by September 1 of the current year, demonstrating that it has fully implemented the standards and procedures for conducting annual professional performance reviews of classroom teachers and building principals in accordance with the requirements of section 3012-c of the education law and the commissioner of education's regulations. Any apportionment withheld pursuant to this section shall not occur prior to April 1 of the current year and shall not have any effect on the base year calculation for use in the subsequent school year.

§ 22. School bus driver training. In addition to apportionments otherwise provided by section 3602 of the education law, for aid payable in the 2015-2016 school year, the commissioner of education shall allocate school bus driver training grants to school districts and boards of cooperative educational services pursuant to sections 3650-a, 3650-b and 3650-c of the education law, or for contracts directly with not-for-profit educational organizations for the purposes of this section. Such payments shall not exceed four hundred thousand dollars (\$400,000) per school year.

§ 23. Special apportionment for salary expenses. a. Notwithstanding any other provision of law, upon application to the commissioner of education, not sooner than the first day of the second full business week of June 2016 and not later than the last day of the third full business week of June 2016, a school district eligible for an apportionment pursuant to section 3602 of the education law shall be eligible to receive an apportionment pursuant to this section, for the school year ending June 30, 2016, for salary expenses incurred between April 1 and June 30, 2015 and such apportionment shall not exceed the sum of (i) the deficit reduction assessment of 1990--1991 as determined by the commissioner of education, pursuant to paragraph f of subdivision 1 of section 3602 of the education law, as in effect through June 30, 1993, plus (ii) 186 percent of such amount for a city school district in a city with a population in excess of 1,000,000 inhabitants, plus (iii) 209 percent of such amount for a city school district in a city with a population of more than 195,000 inhabitants and less than 219,000 inhabitants according to the latest federal census, plus (iv) the net gap elimination adjustment for 2010--2011, as determined by the commissioner of education pursuant to chapter 53 of the laws of 2010, plus (v) the gap elimination adjustment for 2011--2012 as determined by the commissioner of education pursuant to subdivision 17 of section 3602 of the education law, and provided further that such apportionment shall not exceed such salary expenses. Such application shall be made by a school district, after the board of education or trustees have adopted a resolution to do so and in the case of a city school district in a city with a population in excess of 125,000 inhabitants, with the approval of the mayor of such city.

b. The claim for an apportionment to be paid to a school district pursuant to subdivision a of this section shall be submitted to the commissioner of education on a form prescribed for such purpose, and shall be payable upon determination by such commissioner that the form has been submitted as prescribed. Such approved amounts shall be payable on the same day in September of the school year following the year in which application was made as funds provided pursuant to subparagraph (4) of paragraph b of subdivision 4 of section 92-c of the state finance law, on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of education in the manner prescribed by law from moneys in the state lottery fund and from the general fund to the extent that the amount paid to a school district

pursuant to this section exceeds the amount, if any, due such school district pursuant to subparagraph (2) of paragraph a of subdivision 1 of section 3609-a of the education law in the school year following the year in which application was made.

c. Notwithstanding the provisions of section 3609-a of the education law, an amount equal to the amount paid to a school district pursuant to subdivisions a and b of this section shall first be deducted from the following payments due the school district during the school year following the year in which application was made pursuant to subparagraphs (1), (2), (3), (4) and (5) of paragraph a of subdivision 1 of section 3609-a of the education law in the following order: the lottery apportionment payable pursuant to subparagraph (2) of such paragraph followed by the fixed fall payments payable pursuant to subparagraph (4) of such paragraph and then followed by the district's payments to the teachers' retirement system pursuant to subparagraph (1) of such paragraph, and any remainder to be deducted from the individualized payments due the district pursuant to paragraph b of such subdivision shall be deducted on a chronological basis starting with the earliest payment due the district.

§ 24. Special apportionment for public pension accruals. a. Notwithstanding any other provision of law, upon application to the commissioner of education, not later than June 30, 2016, a school district eligible for an apportionment pursuant to section 3602 of the education law shall be eligible to receive an apportionment pursuant to this section, for the school year ending June 30, 2016 and such apportionment shall not exceed the additional accruals required to be made by school districts in the 2004--2005 and 2005--2006 school years associated with changes for such public pension liabilities. The amount of such additional accrual shall be certified to the commissioner of education by the president of the board of education or the trustees or, in the case of a city school district in a city with a population in excess of 125,000 inhabitants, the mayor of such city. Such application shall be made by a school district, after the board of education or trustees have adopted a resolution to do so and in the case of a city school district in a city with a population in excess of 125,000 inhabitants, with the approval of the mayor of such city.

b. The claim for an apportionment to be paid to a school district pursuant to subdivision a of this section shall be submitted to the commissioner of education on a form prescribed for such purpose, and shall be payable upon determination by such commissioner that the form has been submitted as prescribed. Such approved amounts shall be payable on the same day in September of the school year following the year in which application was made as funds provided pursuant to subparagraph (4) of paragraph b of subdivision 4 of section 92-c of the state finance law, on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of education in the manner prescribed by law from moneys in the state lottery fund and from the general fund to the extent that the amount paid to a school district pursuant to this section exceeds the amount, if any, due such school district pursuant to subparagraph (2) of paragraph a of subdivision 1 of section 3609-a of the education law in the school year following the year in which application was made.

c. Notwithstanding the provisions of section 3609-a of the education law, an amount equal to the amount paid to a school district pursuant to subdivisions a and b of this section shall first be deducted from the following payments due the school district during the school year



following the year in which application was made pursuant to subparagraphs (1), (2), (3), (4) and (5) of paragraph a of subdivision 1 of section 3609-a of the education law in the following order: the lottery apportionment payable pursuant to subparagraph (2) of such paragraph followed by the fixed fall payments payable pursuant to subparagraph (4) of such paragraph and then followed by the district's payments to the teachers' retirement system pursuant to subparagraph (1) of such paragraph, and any remainder to be deducted from the individualized payments due the district pursuant to paragraph b of such subdivision shall be deducted on a chronological basis starting with the earliest payment due the district.

§ 25. a. Notwithstanding any other law, rule or regulation to the contrary, any moneys appropriated to the state education department may be suballocated to other state departments or agencies, as needed, to accomplish the intent of the specific appropriations contained therein.

b. Notwithstanding any other law, rule or regulation to the contrary, moneys appropriated to the state education department from the general fund/aid to localities, local assistance account-001, shall be for payment of financial assistance, as scheduled, net of disallowances, refunds, reimbursement and credits.

c. Notwithstanding any other law, rule or regulation to the contrary, all moneys appropriated to the state education department for aid to localities shall be available for payment of aid heretofore or hereafter to accrue and may be suballocated to other departments and agencies to accomplish the intent of the specific appropriations contained therein.

d. Notwithstanding any other law, rule or regulation to the contrary, moneys appropriated to the state education department for general support for public schools may be interchanged with any other item of appropriation for general support for public schools within the general fund local assistance account office of prekindergarten through grade twelve education programs.

§ 25-a. Notwithstanding any provision of law to the contrary, excess state building aid payments in the amount of not more than \$1,989,867 made to the Johnson City central school district in various school years shall be recovered in five equal annual installments beginning the later of June of 2015 or June of the school year in which such district is notified of such excess payments. Provided, further, that such district may elect to make an initial payment no later than thirty days in advance of the first annual installment which shall reduce the amount of each annual installment.

§ 25-b. Notwithstanding any provision of the law to the contrary, for the Amsterdam city school district having a penalty arising from the late filing of a final cost report pursuant to section 31 of part A of chapter 57 of the laws of 2012 in the amount of not more than \$5,337,224, the commissioner of education shall recover such penalty in five equal annual installments beginning the later of June of 2017 or June of the school year in which such district is notified of the penalty. Provided further that such district may elect to make an initial payment no later than thirty days in advance of the first annual installment which shall reduce the amount of each annual installment.

§ 25-c. Notwithstanding any provision of the law to the contrary, for the Tonawanda city school district having a penalty arising from the late filing of a final cost report pursuant to section 31 of part A of chapter 57 of the laws of 2012 in the amount of not more than \$1,455,736, the commissioner of education shall recover such penalty in five equal annual installments beginning the later of June of 2017 or

June of the school year in which such district is notified of the penalty. Provided, further, that such district may elect to make an initial payment no later than thirty days in advance of the first annual installment which shall reduce the amount of each annual installment.

§ 25-d. Notwithstanding any provision of law to the contrary, excess state building aid payments in the amount of not more than \$2,249,247 made to the East Islip union free school district in various school years shall be recovered in five equal annual installments beginning the later of June of 2017 or June of the school year in which such district is notified of such excess payments. Provided, further, that such district may elect to make an initial payment no later than thirty days in advance of the first annual installment which shall reduce the amount of each annual installment.

§ 25-e. Notwithstanding any provision of the law to the contrary, for the Mount Morris central school district having a penalty arising from the late filing of a final cost report pursuant to section 31 of part A of chapter 57 of the laws of 2012 in the amount of not more than \$2,457,364, the commissioner of education shall recover such penalty in five equal annual installments beginning the later of June of 2017 or June of the school year in which such district is notified of the penalty. Provided, further, that such district may elect to make an initial payment no later than thirty days in advance of the first annual installment which shall reduce the amount of each annual installment.

§ 26. Notwithstanding the provision of any law, rule, or regulation to the contrary, the city school district of the city of Rochester, upon the consent of the board of cooperative educational services of the supervisory district serving its geographic region may purchase from such board for the 2015--2016 school year, as a non-component school district, services required by article 19 of the education law.

§ 26-a. Subdivision 10 of section 6-p of the general municipal law, as amended by section 14-b of part A of chapter 56 of the laws of 2014, is amended to read as follows:

10. Notwithstanding any provision of law to the contrary, the governing board of a school district may, during the [~~two thousand fourteen~~  
~~two thousand fifteen~~] two thousand fifteen--two thousand sixteen school year, authorize a withdrawal from this fund in an amount not to exceed the lesser of: (a) the dollar value of excess funding in the fund as determined by the comptroller pursuant to section thirty-three of this chapter or (b) the amount of the school district's remaining gap elimination adjustment as calculated by the commissioner of education pursuant to subdivision seventeen of section thirty-six hundred two of the education law. Funds withdrawn pursuant to this subdivision may only be used for the purpose of maintaining educational programming during the [~~two thousand fourteen~~  
~~two thousand fifteen~~] two thousand fifteen--two thousand sixteen school year which otherwise would have been reduced as a result of such gap elimination adjustment. Governing boards which make such a withdrawal shall submit, in a form prescribed by the commissioner of education, relevant information about the withdrawal, which shall include but not be limited to, the amount of such withdrawal, the date of withdrawal, and the use of such withdrawn funds.

§ 26-b. Subdivision a of section 5 of chapter 121 of the laws of 1996 relating to authorizing the Roosevelt union free school district to finance deficits by the issuance of serial bonds, as amended by section 20-b of part A of chapter 56 of the laws of 2014, is amended to read as follows:

a. Notwithstanding any other provisions of law, upon application to the commissioner of education submitted not sooner than April first and not later than June thirtieth of the applicable school year, the Roosevelt union free school district shall be eligible to receive an apportionment pursuant to this chapter for salary expenses, including related benefits, incurred between April first and June thirtieth of such school year. Such apportionment shall not exceed: for the 1996-97 school year through the [~~2014-15~~] 2015-16 school year, four million dollars (\$4,000,000); for the [~~2015-16~~] 2016-17 school year, three million dollars (\$3,000,000); for the [~~2016-17~~] 2017-18 school year, two million dollars (\$2,000,000); for the [~~2017-18~~] 2018-19 school year, one million dollars (\$1,000,000); and for the [~~2018-19~~] 2019-20 school year, zero dollars. Such annual application shall be made after the board of education has adopted a resolution to do so with the approval of the commissioner of education.

§ 27. The amounts specified in this section shall be a set aside from the state funds which each such district is receiving from the total foundation aid: for the purpose of the development, maintenance or expansion of magnet schools or magnet school programs for the 2015--2016 school year. To the city school district of the city of New York there shall be paid forty-eight million one hundred seventy-five thousand dollars (\$48,175,000) including five hundred thousand dollars (\$500,000) for the Andrew Jackson High School; to the Buffalo city school district, twenty-one million twenty-five thousand dollars (\$21,025,000); to the Rochester city school district, fifteen million dollars (\$15,000,000); to the Syracuse city school district, thirteen million dollars (\$13,000,000); to the Yonkers city school district, forty-nine million five hundred thousand dollars (\$49,500,000); to the Newburgh city school district, four million six hundred forty-five thousand dollars (\$4,645,000); to the Poughkeepsie city school district, two million four hundred seventy-five thousand dollars (\$2,475,000); to the Mount Vernon city school district, two million dollars (\$2,000,000); to the New Rochelle city school district, one million four hundred ten thousand dollars (\$1,410,000); to the Schenectady city school district, one million eight hundred thousand dollars (\$1,800,000); to the Port Chester city school district, one million one hundred fifty thousand dollars (\$1,150,000); to the White Plains city school district, nine hundred thousand dollars (\$900,000); to the Niagara Falls city school district, six hundred thousand dollars (\$600,000); to the Albany city school district, three million five hundred fifty thousand dollars (\$3,550,000); to the Utica city school district, two million dollars (\$2,000,000); to the Beacon city school district, five hundred sixty-six thousand dollars (\$566,000); to the Middletown city school district, four hundred thousand dollars (\$400,000); to the Freeport union free school district, four hundred thousand dollars (\$400,000); to the Greenburgh central school district, three hundred thousand dollars (\$300,000); to the Amsterdam city school district, eight hundred thousand dollars (\$800,000); to the Peekskill city school district, two hundred thousand dollars (\$200,000); and to the Hudson city school district, four hundred thousand dollars (\$400,000). Notwithstanding the provisions of this section, a school district receiving a grant pursuant to this section may use such grant funds for: (i) any instructional or instructional support costs associated with the operation of a magnet school; or (ii) any instructional or instructional support costs associated with implementation of an alternative approach to reduction of racial isolation and/or enhancement of the instructional program and

raising of standards in elementary and secondary schools of school districts having substantial concentrations of minority students. The commissioner of education shall not be authorized to withhold magnet grant funds from a school district that used such funds in accordance with this paragraph, notwithstanding any inconsistency with a request for proposals issued by such commissioner. For the purpose of attendance improvement and dropout prevention for the 2015--2016 school year, for any city school district in a city having a population of more than one million, the setaside for attendance improvement and dropout prevention shall equal the amount set aside in the base year. For the 2015--2016 school year, it is further provided that any city school district in a city having a population of more than one million shall allocate at least one-third of any increase from base year levels in funds set aside pursuant to the requirements of this subdivision to community-based organizations. Any increase required pursuant to this subdivision to community-based organizations must be in addition to allocations provided to community-based organizations in the base year. For the purpose of teacher support for the 2015--2016 school year: to the city school district of the city of New York, sixty-two million seven hundred seven thousand dollars (\$62,707,000); to the Buffalo city school district, one million seven hundred forty-one thousand dollars (\$1,741,000); to the Rochester city school district, one million seventy-six thousand dollars (\$1,076,000); to the Yonkers city school district, one million one hundred forty-seven thousand dollars (\$1,147,000); and to the Syracuse city school district, eight hundred nine thousand dollars (\$809,000). All funds made available to a school district pursuant to this section shall be distributed among teachers including prekindergarten teachers and teachers of adult vocational and academic subjects in accordance with this section and shall be in addition to salaries heretofore or hereafter negotiated or made available; provided, however, that all funds distributed pursuant to this section for the current year shall be deemed to incorporate all funds distributed pursuant to former subdivision 27 of section 3602 of the education law for prior years. In school districts where the teachers are represented by certified or recognized employee organizations, all salary increases funded pursuant to this section shall be determined by separate collective negotiations conducted pursuant to the provisions and procedures of article 14 of the civil service law, notwithstanding the existence of a negotiated agreement between a school district and a certified or recognized employee organization.

§ 28. Support of public libraries. The moneys appropriated for the support of public libraries by a chapter of the laws of 2015 enacting the aid to localities budget shall be apportioned for the 2015-2016 state fiscal year in accordance with the provisions of sections 271, 272, 273, 282, 284, and 285 of the education law as amended by the provisions of this chapter and the provisions of this section, provided that library construction aid pursuant to section 273-a of the education law shall not be payable from the appropriations for the support of public libraries and provided further that no library, library system or program, as defined by the commissioner of education, shall receive less total system or program aid than it received for the year 2001-2002 except as a result of a reduction adjustment necessary to conform to the appropriations for support of public libraries.

Notwithstanding any other provision of law to the contrary the moneys appropriated for the support of public libraries for the year 2015-2016 by a chapter of the laws of 2015 enacting the education, labor and fami-

ly assistance budget shall fulfill the state's obligation to provide such aid and, pursuant to a plan developed by the commissioner of education and approved by the director of the budget, the aid payable to libraries and library systems pursuant to such appropriations shall be reduced proportionately to assure that the total amount of aid payable does not exceed the total appropriations for such purpose.

§ 28-a. Subdivision 3 of section 4204-b of the education law, as amended by section 12-b of part A of chapter 57 of the laws of 2012, is amended to read as follows:

3. The state comptroller may deduct from any state funds which become due to a school district for each year in which such child was in attendance at such institution or facility an amount equal to the reimbursement required to be made by such school district in accordance with this section, and the amount so deducted shall not be included in the operating expense of such district for the purposes of computing the ~~[apportionment for]~~ approved operating expense ~~[aid]~~ pursuant to paragraph t of subdivision ~~[eleven]~~ one of section thirty-six hundred two of this chapter.

§ 29. Severability. The provisions of this act shall be severable, and if the application of any clause, sentence, paragraph, subdivision, section or part of this act to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not necessarily affect, impair or invalidate the application of any such clause, sentence, paragraph, subdivision, section, part of this act or remainder thereof, as the case may be, to any other person or circumstance, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 30. This act shall take effect immediately, and shall be deemed to have been in full force and effect on and after April 1, 2015, provided, however, that:

1. Sections one, eight, nine, fourteen, twenty-two, twenty-six, twenty-six-a and twenty-seven of this act shall take effect July 1, 2015.

2. Sections seven and twelve of this act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2014.

3. Sections six and thirteen of this act shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2014.

4. Section eleven of this act shall take effect July 1, 2015 and shall first apply to reimbursement for services and programs provided pursuant to section 4410 of the education law as provided in such section.

5. This act shall take effect immediately; provided, however, that the amendments to paragraph b-1 of subdivision 4 of section 3602 of the education law made by section five-a of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith.

6. The amendments to chapter 756 of the laws of 1992, relating to funding a program for work force education conducted by a consortium for worker education in New York city, made by sections thirteen and fourteen of this act shall not affect the repeal of such chapter and shall be deemed repealed therewith.

7. Section seventeen of this act shall take effect immediately and shall be deemed to have been in full force and effect on and after the effective date of section 140 of chapter 82 of the laws of 1995.

## PART B

Intentionally Omitted

## PART C

Section 1. The education law is amended by adding a new section 679-g to read as follows:

§ 679-g. New York state get on your feet loan forgiveness program. 1. Purpose. The president shall grant student loan forgiveness awards for the purpose of alleviating the burden of federal student loan debt for recent New York state college graduates.

2. Eligibility. To be eligible for an award pursuant to this section, an applicant shall: (a) have graduated from a high school located in New York state or attended an approved New York state program for a state high school equivalency diploma and received such high school equivalency diploma; (b) have graduated and obtained an undergraduate degree from a college or university with its headquarters located in New York state in or after the two thousand fourteen--fifteen academic year; (c) apply for this program within two years of obtaining such degree; (d) be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income; (e) have income of less than fifty thousand dollars; (f) comply with subdivisions three and five of section six hundred sixty-one of this part; and (g) work in New York state, if employed. For purposes of this program, "income" shall be the total adjusted gross income of the applicant and the applicant's spouse, if applicable.

3. Awards. An applicant whose annual income is less than fifty thousand dollars shall be eligible to receive an award equal to one hundred percent of his or her monthly federal income-driven repayment plan payments for twenty-four months of repayment under the federal program. Provided, however, that the awards granted under this section shall be deferred for a recipient who has been granted a deferment or forbearance under the federal income-driven repayment plan. Upon completion of such deferment or forbearance period, such recipient shall be eligible to receive an award for the remaining time period under this subdivision. A recipient who is not a resident of New York state at the time any payment is made under this program shall be required to refund such payments to the state. The corporation shall be authorized to recover such payments in accordance with rules and regulations promulgated by the corporation. A student who is delinquent or in default on a student loan made under any statutory New York state or federal education loan program or has failed to comply with the terms of a service condition imposed by an award made pursuant to this article or has failed to repay an award shall be ineligible to receive an award under this program until such delinquency, default or failure is cured.

4. Rules and regulations. The corporation is authorized to promulgate rules and regulations, and may promulgate emergency regulations necessary for the implementation of the provisions of this section.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

## PART D

Intentionally Omitted

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## PART E

Intentionally Omitted

## PART F

Section 1. The banking law is amended by adding a new section 9-w to read as follows:

§ 9-w. Standard financial aid award letter. The superintendent of financial services in consultation with the president of the higher education services corporation shall develop a standard financial aid award letter which shall clearly delineate (a) the estimated cost of attendance, including but not limited to, the cost of tuition and fees, room and board, books, and transportation. Such standard letter shall provide the estimated cost of attendance for the current academic year as well as estimates for each academic year that the student would need to attend to earn a degree at such institution with a disclaimer that the cost of attendance for years other than the current academic year are estimates and may be subject to change, (b) all financial aid offered from the federal government, the state, and the institution with an explanation as to which components will require repayment, (c) any expected student and/or family contribution, (d) campus-specific graduation, median borrowing, and loan default rates, and (e) any other information as determined by the superintendent in consultation with the president. Such standard letter shall include a glossary of standard terms and definitions used on such standard letter. The superintendent shall publish and make available such standard letter by December thirty-first, two thousand fifteen and thereafter. Each college, vocational institution, and any other institution that offers an approved program as defined in section six hundred one of the education law shall utilize the standard letter issued by the department of financial services in responding to all financial aid applicants for the two thousand sixteen--two thousand seventeen academic year and thereafter. The superintendent shall promulgate regulations implementing this section.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

## PART G

Intentionally Omitted

## PART H

Intentionally Omitted

## PART I

Section 1. Paragraphs (a), (b), (c) and (d) of subdivision 1 of section 131-o of the social services law, as amended by section 1 of part E of chapter 58 of the laws of 2014, are amended to read as follows:



(a) in the case of each individual receiving family care, an amount equal to at least [~~\$139.00~~] \$141.00 for each month beginning on or after January first, two thousand [~~fourteen~~] fifteen.

(b) in the case of each individual receiving residential care, an amount equal to at least [~~\$160.00~~] \$163.00 for each month beginning on or after January first, two thousand [~~fourteen~~] fifteen.

(c) in the case of each individual receiving enhanced residential care, an amount equal to at least [~~\$190.00~~] \$193.00 for each month beginning on or after January first, two thousand [~~fourteen~~] fifteen.

(d) for the period commencing January first, two thousand [~~fifteen~~] sixteen, the monthly personal needs allowance shall be an amount equal to the sum of the amounts set forth in subparagraphs one and two of this paragraph:

(1) the amounts specified in paragraphs (a), (b) and (c) of this subdivision; and

(2) the amount in subparagraph one of this paragraph, multiplied by the percentage of any federal supplemental security income cost of living adjustment which becomes effective on or after January first, two thousand [~~fifteen~~] sixteen, but prior to June thirtieth, two thousand [~~fifteen~~] sixteen, rounded to the nearest whole dollar.

§ 2. Paragraphs (a), (b), (c), (d), (e) and (f) of subdivision 2 of section 209 of the social services law, as amended by section 2 of part E of chapter 58 of the laws of 2014, are amended to read as follows:

(a) On and after January first, two thousand [~~fourteen~~] fifteen, for an eligible individual living alone, [~~\$808.00~~] \$820.00; and for an eligible couple living alone, [~~\$1186.00~~] \$1204.00.

(b) On and after January first, two thousand [~~fourteen~~] fifteen, for an eligible individual living with others with or without in-kind income, [~~\$744.00~~] \$756.00; and for an eligible couple living with others with or without in-kind income, [~~\$1128.00~~] \$1146.00.

(c) On and after January first, two thousand [~~fourteen~~] fifteen, (i) for an eligible individual receiving family care, [~~\$987.48~~] \$999.48 if he or she is receiving such care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible couple receiving family care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland, two times the amount set forth in subparagraph (i) of this paragraph; or (iii) for an eligible individual receiving such care in any other county in the state, [~~\$949.48~~] \$961.48; and (iv) for an eligible couple receiving such care in any other county in the state, two times the amount set forth in subparagraph (iii) of this paragraph.

(d) On and after January first, two thousand [~~fourteen~~] fifteen, (i) for an eligible individual receiving residential care, [~~\$1156.00~~] \$1168.00 if he or she is receiving such care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for an eligible couple receiving residential care in the city of New York or the county of Nassau, Suffolk, Westchester or Rockland, two times the amount set forth in subparagraph (i) of this paragraph; or (iii) for an eligible individual receiving such care in any other county in the state, [~~\$1126.00~~] \$1138.00; and (iv) for an eligible couple receiving such care in any other county in the state, two times the amount set forth in subparagraph (iii) of this paragraph.

(e) (i) On and after January first, two thousand [~~fourteen~~] fifteen, for an eligible individual receiving enhanced residential care, [~~\$1415.00~~] \$1427.00; and (ii) for an eligible couple receiving enhanced



residential care, two times the amount set forth in subparagraph (i) of this paragraph.

(f) The amounts set forth in paragraphs (a) through (e) of this subdivision shall be increased to reflect any increases in federal supplemental security income benefits for individuals or couples which become effective on or after January first, two thousand ~~[fifteen]~~ sixteen but prior to June thirtieth, two thousand ~~[fifteen]~~ sixteen.

§ 3. This act shall take effect December 31, 2015.

#### PART J

Section 1. Subparagraph 8 of paragraph h of subdivision 4 of section 1950 of the education law, as amended by section 1 of part G of chapter 58 of the laws of 2014, is amended to read as follows:

(8) To enter into contracts with the commissioner of the office of children and family services pursuant to subdivision six-a of section thirty-two hundred two of this chapter to provide to such office, for the benefit of youth in its custody, any special education programs, related services ~~[and]~~ career and technical education services and music, art and foreign language programs provided by the board of cooperative educational services to component school districts. Any such proposed contract shall be subject to the review and approval of the commissioner to determine that it is an approved cooperative educational service. Services provided pursuant to such contracts shall be provided at cost, and the board of cooperative educational services shall not be authorized to charge any costs incurred in providing such services to its component school districts.

§ 2. Subdivision 6-a of section 3202 of the education law, as amended by section 2 of part G of chapter 58 of the laws of 2014, is amended to read as follows:

6-a. Notwithstanding subdivision six of this section or any other law to the contrary, the commissioner of the office of children and family services shall be responsible for the secular education of youth under the jurisdiction of the office and may contract for such education with the trustees or board of education of the school district wherein a facility for the residential care of such youth is located or with the board of cooperative educational services at which any such school district is a component district for special education programs, related services and career and technical education services and music, art and foreign language programs in accordance with subparagraph eight of paragraph (h) of subdivision four of section nineteen hundred fifty of this chapter. A youth attending a local public school while in residence at such facility shall be deemed a resident of the school district where his parent or guardian resides at the commencement of each school year for the purpose of determining which school district shall be responsible for the youth's tuition pursuant to section five hundred four of the executive law.

§ 3. Subdivision 1 of section 505 of the executive law, as amended by chapter 465 of the laws of 1992, is amended to read as follows:

1. There shall be a facility director of each ~~[division for youth]~~ office of children and family services operated facility. Such facility director shall be appointed by the ~~[director]~~ commissioner of the ~~[division]~~ office of children and family services and the position shall be in the noncompetitive class and designated as confidential as defined by subdivision two-a of section forty-two of the civil service law. The facility director shall have ~~[two years]~~ such experience ~~[in appropriate]~~

~~titles in state government. Such facility director shall have such~~ and other qualifications as may be prescribed by the director of classification and compensation within the department of civil service in consultation with the commissioner of the ~~[division]~~ office of children and family services based on differences in duties, levels of responsibility, size and character of the facility, knowledge, skills and abilities required, and other factors affecting the position ~~[and]~~. Such facility director shall serve at the pleasure of the ~~[director]~~ commissioner of the ~~[division]~~ office of children and family services.

§ 4. Section 3 of part K of chapter 57 of the laws of 2012, amending the education law relating to authorizing the board of cooperative educational services to enter into contracts with the commissioner of children and family services to provide certain services, as amended by section 3 of part G of chapter 58 of the laws of 2014, is amended to read as follows:

§ 3. The office of children and family services, in consultation with the state education department, shall prepare and submit to the governor, the temporary president of the senate and the speaker of the assembly a report by December 1, 2015 and December 1, 2017, that shall analyze the cost effectiveness and programmatic impact of delivering special education programs, related services ~~[and]~~, career and technical education services and music, art and foreign language programs through boards of cooperative educational services in juvenile justice facilities operated by the office.

§ 5. Section 4 of part K of chapter 57 of the laws of 2012, amending the education law, relating to authorizing the board of cooperative educational services to enter into contracts with the commissioner of children and family services to provide certain services, is amended to read as follows:

§ 4. This act shall take effect July 1, 2012 and shall expire June 30, ~~[2015]~~ 2018 when upon such date the provisions of this act shall be deemed repealed.

§ 6. This act shall take effect immediately; provided, the amendments to subparagraph (8) of paragraph h of subdivision 4 of section 1950 of the education law made by section one of this act shall not affect the repeal of such subparagraph and shall be deemed repealed therewith; provided, however, that the amendments to subdivision 6-a of section 3202 of the education law made by section two of this act shall not affect the expiration of such subdivision and shall be deemed to expire therewith; provided, further, that the amendments to section 3 of part K of chapter 57 of the laws of 2012 made by section four of this act shall not affect the repeal of such chapter and shall be deemed repealed therewith.

#### PART K

Section 1. The section heading of section 456 of the social services law, as added by chapter 865 of the laws of 1977, is amended to read as follows:

State reimbursement and payments.

§ 2. Paragraphs (c) and (d) of subdivision 1 of section 456 of the social services law, as amended by chapter 601 of the laws of 1994, are amended to read as follows:

~~[(c) one hundred per centum of such payments after first deducting therefrom any federal funds properly to be received on account of such payments, for children placed out for adoption by a voluntary authorized~~

~~agency or for children being adopted after being placed out for adoption by a voluntary authorized agency in accordance with the provisions of this title,~~ or ~~[(d)]~~ (c) one hundred per centum of such payments after first deducting therefrom any federal funds properly to be received on account of such payments, for children placed out for adoption or being adopted after being placed out for adoption by an Indian tribe as referenced in subdivision seven of section four hundred fifty-one of this title.

§ 3. Section 456 of the social services law is amended by adding a new subdivision 3 to read as follows:

3. Notwithstanding any other provision of law to the contrary, for a child who has been placed for adoption by a voluntary authorized agency with guardianship and custody or care and custody of such child, as referenced in subdivision one of section four hundred fifty-one of this title, payments available under section four hundred fifty-three, four hundred fifty-three-a or four hundred fifty-four of this title shall be made by the state pursuant to a written agreement between an official of the office of children and family services and the persons who applied for such payments prior to adoption. Notwithstanding any other provision of law to the contrary, the office of children and family services shall not enter into written agreements for, or issue, any such payments in instances where the person or persons applying for such payments reside outside of the state of New York at the time the application for such payments is made.

§ 4. This act shall take effect July 1, 2015 and shall only apply to applications for payments under sections 453, 453-a or 454 of the social services law that are made on or after such effective date; provided, however, that effective immediately the commissioner of the office of children and family services is authorized and directed to promulgate such rules and regulations as he or she deems necessary to implement the provisions of this act on or before its effective date.

#### PART L

Section 1. Section 458-a of the social services law is amended by adding three new subdivisions 6, 7 and 8 to read as follows:

6. "Successor guardian" shall mean a person or persons that is approved by a local social services district to receive payments pursuant to this title in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this title and that has been named in the agreement in effect between the relative guardian and social services official for kinship guardianship assistance payments pursuant to this title who shall provide care and guardianship for a child in the event of death or incapacity of the relative guardian, as set forth in section four hundred fifty-eight-b of this title, who has assumed care for and is the guardian or permanent guardian of such child, provided that such person was appointed guardian or permanent guardian of such child by the court following, or due to, the death or incapacity of the relative guardian. Once approved in accordance with subparagraph (ii) of paragraph (b) of section four hundred fifty-eight-b of this title, a successor guardian shall be deemed to have the same rights and responsibilities as a relative guardian in relation to any provisions of this title and any agreement entered into under this title.

7. "Prospective successor guardian" shall mean a person or persons whom a prospective relative guardian or a relative guardian seeks to

name or names in the original kinship guardianship assistance agreement, or any amendment thereto, as set forth in section four hundred fifty-eight-b of this title, as the person or persons to provide care and guardianship for a child in the event of the death or incapacity of a relative guardian, who has not been approved in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this title.

8. "Incapacity" shall mean a substantial inability to care for a child as a result of: (a) a physically debilitating illness, disease or injury; or (b) a mental impairment that results in a substantial inability to understand the nature and consequences of decisions concerning the care of a child.

§ 2. Section 458-b of the social services law is amended by adding a new subdivision 1-a to read as follows:

1-a. A child shall remain eligible for kinship guardianship assistance payments under this title when a successor guardian as defined in subdivision six of section four hundred fifty-eight-a of this title assumes care and guardianship of the child.

§ 3. Subdivision 2 of section 458-b of the social services law is amended by adding a new paragraph (d) to read as follows:

(d)(i) Notwithstanding any other provision of law to the contrary, prior to the social services official approving a prospective successor guardian to receive payments pursuant to this title in accordance with subparagraph (ii) of paragraph (b) of subdivision five of this section: (1) the social services official must complete a national and state criminal history record check pursuant to subdivision two of section three hundred seventy-eight-a of this article for the prospective successor guardian and any person over the age of eighteen living in the home of the prospective successor guardian, in accordance with the procedures and standards set forth in such subdivision; and (2) the social services official must inquire of the office of children and family services, in accordance with section four hundred twenty-four-a of this article, whether each prospective successor guardian and each person over the age of eighteen living in the home of the prospective successor guardian has been or is currently the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment and, if the prospective successor guardian or any other person over the age of eighteen residing in the home of the prospective successor guardian resided in another state in the five years preceding the inquiry, request child abuse and maltreatment information maintained by the child abuse and maltreatment registry from the applicable child welfare agency in each such state of previous residence.

(ii) It shall be the duty of the prospective successor guardian to inform the social services official that has entered into an agreement with the relative guardian for payments under this title in writing of the death or incapacity of the relative guardian and of the prospective successor guardian's desire to enforce the provisions in the agreement that authorize payment to him or her in the event of the death or incapacity of the relative guardian.

(iii) The clearances required by subparagraph (i) of this paragraph shall be conducted following receipt by the social services official of the written communication required by subparagraph (ii) of this paragraph.

§ 4. Subdivision 4 of section 458-b of the social services law is amended by adding four new paragraphs (e), (f), (g) and (h) to read as follows:

(e) The original kinship guardianship assistance agreement executed in accordance with this section and any amendments thereto may name an appropriate person to act as a successor guardian for the purpose of providing care and guardianship for a child in the event of death or incapacity of the relative guardian. Nothing herein shall be deemed to require the relative guardian to name a prospective successor guardian as a condition for the approval of a kinship guardianship assistance agreement.

(f) A fully executed agreement between a relative guardian and a social services official may be amended to add or modify terms and conditions mutually agreeable to the relative guardian and the social services official, including the naming of an appropriate person to provide care and guardianship for a child in the event of death or incapacity of the relative guardian.

(g) The social services official shall inform the relative guardian of the right to name an appropriate person to act as a successor guardian in the original kinship guardianship assistance agreement or through an amendment to such agreement.

(h) A fully executed agreement between a relative guardian or a successor guardian and a social services official may be terminated if:

(i) in accordance with paragraph (b) of subdivision seven of this section, a social services official has determined that a relative guardian or a successor guardian is no longer legally responsible for the support of the child; or

(ii) following the death or permanent incapacity of a relative guardian, all prospective successor guardians named in such agreement were not approved by the social services district pursuant to subparagraph (ii) of paragraph (b) of subdivision five of this section.

§ 5. Subdivision 5 of section 458-b of the social services law, as added by section 4 of part F of chapter 58 of the laws of 2010, is amended to read as follows:

5. (a) Once the prospective relative guardian with whom a social services official has entered into an agreement under subdivision four of this section has been issued letters of guardianship for the child and the child has been finally discharged from foster care to such relative, a social services official shall make monthly kinship guardianship assistance payments for the care and maintenance of the child.

(b) (i) In the event of death or incapacity of a relative guardian, a social services district shall make monthly kinship guardianship assistance payments for the care and maintenance of a child to a successor guardian that has been approved pursuant to subparagraph (ii) of this paragraph.

(ii) Following the death or incapacity of the relative guardian, a social services official shall approve a prospective successor guardian that is named in the agreement between the relative guardian and a social services official for payments under this title and that has been awarded guardianship or permanent guardianship of the child by the court unless, based on the results of the clearances required by paragraph (d) of subdivision two of this section, the social services official has determined that approval of the prospective successor guardian is not authorized or appropriate. Provided however, that no approval can be issued pursuant to this paragraph unless the prospective successor guardian has been awarded guardianship or permanent guardianship of the

child by the court and the clearances required by paragraph (d) of subdivision two of this section have been conducted.

(iii) Notwithstanding any other provision of law to the contrary, if a prospective successor guardian assumes care of the child prior to being approved pursuant to subparagraph (ii) of this paragraph, payments under this title shall be made once a prospective guardian is approved pursuant to such subparagraph retroactively from: (1) in the event of death of the relative guardian, the date the successor guardian assumed care of the child or the date of death of the relative guardian, whichever is later; or (2) in the event of incapacity of the relative guardian, the date the successor guardian assumed care of the child or the date of incapacity of the relative guardian, whichever is later.

(c) In the event that a successor guardian assumed care and was awarded guardianship or permanent guardianship of a child due to the incapacity of a relative guardian and the relative guardian is subsequently awarded or resumes guardianship or permanent guardianship of such child and assumes care of such child after the incapacity ends, a social services official shall make monthly kinship guardianship assistance payments for the care and maintenance of the child to the relative guardian, in accordance with the terms of the fully executed written agreement.

§ 6. Paragraph (b) of subdivision 7 of section 458-b of the social services law, as added by section 4 of part F of chapter 58 of the laws of 2010, is amended to read as follows:

(b) (i) Notwithstanding paragraph (a) of this subdivision, and except as provided for in paragraph (b) of subdivision five of this section, no kinship guardianship assistance payments may be made pursuant to this title if the social services official determines that the relative guardian is no longer legally responsible for the support of the child, including if the status of the legal guardian is terminated or the child is no longer receiving any support from such guardian. In accordance with the regulations of the office, a relative guardian who has been receiving kinship guardianship assistance payments on behalf of a child under this title must keep the social services official informed, on an annual basis, of any circumstances that would make the relative guardian ineligible for such payments or eligible for payments in a different amount.

(ii) Notwithstanding paragraph (a) of this subdivision, and except as provided for in paragraph (c) of subdivision five of this section, no kinship guardianship assistance payments may be made pursuant to this title to a successor guardian if the social services official determines that the successor guardian is no longer legally responsible for the support of the child, including if the status of the successor guardian is terminated or the child is no longer receiving any support from such guardian. A successor guardian who has been receiving kinship guardianship assistance payments on behalf of a child under this title must keep the social services official informed, on an annual basis, of any circumstances that would make the successor guardian ineligible for such payments or eligible for payments in a different amount.

§ 7. Subdivision 8 of section 458-b of the social services law, as added by section 4 of part F of chapter 58 of the laws of 2010, is amended to read as follows:

8. The placement of the child with the relative guardian or successor guardian and any kinship guardianship assistance payments made on behalf of the child under this section shall be considered never to have been made when determining the eligibility for adoption subsidy payments



under title nine of this article of a child in such legal guardianship arrangement.

§ 8. Subdivision 2 of section 458-d of the social services law, as added by section 4 of part F of chapter 58 of the laws of 2010, is amended to read as follows:

2. In addition, a social services official shall make payments for the cost of care, services and supplies payable under the state's program of medical assistance for needy persons provided to any child for whom kinship guardianship assistance payments are being made under this title who is not eligible for medical assistance under subdivision one of this section and for whom the relative or successor guardian is unable to obtain appropriate and affordable medical coverage through any other available means, regardless of whether the child otherwise qualifies for medical assistance for needy persons. Payments pursuant to this subdivision shall be made only with respect to the cost of care, services, and supplies which are not otherwise covered or subject to payment or reimbursement by insurance, medical assistance or other sources. Payments made pursuant to this subdivision shall only be made if the relative or successor guardian applies to obtain such medical coverage for the child from all available sources, unless the social services official determines that the relative guardian has good cause for not applying for such coverage; which shall include that appropriate coverage is not available or affordable.

§ 9. Subdivisions 1 and 2 of section 458-f of the social services law, as added by section 4 of part F of chapter 58 of the laws of 2010, are amended to read as follows:

1. Any person aggrieved by the decision of a social services official not to make a payment or payments pursuant to this title or to make such payment or payments in an inadequate or inappropriate amount or the failure of a social services official to determine an application under this title within thirty days after filing, or the failure of a social services district to agree to a prospective successor guardian being named in an agreement or to approve a prospective successor guardian pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this title, or the decision of a social services district to terminate an agreement pursuant to paragraph (h) of subdivision four of section four hundred fifty-eight-b of this title, may appeal to the office of children and family services, which shall review the case and give such person an opportunity for a fair hearing thereon and render its decision within thirty days. All decisions of the office of children and family services shall be binding upon the social services district involved and shall be complied with by the social services official thereof.

2. The only issues which may be raised in a fair hearing under this section are: (a) whether the social services official has improperly denied an application for payments under this title; (b) whether the social services official has improperly discontinued payments under this title; (c) whether the social services official has determined the amount of the payments made or to be made in violation of the provisions of this title or the regulations of the office of children and family services promulgated hereunder; ~~(d)~~ (d) whether the social services official has failed to determine an application under this title within thirty days; (e) whether the social services official has improperly denied an application to name a prospective successor guardian in the original kinship guardianship assistance agreement for payments pursuant to this title or any amendments thereto; (f) whether a social services

official has inappropriately failed to approve a prospective successor guardian; or (g) whether a social services official has inappropriately terminated an agreement for payments under this title.

§ 10. Subdivision 2 of section 378-a of the social services law, as added by chapter 7 of the laws of 1999, paragraphs (a), (f) and (g) as amended by chapter 668 of the laws of 2006, paragraph (e) as amended by chapter 623 of the laws of 2008, paragraphs (h) and (i) as amended by chapter 145 of the laws of 2000 and paragraph (j) as amended by chapter 405 of the laws of 2010, is amended to read as follows:

2. (a) Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the division of criminal justice services, an authorized agency, as defined in subdivision ten of section three hundred seventy-one of this ~~[article]~~ title, shall perform a criminal history record check with the division of criminal justice services regarding any prospective foster parent or prospective adoptive parent or, a prospective successor guardian in accordance with paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, and any person over the age of eighteen who is currently residing in the home of such prospective foster parent ~~[or],~~ prospective adoptive parent or prospective successor guardian. Provided, however, that for prospective foster parents and prospective adoptive parents and other persons over the age of eighteen in their homes, the checks required by this paragraph shall be conducted before the foster parent or adoptive parent is finally certified or approved for the placement of a child. Persons who are over the age of eighteen residing in the home of a certified or approved foster parent and who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the foster parent applies for renewal of his or her certification or approval as a foster parent. The division of criminal justice services is authorized to submit fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check pursuant to and consistent with public law 92-544 to determine whether such prospective foster parent, prospective adoptive parent, prospective successor guardian or person over the age of eighteen currently residing in the home of such prospective parent or guardian has a criminal history in any state or federal jurisdiction. The provisions and procedures of this section, including the criminal history record check of persons over the age of eighteen who are currently residing in the home of the foster parent, also shall apply to prospective foster parents certified by the office of children and family services and to family homes certified by any other state agency where such family homes care for foster children in accordance with a memorandum of understanding with the office of children and family services.

(b) Every authorized agency shall obtain a set of the prospective foster parent ~~[or],~~ prospective adoptive ~~[parent's]~~ parent or prospective successor guardian's fingerprints and those of any person over the age of eighteen who currently resides in the home of such prospective foster parent ~~[or],~~ prospective adoptive parent or prospective successor guardian, and such other information as is required by the office of children and family services and the division of criminal justice services. The authorized agency shall provide to the applicant blank fingerprint cards and a description of how the completed fingerprint cards will be used upon submission to the authorized agency. The authorized agency shall promptly transmit such fingerprint cards to the office of children and family services. The office of children and family



services shall promptly submit such fingerprint cards and the processing fee imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law to the division of criminal justice services for its full search and retain processing. Notwithstanding any other provision of law to the contrary, the processing fee shall be submitted by the office of children and family services and no part thereof shall be charged to the prospective foster parent ~~[or]~~, prospective adoptive parent, prospective successor guardian or any person over the age of eighteen who currently resides in the home of such prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian who submitted a fingerprint card pursuant to this subdivision.

(c) The division of criminal justice services shall promptly provide to the office of children and family services a criminal history record, if any, with respect to the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian and any other person over the age of eighteen who resides in the home of the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian, or a statement that the individual has no criminal history record.

(d) Notwithstanding any other provision of law to the contrary, the office of children and family services, upon receipt of a criminal history record from the division of criminal justice services, may request, and is entitled to receive, information pertaining to any offense contained in such criminal history record from any state or local law enforcement agency or court for the purposes of determining whether any ground relating to such criminal conviction or pending criminal charge exists for denying an application.

(e) After reviewing any criminal history record information provided by the division of criminal justice services, the office of children and family services shall promptly notify the authorized agency or other state agency that:

(1) Notwithstanding any other provision of law to the contrary, an application for certification or approval of a prospective foster parent or prospective adoptive parent shall be denied and, in the event of death or incapacity of a relative guardian, an agreement to provide payments to a prospective successor guardian pursuant to title ten of this article shall not be approved pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, as applicable, where a criminal history record of the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian, as applicable, reveals a conviction for:

(A) a felony conviction at any time involving: (i) child abuse or neglect; (ii) spousal abuse; (iii) a crime against a child, including child pornography; or (iv) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; or

(B) a felony conviction within the past five years for physical assault, battery, or a drug-related offense; or

(2) Notwithstanding any other provision of law to the contrary, a final determination of an application for certification or approval of a prospective foster parent or prospective adoptive parent and, in relation to prospective successor guardians, approval pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article shall be held in abeyance whenever the criminal history record of the prospective foster parent ~~[or]~~,

prospective adoptive parent or prospective successor guardian, as applicable, reveals:

(A) a charge for a crime set forth in subparagraph one of this paragraph which has not been finally resolved; or

(B) a felony conviction that may be for a crime set forth in subparagraph one of this paragraph. An authorized agency may proceed with a determination of such application, in a manner consistent with this subdivision, only upon receiving subsequent notification from the office of children and family services regarding the status of such charge or the nature of such conviction; or

(3) consistent with the provisions of article twenty-three-A of the correction law, an application for certification or approval of a prospective foster parent or prospective adoptive parent may~~[, consistent with the provisions of article twenty three A of the correction law, be denied]~~ be denied, an agreement to provide payments to a prospective successor guardian pursuant to title ten of this article may not be approved pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, as applicable, where:

(A) a criminal history record of the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian reveals a charge or a conviction of a crime other than one set forth in subparagraph one of this paragraph; or

(B) a criminal history record of any other person over the age of eighteen who resides in the home of the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian reveals a charge or a conviction of any crime; or

(4) Notwithstanding any other provision of law to the contrary, an application for renewal of the certification or approval of a foster parent submitted on or after October first, two thousand eight shall be denied based on the conviction of the foster parent of a crime set forth in subparagraph one of this paragraph where such conviction occurred on or after October first, two thousand eight; or

(5) Notwithstanding any other provision of law to the contrary, the certification or approval of a foster parent, or the approval of an adoptive parent who has not completed the adoption process, shall be revoked based on the conviction of the foster parent or the adoptive parent of a crime set forth in subparagraph one of this paragraph; or

(6) the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian and any person over the age of eighteen who is residing in the home of the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian has no criminal history record.

(f) Except as otherwise set forth in this paragraph, any notification by the office of children and family services pursuant to paragraph (e) of this subdivision shall include a summary of the criminal history record provided by the division of criminal justice services, including, but not limited to, the specific crime or crimes for which the prospective foster parent or parents, adoptive parent or parents or prospective successor guardian or guardians or any adults over the age of eighteen living in the home have been charged or convicted, as applicable. When responding to an inquiry from a voluntary authorized agency or other non-public agency with respect to the results of a national criminal history check performed by the federal bureau of investigation, the office of children and family services shall advise the voluntary authorized agency or other non-public agency of the category or category-

ries of crime or crimes and shall not provide the voluntary authorized agency or other non-public agency with the specific crime or crimes absent the written consent of the person for whom the national criminal history check was performed.

(g) When an authorized agency has denied an application ~~[pursuant to]~~ or approval in accordance with the provisions of paragraph (e) of this subdivision, the authorized agency shall provide to the applicant a written statement setting forth the reasons for such denial, including, as authorized by paragraph (f) of this subdivision, the summary of the criminal history record provided to the authorized agency by the office of children and family services. The authorized agency shall also provide a description of the division of criminal justice services' record review process and any remedial processes provided by the office of children and family services to any prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian. If the applicant is disqualified under item (ii) of clause (A) of subparagraph one of paragraph (e) of this subdivision, then the applicant may apply for relief from the mandatory disqualification based on the grounds that the offense was not spousal abuse as that term is defined in paragraph (j) of this subdivision.

(h) Where a criminal history record of the certified or approved fosterparent, prospective adoptive parent or of any other person over the age of eighteen who resides in the home of the certified or approved foster parent or prospective adoptive parent reveals a charge or conviction of any crime, the authorized agency shall perform a safety assessment of the conditions in the household. Such assessment shall include: whether the subject of the charge or conviction resides in the household; the extent to which such person may have contact with foster children or other children residing in the household; and the status, date and nature of the criminal charge or conviction. The authorized agency shall thereafter take all appropriate steps to protect the health and safety of such child or children, including, when appropriate, the removal of any foster child or children from the home. Where the authorized agency denies the application or revokes the approval or certification of the foster parent or the prospective adoptive parent in accordance with the standards set forth in paragraph (e) of this subdivision, such authorized agency shall remove any foster child or children from the home of the foster parent or the prospective adoptive parent.

(i) Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to an authorized agency pursuant to this subdivision, is confidential and shall not be available for public inspection; provided, however, nothing herein shall prevent an authorized agency, the office of children and family services or other state agency referenced in paragraph (a) of this subdivision from disclosing criminal history information to any administrative or judicial proceeding relating to the denial or revocation of a certification or approval of a foster parent or an adoptive parent or the removal of the foster child from the home or the failure to approve a prospective successor guardian pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article or the termination of an agreement for payments pursuant to title ten of this article that is made in accordance with paragraph (h) of subdivision four of section four hundred fifty-eight-b of this article. Where there is a pending court case, the authorized agency which received the criminal history record summary from the office of children

and family services, shall provide a copy of such summary to the family court or surrogate's court.

(j) For the purposes of this subdivision "spousal abuse" is an offense defined in section 120.05, 120.10, 121.12 or 121.13 of the penal law where the victim of such offense was the defendant's spouse; provided, however, spousal abuse shall not include a crime in which the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian, who was the defendant, has received notice pursuant to paragraph (g) of this subdivision and the office of children and family services finds after a fair hearing held pursuant to section twenty-two of this chapter, that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the prospective foster parent ~~[or]~~, prospective adoptive parent or prospective successor guardian to commit such offense.

(k) The office of children and family services shall inform the division of criminal justice services when a person is no longer certified or approved as a foster parent or is no longer a prospective adoptive parent so that the division of criminal justice services may terminate its retain processing with regard to such person and any person over the age of eighteen who is residing in the home of the foster parent or prospective adoptive parent. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

(l) The office of children and family services, in consultation with the division of criminal justice services, shall promulgate regulations for the purpose of implementing the provisions of this subdivision relating to the standards for the certification or approval of foster parents or adoptive parents.

§ 11. Subparagraph (z) of paragraph (A) of subdivision 4 of section 422 of the social services law, as amended by chapter 440 of the laws of 2011, is amended to read as follows:

(z) an entity with appropriate legal authority in another state to license, certify or otherwise approve prospective foster ~~[and]~~ parents, prospective adoptive parents, prospective relative guardians or prospective successor guardians where disclosure of information regarding ~~[the]~~ such prospective foster or prospective adoptive parents or prospective relative or prospective successor guardians and other persons over the age of eighteen residing in the home of such ~~[prospective parents]~~ persons is required ~~[by paragraph twenty of subdivision (a) of section six hundred seventy one of title forty two of the United States code]~~ under title IV-E of the federal social security act; and

§ 12. Paragraph (a) of subdivision 1 of section 424-a of the social services law, as amended by chapter 126 of the laws of 2014, is amended to read as follows:

(a) A licensing agency shall inquire of the department and the department shall, subject to the provisions of paragraph (e) of this subdivision, inform such agency and the subject of the inquiry whether an applicant for a certificate, license or permit, assistants to group family day care providers, the director of a camp subject to the provisions of article thirteen-B of the public health law, a prospective successor guardian when a clearance is conducted pursuant to paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, and any person over the age of eighteen who resides in the home of a person who has applied to become an adoptive parent or a foster parent or to operate a family day care home or group family day care

home or any person over the age of eighteen residing in the home of a prospective successor guardian when a clearance is conducted of a prospective successor guardian pursuant to this paragraph, has been or is currently the subject of an indicated child abuse and maltreatment report on file with the statewide central register of child abuse and maltreatment.

§ 13. Subdivision 2 of section 424-a of the social services law, as amended by chapter 677 of the laws of 1985, paragraph (a) as amended by chapter 126 of the laws of 2014, paragraph (d) as amended by chapter 12 of the laws of 1996, and paragraph (e) as amended by chapter 634 of the laws of 1988, is amended to read as follows:

2. (a) Upon notification by the office or by a child care resource and referral program in accordance with subdivision six of this section that any person who has applied to a licensing agency for a license, certificate or permit or who seeks to become an employee of a provider agency, or to accept a child for adoptive placement or who will be hired as a consultant or used as a volunteer by a provider agency, or that any other person about whom an inquiry is made to the office pursuant to the provisions of this section is the subject of an indicated report, the licensing or provider agency shall determine on the basis of information it has available whether to approve such application or retain the employee or hire the consultant or use the volunteer or permit an employee of another person, corporation, partnership or association to have access to the individuals cared for by the provider agency, provided, however, that if such application is approved, or such employee is retained or consultant hired or volunteer used or person permitted to have access to the children cared for by such agency the licensing or provider agency shall maintain a written record, as part of the application file or employment record, of the specific reasons why such person was determined to be appropriate to receive a foster care or adoption placement or to provide day care services, to be the director of a camp subject to the provisions of article thirteen-B of the public health law, to be approved as a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, to be employed, to be retained as an employee, to be hired as a consultant, used as a volunteer or to have access to the individuals cared for by the agency.

(b) (i) Upon denial of such application by a licensing or a provider agency or failure to hire the consultant or use the volunteer, or denial of access by a person to the children cared for by the agency, or failure to approve a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, such agency shall furnish the applicant, prospective consultant, volunteer or person who is denied access to the children cared for by the agency with a written statement setting forth whether its denial, failure to hire or failure to use was based, in whole or in part, on such indicated report, and if so, its reasons for the denial or failure to hire or failure to use.

(ii) Upon the termination of employment of an employee of a provider agency, who is the subject of an indicated report of child abuse or maltreatment on file with the statewide central register of child abuse and maltreatment, the agency shall furnish the employee with a written statement setting forth whether such termination was based, in whole or in part, on such indicated report and, if so, the reasons for the termination of employment.

(c) If the reasons for such denial or termination or failure to hire a consultant or use a volunteer or failure to approve a successor guardian in accordance with subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article include the fact that the person is the subject of an indicated child abuse or maltreatment report, such person may request from the department within ninety days of receipt of notice of such denial, termination, failure to hire a consultant or use a volunteer and shall be granted a hearing in accordance with the procedures set forth in section twenty-two of this chapter relating to fair hearings. All hearings held pursuant to the provisions of this subdivision shall be held within thirty days of a request for the hearing unless the hearing is adjourned for good cause shown. Any subsequent adjournment for good cause shown shall be granted only upon consent of the person who requested the hearing. The hearing decision shall be rendered not later than sixty days after the conclusion of the hearing.

(d) At any such hearing, the sole question before the department shall be whether the applicant, employee, prospective consultant, volunteer, prospective successor guardian or person who was denied access to the children cared for by a provider agency has been shown by a fair preponderance of the evidence to have committed the act or acts of child abuse or maltreatment giving rise to the indicated report. In such hearing, the burden of proof on the issue of whether an act of child abuse or maltreatment was committed shall be upon the local child protective service or the state agency which investigated the report, as the case may be. The failure to sustain the burden of proof at a hearing held pursuant to this section shall not result in the expungement or unbounding of an indicated report but shall be noted on the report maintained by the state central register and shall preclude the department from notifying a party which subsequently makes an inquiry to the department pursuant to this section that the person about whom the inquiry is made is the subject of an indicated report.

(e) Upon the failure, at the fair hearing held pursuant to this section, to prove by a fair preponderance of the evidence that the applicant committed the act or acts of child abuse or maltreatment giving rise to the indicated report, the department shall notify the provider or licensing agency which made the inquiry pursuant to this section that it should reconsider any decision to discharge an employee, or to deny the subject's application for employment, or to become an adoptive parent, or to become a successor guardian, or for a certificate, license or permit; or not to hire a consultant, use a volunteer, or allow access to children cared for by the agency.

§ 14. Subdivision 4 of section 424-a of the social services law, as amended by chapter 126 of the laws of 2014, is amended to read as follows:

4. For purposes of this section, the term "licensing agency" shall mean an authorized agency which has received an application to become an adoptive parent or an authorized agency which has received an application for a certificate or license to receive, board or keep any child pursuant to the provisions of section three hundred seventy-six or three hundred seventy-seven of this article or an authorized agency which has received an application from a relative within the second degree or third degree of consanguinity of the parent of a child or a relative within the second degree or third degree of consanguinity of the step-parent of a child or children, or the child's legal guardian for approval to receive, board or keep such child, or an authorized agency



that conducts a clearance pursuant to paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, or a state or local governmental agency which receives an application to provide child day care services in a child day care center, school-age child care program, family day care home or group family day care home pursuant to the provisions of section three hundred ninety of this article, or the department of health and mental hygiene of the city of New York, when such department receives an application for a certificate of approval to provide child day care services in a child day care center pursuant to the provisions of the health code of the city of New York, or the office of mental health or the office for people with developmental disabilities when such office receives an application for an operating certificate pursuant to the provisions of the mental hygiene law to operate a family care home, or a state or local governmental official who receives an application for a permit to operate a camp which is subject to the provisions of article thirteen-B of the public health law or the office of children and family services which has received an application for a certificate to receive, board or keep any child at a foster family home pursuant to articles nineteen-G and nineteen-H of the executive law or any other facility or provider agency, as defined in subdivision four of section four hundred eighty-eight of this chapter, in regard to any licensing or certification function carried out by such facility or agency.

§ 15. Subdivision 1 of section 1707 of the surrogate's court procedure act, as amended by section 11 of part F of chapter 58 of the laws of 2010, is amended to read as follows:

1. If the court be satisfied that the interests of the infant will be promoted by the appointment of a guardian or by the issuance of temporary letters of guardianship of his or her person or of his or her property, or of both, it must make a decree accordingly. If the court determines that appointment of a permanent guardian is in the best interests of the infant or child, the court shall issue a decree appointing such guardian. The same person may be appointed guardian of both the person and the property of the infant or the guardianship of the person and of the property may be committed to different persons. The court may appoint a person other than the parent of the infant or the person nominated by the petitioner. When the court is informed that the infant, a person nominated to be a guardian of such infant, the petitioner, or any individual eighteen years of age or over who resides in the home of the proposed guardian is a subject of or another person named in an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide register of child abuse and maltreatment pursuant to title six of article six of the social services law or is or has been the subject of or the respondent in or a party to a child protective proceeding commenced under article ten of the family court act which resulted in an order finding that the child is an abused or neglected child the court shall obtain such records regarding such report or proceeding as it deems appropriate and shall give the information contained therein due consideration in its determination. The court shall provide in its order appointing a guardian of a child for whom the guardian and a local department of social services have entered into an agreement under title ten of article six of the social services law: (a) if the guardian would meet the definition of relative guardian as such term is defined in section four hundred fifty-eight-a of the social services law, the compelling reasons that exist for determining that the return home of the child and the

adoption of the child are not in the best interests of the child and are, therefore, not appropriate permanency options for the child; and (b) that the local department of social services and the attorney for the child must receive notice of, and be made parties to, any subsequent proceeding to vacate or modify the order of guardianship.

§ 16. Paragraph (c) of subdivision 7 of section 353.3 of the family court act, as amended by section 6 of part G of chapter 58 of the laws of 2010, is amended to read as follows:

(c) Where the respondent is placed pursuant to subdivision two or three of this section, such report shall contain a plan for the release, or conditional release (pursuant to section five hundred ten-a of the executive law), of the respondent to the custody of his or her parent or other person legally responsible, ~~[to independent living]~~ or to another permanency alternative as provided in paragraph (d) of subdivision seven of section 355.5 of this part. If the respondent is subject to article sixty-five of the education law or elects to participate in an educational program leading to a high school diploma, such plan shall include, but not be limited to, the steps that the agency with which the respondent is placed has taken and will be taking to facilitate the enrollment of the respondent in a school or educational program leading to a high school diploma following release, or, if such release occurs during the summer recess, upon the commencement of the next school term. If the respondent is not subject to article sixty-five of the education law and does not elect to participate in an educational program leading to a high school diploma, such plan shall include, but not be limited to, the steps that the agency with which the respondent is placed has taken and will be taking to assist the respondent to become gainfully employed or enrolled in a vocational program following release.

§ 17. Paragraph (b) of subdivision 7 of section 355.5 of the family court act, as added by chapter 7 of the laws of 1999, is amended to read as follows:

(b) in the case of a respondent who has attained the age of ~~[sixteen]~~ fourteen, the services needed, if any, to assist the respondent to make the transition from foster care to independent living;

§ 18. Paragraph (d) of subdivision 7 of section 355.5 of the family court act, as amended by chapter 181 of the laws of 2000, is amended to read as follows:

(d) with regard to the completion of placement ordered by the court pursuant to section 353.3 or 355.3 of this ~~[article]~~ part: whether and when the respondent: (i) will be returned to the parent; (ii) should be placed for adoption with the local commissioner of social services filing a petition for termination of parental rights; (iii) should be referred for legal guardianship; (iv) should be placed permanently with a fit and willing relative; or (v) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent if the respondent is age sixteen or older and (A) the office of children and family services or the local commissioner of social services has documented to the court ~~[a]:~~ (1) the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the respondent home or secure a placement for the respondent with a fit and willing relative including adult siblings, a legal guardian, or an adoptive parent, including through efforts that utilize search technology including social media to find biological family members for children, (2) the steps being taken to ensure that (I) the respondent's foster family home or child care facility is following the reasonable and prudent parent



standard in accordance with guidance provided by the United States department of health and human services, and (II) the respondent has regular, ongoing opportunities to engage in age or developmentally appropriate activities including by consulting with the respondent in an age-appropriate manner about the opportunities of the respondent to participate in activities; and (B) the office of children and family services or the local commissioner of social services has documented to the court and the court has determined that there are compelling [reason] reasons for determining that it [would] continues to not be in the best interest of the respondent to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian; and (C) the court has made a determination explaining why, as of the date of this hearing, another planned living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent is the best permanency plan for the respondent; and

§ 19. Subdivision 8 of section 355.5 of the family court act, as added by section 2 of part B of chapter 327 of the laws of 2007, is amended to read as follows:

8. At the permanency hearing, the court shall consult with the respondent in an age-appropriate manner regarding the permanency plan for the respondent; provided, however, that if the respondent is age sixteen or older and the requested permanency plan for the respondent is placement in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent, the court must ask the respondent about the desired permanency outcome for the respondent.

§ 20. Subparagraph (ii) of paragraph (a) of subdivision 2 of section 754 of the family court act, as amended by chapter 7 of the laws of 1999, is amended to read as follows:

(ii) in the case of a child who has attained the age of [sixteen] fourteen, the services needed, if any, to assist the child to make the transition from foster care to independent living. Nothing in this subdivision shall be construed to modify the standards for directing detention set forth in section seven hundred thirty-nine of this article.

§ 21. The closing paragraph of paragraph (b) of subdivision 2 of section 754 of the family court act, as added by chapter 7 of the laws of 1999, is amended to read as follows:

If the court determines that reasonable efforts are not required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. At the permanency hearing, the court shall determine the appropriateness of the permanency plan prepared by the social services official which shall include whether and when the child:

(A) will be returned to the parent; (B) should be placed for adoption with the social services official filing a petition for termination of parental rights; (C) should be referred for legal guardianship; (D) should be placed permanently with a fit and willing relative; or (E) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the child if the child is age sixteen or older and if the [social services official has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a

~~legal guardian]~~ requirements of subparagraph (E) of paragraph (iv) of subdivision (d) of section seven hundred fifty-six-a of this part have been met. The social services official shall thereafter make reasonable efforts to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

§ 22. Paragraph (ii) of subdivision (d) of section 756-a of the family court act, as amended by section 4 of part B of chapter 327 of the laws of 2007, is amended to read as follows:

(ii) in the case of a child who has attained the age of ~~[sixteen]~~ fourteen, the services needed, if any, to assist the child to make the transition from foster care to independent living;

§ 23. Paragraphs (iii) and (iv) of subdivision (d) of section 756-a of the family court act, as amended by section 4 of part B of chapter 327 of the laws of 2007, are amended to read as follows:

(iii) in the case of a child placed outside New York state, whether the out-of-state placement continues to be appropriate and in the best interests of the child; ~~[and]~~

(iv) whether and when the child: (A) will be returned to the parent; (B) should be placed for adoption with the social services official filing a petition for termination of parental rights; (C) should be referred for legal guardianship; (D) should be placed permanently with a fit and willing relative; or (E) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the child if the child is age sixteen or older and (1) the social services official has documented to the court [a]: (I) intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made by the social services district to return the child home or secure a placement for the child with a fit and willing relative including adult siblings, a legal guardian, or an adoptive parent, including through efforts that utilize search technology including social media to find biological family members for children, (II) the steps the social services district is taking to ensure that (A) the child's foster family home or child care facility is following the reasonable and prudent parent standard in accordance with guidance provided by the United States department of health and human services, and (B) the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in activities; and (2) the social services district has documented to the court and the court has determined that there are compelling [reason] reasons for determining that it [would] continues to not be in the best interest of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian; and (3) the court has made a determination explaining why, as of the date of the hearing, another planned living arrangement with a significant connection to an adult willing to be a permanency resource for the child is the best permanency plan for the child; and

(v) where the child will not be returned home, consideration of appropriate in-state and out-of-state placements.

§ 24. Subdivision (d-1) of section 756-a of the family court act, as added by section 4 of part B of chapter 327 of the laws of 2007, is amended to read as follows:

(d-1) At the permanency hearing, the court shall consult with the respondent in an age-appropriate manner regarding the permanency plan; provided, however, that if the respondent is age sixteen or older and the requested permanency plan for the respondent is placement in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the respondent, the court must ask the respondent about the desired permanency outcome for the respondent.

§ 25. Paragraph (v) of subdivision (c) of section 1039-b of the family court act, as amended by section 5 of part B of chapter 327 of the laws of 2007, is amended to read as follows:

(v) should be placed in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the child if the child is age sixteen or older and if the [~~social services official has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian~~] requirements of clause (E) of subparagraph (i) of paragraph two of subdivision (d) of section one thousand eighty-nine of this chapter have been met. The social services official shall thereafter make reasonable efforts to place the child in a timely manner, including consideration of appropriate in-state and out-of-state placements, and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

§ 26. Item (v) of clause 7 of subparagraph (A) of paragraph (i) of subdivision (b) of section 1052 of the family court act, as amended by section 7 of part B of chapter 327 of the laws of 2007, is amended to read as follows:

(v) should be placed in another planned permanent living arrangement that includes a significant connection to an adult [~~who is~~] willing to be a permanency resource for the child, if the child is age sixteen or older and if the [~~social services official has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian~~] requirements of clause (E) of subparagraph (i) of paragraph two of subdivision (d) of section one thousand eighty-nine of the chapter have been met. The social services official shall thereafter make reasonable efforts to place the child in a timely manner, including consideration of appropriate in-state and out-of-state placements, and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with section three hundred eighty-four-b of the social services law.

§ 27. Subparagraph (v) of paragraph 1 of subdivision (c) of section 1089 of the family court act, as added by section 27 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

(v) placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child if the child is age sixteen or older, including documentation of: (A) intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts to return the child home or secure a placement for the child with a fit and willing relative including adult siblings, a legal guardian, or an adoptive parent, including through efforts that utilize search technology including social media to find biological family members for children, (B) the steps being taken to ensure that (I) the child's foster family home or child care facility is following the reasonable and prudent parent standard in accordance with the guidance provided by the United States department of health and human services, and (II) the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities including by consulting with the child in an age-appropriate manner about the opportunities of the child to participate in activities, and (C) the compelling [reason] reasons for determining that it [would] continues to not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative;

§ 28. The opening paragraph of subdivision (d) of section 1089 of the family court act, as amended by chapter 334 of the laws of 2009, is amended to read as follows:

Evidence, court findings and order. The provisions of subdivisions (a) and (c) of section one thousand forty-six of this act shall apply to all proceedings under this article. The permanency hearing shall include an age appropriate consultation with the child; provided, however that if the child is age sixteen or older and the requested permanency plan for the child is placement in another planned permanent living arrangement with a significant connection to an adult willing to be a permanency resource for the child, the court must ask the child about the desired permanency outcome for the child. At the conclusion of each permanency hearing, the court shall, upon the proof adduced, [~~which shall include age-appropriate consultation with the child who is the subject of the permanency hearing,~~] and in accordance with the best interests and safety of the child, including whether the child would be at risk of abuse or neglect if returned to the parent or other person legally responsible, determine and issue its findings, and enter an order of disposition in writing:

§ 29. Clause (E) of subparagraph (i) of paragraph 2 of subdivision (d) of section 1089 of the family court act, as added by section 27 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

(E) placement in another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child if the [~~local social services official has documented to~~] child is age sixteen or older and the court [~~a~~] has determined that as of the date of the permanency hearing, another planned permanency living arrangement with a significant connection to an adult willing to be a permanency resource for the child is the best permanency plan for the child and there are compelling [reason] reasons for determining that it [would] continues to not be in the best interests of the child to return home, be referred for termination of parental rights and

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placed for adoption, placed with a fit and willing relative, or placed with a legal guardian;

§ 30. Subdivision 2 of section 4173 of the public health law, as amended by chapter 644 of the laws of 1988, is amended to read as follows:

2. A certified copy or certified transcript of a birth record shall be issued only upon order of a court of competent jurisdiction or upon a specific request therefor by the person, if eighteen years of age or more, or by a parent or other lawful representative of the person to whom the record of birth relates including an authorized representative of the office of children and family services or a local social services district if the person is in the care and custody or custody and guardianship of such entity.

§ 31. Paragraph (b) of subdivision 1 of section 4174 of the public health law, as amended by chapter 396 of the laws of 1989, is amended to read as follows:

(b) issue certified copies or certified transcripts of birth certificates only (1) upon order of a court of competent jurisdiction, or (2) upon specific request therefor by the person, if eighteen years of age or more, or by a parent or other lawful representative of the person, to whom the record of birth relates including authorized representatives of a local social services district if the person is in the care and custody or custody and guardianship of such district, or (3) upon specific request therefor by a department of a state or the federal government of the United States;

§ 32. Subdivision 4 of section 4174 of the public health law, as amended by section 132 of subpart B of part C of chapter 62 of the laws of 2011, is amended to read as follows:

4. No fee shall be charged for a search, certification, certificate, certified copy or certified transcript of a record to be used for school entrance, employment certificate or for purposes of public relief or when required by the veterans administration to be used in determining the eligibility of any person to participate in the benefits made available by the veterans administration or when required by a board of elections for the purposes of determining voter eligibility or when requested by the department of corrections and community supervision or a local correctional facility as defined in subdivision sixteen of section two of the correction law for the purpose of providing a certified copy or certified transcript of birth to an inmate in anticipation of such inmate's release from custody or when requested by the office of children and family services or an authorized agency for the purpose of providing a certified copy or certified transcript of birth to a youth placed in the care and custody or custody and guardianship of the local commissioner of social services or the care and custody or custody and guardianship of the office of children and family services [~~pursuant to article three of the family court act~~] in anticipation of such youth's discharge from placement or foster care.

§ 33. Subdivision 1 of section 837-e of the executive law, as amended by chapter 690 of the laws of 1994, is amended to read as follows:

1. There is hereby established through electronic data processing and related procedures, a statewide central register for missing children which shall be compatible with the national crime information center register maintained pursuant to the federal missing children act of nineteen hundred eighty-two[~~, such missing~~]. As used in this article, the term missing child [~~hereinafter defined as~~] shall mean any person under the age of eighteen years, or any youth, under the age of twenty-

one years, that the office of children and family services or a local department of social services has responsibility for placement, care, or supervision, or who is the subject child of a child protective investigation, or is receiving preventive services or services under section 477 of the Social Security Act, or has run away from foster care, where such office or department has reasonable cause to believe that such youth is, or is at risk of being, a sex trafficking victim, who is missing from his or her normal and ordinary place of residence and whose whereabouts cannot be determined by a person responsible for the child's care and any child known to have been taken, enticed or concealed from the custody of his or her lawful guardian by a person who has no legal right to do so.

§ 34. Severability. If any clause, sentence, paragraph, subdivision, section or part contained in any part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part contained in any part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 35. This act shall take effect immediately, provided however that sections sixteen through thirty-two of this act shall take effect September 1, 2015 and section thirty-three of this act shall take effect January 1, 2016.

#### PART M

Section 1. Notwithstanding any other provision of law, the housing trust fund corporation may provide, for purposes of the rural rental assistance program, a sum not to exceed twenty-one million six hundred forty-two thousand dollars for the fiscal year ending March 31, 2016. Notwithstanding any other provision of law, and subject to the approval of the New York state director of the budget, the board of directors of the state of New York mortgage agency shall authorize the transfer to the housing trust fund corporation, for the purposes of reimbursing any costs associated with rural rental assistance program contracts authorized by this section, a total sum not to exceed twenty-one million six hundred forty-two thousand dollars, such transfer to be made from (i) the special account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law, in an amount not to exceed the actual excess balance in the special account of the mortgage insurance fund, as determined and certified by the state of New York mortgage agency for the fiscal year 2014-2015 in accordance with section 2429-b of the public authorities law, if any, and/or (ii) provided that the reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the project pool insurance account of the mortgage insurance fund, such transfer to be made as soon as practicable but no later than June 30, 2015. Notwithstanding any other provision of law, such funds may be used by the corporation in support of contracts scheduled to expire in the fiscal year ending March 31, 2016 for as many as 10 additional years; in support of contracts for new eligible



projects for a period not to exceed 5 years; and in support of contracts which reach their 25 year maximum in and/or prior to the fiscal year ending March 31, 2016 for an additional one year period.

§ 2. Notwithstanding any other provision of law, the housing finance agency may provide, for costs associated with the rehabilitation of Mitchell Lama housing projects, a sum not to exceed forty-two million dollars for the fiscal year ending March 31, 2016. Notwithstanding any other provision of law, and provided that the reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the board of directors of the state of New York mortgage agency shall authorize the transfer from the project pool insurance account of the mortgage insurance fund to the housing finance agency, for the purposes of reimbursing any costs associated with Mitchell Lama housing projects authorized by this section, a total sum not to exceed forty-two million dollars as soon as practicable but no later than March 31, 2016.

§ 3. Notwithstanding any other provision of law, the housing trust fund corporation may provide, for purposes of the neighborhood preservation program, a sum not to exceed eight million four hundred seventy-nine thousand dollars for the fiscal year ending March 31, 2016. Within this total amount, one hundred fifty thousand dollars shall be used for the purpose of entering into a contract with the neighborhood preservation coalition to provide technical assistance and services to companies funded pursuant to article XVI of the private housing finance law. Notwithstanding any other provision of law, and subject to the approval of the New York state director of the budget, the board of directors of the state of New York mortgage agency shall authorize the transfer to the housing trust fund corporation, for the purposes of reimbursing any costs associated with neighborhood preservation program contracts authorized by this section, a total sum not to exceed eight million four hundred seventy-nine thousand dollars, such transfer to be made from (i) the special account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law, in an amount not to exceed the actual excess balance in the special account of the mortgage insurance fund, as determined and certified by the state of New York mortgage agency for the fiscal year 2014-2015 in accordance with section 2429-b of the public authorities law, if any, and/or (ii) provided that the reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the project pool insurance account of the mortgage insurance fund, such transfer to be made as soon as practicable but no later than June 30, 2015.

§ 4. Notwithstanding any other provision of law, the housing trust fund corporation may provide, for purposes of the rural preservation program, a sum not to exceed three million five hundred thirty-nine thousand dollars for the fiscal year ending March 31, 2016. Within this total amount, one hundred fifty thousand dollars shall be used for the purpose of entering into a contract with the rural housing coalition to provide technical assistance and services to companies funded pursuant to article XVII of the private housing finance law. Notwithstanding any other provision of law, and subject to the approval of the New York state director of the budget, the board of directors of the state of New

York mortgage agency shall authorize the transfer to the housing trust fund corporation, for the purposes of reimbursing any costs associated with rural preservation program contracts authorized by this section, a total sum not to exceed three million five hundred thirty-nine thousand dollars, such transfer to be made from (i) the special account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law, in an amount not to exceed the actual excess balance in the special account of the mortgage insurance fund, as determined and certified by the state of New York mortgage agency for the fiscal year 2014-2015 in accordance with section 2429-b of the public authorities law, if any, and/or (ii) provided that the reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the project pool insurance account of the mortgage insurance fund, such transfer to be made as soon as practicable but no later than June 30, 2015.

§ 5. Notwithstanding any other provision of law, the housing trust fund corporation may provide, for purposes of the rural and urban community investment fund program created pursuant to article XXVII of the private housing finance law, a sum not to exceed seventeen million dollars for the fiscal year ending March 31, 2016. Notwithstanding any other provision of law, and provided that the reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the board of directors of the state of New York mortgage agency shall authorize the transfer from the project pool insurance account of the mortgage insurance fund to the housing trust fund corporation, for the purposes of reimbursing any costs associated with rural and urban community investment fund program contracts authorized by this section, a total sum not to exceed seventeen million dollars as soon as practicable but not later than March 31, 2016.

§ 6. Notwithstanding any other provision of law, the housing trust fund corporation may provide, for the purposes of carrying out the provisions of the low income housing trust fund program created pursuant to article XVIII of the private housing finance law, a sum not to exceed seven million five hundred thousand dollars for the fiscal year ending March 31, 2016. Notwithstanding any other provision of law, and provided that reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the board of directors of the state of New York mortgage agency shall authorize the transfer from the project pool insurance account of the mortgage insurance fund to the housing trust fund corporation, for the purposes of carrying out the provisions of the low income housing trust fund program created pursuant to article XVIII of the private housing finance law authorized by this section, a total sum not to exceed seven million five hundred thousand dollars as soon as practicable but no later than March 31, 2016.

§ 7. Notwithstanding any other provision of law, the housing trust fund corporation may provide, for purposes of the homes for working families program for deposit in the housing trust fund created pursuant



to section 59-a of the private housing finance law and subject to the provisions of article XVIII of the private housing finance law, a sum not to exceed eight million five hundred thousand dollars for the fiscal year ending March 31, 2016. Notwithstanding any other provision of law, and provided that the reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the board of directors of the state of New York mortgage agency shall authorize the transfer from the project pool insurance account of the mortgage insurance fund to the housing trust fund corporation, for the purposes of reimbursing any costs associated with homes for working families program contracts authorized by this section, a total sum not to exceed eight million five hundred thousand dollars as soon as practicable but no later than March 31, 2016.

§ 8. Notwithstanding any other provision of law, the homeless housing and assistance corporation may provide, for purposes of the New York state supportive housing program, the solutions to end homelessness program or the operational support for AIDS housing program, or to qualified grantees under those programs, in accordance with the requirements of those programs, a sum not to exceed sixteen million three hundred forty thousand dollars for the fiscal year ending March 31, 2016. The homeless housing and assistance corporation may enter into an agreement with the office of temporary and disability assistance to administer such sum in accordance with the requirements of the programs. Notwithstanding any other provision of law, and subject to the approval of the director of the budget, the board of directors of the state of New York mortgage agency shall authorize the transfer to the homeless housing and assistance corporation, a total sum not to exceed sixteen million three hundred forty thousand dollars, such transfer to be made from (i) the special account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law, in an amount not to exceed the actual excess balance in the special account of the mortgage insurance fund, as determined and certified by the state of New York mortgage agency for the fiscal year 2014-2015 in accordance with section 2429-b of the public authorities law, if any, and/or (ii) provided that the reserves in the project pool insurance account of the mortgage insurance fund created pursuant to section 2429-b of the public authorities law are sufficient to attain and maintain the credit rating (as determined by the state of New York mortgage agency) required to accomplish the purposes of such account, the project pool insurance account of the mortgage insurance fund, such transfer to be made as soon as practicable but no later than March 31, 2016.

§ 9. This act shall take effect immediately.

#### PART N

Intentionally Omitted

#### PART O

Section 1. The labor law is amended by adding a new section 202-m to read as follows:

§ 202-m. Healthcare professionals who volunteer to fight the Ebola virus disease overseas. 1. Findings and policy of the state. It is hereby found and declared that the Ebola virus disease is a rare and potentially deadly disease caused by infection with one of four Ebola virus strains known to cause disease in humans, that the World Health Organization has declared that the current Ebola virus disease outbreak in West Africa constitutes a public health emergency of international concern, and that the centers for disease control and prevention of the United States department of health and human services has reported that the number of future Ebola virus disease cases will reach extraordinary levels without a scale-up of interventions. It is hereby declared to be the policy of the state to work with its international partners to help eradicate the Ebola virus disease by supporting the dedicated New York state healthcare professionals who seek to provide invaluable help to this effort.

2. Bill of rights. A healthcare professional who volunteers to fight Ebola is protected by existing state laws that prohibit discrimination on the basis of an actual or perceived disability. Upon return from fighting Ebola overseas, a healthcare professional will be provided with a bill of rights outlining these existing anti-discrimination laws. In addition to these existing anti-discrimination laws, and in accordance with the provisions of this section, healthcare professionals shall have the right to seek a leave of absence to volunteer to fight Ebola overseas without adverse employment consequences.

3. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Employee" means any individual healthcare professional who performs services for hire for an employer but shall not include an independent contractor.

(b) "Employer" means a person or entity that employs a healthcare professional and includes an individual, corporation, limited liability company, partnership, association, nonprofit organization, group of persons, county, town, city, school district, public authority, state agency, or other governmental subdivision of any kind.

(c) "Fight Ebola" means to serve as a healthcare professional in a country that has been classified as having widespread transmission of the Ebola virus disease by the centers for disease control and prevention of the United States department of health and human services.

(d) "Healthcare professional" means:

(i) a physician licensed pursuant to article one hundred thirty-one of the education law;

(ii) a physician assistant licensed pursuant to article one hundred thirty-one-B of the education law;

(iii) a nurse practitioner licensed pursuant to article one hundred thirty-nine of the education law;

(iv) a registered professional nurse licensed pursuant to article one hundred thirty-nine of the education law; and

(v) other healthcare professions as added by the commissioner pursuant to subdivision thirteen of this section.

(e) "Leave of absence" means time away from work that is excused. Such time shall be unpaid, unless the employee requests that such time, or a portion thereof, be paid pursuant to a charge against paid leave that has accrued to such employee.

(f) "Undue hardship" means an absence requiring significant expense or difficulty, including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority

system. Factors to be considered in determining whether an absence constitutes an undue economic hardship shall include, but not be limited to the identifiable cost of the absence, including the costs of loss of productivity and of retraining, hiring or transfer of employees, in relation to the size and operating costs of the employer and other known or reasonably foreseeable absences, the overall financial resources of the employer, the number of employees at the employee's facility, the employee's role within the facility, the type of operation of the employer, including the structure and functions of the employee within it, the impact on the operation of the employer, and the employer's ability to hire temporary or new employees with the requisite skills to ensure the employer's continued operations.

(g) "Volunteer" means to freely offer services to fight Ebola and includes such services without regard to whether they are compensated.

4. Leave of absence by healthcare professionals who volunteer to fight Ebola. An employee covered by this section has the right to request a leave of absence to volunteer to fight Ebola from his or her employer as herein provided. An employer shall grant such request for a leave of absence to volunteer to fight Ebola, unless the employee's absence imposes an undue hardship on the employer's business or operations.

5. Duration of the leave of absence. (a) The duration of the leave of absence shall be the full time period requested by the employee, which shall include travel time, service volunteering to fight Ebola, and a reasonable period of rest and recovery. If the employer determines that an absence for that full period of time would constitute an undue hardship, the employer and employee shall work together to determine whether there is a shorter period of time that would not constitute an undue hardship that would still allow the employee to volunteer to fight Ebola. If the employer and employee agree on a shorter period, that shall be the duration of the leave of absence under this paragraph. Otherwise, if they are unable to agree on a shorter period, the leave of absence shall be deemed denied.

(b) The duration of leave of absence, as determined pursuant to paragraph (a) of this subdivision shall be extended to include any additional period of time that the employee becomes subject to a mandatory quarantine period imposed at the end of the employee's voluntary service to fight Ebola.

6. Leave of absence request. An employee's request for a leave of absence pursuant to this section shall be made, in writing, to his or her employer at least twenty-one days prior to the employee's proposed start date of such leave of absence. The employee's request shall, at a minimum:

(a) identify the duration of leave sought, including the anticipated start and end dates of the volunteer service, together with any additional time sought for transportation and for rest prior to returning to work;

(b) identify the service to be volunteered, including the country and the organization with whom the employee will be volunteering; and

(c) certify that such service constitutes volunteering to fight Ebola, within the meaning of this section.

7. Notarization. Upon the employer's request, an employee who has been granted a leave of absence in accordance with this section shall provide his or her employer with a notarized statement from the organization or entity with whom the employee will be volunteering. The statement shall:

(a) identify the anticipated start and end dates of the volunteer service and the terms of service, including any compensation and benefits to be provided;

(b) identify the service to be volunteered, including the country and the organization with whom the employee will be volunteering; and

(c) certify that such service constitutes volunteering to fight Ebola, within the meaning of this section.

8. Benefits during leave. Employees who take leave under this section shall be restored at the completion of such leave to the same or comparable position without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such employee made request to take leave of absence as provided in this section.

9. Retaliation prohibited. An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided by this section.

10. Retention of benefits. The provisions of this section shall not affect or prevent an employer from providing leave in addition to leave allowed under any other provision of law. The provisions of this section shall not affect an employee's rights with respect to any other employee benefit provided by law, rule or regulation.

11. Collective bargaining. Nothing set forth in this section shall be construed to impede, infringe, or diminish the rights and benefits that accrue to employees through bona fide collective bargaining agreements, or otherwise diminish the integrity of an existing collective bargaining agreement.

12. Review of denial of leave. An employee whose request for leave under this section has been denied may petition the commissioner for review of such denial, which review shall be expeditiously conducted.

13. Rules and regulations. The commissioner shall promulgate such rules and regulations as may be necessary for the purposes of carrying out the provisions of this section.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that subdivision four of section 202-m of the labor law, as added by section one of this act, shall expire and be deemed repealed December 1, 2016, and provided, further that this act shall expire and be deemed repealed December 1, 2018.

#### PART P

Section 1. Subdivision 3 of section 204 of the labor law, as amended by section 2 of part A of chapter 57 of the laws of 2004, is amended to read as follows:

3. Fees. A fee of two hundred dollars shall be charged the owner or lessee of each boiler internally inspected and seventy-five dollars for each boiler externally inspected by the commissioner, provided however, that the external inspection of multiple boilers connected to a common header or of separate systems owned or leased by the same party and located in the same building, with a combined input which is 300,000 BTU/hour or less, shall be charged a single inspection fee, and further provided that, not more than two hundred seventy-five dollars shall be charged for the inspection of any one boiler for any year; except that ~~[in the case]~~ no fee shall be charged for internal or external inspections by the commissioner of an antique steam engine maintained as a hobby and displayed at agricultural fairs and other gatherings ~~[a fee~~

~~of twenty five dollars only shall be charged the owner or lessee thereof for each boiler internally inspected by the commissioner and a fee of twenty five dollars only shall be charged for each boiler externally inspected by the commissioner, but not more than fifty dollars shall be charged for the inspection of any one such boiler for any year, and except that in the case~~ or ~~a miniature boiler [a fee of fifty dollars only shall be charged for the inspection of any one such boiler for any year. Such fee shall be payable within thirty days after inspection].~~

§ 2. Subdivision 1 of section 212-b of the labor law, as amended by section 6 of part A of chapter 57 of the laws of 2004, is amended to read as follows:

1. No person shall operate a farm labor camp commissary, or cause or allow the operation of a farm labor camp commissary, without a permit from the commissioner to do so, and unless such permit is in full force and effect. Application for such permit shall be made on a form prescribed by the commissioner ~~[and shall be accompanied by a non refundable fee of forty dollars].~~

§ 3. Subdivision 1 of section 74 of chapter 784 of the laws of 1951, constituting the New York state defense emergency act, as amended by section 12 of part A of chapter 57 of the laws of 2004, is amended to read as follows:

1. Employers in defense work may make applications for dispensation pursuant to this article in such manner and upon such forms as the commissioner of labor shall prescribe. ~~[Each application shall be accompanied by a non refundable fee of forty dollars payable to the commissioner.]~~ The commissioner of labor may, after hearing upon due notice, revoke dispensations not necessary to maintain maximum possible production in defense work.

§ 4. Subdivision 5 of section 161 of the labor law, as amended by section 1 of part A of chapter 57 of the laws of 2004, is amended to read as follows:

5. If there shall be practical difficulties or unnecessary hardship in carrying out the provisions of this section or the rules promulgated hereunder, the commissioner may make a variation therefrom if the spirit of the act be observed and substantial justice done. Such variation shall describe the conditions under which it shall be permitted and shall apply to substantially similar conditions. A properly indexed record of variations shall be kept by the department. ~~[Each application for a variation shall be accompanied by a non refundable fee of forty dollars.]~~

§ 5. Paragraph b of subdivision 4 of section 212-a of the labor law, as amended by section 5 of part A of chapter 57 of the laws of 2004, is amended to read as follows:

b. The application for such registration shall be made on a form prescribed by the commissioner, shall contain information on wages, working conditions, housing, and on such other matters as the commissioner may prescribe ~~[and shall be accompanied by a non refundable fee of forty dollars]~~. Copies of the application, or summaries thereof containing the above information, shall be made available by the commissioner to the registrant, and the registrant shall give a copy to each worker, preferably at the time of recruitment, but in no event later than the time of arrival in this state. A copy shall also be kept posted at all times in a conspicuous place in any camp in which such workers are housed.

§ 6. Paragraph b of subdivision 2 of section 212-a of the labor law, as amended by section 4 of part A of chapter 57 of the laws of 2004, is amended to read as follows:

b. The application for such certificate of registration shall be made on a form prescribed by the commissioner, shall contain information on wages, working conditions, housing and on such other matters as the commissioner may prescribe ~~[and shall be accompanied by a non-refundable fee of two hundred dollars]~~. It shall be countersigned by each grower or processor who utilizes the services of such farm labor contractor, as provided in subdivision three of this section. Copies of the application, or summaries thereof containing the above information, shall be made available by the commissioner to the registrant, and the registrant shall give a copy to each worker, preferably at the time of recruitment, but in no event later than the time of arrival in this state if the worker comes from outside of the state, or the time of commencement of work if the worker does not come from outside of the state. A copy shall also be kept posted at all times in a conspicuous place in any camp in which such workers are housed. Each applicant shall submit his or her fingerprints with his or her application for a certificate of registration. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check.

§ 7. Subdivision 2 of section 352 of the labor law is REPEALED.

§ 8. Subdivisions 5 and 6 of section 919 of the labor law, as added by chapter 565 of the laws of 2002, are amended to read as follows:

5. A professional employer organization shall be exempt from the registration requirements specified in this section ~~[and from the fees specified in section nine hundred twenty of this article]~~ if such professional employer organization:

- (a) submits a properly executed request for registration and exemption on a form provided by the department;
- (b) is domiciled outside this state and is licensed or registered as a professional employer organization in another state that has the same or greater requirements as this article;
- (c) does not maintain an office in this state or solicit in any manner clients located or domiciled within this state; and
- (d) does not have more than twenty-five worksite employees in this state.

6. The registration and exemption of a professional employer organization under subdivision five of this section shall be valid for one year. ~~[Each de minimis registrant shall pay to the department upon initial registration, and upon each annual renewal thereafter, a registration fee in the amount of two hundred fifty dollars.]~~

§ 9. Section 920 of the labor law is REPEALED.

§ 10. Subdivision 4 of section 134 of the workers' compensation law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

4. Employers required to participate in the workplace safety and loss prevention program established by this section shall be permitted to utilize the services of either the department of labor, or a private safety and loss consultant which has been certified by the department of labor ~~[and has paid the appropriate certification fee prescribed by rules and regulations promulgated under this section]~~. Private safety and loss consultants may charge employers a fee for their services~~[, and~~



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~~where employers elect to have the services provided by the department of labor, they shall pay for such services in accordance with fee schedules established by the department of labor's rules and regulations].~~

§ 11. Subdivision 5 of section 134 of the workers' compensation law is REPEALED.

§ 12. Subdivision 10 of section 134 of the workers' compensation law, as amended by chapter 6 of the laws of 2007 and as further amended by section 104 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

10. The commissioner of labor, in consultation with the superintendent of financial services, shall promulgate rules and regulations for the certification of safety and loss management specialists. Such rules and regulations shall include provisions that outline the minimum qualifications for safety and loss management specialists, procedures for certification, causes for revocation or suspension of certification and appropriate administrative and judicial review procedures, and violations and penalties for misuse of certification by certified safety and loss management specialists~~[, and fees for certificate and certificate renewal]~~.

§ 13. Subdivision 2 of section 345-a of the labor law, as added by chapter 503 of the laws of 1998, is amended to read as follows:

2. For the purposes of this section, the exercise of reasonable care or diligence by a manufacturer or contractor shall be presumed if, prior to the execution of such contract or subcontract, and annually thereafter, such manufacturer or contractor receives from the department written assurance of compliance with section three hundred forty-one of this article. ~~[The department may charge a reasonable fee for providing such assurance to a manufacturer or contractor.]~~

§ 14. Subdivisions 6 and 7 of section 819 of the labor law are REPEALED and subdivision 5, as amended by chapter 319 of the laws of 2004, is amended to read as follows:

5. The entity possesses a tag issued by the department with an identification number affixed and identifying each machine~~[+]~~.

§ 15. Section 204-a of the labor law is REPEALED.

§ 16. This act shall take effect immediately.

#### PART Q

Section 1. Subdivision 2 of section 355 of the education law is amended by adding a new paragraph f-1 to read as follows:

f-1. Notwithstanding any law, rule or regulation to the contrary, the state university of New York board of trustees shall pass a resolution by June first, two thousand fifteen, to develop a plan to make available to students enrolled in an academic program of the state university of New York beginning in the two thousand sixteen--two thousand seventeen academic year, approved experiential or applied learning activities. Such experiential or applied learning activities may include completion of activities related to students' program of study, including, but not limited to, service-learning activities completed as part of a course, paid or unpaid internships, faculty-supervised undergraduate projects and activities leading to publication of research in journals or similar publications, production or performance of creative works, and iterative "co-op" partnerships that explicitly link the curricula to a temporary, paid position in industry or the public sector. Such plan, to be completed by June first, two thousand sixteen, shall be developed in consultation with university faculty senate, the faculty council of

community colleges, the SUNY student assembly, and other stakeholders. Such plan shall define approved experiential or applied learning activities, methods of faculty oversight and assessment, responsibilities of business, corporate, non-profit or other entities hosting students, and include a requirement for collecting and reporting data associated with such experiential or applied learning activities. Such plan shall have each college examine the feasibility of including such experiential or applied learning activities as a degree requirement. Such college shall examine its ability to administer and provide such opportunities to students; the local community's capacity to support such experiential or applied learning activities; the impact such requirement would have on the local workforce, if any; potential for such a requirement to enhance learning outcomes for students; and whether adding such a requirement would cause potential delays in graduation for students.

§ 2. Section 6206 of the education law is amended by adding a new subdivision 18 to read as follows:

18. Notwithstanding any law, rule or regulation to the contrary, the city university of New York board of trustees shall pass a resolution by June first, two thousand sixteen, to develop a plan to make available to students enrolled in an academic program of the city university of New York beginning in the two thousand sixteen--two thousand seventeen academic year, approved experiential or applied learning activities. Such experiential or applied learning activities may include completion of activities related to students' program of study, including, but not limited to, service-learning activities completed as part of a course, paid or unpaid internships, faculty-supervised undergraduate projects and activities leading to publication of research in journals or similar publications, production or performance of creative works, and iterative "co-op" partnerships that explicitly link the curricula to a temporary, paid position in industry or the public sector. Such plan, to be completed by June first, two thousand sixteen, shall be developed in consultation with university faculty senate, the university student senate and other stakeholders. Such plan shall define approved experiential or applied learning activities, methods of faculty oversight and assessment, responsibilities of business, corporate, non-profit or other entities hosting students, and include a requirement for collecting and reporting data associated with such experiential or applied learning activities. Such plan shall have each college examine the feasibility of including such experiential or applied learning activities as a degree requirement. Such college shall examine its ability to administer and provide such opportunities to students; the local community's capacity to support such experiential or applied learning activities; the impact such requirement would have on the local workforce, if any; potential for such a requirement to enhance learning outcomes for students; and whether adding such a requirement would cause potential delays in graduation for students.

§ 3. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

#### PART R

Section 1. Paragraph (a) of subdivision 1 of section 1 of part U of chapter 57 of the laws of 2005, relating to the New York state higher education capital matching grant program for independent colleges, as amended by section 1 of part H of chapter 56 of the laws of 2014, is amended to read as follows:



(a) The New York state higher education capital matching grant board is hereby created to have and exercise the powers, duties and prerogatives provided by the provisions of this section and any other provision of law. The board shall remain in existence during the period of the New York state higher education capital matching grant program from the effective date of this section through ~~[March 31, 2017, or]~~ the date on which the last of the funds available for grants under this section shall have been disbursed~~[, whichever is earlier]~~; provided, however, that the termination of the existence of the board shall not affect the power and authority of the dormitory authority to perform its obligations with respect to any bonds, notes, or other indebtedness issued or incurred pursuant to authority granted in this section.

§ 2. Paragraph (h) of subdivision 4 of section 1 of part U of chapter 57 of the laws of 2005, relating to the New York state higher education capital matching grant program for independent colleges, as amended by section 2 of part H of chapter 56 of the laws of 2014, is amended to read as follows:

(h) In the event that any colleges do not apply for higher education capital matching grants by March 31, 2009, or in the event they apply for and are awarded, but do not use the full amount of such grants, the unused funds associated with such grants and any additional funds that become available shall thereafter be awarded to colleges on a competitive basis. The dormitory authority shall develop a request for proposals and application process, in consultation with the board, for higher education capital matching grants awarded pursuant to this paragraph, and shall develop criteria, subject to review by the board, for the awarding of such grants. Such criteria may include, but not be limited to the matching criteria contained in paragraph (c) of this subdivision, and application criteria set forth in paragraph (e) of this subdivision. ~~[The dormitory authority shall require all applications in response to the request for proposals to be submitted by September 1, 2014, and the board shall act on each application for such matching grants by November 1, 2014.]~~

§ 3. Subclause (A) of clause (ii) of paragraph (j) of subdivision 4 of section 1 of part U of chapter 57 of the laws of 2005, relating to the New York state higher education capital matching grant program for independent colleges, as amended by section 3 of part H of chapter 56 of the laws of 2014, is amended to read as follows:

(A) Notwithstanding the provision of any general or special law to the contrary, and subject to the provisions of chapter 59 of the laws of 2000 and to the making of annual appropriations therefor by the legislature, in order to assist the dormitory authority in providing such higher education capital matching grants, the director of the budget is authorized in any state fiscal year commencing April 1, 2005 or any state fiscal year thereafter ~~[for a period ending on March 31, 2017]~~, to enter into one or more service contracts, none of which shall exceed 30 years in duration, with the dormitory authority, upon such terms as the director of the budget and the dormitory authority agree.

§ 4. Paragraph (b) of subdivision 7 of section 1 of part U of chapter 57 of the laws of 2005, relating to the New York state higher education capital matching grant program for independent colleges, as amended by section 4 of part H of chapter 56 of the laws of 2014, is amended to read as follows:

(b) Any eligible institution receiving a grant pursuant to this article shall report to the dormitory authority ~~[no later than June 1, 2018]~~ on the use of funding received and its programmatic and economic

impact no later than twelve months after the completion of the project. The dormitory authority shall submit a report [~~no later than November 1, 2018~~] to the governor, the director of the budget, the temporary president of the senate, and the speaker of the assembly on the aggregate impact of the higher education [~~matching~~] capital matching grant program no later than eighteen months after the completion of the last project. Such report shall provide information on the progress and economic impact of such [~~project~~] projects.

§ 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

#### PART S

Section 1. Section 904 of the labor law is amended by adding two new subdivisions 2-a and 2-b to read as follows:

2-a. The project notification fee imposed by subdivision two of this section shall be waived if the project is being undertaken by or on behalf of a city, town, village, or county that is abating or demolishing a building that is a public nuisance or unsafe. Such waiver shall apply only if the city, town, village or county certifies in writing that the project cost will exceed the resulting value of the property.

2-b. The project notification fee imposed by subdivision two of this section shall be waived if the project is being undertaken: (a) pursuant to a plan adopted pursuant to article fifteen of the general municipal law; (b) pursuant to a plan adopted pursuant to article eighteen-C of the general municipal law; or (c) by or on behalf of a land bank operating pursuant to article sixteen of the not-for-profit corporation law.

§ 2. This act shall take effect immediately.

#### PART T

Section 1. Section 13 of chapter 141 of the laws of 1994, amending the legislative law and the state finance law relating to the operation and administration of the legislature, as amended by section 2 of part K of chapter 55 of the laws of 2014, is amended to read as follows:

§ 13. This act shall take effect immediately and shall be deemed to have been in full force and effect as of April 1, 1994, provided that, the provisions of section 5-a of the legislative law as amended by sections two and two-a of this act shall take effect on January 1, 1995, and provided further that, the provisions of article 5-A of the legislative law as added by section eight of this act shall expire June 30, [~~2015~~] 2016 when upon such date the provisions of such article shall be deemed repealed; and provided further that section twelve of this act shall be deemed to have been in full force and effect on and after April 10, 1994.

§ 2. This act shall take effect immediately, provided, however, if this act shall take effect on or after June 30, 2015 this act shall be deemed to have been in full force and effect on and after June 30, 2015.

#### PART U

Section 1. The state finance law is amended by adding a new section 99-w to read as follows:

§ 99-w. SUNY DSRIP escrow fund. 1. Notwithstanding any other provision of law, rule, regulation, or practice to the contrary, there is hereby established in the joint custody of the comptroller and the chancellor

of the state university of New York (SUNY) a trust and agency fund, to be known as the "SUNY DSRIP escrow fund" which shall be available without fiscal year limitation.

2.The SUNY DSRIP escrow fund shall consist of (i) monies transferred to SUNY hospital facilities, acting as lead providers under the delivery system reform incentive payment program from the medicaid management information system (MMIS) statewide escrow fund (179) to provide funds to SUNY hospital facilities to make those payments specified in subdivision three of this section that are authorized by New York State's Section 1115 Waiver Partnership Plan pursuant to Section 1115 of Title XI of the Social Security Act, and (ii) monies transferred by SUNY from a state university health care account referenced in subdivision eight-a of section three hundred fifty-five of the education law to pay any amount owed by a SUNY hospital to a performing provider system for which such SUNY hospital is the lead provider resulting from a successful payment distribution challenge by such performing provider system. Notwithstanding any law to the contrary, such amounts owed by a SUNY hospital may be transferred without appropriation by SUNY from the health care account referenced in subdivision eight-a of section three hundred fifty-five of the education law to the SUNY DSRIP escrow fund.

3.Monies of the SUNY DSRIP escrow fund shall be expended only for such purposes as authorized under the delivery system reform incentive payment program of New York State's Section 1115 Waiver Partnership Plan pursuant to Section 1115 of Title XI of the Social Security Act. Notwithstanding any other law, rule, regulation or practice to the contrary, upon the request of the chancellor of SUNY, or her or his designee, payments from the SUNY DSRIP escrow fund shall be made, solely and exclusively to Central New York Care Collaborative, Inc. and SB Clinical Network IPA, LLC, or any successor in interest to either entity, as necessary to implement the distribution of the net award of health care delivery system reform incentive payments in accordance with the methodology and distribution plan for award distribution adopted and amended from time to time by the performing provider system for which a SUNY hospital is the lead provider.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

#### PART V

Section 1. Subdivision 6 of section 665 of the education law is amended by adding a new paragraph e to read as follows:

e. Notwithstanding the provisions of paragraph c of this subdivision, for students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, and who receive their first state award during the two thousand ten--two thousand eleven academic year and thereafter shall make satisfactory progress toward completion of the program's academic requirements as provided in this paragraph. For purposes of this subdivision, "reasonable progress toward the completion of the program" shall mean a student must complete, at a minimum, the following requirements at the time of certification; provided that nothing shall prevent a college from developing stricter standards to measure reasonable progress:

(i)For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, first receiving aid in two thousand ten--two thousand eleven and thereafter, and enrolled in four-year

or five-year undergraduate programs whose terms are organized in semesters:

| <u>Before Being<br/>Certified<br/>for This<br/>Payment</u>                | <u>1st</u> | <u>2nd</u> | <u>3rd</u> | <u>4th</u> | <u>5th</u> | <u>6th</u> | <u>7th</u> | <u>8th</u> | <u>9th</u> | <u>10th</u> |
|---------------------------------------------------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|
| <u>A Student Must<br/>Have Accrued<br/>at Least This<br/>Many Credits</u> | <u>0</u>   | <u>3</u>   | <u>9</u>   | <u>21</u>  | <u>33</u>  | <u>45</u>  | <u>60</u>  | <u>75</u>  | <u>90</u>  | <u>105</u>  |
| <u>With At Least<br/>This Grade<br/>Point Average</u>                     | <u>0</u>   | <u>1.5</u> | <u>1.8</u> | <u>1.8</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u>  |

(ii) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, first receiving aid in two thousand ten--two thousand eleven and thereafter, and enrolled in two-year undergraduate programs whose terms are organized in semesters:

| <u>Before Being<br/>Certified<br/>for This<br/>Payment</u>                    | <u>1st</u> | <u>2nd</u> | <u>3rd</u> | <u>4th</u> | <u>5th</u> | <u>6th</u> | <u>7th</u> | <u>8th</u> |
|-------------------------------------------------------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| <u>A Student<br/>Must Have<br/>Accrued at<br/>Least This<br/>Many Credits</u> | <u>0</u>   | <u>3</u>   | <u>9</u>   | <u>18</u>  | <u>30</u>  | <u>42</u>  | <u>51</u>  | <u>60</u>  |
| <u>With At Least<br/>This Grade<br/>Point Average</u>                         | <u>0</u>   | <u>1.3</u> | <u>1.5</u> | <u>1.8</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> |

(iii) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, first receiving aid in two thousand ten--two thousand eleven and thereafter, and enrolled in four-year or five-year undergraduate programs whose terms are organized on a trimester basis:

| <u>Before Being<br/>Certified<br/>for This<br/>Payment</u>                    | <u>1st</u> | <u>2nd</u> | <u>3rd</u> | <u>4th</u> | <u>5th</u> | <u>6th</u> | <u>7th</u> | <u>8th</u> |
|-------------------------------------------------------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| <u>A Student<br/>Must Have<br/>Accrued at<br/>Least This<br/>Many Credits</u> | <u>0</u>   | <u>2</u>   | <u>4</u>   | <u>9</u>   | <u>17</u>  | <u>25</u>  | <u>33</u>  | <u>40</u>  |
| <u>With At Least<br/>This Grade</u>                                           | <u>0</u>   | <u>1.1</u> | <u>1.5</u> | <u>1.5</u> | <u>1.8</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> |

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| <u>Before Being<br/>Certified<br/>for This<br/>Payment</u> | <u>9th</u> | <u>10th</u> | <u>11th</u> | <u>12th</u> | <u>13th</u> | <u>14th</u> | <u>15th</u> |
|------------------------------------------------------------|------------|-------------|-------------|-------------|-------------|-------------|-------------|

|                                                                               |           |           |           |           |           |            |            |
|-------------------------------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|------------|------------|
| <u>A Student<br/>Must Have<br/>Accrued at<br/>Least This<br/>Many Credits</u> | <u>50</u> | <u>60</u> | <u>70</u> | <u>80</u> | <u>90</u> | <u>100</u> | <u>110</u> |
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|                                                       |            |            |            |            |            |            |            |
|-------------------------------------------------------|------------|------------|------------|------------|------------|------------|------------|
| <u>With At Least<br/>This Grade<br/>Point Average</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> |
|-------------------------------------------------------|------------|------------|------------|------------|------------|------------|------------|

(iv) For students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101, first receiving aid in two thousand ten--two thousand eleven and thereafter, and enrolled in two-year undergraduate programs whose terms are organized on a trimester basis:

|                                                            |            |            |            |            |            |            |            |            |
|------------------------------------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|
| <u>Before Being<br/>Certified<br/>for This<br/>Payment</u> | <u>1st</u> | <u>2nd</u> | <u>3rd</u> | <u>4th</u> | <u>5th</u> | <u>6th</u> | <u>7th</u> | <u>8th</u> |
|------------------------------------------------------------|------------|------------|------------|------------|------------|------------|------------|------------|

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|-------------------------------------------------------------------------------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|
| <u>A Student<br/>Must Have<br/>Accrued at<br/>Least This<br/>Many Credits</u> | <u>0</u> | <u>2</u> | <u>4</u> | <u>9</u> | <u>15</u> | <u>21</u> | <u>30</u> | <u>37</u> |
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|-------------------------------------------------------|----------|------------|------------|------------|------------|------------|------------|------------|
| <u>With At Least<br/>This Grade<br/>Point Average</u> | <u>0</u> | <u>1.0</u> | <u>1.3</u> | <u>1.5</u> | <u>1.5</u> | <u>1.8</u> | <u>2.0</u> | <u>2.0</u> |
|-------------------------------------------------------|----------|------------|------------|------------|------------|------------|------------|------------|

and,

|                                                            |            |             |             |             |
|------------------------------------------------------------|------------|-------------|-------------|-------------|
| <u>Before Being<br/>Certified<br/>for This<br/>Payment</u> | <u>9th</u> | <u>10th</u> | <u>11th</u> | <u>12th</u> |
|------------------------------------------------------------|------------|-------------|-------------|-------------|

|                                                                               |           |           |           |           |
|-------------------------------------------------------------------------------|-----------|-----------|-----------|-----------|
| <u>A Student<br/>Must Have<br/>Accrued at<br/>Least This<br/>Many Credits</u> | <u>45</u> | <u>50</u> | <u>55</u> | <u>60</u> |
|-------------------------------------------------------------------------------|-----------|-----------|-----------|-----------|

|                                                       |            |            |            |            |
|-------------------------------------------------------|------------|------------|------------|------------|
| <u>With At Least<br/>This Grade<br/>Point Average</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> | <u>2.0</u> |
|-------------------------------------------------------|------------|------------|------------|------------|

(v) Notwithstanding any other provision of law or regulation to the contrary, upon each certification, payment eligibility shall be determined and measured proportionally in equivalence with full time study for students who are disabled as defined by the Americans with Disabilities Act of 1990, 42 USC 12101.

§ 2. This act shall take effect immediately.

#### PART W

Section 1. Subdivision 8 of section 695-e of the education law, as amended by chapter 593 of the laws of 2003, is amended to read as follows:

8. No account owner or designated beneficiary of any account shall be permitted to direct the investment of any contributions to an account or the earnings thereon more than two times in any calendar year.

§ 2. This act shall take effect immediately.

#### PART X

Section 1. The education law is amended by adding a new section 6456 to read as follows:

§ 6456. Foster youth college success initiative. 1. Subject to an appropriation, the commissioner shall allocate the funds available for the foster youth college success initiative for the purpose of providing support services to assist youth in foster care to apply for, enroll in, and succeed in college. Such grants shall be awarded to institutions of the state university of New York and institutions of the city university of New York, and the commissioner shall enter into contracts with degree-granting institutions in New York that are currently funded by the Arthur O. Eve higher education opportunity program pursuant to section sixty-four hundred fifty-one of this article for the purpose of providing additional services and expenses to expand opportunities for foster youth.

2. For the purposes of this section, "foster youth" shall mean students who have qualified as an orphan, foster child or ward of the court for the purposes of federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended.

3. Funds appropriated for the purposes of this initiative shall be allocated by sector as follows: fifty-two percent for institutions in the state university of New York; thirty percent for institutions in the city university of New York; and eighteen percent for other degree-granting institutions in New York with current Arthur O. Eve higher education opportunity programs.

4. Funds for all programs under this section shall be awarded in equal amounts per foster youth to each institution that applies for funding allocated to its sector distribution as provided in subdivision three of this section and has an application that is approved by the commissioner.

5. Moneys made available to institutions under this section shall be spent for the following purposes:

a. to provide additional services and expenses to expand opportunities through existing postsecondary opportunity programs at the state university of New York, the city university of New York, and other degree-granting higher education institutions for foster youth;

b. to provide any necessary supplemental financial aid for foster youth, which may include the cost of tuition and fees, books, transpor-

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tation, and other expenses as determined by the commissioner to be necessary for such foster youth to attend college;

c.summer college preparation programs to help foster youth transition to college, prepare them to navigate on-campus systems, and provide preparation in reading, writing, and mathematics for foster youth who need it; or

d.advisement, tutoring, and academic assistance for foster youth.

6.Eligible institutions shall file an application for approval by the commissioner no later than the first of October each year demonstrating a need for such funding, including how the funding would be used and how many foster youth would be assisted with such funding. Successful applicants will be funded as provided in subdivision four of this section.

7.No funds pursuant to this section shall be made available to support the regular academic programs of any institution participating in this program, nor shall funds be provided for programs which are incompatible with the regents plan for the expansion and development of higher education in this state.

§ 2. This act shall take effect on July 1, 2015; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized.

#### PART Y

Section 1. Section 6306 of the education law is amended by adding a new subdivision 10 to read as follows:

10. The boards of trustees of the state university of New York community colleges shall consult with boards of cooperative educational services (BOCES) to identify new or existing programs offered to students that would allow a student to pursue an associate of occupational studies (AOS) degree from a community college upon high school graduation. Once identified, BOCES in collaboration with the community college boards of trustees shall make such path, identified programs, and AOS degree options known to ensure that students are aware that such options exist. Such notification may begin as early as the seventh grade. Provided however, that such boards and BOCES shall not take any action to direct or suggest that a student should pursue a particular degree or pathway.

§ 2. This act shall take effect August 1, 2015.

#### PART Z

Section 1. The education law is amended by adding a new section 669-g to read as follows:

§ 669-g. The New York state achievement and investment in merit scholarship (NY-AIMS). 1. Purpose. The New York state achievement and investment in merit scholarship (NY-AIMS) is hereby established for the purpose of granting merit based scholarship awards to New York state high school graduates who achieve academic excellence.

2.Eligibility. To be eligible for such awards, an applicant must have graduated from a New York state high school, enrolled in an approved undergraduate program of study in a New York state post-secondary institution beginning in the two thousand fifteen--two thousand sixteen academic year or thereafter, and achieved at least two of the following during high school:

a.graduated with a grade point average of 3.3 or above;



b.graduated with a "with honors" distinction on a New York state regents diploma or received a score of 3 or higher on two or more advanced placement examinations; or

c.graduated within the top fifteen percent of their high school class, provided that actual class rank may be taken into consideration.

3.Priority. a. Such awards shall be made to eligible applicants in the following priority:

(i)first, to applicants who have received payment of an award pursuant to this section in a prior year and remain in good academic standing; and

(ii)second, to applicants in descending order based on the unmet need to reach the full cost of attendance as indicated on the financial aid award letter.

However, in the program's first year, first priority shall be in accordance with subparagraph (ii) of this paragraph.

b.In the event that there are more applicants who have the same priority than there are remaining scholarships, the president shall distribute the remaining number of such scholarships by means of a lottery or other form of random selection.

c.In each year, the awards made shall be proportionate to the total applications received for students accepted for undergraduate study at public and private not-for-profit degree granting institutions.

4.Awards. Within amounts appropriated therefor, the president shall grant an annual award to eligible applicants on a competitive basis pursuant to subdivisions two and three of this section in the amount of five hundred dollars for not more than four academic years of undergraduate study, or five academic years, if the program of study normally requires five years as defined by the commissioner pursuant to article thirteen of this chapter. Up to five thousand awards may be granted to new recipients annually.

5.Offset. Such awards may be used to offset the applicant's total cost of attendance determined for federal Title IV student financial aid purposes.

6.Rules. The corporation is authorized to promulgate rules and regulations, and may promulgate emergency regulations, necessary for the implementation of the provisions of this section.

§ 2. This act shall take effect immediately, and shall be deemed to have been in full force and effect on and after April 1, 2015.

#### PART AA

Section 1. Section 25-a of the labor law, as added by section 1 of part D of chapter 56 of the laws of 2011, subdivision (a) as amended by section 3, subdivision (c) as amended by section 4 and subdivision (f) as amended by section 5 of part U of chapter 59 of the laws of 2014, and subdivision (b) as amended by section 1 and subdivision (d) as amended by section 2 of part DD of chapter 59 of the laws of 2013, is amended to read as follows:

§ 25-a. Power to administer the ~~[New-York]~~ urban youth ~~[works]~~ jobs program tax credit ~~[program]~~. (a) The commissioner is authorized to establish and administer the ~~[New-York youth works tax credit]~~ program established under this section to provide tax incentives to employers for employing at risk youth in part-time and full-time positions. There will be five distinct pools of tax incentives. Program one will cover tax incentives allocated for two thousand twelve and two thousand thirteen. Program two will cover tax incentives allocated in two thousand



fourteen [~~to be used in two thousand fourteen and fifteen~~]. Program three will cover tax incentives allocated in two thousand fifteen [~~to be used in two thousand fifteen and sixteen~~]. Program four will cover tax incentives allocated in two thousand sixteen [~~to be used in two thousand sixteen and seventeen~~]. Program five will cover tax incentives allocated in two thousand seventeen [~~to be used in two thousand seventeen and eighteen~~]. The commissioner is authorized to allocate up to twenty-five million dollars of tax credits under program one, ten million dollars of tax credits under program two, [~~ten~~] and twenty million dollars of tax credits under [~~program~~] each of programs three, [~~ten million dollars of tax credits under program~~] four, [~~ten million dollars of tax credits under program~~] and five.

(b) Definitions. (1) The term "qualified employer" means an employer that has been certified by the commissioner to participate in the [~~New York youth works tax credit~~] program established under this section and that employs one or more qualified employees.

(2) The term "qualified employee" means an individual:

- (i) who is between the age of sixteen and twenty-four;
  - (ii) who resides in a city with a population of fifty-five thousand or more or a town with a population of four hundred eighty thousand or more;
  - (iii) who is low-income or at-risk, as those terms are defined by the commissioner;
  - (iv) who is unemployed prior to being hired by the qualified employer;
- and

(v) who will be working for the qualified employer in a full-time or part-time position that pays wages that are equivalent to the wages paid for similar jobs, with appropriate adjustments for experience and training, and for which no other employee has been terminated, or where the employer has not otherwise reduced its workforce by involuntary terminations with the intention of filling the vacancy by creating a new hire.

(c) A qualified employer shall be entitled to a tax credit equal to (1) five hundred dollars per month for up to six months for each qualified employee the employer employs in a full-time job or two hundred fifty dollars per month for up to six months for each qualified employee the employer employs in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, (2) one thousand dollars for each qualified employee who is employed for at least an additional six months by the qualified employer in a full-time job or five hundred dollars for each qualified employee who is employed for at least an additional six months by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, and (3) an additional one thousand dollars for each qualified employee who is employed for at least an additional year after the first year of the employee's employment by the qualified employer in a full-time job or five hundred dollars for each qualified employee who is employed for at least an additional year after the first year of the employee's employment by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full time. The tax credits shall be claimed by the qualified employer as specified in subdivision [~~forty-four~~] thirty-six of section two hundred [~~ten~~] ten-B and subsection (tt) of section six hundred six of the tax law.

(d) To participate in the [~~New York youth works tax credit~~] program established under this section, an employer must submit an application (in a form prescribed by the commissioner) to the commissioner after January first, two thousand twelve but no later than November thirtieth, two thousand twelve for program one, after January first, two thousand fourteen but no later than November thirtieth, two thousand fourteen for program two, after January first, two thousand fifteen but no later than November thirtieth, two thousand fifteen for program three, after January first, two thousand sixteen but no later than November thirtieth, two thousand sixteen for program four, and after January first, two thousand seventeen but no later than November thirtieth, two thousand seventeen for program five. The qualified employees must start their employment on or after January first, two thousand twelve but no later than December thirty-first, two thousand twelve for program one, on or after January first, two thousand fourteen but no later than December thirty-first, two thousand fourteen for program two, on or after January first, two thousand fifteen but no later than December thirty-first, two thousand fifteen for program three, on or after January first, two thousand sixteen but no later than December thirty-first, two thousand sixteen for program four, and on or after January first, two thousand seventeen but no later than December thirty-first, two thousand seventeen for program five. The commissioner shall establish guidelines and criteria that specify requirements for employers to participate in the program including criteria for certifying qualified employees. Any regulations that the commissioner determines are necessary may be adopted on an emergency basis notwithstanding anything to the contrary in section two hundred two of the state administrative procedure act. Such requirements may include the types of industries that the employers are engaged in. The commissioner may give preference to employers that are engaged in demand occupations or industries, or in regional growth sectors, including those identified by the regional economic development councils, such as clean energy, healthcare, advanced manufacturing and conservation. In addition, the commissioner shall give preference to employers who offer advancement and employee benefit packages to the qualified individuals.

(e) If, after reviewing the application submitted by an employer, the commissioner determines that such employer is eligible to participate in the [~~New York youth works tax credit~~] program established under this section, the commissioner shall issue the employer a certificate of eligibility that establishes the employer as a qualified employer. The certificate of eligibility shall specify the maximum amount of [~~New York youth works~~] tax credit that the employer will be allowed to claim.

(f) The commissioner shall annually publish a report. Such report must contain the names and addresses of any employer issued a certificate of eligibility under this section, and the maximum amount of New York youth works tax credit allowed to the employer as specified on such certificate of eligibility.

§ 2. The subdivision heading and paragraph (a) of subdivision 36 of section 210-B of the tax law, as added by section 17 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

[~~New York~~] Urban youth [works] jobs program tax credit. (a) A taxpayer that has been certified by the commissioner of labor as a qualified employer pursuant to section twenty-five-a of the labor law shall be allowed a credit against the tax imposed by this article equal to (i) five hundred dollars per month for up to six months for each qualified employee the employer employs in a full-time job or two hundred fifty

dollars per month for up to six months for each qualified employee the employer employs in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, (ii) one thousand dollars for each qualified employee who is employed for at least an additional six months by the qualified employer in a full-time job or five hundred dollars for each qualified employee who is employed for at least an additional six months by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, and (iii) an additional one thousand dollars for each qualified employee who is employed for at least an additional year after the first year of the employee's employment by the qualified employer in a full-time job or five hundred dollars for each qualified employee who is employed for at least an additional year after the first year of the employee's employment by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time. For purposes of this subdivision, the term "qualified employee" shall have the same meaning as set forth in subdivision (b) of section twenty-five-a of the labor law. The portion of the credit described in subparagraph (i) of this paragraph shall be allowed for the taxable year in which the wages are paid to the qualified employee, ~~[and]~~ the portion of the credit described in subparagraph (ii) of this paragraph shall be allowed in the taxable year in which the additional six month period ends, and the portion of the credit described in subparagraph (iii) of this paragraph shall be allowed in the taxable year in which the additional year after the first year of employment ends.

§ 3. The subdivision heading and paragraph 1 of subsection (tt) of section 606 of the tax law, the subdivision heading as added by section 3 of part D of chapter 56 of the laws of 2011 and paragraph 1 as amended by section 2 of part U of chapter 59 of the laws of 2014, are amended to read as follows:

~~[New York]~~ Urban youth ~~[works]~~ jobs program tax credit. (1) A taxpayer that has been certified by the commissioner of labor as a qualified employer pursuant to section twenty-five-a of the labor law shall be allowed a credit against the tax imposed by this article equal to (A) five hundred dollars per month for up to six months for each qualified employee the employer employs in a full-time job or two hundred fifty dollars per month for up to six months for each qualified employee the employer employs in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, and (B) one thousand dollars for each qualified employee who is employed for at least an additional six months by the qualified employer in a full-time job or five hundred dollars for each qualified employee who is employed for at least an additional six months by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time, and (C) an additional one thousand dollars for each qualified employee who is employed for at least an additional year after the first year of the employee's employment by the qualified employer in a full-time job or five hundred dollars for each qualified employee who is employed for at least an additional year after the first year of the employee's employment by the qualified employer in a part-time job of at least twenty hours per week or ten hours per week when the qualified employee is enrolled in high school full-time. A taxpayer that is a partner in a partnership, member of a limited liability compa-

ny or shareholder in an S corporation that has been certified by the commissioner of labor as a qualified employer pursuant to section twenty-five-a of the labor law shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or S corporation. For purposes of this subsection, the term "qualified employee" shall have the same meaning as set forth in subdivision (b) of section twenty-five-a of the labor law. The portion of the credit described in subparagraph (A) of this paragraph shall be allowed for the taxable year in which the wages are paid to the qualified employee, ~~[and]~~ the portion of the credit described in subparagraph (B) of this paragraph shall be allowed in the taxable year in which the additional six month period ends, and the portion of the credit described in subparagraph (C) of this paragraph shall be allowed in the taxable year in which the additional year after the first year of employment ends.

§ 4. Clause (xxxiii) of subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law, as amended by section 68 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

|                                                   |                              |
|---------------------------------------------------|------------------------------|
| (xxxiii) <del>[New York]</del> <u>Urban</u> youth | Amount of credit under       |
| <del>[works]</del> <u>jobs program</u>            | subdivision thirty-six       |
| tax credit                                        | of section two hundred ten-B |

§ 5. This act shall take effect immediately.

#### PART BB

Section 1. Subdivision (b) of section 27-1318 of the environmental conservation law, as amended by section 2 of part E of chapter 577 of the laws of 2004, is amended to read as follows:

(b) Within ~~[sixty]~~ one hundred eighty days of commencement of the remedial design, the owner of an inactive hazardous waste disposal site, and/or any person responsible for implementing a remedial program at such site, where institutional or engineering controls are employed pursuant to this title, shall execute an environmental easement pursuant to title thirty-six of article seventy-one of this chapter.

§ 2. Subdivision 2 of section 27-1405 of the environmental conservation law, as amended by section 2 of part A of chapter 577 of the laws of 2004, is amended and three new subdivisions 29, 30 and 31 are added to read as follows:

2. "Brownfield site" or "site" shall mean any real property~~[, the redevelopment or reuse of which may be complicated by the presence or potential presence of]~~ where a contaminant is present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by the department that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Such term shall not include real property:

(a) listed in the registry of inactive hazardous waste disposal sites under section 27-1305 of this article at the time of application to this program and given a classification as described in subparagraph one or two of paragraph b of subdivision two of section 27-1305 of this article; provided, however ~~[except until July first, two thousand five]~~, real property listed in the registry of inactive hazardous waste disposal sites under subparagraph two of paragraph b of subdivision two of section 27-1305 of this article ~~[prior to the effective date of this article]~~, where such real property is owned by a volunteer or under

contract to be transferred to a volunteer, shall not be deemed ineligible to participate, provided that, prior to the site being accepted into the brownfield cleanup program, the department has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property and further provided that the status of any such site as listed in the registry shall not be altered prior to the issuance of a certificate of completion pursuant to section 27-1419 of this title. The department's assessment of eligibility under this paragraph shall not constitute a finding concerning liability with respect to the property;

(b) listed on the national priorities list established under authority of 42 U.S.C. section 9605;

(c) subject to an enforcement action under title seven or nine of this article, [~~except~~] or permitted or required to be permitted as a treatment, storage or disposal facility [~~subject to a permit~~]; provided, that nothing herein contained shall be deemed otherwise to exclude from the scope of the term "brownfield site" a hazardous waste treatment, storage or disposal facility having interim status according to regulations promulgated by the commissioner and provided further that real property owned by a volunteer or under contract to be transferred to a volunteer shall not be deemed ineligible to participate provided that, prior to the site being accepted into the brownfield cleanup program, the department has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property;

(d) subject to an order for cleanup pursuant to article twelve of the navigation law or pursuant to title ten of article seventeen of this chapter except such property shall not be deemed ineligible if it is subject to a stipulation agreement; or

(e) subject to any other on-going state or federal environmental enforcement action related to the contamination which is at or emanating from the site subject to the present application.

29. "Affordable housing project" shall be defined in regulation by the department, after consultation with the division of housing and community renewal, which shall at a minimum, establish the percentage of units in the project that must be below a defined percentage of the area median income.

30. "Underutilized" shall be defined in regulation by the department, after consultation with the business community and the city of New York. Such regulations shall be adopted no later than October first, two thousand fifteen and take into consideration the existing use of a property relative to allowable development under zoning, the need for substantial government assistance to redevelop and other relevant factors.

31. "Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.

§ 3. Subdivision 1 of section 27-1407 of the environmental conservation law, as amended by section 3 of part A of chapter 577 of the laws of 2004, is amended and a new subdivision 1-a is added to read as follows:

1. A person who seeks to participate in this program shall submit a request to the department on a form provided by the department. Such form shall include information to be determined by the department suffi-

cient to allow the department to determine eligibility and the current, intended and reasonably anticipated future land use of the site pursuant to section 27-1415 of this title. Any such person shall submit an investigation report sufficient to demonstrate that the site requires remediation in order to meet the remedial requirements of this title.

1-a. If the person is also seeking a determination that the site is eligible for the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law for a site located in a city having a population of one million or more, such person shall submit information sufficient to demonstrate that: (a) at least half of the site area is located in an environmental zone as defined in section twenty-one of the tax law; (b) the property is upside down or underutilized; or (c) the project is an affordable housing project. An applicant may request an eligibility determination for tangible property credits at any time from application until the site receives a certificate of completion pursuant to section 27-1419 of this title except for sites seeking eligibility under the underutilized category.

Sites are not eligible for tangible property tax credits if: (a) the contamination from ground water or soil vapor is solely emanating from property other than the site subject to the present application; or (b) the department has determined that the property has previously been remediated pursuant to titles nine, thirteen and fourteen of this article, title five of article fifty-six of this chapter and article twelve of the navigation law such that it may be developed for its then intended use.

§ 4. Subdivision 3 of section 27-1407 of the environmental conservation law, as amended by section 3 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

3. The department shall notify the person requesting participation in this program within ~~[ten]~~ thirty days after receiving such request that such request is either complete or incomplete. In the event the application is determined to be incomplete the department shall specify in writing the missing necessary information required pursuant to this article to complete the application and shall have ten days after receipt of the missing information to issue a written determination if the application is complete.

§ 5. Subdivision 6 of section 27-1407 of the environmental conservation law, as added by section 1 of part A of chapter 1 of the laws of 2003, is amended to read as follows:

6. The department shall use all best efforts to expeditiously notify the applicant within forty-five days after receiving ~~[their request]~~ a complete application for participation that such request is either accepted or rejected, and, for any applicant seeking to receive the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law, shall concurrently notify the applicant whether the criteria for receiving such component as set forth in subdivision one of this section have been met.

§ 6. Subdivision 9 of section 27-1407 of the environmental conservation law is amended by adding a new paragraph (g) to read as follows:

(g) The person's participation in any remedial program under the department's oversight was terminated by the department or by a court for failure to substantially comply with an agreement or order.



§ 7. Subdivision 2 of section 27-1409 of the environmental conservation law, as amended by section 4 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

2. One requiring: (a) the [applicant] participant to pay for state costs, including the recovery of state costs incurred before the effective date of such agreement; provided, however, that such costs may be based on a reasonable flat-fee for oversight, which shall reflect the projected future state costs incurred in negotiating and overseeing implementation of such agreement; and

(b) with respect to a brownfield site which the department has determined constitutes a significant threat to the public health or environment the department may include a provision requiring the applicant to provide a technical assistance grant, as described in subdivision four of section 27-1417 of this title and under the conditions described therein, to an eligible party in accordance with procedures established under such program, with the cost of such a grant incurred by a volunteer serving as an offset against such state costs~~[. Where the applicant is a participant, the department shall include provisions relating to recovery of state costs incurred before the effective date of such agreement];~~

§ 8. Section 27-1411 of the environmental conservation law is amended by adding a new subdivision 6 to read as follows:

6. An applicant shall include with every report submitted to the department a schedule for the submission of any subsequent work plan required to meet the requirements of this title.

§ 9. Paragraphs (b), (c) and (d) of subdivision 7 of section 27-1415 of the environmental conservation law are relettered paragraphs (c), (d) and (e) and a new paragraph (b) is added to read as follows:

(b) Within one hundred eighty days of commencement of the remedial design or at least three months prior to the date of the anticipated issuance of the certificate of completion, the owner of a brownfield site, and/or any person responsible for implementing a remedial program at such site, where institutional or engineering controls are employed pursuant to this title, shall execute an environmental easement pursuant to title thirty-six of article seventy-one of this chapter.

§ 10. Subdivision 1, paragraph (a) of subdivision 2 and subdivision 3 of section 27-1419 of the environmental conservation law, subdivision 1 and paragraph (a) of subdivision 2 as added by section 1 of part A of chapter 1 of the laws of 2003, subdivision 3 as amended by chapter 390 of the laws of 2008, are amended to read as follows:

1. Upon certification by the applicant that the remediation requirements of this title have been or will be achieved in accordance with the schedules provided in reports submitted to the department on the remedial work plan for the brownfield site, such applicant shall submit to the department a final engineering report prepared by an individual licensed or otherwise authorized in accordance with article one hundred forty-five of the education law to practice the profession of engineering.

(a) a description of the remediation activities completed pursuant to the remedial work plan and any interim remedial measures for the brownfield site;

3. Upon receipt of the final engineering report, the department shall review such report and the data submitted pursuant to the brownfield site cleanup agreement as well as any other relevant information regarding the brownfield site. Upon satisfaction of the commissioner that the remediation requirements set forth in this title have been or will be achieved in accordance with the timeframes, if any, established in the

remedial work plan, the commissioner shall issue a written certificate of completion~~[, such].~~ The certificate shall include such information as determined by the department of taxation and finance, including but not limited to the brownfield site boundaries included in the final engineering report, the date of the brownfield site cleanup agreement ~~[pursuant to section 27-1409 of this title]~~, and the applicable percentages available as of the date of the certificate of completion for that site for purposes of section twenty-one of the tax law~~[, with such percentages to be determined as follows with respect to such qualified site]~~. For those sites for which the department has issued a notice to the applicant on or after July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of this title, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of this title, the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law shall only be available to the taxpayer if the criteria for receiving such tax component have been met. For those sites for which the department has issued a notice to the taxpayer after June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of this title~~[+]~~.

~~For the purposes of calculating]~~, the applicable percentage for the site preparation credit component pursuant to paragraph two of subdivision (a) of section twenty-one of the tax law, and the on-site groundwater remediation credit component pursuant to paragraph four of subdivision (a) of section twenty-one of the tax law~~[, the applicable percentage]~~ shall be based on the level of cleanup achieved pursuant to subdivision four of section 27-1415 of this title and the level of cleanup of soils to contaminant-specific soil cleanup objectives promulgated pursuant to subdivision six of section 27-1415 of this title, up to a maximum of fifty percent, as follows:

(a) soil cleanup for unrestricted use, the protection of groundwater or the protection of ecological resources, the applicable percentage shall be fifty percent;

(b) soil cleanup for residential use, the applicable percentage shall be forty percent, except for Track 4 which shall be twenty-eight percent;

(c) soil cleanup for commercial use, the applicable percentage shall be thirty-three percent, except for Track 4 which shall be twenty-five percent;

(d) soil cleanup for industrial use, the applicable percentage shall be twenty-seven percent, except for Track 4 which shall be twenty-two percent.

§ 11. Subdivision 5 of section 27-1419 of the environmental conservation law, as amended by section 9 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

5. A certificate of completion issued pursuant to this section may be transferred ~~[to the applicant's successors or assigns upon transfer or sale of the brownfield site]~~ by the applicant or subsequent holder of the certificate of completion to a successor to a real property interest, including legal title, equitable title or leasehold, in all or a part of the brownfield site for which the certificate of completion was issued. Notwithstanding any provision of this chapter to the contrary, a certificate of completion shall not be transferred to a responsible



party. Further, a certificate of completion may be modified or revoked by the commissioner upon a finding that:

(a) Either the applicant, or the applicant's successors or assigns, has failed to comply with the terms and conditions of the brownfield site cleanup agreement;

(b) The applicant made a misrepresentation of a material fact tending to demonstrate that: (i) it was qualified as a volunteer; or (ii) met the criteria set forth in subdivision one-a of section 27-1407 of this title for the purpose of receiving the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of section twenty-one of the tax law;

(c) Either the applicant, or the applicant's successors or assigns, made a misrepresentation of a material fact tending to demonstrate that the cleanup levels identified in the brownfield site cleanup agreement were reached; or

(d) There is good cause for such modification or revocation.

§ 12. Section 27-1423 of the environmental conservation law is REPEALED.

§ 13. Section 27-1429 of the environmental conservation law, as amended by section 13 of part A of chapter 577 of the laws of 2004, is amended to read as follows:

§ 27-1429. Permit waivers.

The department, by and through the commissioner, shall be exempt for activities conducted pursuant to subdivision five of section 27-1411 of this title and shall be authorized to exempt a person from the requirement to obtain any state or local permit or other authorization for any activity needed to implement a program for the investigation and/or remediation of contamination at or emanating from a brownfield site; provided that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

§ 14. Subdivision 1 of section 27-1431 of the environmental conservation law is amended by adding a new paragraph c to read as follows:

c.to inspect for compliance with the site management plan approved by the department, including (i) inspection of the performance of maintenance, monitoring and operational activities required as part of the remedial program for the site, (ii) inspection for the purpose of ascertaining current uses of the site, and (iii) taking samples in accordance with paragraph (a) of this subdivision.

§ 15. Section 27-1435 of the environmental conservation law is REPEALED.

§ 15-a. The environmental conservation law is amended by adding a new section 27-1437 to read as follows:

§ 27-1437. BCP-EZ program.

1.The department may promulgate regulations to implement a program providing for the expedited investigation and/or remediation of contamination at brownfield sites (BCP-EZ program), provided that:

(a)at the time of the application, the department has determined that the brownfield site does not pose a significant threat pursuant to section 27-1411 of this title;

(b)the applicant has waived in writing any claim for tax credits pursuant to section twenty-one of the tax law on a form prescribed by the department; and

(c)the activity is conducted in a manner which satisfies all requirements applicable to like activity conducted pursuant to sections 27-1415 and 27-1417 of this title, except as provided in subdivision two of this

section and the time periods specified in paragraphs (b) and (c) of subdivision three of section 27-1417 of this title.

2. For any site accepted into the BCP-EZ program pursuant to this section with a remedial work plan identifying a Track 4 remediation, if a contaminant is identified in soil in excess of the remedial action objectives contained in an applicable generic table developed pursuant to subdivision six of section 27-1415 of this title, the applicant may use site-specific data to demonstrate to the department that the concentration of the contaminant in the soils reflects background conditions and, in that case, a contaminant-specific action objective for such contaminant equal to such background concentration may be established provided that such objective is protective of the public health and the environment and is determined in a manner acceptable to the department.

3. Upon the department's acceptance of the certification by the applicant that the remediation requirements of this title, pursuant to section 27-1419 of this title, have been achieved for the brownfield site and an environmental easement, if necessary, has been created and filed pursuant to title thirty-six of article seventy-one of this chapter, a site in the BCP-EZ program shall be eligible to receive a certificate of completion in accordance with section 27-1419 of this title; provided, however, that such certificate of completion shall not entitle the holder to any tax credits provided by section twenty-one of the tax law.

§ 16. The opening paragraph of subdivision 10 of section 71-3605 of the environmental conservation law, as added by section 2 of part A of chapter 1 of the laws of 2003, is amended to read as follows:

An environmental easement may be enforced in law or equity by its grantor, by the state, or any affected local government as defined in section 71-3603 of this title. Such easement is enforceable against the owner of the burdened property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, reversion or waiver. No general law of the state which operates to defeat the enforcement of any interest in real property shall operate to defeat the enforcement of any environmental easement unless such general law expressly states the intent to defeat the enforcement of such easement or provides for the exercise of the power of eminent domain. It is not a defense in any action to enforce an environmental easement that:

§ 17. Paragraph 3 of subdivision (a) of section 21 of the tax law, as amended by chapter 390 of the laws of 2008, is amended to read as follows:

(3) Tangible property credit component.

(i) The tangible property credit component shall be equal to the applicable percentage of the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, which constitute qualified tangible property and may include any related party service fee paid; provided[~~, however,~~] that in determining the cost or other basis of such property, the taxpayer shall exclude the acquisition cost of any item of property with respect to which a credit under this section was allowable to another taxpayer. A related party service fee shall be allowed only in the calculation of the tangible property credit component and shall not be allowed in the calculation of the site preparation credit component or the on-site groundwater remediation credit component. The portion of the tangible property credit component which is attributable to related party service fees shall be allowed only as

follows: (A) in the taxable year in which the qualified tangible property described in subparagraph (iii) of this paragraph is placed in service, for that portion of the related party service fees which have been earned and actually paid to the related party on or before the last day of such taxable year; and (B) with respect to any other taxable year for which the tangible property credit component may be claimed under this subparagraph and in which the amount of any additional related party service fees are actually paid by the taxpayer to the related party, the tangible property credit component for such amount shall be allowed in such taxable year. The credit component amount so determined shall be allowed for the taxable year in which such qualified tangible property is first placed in service on a qualified site with respect to which a certificate of completion has been issued to the taxpayer, or for the taxable year in which the certificate of completion is issued if the qualified tangible property is placed in service prior to the issuance of the certificate of completion. This credit component shall only be allowed for up to ~~[ten taxable years after]~~ one hundred twenty months after the date of the issuance of such certificate of completion.

(ii) The tangible property credit component shall be allowed with respect to property leased to a second party only if such second party is either ~~[(i)]~~ (A) not a party responsible for the disposal of hazardous waste or the discharge of petroleum at the site according to applicable principles of statutory or common law liability, or ~~[(ii)]~~ (B) a party responsible according to applicable principles of statutory or common law liability if such party's liability arises solely from operation of the site subsequent to the disposal of hazardous waste or the discharge of petroleum, and is so certified by the commissioner of environmental conservation at the request of the taxpayer, pursuant to section 27-1419 of the environmental conservation law. Notwithstanding any other provision of law to the contrary, in the case of allowance of credit under this section to such a lessor, the commissioner shall have the authority to reveal to such lessor any information, with respect to the issue of qualified use of property by the lessee, which is the basis for the denial in whole or in part, or for the recapture, of the credit claimed by such lessor. For purposes of the tangible property credit component allowed under this section the taxpayer to whom the certificate of completion is issued, as provided for under subdivision five of section 27-1419 of the environmental conservation law, may transfer the benefits and burdens of the certificate of completion, which run with the land and to the applicant's successors or assigns upon transfer or sale of all or any portion of an interest or estate in the qualified site. However, the taxpayer to whom certificate's benefits and burdens are transferred shall not include the cost of acquiring all or any portion of an interest or estate in the site and the amounts included in the cost or other basis for federal income tax purposes of qualified tangible property already claimed by the previous taxpayer pursuant to this section.

(iii) The term "related party service fee" shall mean any fee or other monetary compensation earned by a related party and calculated as a percentage of project and/or acquisition costs, in consideration of services rendered to or for the benefit of the taxpayer placing qualified tangible property in service in connection with the acquisition and development of such property. For purposes of this subparagraph, "related party" shall have the same meaning as related person as defined in subparagraph (c) of paragraph three of subdivision (b) of section four hundred sixty-five of the internal revenue code.

(iv) Eligible costs for the tangible property credit component are limited to costs for tangible property that has a depreciable life for federal income tax purposes of fifteen years or more, costs associated with demolition and excavation on the site and the foundation of any buildings constructed as part of the site cover that are not properly included in the site preparation component and costs associated with non-portable equipment, machinery and associated fixtures and appurtenances used exclusively on the site, whether or not such property has a depreciable life for federal income tax purposes of fifteen years or more.

(v) With respect to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer on or after July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, and the site is eligible for the tangible property credit component because it is an affordable housing project pursuant to subdivision one-a of section 27-1407 of the environmental conservation law, the portion of eligible costs to be included in the calculation of the tangible property credit component will be determined by multiplying the total costs qualified for the tangible property credit component by a fraction, the numerator of which shall be the square footage of space of the affordable housing units dedicated to residential occupancy and the denominator of which shall be the total square footage of the building.

§ 18. Subparagraphs (A) and (B) of paragraph 3-a of subdivision (a) of section 21 of the tax law, as added by chapter 390 of the laws of 2008, are amended to read as follows:

(A) Notwithstanding any other provision of law to the contrary, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed thirty-five million dollars or three times the sum of the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, and the costs that would have been included in the calculation of such components if not treated as an expense and deducted pursuant to section one hundred ninety-eight of the internal revenue code, whichever is less; provided, however, that: (1) in the case of a qualified site to be used primarily for manufacturing activities, the tangible property credit component available for any qualified site pursuant to paragraph three of this subdivision shall not exceed forty-five million dollars or six times the sum of the costs included in the calculation of the site preparation credit component and the on-site groundwater remediation credit component under paragraphs two and four, respectively, of this subdivision, and the costs that would have been included in the calculation of such components if not treated as an expense and deducted pursuant to section one hundred ninety-eight of the internal revenue code, whichever is less; and (2) the provisions of this paragraph shall not apply to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law.

(B) For the purposes of this paragraph, the term "manufacturing activities" means the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing~~[, and shall also include the activities of a qualified emerging technology company as defined in paragraph (c) of subdivision one of section thirty one hundred two-e of the public authorities law regardless of the ten million dollar limitation expressed in subparagraph one of such paragraph]~~; provided however, that the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity, shall not constitute manufacturing activities.

§ 19. Subparagraph (C) of paragraph 3-a of subdivision (a) of section 21 of the tax law, as added by chapter 390 of the laws of 2008, is amended to read as follows:

(C) In order to properly administer the ~~[credit]~~ credits set forth in ~~[paragraph three of]~~ this subdivision, the department may disclose information about the calculation and the amounts of the credits claimed under ~~[paragraph three of]~~ this subdivision on a taxpayer's return to the department of environmental conservation and other taxpayers claiming tax credits under this section with respect to the same qualifying site.

§ 20. Subparagraph (D) of paragraph 3-a of subdivision (a) of section 21 of the tax law, as added by chapter 390 of the laws of 2008, is amended to read as follows:

(D) [If] With respect to any qualified site for which the department of environmental conservation has issued a notice to the taxpayer before July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, or where the taxpayer has either been issued or received a certificate of completion from another taxpayer under section 27-1419 of the environmental conservation law before July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, if the qualifying site is located in a brownfield opportunity area and is developed in conformance with the goals and priorities established for that applicable brownfield opportunity area as designated pursuant to section nine hundred seventy-r of the general municipal law, the applicable percentage of the tangible property credit component will be increased by two percent.

§ 21. Paragraph 5 of subdivision (a) of section 21 of the tax law, as amended by section 39 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(5) Applicable percentage. (A) For purposes of computing the site preparation and on-site groundwater remediation credit components pursuant to paragraphs two[~~, three~~] and four of this subdivision, with respect to such qualified sites for which the department of environmental conservation has issued a notice to the taxpayer before June twenty-third, two thousand eight that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, or where the taxpayer has either been issued or received a certificate of completion from another taxpayer under section



27-1419 of the environmental conservation law for such a site, and, for purposes of computing the tangible property component pursuant to paragraph three of this subdivision with respect to such qualified sites for which the department of environmental conservation has issued a notice to the taxpayer before July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, or where the taxpayer has either been issued or received a certificate of completion from another taxpayer under section 27-1419 of the environmental conservation law for such a site, the applicable percentage shall be twelve percent in the case of credits claimed under article nine, nine-A or thirty-three of this chapter, and ten percent in the case of credits claimed under article twenty-two of this chapter, except that where at least fifty percent of the area of the qualified site relating to the credit provided for in this section is located in an environmental zone as defined in paragraph six of subdivision (b) of this section, the applicable percentage shall be increased by an additional eight percent. Provided, however, as afforded in section 27-1419 of the environmental conservation law, if the certificate of completion indicates that the qualified site has been remediated to Track 1 as that term is described in subdivision four of section 27-1415 of the environmental conservation law, the applicable percentage set forth in the first sentence of this paragraph shall be increased by an additional two percent.

(B) With respect to such qualified site for which the department of environmental conservation has issued a notice to the taxpayer on or after July first, two thousand fifteen or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision thirty of section 27-1405 of the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision six of section 27-1407 of the environmental conservation law, the applicable percentage for the tangible property credit component of the brownfield redevelopment tax credit pursuant to paragraph three of subdivision (a) of this section shall be the sum of ten percent and the following additional percentages, provided that if the sum is greater than twenty-four percent, the total percentage of the tangible property credit component shall be twenty-four percent and is otherwise subject to the limitations set forth in paragraphs three and three-a of subdivision (a) of this section:

- (i) five percent for a site within an environmental zone;
- (ii) five percent for a site located within a designated brownfield opportunity area and is developed in conformance with the goals and priorities established for that applicable brownfield opportunity area;
- (iii) five percent for a site developed as affordable housing, as defined in section 27-1405 of the environmental conservation law;
- (iv) five percent for a site to be used primarily for manufacturing activities as such term is defined in subparagraph (B) of paragraph three-a of this subdivision; and
- (v) five percent for sites remediated to Track 1 as that term is defined in subdivision four of section 27-1415 of the environmental conservation law.

(C) The taxpayer shall submit, in the manner prescribed by the commissioner, information sufficient to demonstrate that the site qualifies

for any credit components available under subparagraph (B) of this paragraph. If the site is receiving the credit component authorized pursuant to clause (ii) of subparagraph (B) of this paragraph for being located within a designated brownfield opportunity area, the taxpayer shall submit a certification from the secretary of state that the development is in conformance with such brownfield opportunity area plan pursuant to section nine hundred seventy-r of the general municipal law.

§ 22. Clause (i) of subparagraph (B) of paragraph 3 of subdivision (b) of section 21 of the tax law, as amended by chapter 420 of the laws of 2006, is amended to read as follows:

(i) is, or when occupied becomes, part of a dwelling whose primary ownership structure is covered under either article nine-B of the real property law or meets the requirements of section 216 (b) (1) of the Internal Revenue Code or is part of an affordable housing project as defined in subdivision twenty-nine of section 27-1405 of the environmental conservation law, where units are sold as single family homes or multiple family dwellings;

§ 23. Paragraphs 2, 4 and 6 of subdivision (b) of section 21 of the tax law, as amended by section 1 of part H of chapter 577 of the laws of 2004 and subparagraph (B) and the closing paragraph of paragraph 6 as amended by section 1 of part G of chapter 62 of the laws of 2006, are amended to read as follows:

(2) Site preparation costs. The term "site preparation costs" shall mean all amounts properly chargeable to a capital account, ~~[(i)]~~ which are paid or incurred ~~[in connection with a site's qualification for a certificate of completion, and (ii) all other site preparation costs paid or incurred in connection with preparing a site for the erection of a building or a component of a building, or otherwise to establish a site as usable for its industrial, commercial (including the commercial development of residential housing), recreational or conservation purposes. Site preparation costs shall include, but not be limited to, the costs of excavation, temporary electric wiring, scaffolding, demolition costs, and the costs of fencing and security facilities. Site preparation costs shall not include the cost of acquiring the site and shall not include amounts included in the cost or other basis for federal income tax purposes of qualified tangible property, as described in paragraph three of this subdivision]~~ which are necessary to implement a site's investigation, remediation, or qualification for a certificate of completion, and shall include costs of: excavation; demolition; activities undertaken under the oversight of the department of labor or in accordance with standards established by the department of health to remediate and dispose of regulated materials including asbestos, lead or polychlorinated biphenyls; environmental consulting; engineering; legal costs; transportation, disposal, treatment or containment of contaminated soil; remediation measures taken to address contaminated soil vapor; cover systems consistent with applicable regulations; physical support of excavation; dewatering and other work to facilitate or enable remediation activities; sheeting, shoring, and other engineering controls required to prevent off-site migration of contamination from the qualified site or migrating onto the qualified site; and the costs of fencing, temporary electric wiring, scaffolding, and security facilities until such time as the certificate of completion has been issued. Site preparation shall include all costs paid or incurred within sixty months after the last day of the tax year in which the certificate of completion is issued that are necessary for compliance with the certificate of completion or subsequent modifications thereof, or the remedial

program defined in such certificate of completion including but not limited to institutional controls, engineering controls, an approved site management plan, and an environmental easement with respect to the qualified site. Site preparation cost shall not include the costs of foundation systems that exceed the cover system requirements in the regulations applicable to the qualified site.

(4) On-site groundwater remediation costs. The term "on-site groundwater remediation costs" shall mean all amounts properly chargeable to a capital account, ~~[(i)]~~ which are paid or incurred ~~[in connection with a site's qualification for a certificate of completion, and (ii) include costs which are paid or incurred in connection with the remediation of on-site groundwater contamination and incurred to implement a requirement of the remedial work plan or an interim remedial measure work plan for a qualified site which are imposed pursuant to subdivisions two and three of section 27-1411 of the environmental conservation law]~~ which are necessary to implement a site's groundwater investigation, remediation, or qualification for a certificate of completion not already covered under site preparation costs, and shall include costs of: environmental consulting; engineering; legal costs; transportation, disposal, treatment or containment of contaminated groundwater; sheet-piling, shoring, and other engineering controls required to prevent off-site migration of groundwater contamination from the qualified site or migrating onto the qualified site; and the costs of fencing, temporary electric wiring and security facilities until such time as the certificate of completion is issued. On-site groundwater remediation costs shall include all costs paid or incurred within sixty months after the last day of the tax year in which the certificate of completion is issued that are necessary for compliance with the certificate of completion or subsequent modifications thereof, or the groundwater remedial program defined in such certificate of completion including but not limited to institutional controls, engineering controls, an approved site management plan specific to on-site groundwater remediation, and an environmental easement with respect to the qualified site.

(6) Environmental zones (EN-Zones). An "environmental zone" shall mean an area designated as such by the commissioner of ~~[economic development] labor~~. Such areas ~~[so designated are areas which are]~~ shall be census tracts ~~[and block numbering areas which, as of the two thousand census, that]~~ satisfy either of the following criteria:

(A) areas that have both:

(i) a poverty rate of at least twenty percent ~~[for the year to which the data relate]~~ based on the most recent five year American Community Survey; and

(ii) an unemployment rate of at least one and one-quarter times the statewide unemployment rate ~~[for the year to which the data relate]~~ based on the most recent five year American Community Survey, or;

(B) areas that have a poverty rate of at least two times the poverty rate for the county in which the areas are located ~~[for the year to which the data relate provided, however, that a qualified site shall only be deemed to be located in an environmental zone under this subparagraph (B) if such site was the subject of a brownfield site cleanup agreement pursuant to section 27-1409 of the environmental conservation law that was entered into prior to September first, two thousand ten]~~ based on the most recent five year American Community Survey.

Such designation shall be made and a list of all such environmental zones shall be established by the commissioner of ~~[economic development no later than December thirty-first, two thousand four provided, howev-~~



~~er, that a qualified site shall only be deemed to be located in an environmental zone under subparagraph (B) of this paragraph if such site was the subject of a brownfield site cleanup agreement pursuant to section 27-1409 of the environmental conservation law that was entered into prior to September first, two thousand ten]~~ labor based on the two thousand nine through two thousand thirteen American Community Survey estimate. Upon request of the commissioner of environmental conservation, the commissioner of labor shall update such designation based on the most recent American Community Survey, or its successor.

The determination of whether a site is located in an environmental zone shall be based on the date the department of environmental conservation issued a notice to the taxpayer that its request for participation in the brownfield cleanup program has been deemed complete pursuant to subdivision three of section 27-1407 of the environmental conservation law.

§ 24. Section 171-r of the tax law is amended by adding a new subdivision (e) to read as follows:

(e) The commissioner, in consultation with the commissioner of environmental conservation, shall publish by January thirty-first, two thousand sixteen a supplemental brownfield credit report containing the information required by this section about the credits claimed for the years two thousand five, two thousand six, and two thousand seven.

§ 25. Section 171-s of the tax law is REPEALED.

§ 26. Paragraph b of subdivision 2 of section 970-r of the general municipal law, as added by section 1 of part F of chapter 1 of the laws of 2003, is amended to read as follows:

b. Activities eligible to receive such assistance shall include, but are not limited to, the assembly and development of basic information about:

- (1) the borders of the proposed brownfield opportunity area;
- (2) the number and size of known or suspected brownfield sites;
- (3) current and anticipated uses of the properties in the proposed brownfield opportunity area;
- (4) current and anticipated future conditions of groundwater in the proposed brownfield opportunity area;
- (5) known data about the environmental conditions of the properties in the proposed brownfield opportunity area;
- (6) ownership of the properties in the proposed brownfield opportunity area and whether the owners are participating in the brownfield opportunity area planning process; and
- (7) preliminary descriptions of possible remediation strategies, reuse opportunities, necessary infrastructure improvements and other public or private measures needed to stimulate investment, promote revitalization, and enhance community health and environmental conditions.

§ 27. Subparagraphs 2 and 5 of paragraph c of subdivision 2 of section 970-r of the general municipal law, as added by section 1 of part F of chapter 1 of the laws of 2003, are amended to read as follows:

- (2) areas with concentrations of known or suspected brownfield sites;
- (5) areas with known or suspected brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

§ 28. Paragraph a of subdivision 3 of section 970-r of the general municipal law, as amended by chapter 390 of the laws of 2008, is amended to read as follows:

a. Within the limits of appropriations therefor, the secretary is authorized to provide, on a competitive basis, financial assistance to

municipalities, to community based organizations, to community boards, or to municipalities and community based organizations acting in cooperation to prepare a nomination for designation of a brownfield opportunity area. Such financial assistance shall not exceed ninety percent of the costs of such nomination for any such area. A nomination study must include sufficient information to designate the brownfield opportunity area. The contents of the nomination study shall be developed based on pre-nomination study information, which shall principally consist of an area-wide study, documenting the historic brownfield uses in the area proposed for designation.

§ 29. Subparagraphs 2 and 5 of paragraph e of subdivision 3 and subdivision 4 of section 970-r of the general municipal law, subparagraphs 2 and 5 of paragraph e of subdivision 3 as added by section 1 of part F of chapter 1 of the laws of 2003 and subdivision 4 as amended by chapter 390 of the laws of 2008, are amended to read as follows:

(2) areas with concentrations of known or suspected brownfield sites;

(5) areas with known or suspected brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

4. Designation of brownfield opportunity area. Upon completion of a nomination for designation of a brownfield opportunity area, it shall be forwarded by the applicant to the secretary, who shall determine whether it is consistent with the provisions of this section. The secretary may review and approve a nomination for designation of a brownfield opportunity area at any time. If the secretary determines that the nomination is consistent with the provisions of this section, the brownfield opportunity area shall be designated. If the secretary determines that the nomination is not consistent with the provisions of this section, the secretary shall make recommendations in writing to the applicant of the manner and nature in which the nomination should be amended.

§ 30. Paragraph a and subparagraphs 2 and 5 of paragraph e of subdivision 6 of section 970-r of the general municipal law, paragraph a as amended by chapter 386 of the laws of 2007 and subparagraphs 2 and 5 of paragraph e as added by section 1 of part F of chapter 1 of the laws of 2003, are amended to read as follows:

a. Within the limits of appropriations therefor, ~~[the commissioner, in consultation with]~~ the secretary of state, is authorized to provide, on a competitive basis, financial assistance to municipalities, to community based organizations, to community boards, or to municipalities and community based organizations acting in cooperation to conduct brownfield site assessments ~~[in a brownfield opportunity area designated pursuant to this section]~~. Such financial assistance shall not exceed ninety percent of the costs of such brownfield site assessment.

(2) areas with concentrations of known or suspected brownfield sites;

(5) areas with known or suspected brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

§ 31. Section 970-r of the general municipal law is amended by adding a new subdivision 10 to read as follows:

10. The secretary shall establish criteria for brownfield opportunity area conformance determinations for purposes of the brownfield redevelopment tax credit component pursuant to clause (ii) of subparagraph (B) of paragraph (5) of subdivision (a) of section twenty-one of the tax law. In establishing criteria, the secretary shall be guided by, but not limited to, the following considerations: how the proposed use and development advances the designated brownfield opportunity area plan's

vision statement, goals and objectives for revitalization; how the density of development and associated buildings and structures advances the plan's objectives, desired redevelopment and priorities for investment; and how the project complies with zoning and other local laws and standards to guide and ensure appropriate use of the project site.

§ 32. Section 31 of part H of chapter 1 of the laws of 2003, amending the tax law relating to brownfield redevelopment tax credits, remediated brownfield credit for real property taxes for qualified sites and environmental remediation insurance credits, as amended by chapter 474 of the laws of 2012, is amended to read as follows:

§ 31. The tax credits allowed under section ~~[21,]~~ 22 or 23 of the tax law and the corresponding provisions in articles 9, 9-A, 22~~[, 32]~~ and 33 of the tax law, as added by the provisions of sections one through twenty-nine of this act, shall not be applicable ~~[if]~~ to any site accepted into the brownfield cleanup program on and after July 1, 2015 or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision 30 of section 27-1405 of the environmental conservation law, whichever shall be later. The tax credits allowed under section 21 of the tax law and the corresponding provisions in articles 9, 9-A, 22 and 33 of the tax law, as added by the provisions of sections one through twenty-nine of this act, shall not be applicable to any site accepted into the brownfield cleanup program after December 31, 2022, provided, however that any sites accepted on or before December 31, 2022 must have received the ~~[remediation]~~ certificate of completion required to qualify for any of such credits ~~[is issued after December]~~ on or before March 31, ~~[2015]~~ 2026.

§ 33. Notwithstanding any other provision of this act, any site for which a brownfield cleanup agreement with the department of environmental conservation was entered into (1) prior to June 23, 2008 and which has not received a certificate of completion by December 31, 2017 or (2) on or after June 23, 2008 and prior to July 1, 2015 or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision 30 of section 27-1405 of the environmental conservation law, whichever shall be later, and which has not received a certificate of completion by December 31, 2019, shall only be eligible for brownfield redevelopment tax credits available pursuant to section 21 of the tax law as if the site was accepted into the brownfield cleanup program on and after July 1, 2015 or the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision 30 of section 27-1405 of the environmental conservation law, whichever shall be later, and shall be subject to the eligibility requirements for the tangible property credit component set forth in subdivision 1-a of section 27-1407 of the environmental conservation law.

§ 34. Paragraph c of subdivision 3 of section 27-0923 of the environmental conservation law, as amended by section 5 of part I of chapter 577 of the laws of 2004, is amended to read as follows:

c. For the purpose of this section, generation of hazardous waste shall not include retrieval or creation of hazardous waste which must be disposed of under an order of or agreement with the department pursuant to title thirteen or title fourteen of this article or under a contract with the department pursuant to title five of article fifty-six of this chapter or under an order of or agreement with the United States environmental protection agency or an order of a court of competent jurisdiction, related to a facility addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601

et seq.) or under a written agreement with a municipality which has entered into a memorandum of agreement with the department related to the remediation of brownfield sites as of August fifth, two thousand ten.

§ 35. Subparagraphs (i) and (vi) of paragraph d of subdivision 1 of section 72-0402 of the environmental conservation law, as amended by chapter 99 of the laws of 2010, are amended to read as follows:

(i) under a contract with the department, or with the department's written approval and in compliance with department regulations, or pursuant to an order of the department, the United States environmental protection agency or a court of competent jurisdiction, related to the cleanup or remediation of a hazardous materials or hazardous waste spill, discharge, or surficial cleanup, pursuant to this chapter; or

(vi) under a brownfield site cleanup agreement with the department pursuant to section 27-1409 of this chapter or under a written agreement with a municipality which has entered into a memorandum of agreement with the department related to the remediation of brownfield sites as of August fifth, two thousand ten; or

§ 36. Section 56-0501 of the environmental conservation law, as added by chapter 413 of the laws of 1996, is amended to read as follows:

§ 56-0501. Allocation of moneys.

1. Of the moneys received by the state from the sale of bonds pursuant to the Clean Water/Clean Air Bond Act of 1996, two hundred million dollars (\$200,000,000) shall be available for disbursements for environmental restoration projects.

2. Beginning in state fiscal year two thousand fifteen--two thousand sixteen, environmental restoration projects may be funded using the proceeds of bonds issued pursuant to section twelve hundred eighty-five-g of the public authorities law provided that funding for such projects shall conform to the limitations provided in subdivision one of such section.

§ 37. Subdivision 6 of section 56-0502 of the environmental conservation law, as amended by section 2 of part D of chapter 577 of the laws of 2004, is amended to read as follows:

6. "State assistance", for purposes of this title, shall mean in the case of a contract authorized by subdivision one of section 56-0503 of this title, payments made to a municipality to reimburse the municipality for the state share of the costs incurred by the municipality to undertake an environmental restoration project or in the case of a written agreement authorized by subdivision three of section 56-0503 of this title, costs incurred by the state to undertake an environmental restoration project but not reimbursed by a municipality.

§ 38. Paragraph (c) of subdivision 2 of section 56-0503 of the environmental conservation law, as amended by section 4 of part D of chapter 1 of the laws of 2003, is amended and a new subdivision 3 is added to read as follows:

(c) A provision that the municipality shall assist in identifying a responsible party by searching local records, including property tax rolls, or document reviews, and if, in accordance with the required departmental approval of any settlement with a responsible party, any responsible party payments become available to the municipality, before, during or after the completion of an environmental restoration project, which were not included when the state share was calculated pursuant to this section, the state assistance share shall be recalculated, and the municipality shall pay to the state, for deposit into the environmental restoration project account of the hazardous waste remedial fund estab-

lished under section ninety-seven-b of the state finance law, the difference between the original state assistance payment and the recalculated state share. Recalculation of the state share shall be done each time a payment from a responsible party is received by the municipality;

3. The department may undertake an environmental restoration project on behalf of a municipality upon request. If the department undertakes the project on behalf of the municipality, the state shall enter into a written agreement with the municipality and the agreement shall require the municipality to periodically provide its share to the state for costs incurred during the progress of such project. The municipality's share shall be the same as would be required under subdivision one of this section. The agreement shall include all provisions specified in subdivision two of this section as appropriate.

§ 39. Subdivision 4 of section 56-0505 of the environmental conservation law, as amended by section 5 of part D of chapter 1 of the laws of 2003, is amended to read as follows:

4. After completion of such project, the municipality may use the property for public purposes or may dispose of it. If the municipality shall dispose of such property by sale to a responsible party, such party shall pay to such municipality, in addition to such other consideration, an amount of money constituting the amount of state assistance provided [~~to the municipality~~] under this title plus accrued interest and transaction costs and the municipality shall deposit that money into the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law.

§ 40. Subdivisions 3 and 4 of section 56-0508 of the environmental conservation law, as added by section 7 of part D of chapter 1 of the laws of 2003, are amended to read as follows:

3. such temporary incidents of ownership by such taxing district shall also qualify it as being the owner of such property [~~for the purposes of obtaining~~] to be eligible for funding from the state of New York for such environmental restoration investigation project under this article or for such funding from any source pursuant to any other state, federal, or local law, but such incidents of ownership shall not be sufficient to qualify it as the owner of such property for the purposes of holding it wholly or partially liable for any damages, past, present, or future from any release of any hazardous material, substance, or contaminant into the air, ground, or water, unless such release was caused by such taxing district.

4. within thirty days of the completion of the environmental restoration investigation project and the receipt by the taxing jurisdiction of the final report of such investigation, such taxing jurisdiction shall file such report with the court on notice to the court and all other parties of record, and the stay of the foreclosure shall be lifted (unless lifted earlier by a prior court order), and all incidents of temporary ownership of the taxing jurisdiction that was awarded such taxing district, except any right [~~to receive funding~~] to be funded, shall cease to exist, and nothing in this subdivision shall preclude the taxing jurisdiction that conducted the environmental restoration investigation project or the taxing jurisdiction that commenced the foreclosure action, if it is a different taxing jurisdiction than the taxing jurisdiction which conducted the investigation, from withdrawing the parcel from foreclosure pursuant to section eleven hundred thirty-eight of the real property tax law.

§ 40-a. The opening paragraph and subparagraph (i) of paragraph (a) of subdivision 1 of section 56-0509 of the environmental conservation law, as amended by section 4 of part D of chapter 577 of the laws of 2004, are amended to read as follows:

Notwithstanding any other provision of law and except as provided in subdivision two of this section and in paragraph (h) of subdivision two of section 56-0503 of this title, the following shall not be liable to the state upon any statutory or common law cause of action, or to any person upon any statutory cause of action arising out of the presence of any contamination in or on property at any time before the effective date of a contract entered into pursuant to this title or written agreement pursuant to subdivision three of section 56-0503 of this title:

(i) a municipality receiving state assistance under this title to undertake, or under written agreement pursuant to subdivision three of section 56-0503 of this title for the state to undertake an environmental restoration project and complying with the terms and conditions of the contract or written agreement pursuant to subdivision three of section 56-0503 of this title providing such assistance; and

§ 41. Paragraph (f) of subdivision 3 of section 97-b of the state finance law, as amended by section 4 of part I of chapter 1 of the laws of 2003, is amended to read as follows:

(f) to undertake such remedial measures as the department of environmental conservation may determine necessary due to environmental conditions related to the property subject to an agreement to provide state assistance or contract under title five of article fifty-six of the environmental conservation law that were unknown to such department at the time of its approval of such agreement or contract which indicates that conditions on such property are not sufficiently protective of human health for its reasonably anticipated uses or due to information received, in whole or in part, after such department's approval of such agreement's final engineering report and certification, which indicates that such agreement's remedial activities are not sufficiently protective of human health for such property's reasonably anticipated uses; and, [~~respecting the monies in the environmental restoration project account in excess of ten million dollars,~~] shall provide state assistance under title five of article fifty-six of the environmental conservation law;

§ 42. Notwithstanding the provisions of subdivision 1-a of section 27-1407 of the environmental conservation law, a site which is accepted into the brownfield cleanup program after the effective date of this act and prior to the adoption of regulations defining "underutilized" as provided in subdivision 30 of section 27-1405 of the environmental conservation law may, within ninety days following the adoption of such regulations, request an eligibility determination to receive the tangible property credit component of the brownfield redevelopment credit pursuant to section 21 of the tax law.

§ 43. Subdivisions 1 and 3 of section 1285-q of the public authorities law, as added by section 6 of part I of chapter 1 of the laws of 2003, are amended to read as follows:

1. Subject to chapter fifty-nine of the laws of two thousand, but notwithstanding any other provisions of law to the contrary, in order to assist the corporation in undertaking the administration and the financing of hazardous waste site remediation projects for payment of the state's share of the costs of the remediation of hazardous waste sites, in accordance with title thirteen of article twenty-seven of the environmental conservation law and section ninety-seven-b of the state



finance law, and for payment of state costs associated with the remediation of offsite contamination at significant threat sites as provided in section 27-1411 of the environmental conservation law, and beginning in state fiscal year two thousand fifteen - two thousand sixteen for environmental restoration projects pursuant to title five of article fifty-six of the environmental conservation law provided that funding for such projects shall not exceed ten percent of the funding appropriated for the purposes of financing hazardous waste site remediation projects, pursuant to title thirteen of article twenty-seven of the environmental conservation law in any state fiscal year pursuant to capital appropriations made to the department of environmental conservation, the director of the division of budget and the corporation are each authorized to enter into one or more service contracts, none of which shall exceed twenty years in duration, upon such terms and conditions as the director and the corporation may agree, so as to annually provide to the corporation in the aggregate, a sum not to exceed the annual debt service payments and related expenses required for any bonds and notes authorized pursuant to section twelve hundred ninety of this title. Any service contract entered into pursuant to this section shall provide that the obligation of the state to fund or to pay the amounts therein provided for shall not constitute a debt of the state within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of moneys available for such purposes, subject to annual appropriation by the legislature. Any such service contract or any payments made or to be made thereunder may be assigned and pledged by the corporation as security for its bonds and notes, as authorized pursuant to section twelve hundred ninety of this title.

3. The maximum amount of bonds that may be issued for the purpose of financing hazardous waste site remediation projects and environmental restoration projects authorized by this section shall not exceed [~~one~~] two billion two hundred million dollars and shall not exceed one hundred [~~twenty~~] million dollars for appropriations enacted for any state fiscal year, provided that the bonds not issued for such appropriations may be issued pursuant to reappropriation in subsequent fiscal years. No bonds shall be issued for the repayment of any new appropriation enacted after March thirty-first, two thousand [~~thirteen~~] twenty-six for hazardous waste site remediation projects authorized by this section. Amounts authorized to be issued by this section shall be exclusive of bonds issued to fund any debt service reserve funds, pay costs of issuance of such bonds, and bonds or notes issued to refund or otherwise repay bonds or notes previously issued. Such bonds and notes of the corporation shall not be a debt of the state, and the state shall not be liable thereon, nor shall they be payable out of any funds other than those appropriated by this state to the corporation for debt service and related expenses pursuant to any service contracts executed pursuant to subdivision one of this section, and such bonds and notes shall contain on the face thereof a statement to such effect.

§ 44. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 45. This act shall take effect July 1, 2015 or on the date of publication in the state register of proposed regulations defining "underutilized" as provided in subdivision 30 of section 27-1405 of the environmental conservation law, whichever shall be later; provided, however, that:

a. the commissioner of environmental conservation shall notify the legislative bill drafting commission of the date of publication in the state register of such proposed regulations in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effecting provisions of section 44 of the legislative law and section 70-b of the public officers law;

b. the amendments to section 970-r of the general municipal law made by sections twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty and thirty-one of this act; section 27-0923 of the environmental conservation law made by section thirty-four of this act; section 72-0402 of the environmental conservation law made by section thirty-five of this act; section 56-0501 of the environmental conservation law made by section thirty-six of this act; section 56-0502 of the environmental conservation law made by section thirty-seven of this act; section 56-0503 of the environmental conservation law made by section thirty-eight of this act; section 56-0505 of the environmental conservation law made by section thirty-nine of this act; section 56-0508 of the environmental conservation law made by section forty of this act; section 56-0509 of the environmental conservation law as amended by section forty-a of this act; section 97-b of the state finance law made by section forty-one of this act; and section 1285-q of the public authorities law made by section forty-three of this act shall take effect immediately;

c. the department of environmental conservation shall not charge volunteers in the brownfield cleanup program for oversight costs for any sites in the program incurred on or after July 1, 2015 or after the publication in the state register of proposed regulations defining "underutilized" as provided in subdivision 30 of section 27-1405 of the environmental conservation law, whichever shall be later;

d. the amendments made by section two of this act relating to the definition of brownfield site, and all amendments made by sections seventeen, eighteen, nineteen, twenty, twenty-one and twenty-three of this act shall apply only to sites for which the department of environmental conservation has issued a notice to the applicant on or after July 1, 2015 or after the publication in the state register of proposed regulations defining "underutilized" as provided in subdivision 30 of section 27-1405 of the environmental conservation law, whichever shall be later, that its request for participation has been accepted under subdivision 6 of section 27-1407 of the environmental conservation law subject to the provisions of section thirty-three of this act; and

e. the department of labor shall update the environmental zones as required by section twenty-four of this act within ninety days of this act becoming law; and

f. the department of environmental conservation shall publish in the state register proposed regulations defining "affordable housing project" as provided in subdivision 29 of section 27-1405 of the environmental conservation law, on or before June 8, 2015.



Section 1. Subparagraphs (a), (b) and (c) of paragraph 8 and paragraph 13 of subdivision 3 of section 73-a of the public officers law, subparagraphs (a), (b) and (c) of paragraph 8 as amended by section 37 of subpart A of part H of chapter 55 of the laws of 2014 and paragraph 13 as amended by section 5 of part A of chapter 399 of the laws of 2011, are amended to read as follows:

(a) If the reporting individual practices law, is licensed by the department of state as a real estate broker or agent or practices a profession licensed by the department of education, or works as a member or employee of a firm required to register pursuant to section one-e of the legislative law as a lobbyist, ~~[give a general]~~ describe the services rendered for which compensation was paid including a general description of the principal subject areas of matters undertaken by such individual and principal duties performed. Specifically state whether the reporting individual provides services directly to clients. Additionally, if such an individual practices with a firm or corporation and is a partner or shareholder of the firm or corporation, give a general description of principal subject areas of matters undertaken by such firm or corporation.

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(b) APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE AND BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, OR FOR NEW MATTERS FOR EXISTING CLIENTS OR CUSTOMERS WITH RESPECT TO THOSE SERVICES THAT ARE PROVIDED ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE AND BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN:

If the reporting individual personally provides services to any person or entity, or works as a member or employee of a partnership or corporation that provides such services (referred to hereinafter as a "firm"), then identify each client or customer to whom the reporting individual personally provided services, or who was referred to the firm by the reporting individual, and from whom the reporting individual or his or her firm earned fees in excess of \$10,000 during the reporting period for such services rendered in direct connection with:

(i) ~~[A proposed bill or resolution in the senate or assembly during the reporting period;~~

~~(ii)]~~ A contract in an amount totaling \$50,000 or more from the state or any state agency for services, materials, or property;

~~[(iii)]~~ (ii) A grant of \$25,000 or more from the state or any state agency during the reporting period;

~~[(iv)]~~ (iii) A grant obtained through a legislative initiative during the reporting period; or

~~[(v)]~~ (iv) A case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period.

For purposes of this question, "referred to the firm" shall mean: having intentionally and knowingly taken a specific act or series of acts to intentionally procure for the reporting individual's firm or knowingly solicit or direct to the reporting individual's firm in whole or substantial part, a person or entity that becomes a client of that firm for the purposes of representation for a matter as defined in

subparagraphs (i) through ~~[(v)]~~ (iv) of this paragraph, as the result of such procurement, solicitation or direction of the reporting individual. A reporting individual need not disclose activities performed while lawfully acting pursuant to paragraphs (c), (d), (e) and (f) of subdivision seven of section seventy-three of this article.

The disclosure requirement in this question shall not require disclosure of clients or customers receiving medical or dental services, mental health services, residential real estate brokering services, or insurance brokering services from the reporting individual or his or her firm. The reporting individual need not identify any client to whom he or she or his or her firm provided legal representation with respect to investigation or prosecution by law enforcement authorities, bankruptcy, or domestic relations matters. With respect to clients represented in other matters, where disclosure of a client's identity is likely to cause harm, the reporting individual shall request an exemption from the joint commission pursuant to paragraph (i) of subdivision nine of section ninety-four of the executive law~~[- Only]~~, provided, however, that a reporting individual who first enters public office after July first, two thousand twelve, need not report clients or customers with respect to matters for which the reporting individual or his or her firm was retained prior to entering public office.

Client

Nature of Services Provided

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(c) APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER ~~[JANUARY FIRST]~~ DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, OR FOR NEW MATTERS FOR EXISTING CLIENTS OR CUSTOMERS WITH RESPECT TO THOSE SERVICES THAT ARE PROVIDED ON OR AFTER ~~[JANUARY FIRST]~~ DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN:

If the reporting individual receives income of ~~[fifty]~~ ten thousand dollars or greater from any employment or activity reportable under question 8(a), identify each registered lobbyist who has directly referred to such individual a client who was successfully referred to the reporting individual's business and from whom the reporting individual or firm received a fee for services in excess of ~~[ten]~~ five thousand dollars. Report only ~~[these]~~ those referrals that were made to a reporting individual by direct communication from a person known to such reporting individual to be a registered lobbyist at the time the referral is made. With respect to each such referral, the reporting individual shall identify the client, the registered lobbyist who has made the referral, the category of value of the compensation received and a general description of the type of matter so referred. A reporting individual need not disclose activities performed while lawfully acting pursuant to paragraphs (c), (d), (e) and (f) of subdivision seven of section seventy-three of this article. The disclosure requirements in this question shall not require ~~[disclosure of clients or customers receiving medical or dental services, mental health services, residential real estate brokering services, or insurance brokering services from the reporting individual or his or her firm. The reporting individual need not identify any client to whom he or she or his or her firm provided legal representation with respect to investigation or prosecution by law enforcement authorities, bankruptcy, or domestic relations~~

~~matters. With respect to clients represented in other matters, the reporting individual shall request an exemption from the joint commission, which shall be granted for good cause shown. For the purposes of this question, good cause may be shown by circumstances including, but not limited to, where disclosure of a client's identity would reveal trade secrets or have a negative impact on the client's business interests, would cause embarrassment for the client, could reasonably result in retaliation against the client, or would tend to reveal non-public matters regarding a criminal investigation. Only a]~~ disclosing clients or customers receiving medical, pharmaceutical or dental services, mental health services, or residential real estate brokering services from the reporting individual or his or her firm or if federal law prohibits or limits disclosure. The reporting individual need not identify any client to whom he or she or his or her firm provided legal representation with respect to investigation or prosecution by law enforcement authorities, bankruptcy, family court, estate planning, or domestic relations matters, nor shall the reporting individual identify individuals represented pursuant to an insurance policy but the reporting individual shall in such circumstances only report the entity that provides compensation to the reporting individual; with respect to matters in which the client's name is required by law to be kept confidential (such as matters governed by the family court act) or in matters in which the reporting individual represents or provides services to minors, the client's name may be replaced with initials. To the extent that the reporting individual, or his or her firm, provided legal representation with respect to an initial public offering, and federal law or regulations restricts the disclosure of information relating to such work, the reporting individual shall (i) disclose the identity of the client and the services provided relating to the initial public offering to the office of court administration, who will maintain such information confidentially in a locked box; and (ii) include in his or her response a statement that pursuant to this paragraph, a disclosure to the office of court administration has been made. Upon such time that the disclosure of information maintained in the locked box is no longer restricted by federal law or regulation, the reporting individual shall disclose such information in an amended disclosure statement in response to the disclosure requirements of this paragraph. The office of court administration shall develop and maintain a secure portal through which information submitted to it pursuant to this paragraph can be safely and confidentially stored. With respect to clients represented in other matters not otherwise exempt, the reporting individual may request an exemption to publicly disclosing the name of that client from the joint commission pursuant to paragraph (i) of subdivision nine of section ninety-four of the executive law, or from the office of court administration. In such application, the reporting individual shall state the following: "My client is not currently receiving my services or seeking my services in connection with:

- (i) A proposed bill or resolution in the senate or assembly during the reporting period;
- (ii) A contract in an amount totaling \$10,000 or more from the state or any state agency for services, materials, or property;
- (iii) A grant of \$10,000 or more from the state or any state agency during the reporting period;
- (iv) A grant obtained through a legislative initiative during the reporting period; or

(v) A case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period."

In reviewing the request for an exemption, the joint commission or the office of court administration may consult with bar or other professional associations and the legislative ethics commission for individuals subject to its jurisdiction and may consider the rules of professional conduct. In making its determination, the joint commission or the office of court administration shall conduct its own inquiry and shall consider factors including, but not limited to: (i) the nature and the size of the client; (ii) whether the client has any business before the state; and if so, how significant the business is; and whether the client has any particularized interest in pending legislation and if so how significant the interest is; (iii) whether disclosure may reveal trade secrets; (iv) whether disclosure could reasonably result in retaliation against the client; (v) whether disclosure may cause undue harm to the client; (vi) whether disclosure may result in undue harm to the attorney-client relationship; and (vii) whether disclosure may result in an unnecessary invasion of privacy to the client.

The joint commission or, as the case may be, the office of court administration shall promptly make a final determination in response to such request, which shall include an explanation for its determination. The office of court administration shall issue its final determination within three days of receiving the request. Notwithstanding any other provision of law or any professional disciplinary rule to the contrary, the disclosure of the identity of any client or customer in response to this question shall not constitute professional misconduct or a ground for disciplinary action of any kind, or form the basis for any civil or criminal cause of action or proceeding. A reporting individual who first enters public office after ~~[January first]~~ December thirty-first, two thousand fifteen, need not report clients or customers with respect to matters for which the reporting individual or his or her firm was retained prior to entering public office.

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| Client | Name of Lobbyist | Category of Amount (in Table 1) |
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13. List below the nature and amount of any income in EXCESS of \$1,000 from EACH SOURCE for the reporting individual and such individual's spouse for the taxable year last occurring prior to the date of filing. Each such source must be described with particularity. Nature of income includes, but is not limited to, all income (other than that received from the employment listed under Item 2 above) from compensated employment whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in the case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes

for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

| Self/<br>Spouse | Source | Nature | Category<br>of Amount<br>(In Table I) |
|-----------------|--------|--------|---------------------------------------|
|                 |        |        |                                       |
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|                 |        |        |                                       |
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§ 2. Paragraph 8 of subdivision 3 of section 73-a of the public officers law is amended by adding two new subparagraphs (b-1) and (b-2) to read as follows:

(b-1) APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, OR FOR NEW MATTERS FOR EXISTING CLIENTS OR CUSTOMERS WITH RESPECT TO THOSE SERVICES THAT ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN (FOR PURPOSES OF THIS QUESTION, "SERVICES" SHALL MEAN CONSULTATION, REPRESENTATION, ADVICE OR OTHER SERVICES):

If the reporting individual receives income from employment reportable in question 8(a) and personally provides services to any person or entity, or works as a member or employee of a partnership or corporation that provides such services (referred to hereinafter as a "firm"), the reporting individual shall identify each client or customer to whom the reporting individual personally provided services, or who was referred to the firm by the reporting individual, and from whom the reporting individual or his or her firm earned fees in excess of \$10,000 during the reporting period in direct connection with:

(i) A contract in an amount totaling \$10,000 or more from the state or any state agency for services, materials, or property;

(ii) A grant of \$10,000 or more from the state or any state agency during the reporting period;

(iii) A grant obtained through a legislative initiative during the reporting period; or

(iv) A case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period.

For such services rendered by the reporting individual directly to each such client, describe each matter that was the subject of such representation, the services actually provided and the payment received. For payments received from clients referred to the firm by the reporting individual, if the reporting individual directly received a referral fee or fees for such referral, identify the client and the payment so received.

For purposes of this question, "referred to the firm" shall mean: having intentionally and knowingly taken a specific act or series of acts to intentionally procure for the reporting individual's firm or having knowingly solicited or directed to the reporting individual's firm in whole or substantial part, a person or entity that becomes a client of that firm for the purposes of representation for a matter as defined in clauses (i) through (iv) of this subparagraph, as the result of such procurement, solicitation or direction of the reporting individual. A reporting individual need not disclose activities performed while

lawfully acting in his or her capacity as provided in paragraphs (c), (d), (e) and (f) of subdivision seven of section seventy-three of this article.

| <u>Client</u> | <u>Matter</u> | <u>Nature of Services Provided</u> | <u>Category of Amount</u><br><u>(in Table I)</u> |
|---------------|---------------|------------------------------------|--------------------------------------------------|
|---------------|---------------|------------------------------------|--------------------------------------------------|

(b-2) APPLICABLE ONLY TO NEW CLIENTS OR CUSTOMERS FOR WHOM SERVICES ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN, OR FOR NEW MATTERS FOR EXISTING CLIENTS OR CUSTOMERS WITH RESPECT TO THOSE SERVICES THAT ARE PROVIDED ON OR AFTER DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN (FOR PURPOSES OF THIS QUESTION, "SERVICES" SHALL MEAN CONSULTATION, REPRESENTATION, ADVICE OR OTHER SERVICES):

(i) With respect to reporting individuals who receive ten thousand dollars or more from employment or activity reportable under question 8(a), for each client or customer NOT otherwise disclosed or exempted in question 8 or 13, disclose the name of each client or customer known to the reporting individual to whom the reporting individual provided services: (A) who paid the reporting individual in excess of five thousand dollars for such services; or (B) who had been billed with the knowledge of the reporting individual in excess of five thousand dollars by the firm or other entity named in question 8(a) for the reporting individual's services.

| <u>Client</u> | <u>Services Actually Provided</u> | <u>Category of Amount</u><br><u>(in Table I)</u> |
|---------------|-----------------------------------|--------------------------------------------------|
|---------------|-----------------------------------|--------------------------------------------------|

FOLLOWING IS AN ILLUSTRATIVE, NON-EXCLUSIVE LIST OF EXAMPLES OF DESCRIPTIONS OF "SERVICES ACTUALLY PROVIDED":

- \*REVIEWED DOCUMENTS AND CORRESPONDENCE;
- \*REPRESENTED CLIENT (IDENTIFY CLIENT BY NAME) IN LEGAL PROCEEDING;
- \*PROVIDED LEGAL ADVICE ON CLIENT MATTER (IDENTIFY CLIENT BY NAME);
- \*CONSULTED WITH CLIENT OR CONSULTED WITH LAW PARTNERS/ASSOCIATES/MEMBERS OF FIRM ON CLIENT MATTER (IDENTIFY CLIENT BY NAME);
- \*PREPARED CERTIFIED FINANCIAL STATEMENT FOR CLIENT (IDENTIFY CLIENT BY NAME);
- \*REFERRED INDIVIDUAL OR ENTITY (IDENTIFY CLIENT BY NAME) FOR REPRESENTATION OR CONSULTATION;
- \*COMMERCIAL BROKERING SERVICES (IDENTIFY CUSTOMER BY NAME);
- \*PREPARED CERTIFIED ARCHITECTURAL OR ENGINEERING RENDERINGS FOR CLIENT (IDENTIFY CUSTOMER BY NAME);
- \*COURT APPOINTED GUARDIAN OR EVALUATOR (IDENTIFY COURT NOT CLIENT).

(ii) With respect to reporting individuals who disclosed in question 8(a) that the reporting individual did not provide services to a client but provided services to a firm or business, identify the category of



amount received for providing such services and describe the services rendered.

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A reporting individual need not disclose activities performed while lawfully acting in his or her capacity as provided in paragraphs (c), (d), (e) and (f) of subdivision seven of section seventy-three of this article.

The disclosure requirement in questions (b-1) and (b-2) shall not require disclosing clients or customers receiving medical, pharmaceutical or dental services, mental health services, or residential real estate brokering services from the reporting individual or his or her firm or if federal law prohibits or limits disclosure. The reporting individual need not identify any client to whom he or she or his or her firm provided legal representation with respect to investigation or prosecution by law enforcement authorities, bankruptcy, family court, estate planning, or domestic relations matters, nor shall the reporting individual identify individuals represented pursuant to an insurance policy but the reporting individual shall in such circumstances only report the entity that provides compensation to the reporting individual; with respect to matters in which the client's name is required by law to be kept confidential (such as matters governed by the family court act) or in matters in which the reporting individual represents or provides services to minors, the client's name may be replaced with initials. To the extent that the reporting individual, or his or her firm, provided legal representation with respect to an initial public offering, and professional disciplinary rules, federal law or regulations restrict the disclosure of information relating to such work, the reporting individual shall (i) disclose the identity of the client and the services provided relating to the initial public offering to the office of court administration, who will maintain such information confidentially in a locked box; and (ii) include in his or her response to questions (b-1) and (b-2) that pursuant to this paragraph, a disclosure to the office of court administration has been made. Upon such time that the disclosure of information maintained in the locked box is no longer restricted by professional disciplinary rules, federal law or regulation, the reporting individual shall disclose such information in an amended disclosure statement in response to the disclosure requirements in questions (b-1) and (b-2). The office of court administration shall develop and maintain a secure portal through which information submitted to it pursuant to this paragraph can be safely and confidentially stored. With respect to clients represented in other matters not otherwise exempt, the reporting individual may request an exemption to publicly disclosing the name of that client from the joint commission pursuant to paragraph (i) of subdivision nine of section ninety-four of the executive law, or from the office of court administration. In such application, the reporting individual shall state the following: "My client is not currently receiving my services or seeking my services in connection with:

(i) A proposed bill or resolution in the senate or assembly during the reporting period;

(ii) A contract in an amount totaling \$10,000 or more from the state or any state agency for services, materials, or property;

(iii) A grant of \$10,000 or more from the state or any state agency during the reporting period;

(iv) A grant obtained through a legislative initiative during the reporting period; or

(v) A case, proceeding, application or other matter that is not a ministerial matter before a state agency during the reporting period."

In reviewing the request for an exemption, the joint commission or the office of court administration may consult with bar or other professional associations and the legislative ethics commission for individuals subject to its jurisdiction and may consider the rules of professional conduct. In making its determination, the joint commission or the office of court administration shall conduct its own inquiry and shall consider factors including, but not limited to: (i) the nature and the size of the client; (ii) whether the client has any business before the state; and if so, how significant the business is; and whether the client has any particularized interest in pending legislation and if so how significant the interest is; (iii) whether disclosure may reveal trade secrets; (iv) whether disclosure could reasonably result in retaliation against the client; (v) whether disclosure may cause undue harm to the client; (vi) whether disclosure may result in undue harm to the attorney-client relationship; and (vii) whether disclosure may result in an unnecessary invasion of privacy to the client.

The joint commission or, as the case may be, the office of court administration shall promptly make a final determination in response to such request, which shall include an explanation for its determination. The office of court administration shall issue its final determination within three days of receiving the request. Notwithstanding any other provision of law or any professional disciplinary rule to the contrary, the disclosure of the identity of any client or customer in response to this question shall not constitute professional misconduct or a ground for disciplinary action of any kind, or form the basis for any civil or criminal cause of action or proceeding. A reporting individual who first enters public office after January first, two thousand sixteen, need not report clients or customers with respect to matters for which the reporting individual or his or her firm was retained prior to entering public office.

| <u>Client</u> | <u>Services</u>          | <u>Category of Amount</u> |
|---------------|--------------------------|---------------------------|
|               | <u>Actually Provided</u> | <u>(in Table I)</u>       |

§ 3. Section 73-a of the public officers law is amended by adding a new subdivision 7 to read as follows:

7. With respect to an application to either the joint commission or the office of court administration for an exemption to disclosing the name of a client or customer in response to questions 8 (b-1), 8 (b-2) and 8 (c), all information which is the subject of or a part of such application shall remain confidential. The name of the client need not be disclosed by the reporting individual unless and until the joint commission or the office of court administration formally advises the reporting individual that he or she must disclose such names and the reporting individual agrees to represent the client. Any commissioner or person employed by the joint commission or any person employed by the office of court administration who, intentionally and without authorization from a court of competent jurisdiction releases confidential information related to a request for an exemption received by the



commission or the office of court administration shall be guilty of a class A misdemeanor.

§ 4. Section 73 of the public officers law is amended by adding a new subdivision 7-a to read as follows:

7-a. No member of the legislature, legislative employee, statewide elected official, or state officer or employee shall receive, directly or indirectly, or enter into any agreement express or implied, for any compensation, in whatever form, for the rendering of consulting, representational, advisory or other services by himself or herself or another in connection with any proposed or pending bill or resolution in the senate or assembly.

§ 5. Subdivision 18 of section 73 of the public officers law, as amended by chapter 14 of the laws of 2007, is amended to read as follows:

18. In addition to any penalty contained in any other provision of law, any person who knowingly and intentionally violates the provisions of subdivisions two through five, seven, seven-a, eight, twelve or fourteen through seventeen of this section shall be subject to a civil penalty in an amount not to exceed forty thousand dollars and the value of any gift, compensation or benefit received in connection with such violation. Assessment of a civil penalty hereunder shall be made by the state oversight body with jurisdiction over such person. A state oversight body acting pursuant to its jurisdiction, may, in lieu of a civil penalty, with respect to a violation of subdivisions two through five, seven or eight of this section, refer a violation of any such subdivision to the appropriate prosecutor and upon such conviction such violation shall be punishable as a class A misdemeanor.

§ 6. Subdivisions (k) and (t) of section 1-c of the legislative law, subdivision (k) as amended and subdivision (t) as added by chapter 1 of the laws of 2005, are amended to read as follows:

(k) The term "municipality" shall mean any jurisdictional subdivision of the state, including but not limited to counties, cities, towns, villages, improvement districts and special districts, with a population of more than [~~fifty~~] five thousand, and industrial development agencies in jurisdictional subdivisions with a population of more than [~~fifty~~] five thousand; and public authorities, and public corporations[~~, but shall not include school districts~~].

(t) The term "local legislative body" shall mean the board of supervisors, board of aldermen, common council, council, commission, town board, board of trustees or other elective governing board or body of a municipality now or hereafter vested by state statute, charter or other law with jurisdiction to initiate and adopt local laws [~~and~~] ordinances and budgets, whether or not such local laws [~~or~~] ordinances or budgets require approval of the elective chief executive officer or other official or body to become effective.

§ 7. Subdivision 2 of section 5 of the legislative law is REPEALED and a new subdivision 2 is added to read as follows:

2. (a) Each member of the legislature, upon verification of attendance, which shall be by electronic verification when practicable, in compliance with the policies set forth by the speaker of the assembly and the temporary president of the senate for their respective bodies, shall be eligible to receive payment of actual and necessary travel expenses and a per diem equivalent to the most recent federal per diem rates published by the general services administration as set forth in 41 CFR (Code of Federal Regulations) Part 301, App. A, for the time in which the member was in travel status in the performance of his or her

duties during the months in which the legislature is scheduled to be in regular session. During the months when the legislature is not scheduled to be in regular session, members shall receive such actual and necessary travel expenses and per diems, in compliance with verification policies and in accord with standards and limits for reimbursable events set forth by the speaker of the assembly and the temporary president of the senate for their respective bodies. The per diem allowances including partial per diem allowances shall be made on audit and warrant of the comptroller on vouchers approved by the temporary president of the senate or his or her designee and speaker of the assembly or his or her designee for their respective houses.

(b) Each house shall make available on its website all documentation otherwise available to the public pursuant to section eighty-eight of the public officers law related to the payment of travel expenses and per diems.

§ 8. Subdivision 1 of section 14-107 of the election law, as added by section 4 of subpart C of part H of chapter 55 of the laws of 2014, is amended to read as follows:

1. For purposes of this article:

(a) "Independent expenditure" means an expenditure made by a person conveyed to five hundred or more members of a general public audience in the form of (i) an audio or video communication via broadcast, cable or satellite, (ii) a written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads or (iii) other published statements which: (i) irrespective of when such communication is made, contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the election or defeat of the clearly identified candidate, ~~[or]~~ (ii) refers to and advocates for or against a clearly identified candidate or ballot proposal on or after January first of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot, or (iii) within sixty days before a general or special election for the office sought by the candidate or thirty days before a primary election, includes or references a clearly identified candidate. An independent expenditure shall not include communications where such candidate, the candidate's political committee or its agents, a party committee or its agents, or a constituted committee or its agents or a political committee formed to promote the success or defeat of a ballot proposal or its agents, did authorize, request, suggest, foster or cooperate in such communication.

(b) Independent expenditures do not include expenditures in connection with:

(i) a written news story, commentary, or editorial or a news story, commentary, or editorial distributed through the facilities of any broadcasting station, cable or satellite unless such publication or facilities are owned or controlled by any political party, political committee or candidate; or

(ii) a communication that constitutes a candidate debate or forum; or

(iii) internal communication by members to other members of a membership organization of not more than five hundred members, for the purpose of supporting or opposing a candidate or candidates for elective office, provided such expenditures are not used for the costs of campaign material or communications used in connection with broadcasting, telecasting, newspapers, magazines, or other periodical publication, billboards, or similar types of general public communications; or

(iv) internal communications by members to other members of a membership organization of not more than five hundred members or communi-

cations by a corporation organized for charitable purposes pursuant to §501(c)(3) of the internal revenue code, within sixty days before a general or special election for the office sought by the candidate or thirty days before a primary election, that includes or references a clearly identified candidate but does not otherwise qualify as an independent expenditure under this section.

(v) a communication published on the Internet, unless the communication is a paid advertisement.

(c) For purposes of this section, the term "person" shall mean person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization, or political committee; provided, however, that such definition shall not include any party or constituted committee, that is required to file disclosure reports under this chapter.

§ 9. Section 14-130 of the election law, as added by chapter 152 of the laws of 1985, is amended to read as follows:

§ 14-130. Campaign funds for personal use. 1. Contributions received by a candidate or a political committee may be expended for any lawful purpose. Such funds shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position.

2.No contribution shall be used to pay interest or any other finance charges upon monies loaned to the campaign by such candidate or the spouse of such candidate.

3.For the purposes of this section, contributions "converted by any person to a personal use" are expenditures that are exclusively for the personal benefit of the candidate or any other individual, not in connection with a political campaign or the holding of a public office or party position. "Converted by any person to a personal use", when meeting the definition in this subdivision, shall include, but not be limited to, expenses for the following:

(i)any residential or household items, supplies or expenditures, including mortgage, rent or utility payments for any part of any personal residence of a candidate or officeholder or a member of the candidate's or officeholder's family that are not incurred as a result of, or to facilitate, the individual's campaign, or the execution of his or her duties of public office or party position. In the event that any property or building is used for both personal and campaign use or as part of the execution of his or her duties of public office or party position, personal use shall constitute expenses that exceed the pro-rated amount for such expenses based on fair-market value.

(ii)mortgage, rent, or utility payments to a candidate or officeholder for any part of any non-residential property that is owned by a candidate or officeholder or a member of a candidate's or officeholder's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property's usage for campaign activities;

(iii)clothing, other than items that are used in the campaign or in the execution of the duties of public office or party position;

(iv)tuition payments unrelated to a political campaign or the holding of a public office or party position;

(v)salary payments or other compensation provided to any person for services where such services are not solely for campaign purposes or provided in connection with the execution of the duties of public office or party position;

(vi)salary payments or other compensation provided to a member of a candidate's family, unless the family member is providing bona fide

services to the campaign. If a family member provides bona fide services to a campaign, any salary payments or other compensation in excess of the fair market value of the services provided shall be considered payments for personal use;

(vii) admission to a sporting event, concert, theater, or other form of entertainment, unless such event is part of, or in connection with, a campaign or is related to the holding of public office or party position;

(viii) payment of any fines or penalties assessed against the candidate pursuant to this chapter or in connection with a criminal conviction or by the joint commission for public ethics pursuant to section ninety-four of the executive law or sections seventy-three or seventy-three-a of the public officers law or the legislative ethics commission pursuant to section eighty of the legislative law;

(ix) dues, fees, or gratuities at a country club, health club, recreational facility or other entities with a similar purpose, unless they are expenses connected with a specific fundraising event or activity associated with a political campaign or the holding of public office or party position that takes place on the organization's premises; and

(x) travel expenses including automobile purchases or leases, unless used for campaign purposes or in connection with the execution of the duties of public office or party position and usage of such vehicle which is incidental to such purposes or the execution of such duties.

4. Nothing in this section shall prohibit a candidate from purchasing equipment or property from his or her personal funds and leasing or renting such equipment or property to a committee working directly or indirectly with him to aid or participate in his or her nomination or election, including an exploratory committee, provided that the candidate and his or her campaign treasurer sign a written lease or rental agreement. Such agreement shall include the lease or rental price, which shall not exceed the fair lease or rental value of the equipment. The candidate shall not receive lease or rental payments which, in the aggregate, exceed the cost of purchasing the equipment or property.

5. Nothing in this section shall prohibit an elected public officeholder from using campaign contributions to facilitate, support, or otherwise assist in the execution or performance of the duties of his or her public office.

6. The state board of elections shall issue advisory opinions upon request regarding expenditures that may or may not be considered personal use of contributions. Any formal or informal advisory opinions issued by a majority vote of the commissioners of the state board of elections shall be binding on the board, the chief enforcement counsel established by subdivision three-a of section 3-100 of this chapter, and in any subsequent civil or criminal action or proceeding or administrative proceeding.

§ 10. The opening paragraph of paragraph (a) of subdivision 6 of section 156 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, is amended to read as follows:

"Public official" shall mean any of the following individuals [~~who were not members of any retirement system prior to the effective date of the chapter of the laws of two thousand eleven which added this article but who have become members of a covered retirement system on or after the effective date of the chapter of the laws of two thousand eleven which added this article~~]:

§ 11. Subdivisions 1 and 2 of section 157 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, are amended to read as follows:

1. Notwithstanding any other law to the contrary, it shall be a term and condition of membership for every public official ~~[who becomes a member of any retirement system on or after the effective date of the chapter of the laws of two thousand eleven which added this article,]~~ that such public official's rights to a pension in a retirement system that accrue in such retirement system after his or her date of initial membership in the retirement system shall be subject to the provisions of this article.

2. In the case of a public official who stands convicted, by plea of nolo contendere or plea of guilty to, or by conviction after trial, of any crime related to public office, and has been sentenced, an action may be commenced in supreme court of the county in which such public official was convicted of such felony crime, by the district attorney having jurisdiction over such crime, or by the attorney general if the attorney general brought the criminal charge which resulted in such conviction, for an order to reduce or revoke the pension to which such public official is otherwise entitled for service as a public official. Such complaint shall specify with particularity which category of felony pursuant to subdivision one of section one hundred fifty-six of this article the defendant has committed, and all other facts that are alleged to qualify such crime as a felony crime related to public office subject to pension reduction or revocation pursuant to this article, and the amount of pension reduction or revocation requested. Such action shall be commenced within six months after such ~~[conviction]~~ sentencing.

§ 12. Subdivision 10 of section 157 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, is amended to read as follows:

10. (a) Upon a finding by the court by clear and convincing evidence that the defendant knowingly and intentionally committed a crime related to public office, the court may issue an order to the appropriate retirement system to reduce or revoke the defendant's pension to which he or she is otherwise entitled as such a public official. All orders and findings made by the court pursuant to this section shall be served by the attorney general or the district attorney, as the case may be upon the chief administrator of the defendant's retirement system and the defendant.

(b) If the court issues an order pursuant to paragraph (a) of this subdivision, the court shall order payment of a portion of such pension benefit to: (1) the innocent spouse if so requested by such spouse payable at the time the public official would have been eligible for retirement if such spouse has not otherwise waived, in writing, his or her right to such benefit; and (2) innocent minor children and other dependents pursuant to law of the public official in an amount that the court finds just and proper consistent with the pension benefits to which the public official would be entitled and the portion of those benefits which would be used for the support of such minor children or dependents pursuant to law. Such payment to the innocent spouse shall be computed pursuant to paragraph (c) of this subdivision, and payments pursuant to subparagraphs one and two of this paragraph shall be adjusted to reflect interest accrued between the time of such conviction and the time of such payment.

(c) When determining the amount of benefits which the defendant's innocent spouse is entitled to receive, the factors contained in para-

graph d of subdivision five of part B of section two hundred thirty-six of the domestic relations law shall be considered by the court. However, when determining such apportionment, the court shall not annul or modify any prior court order regarding such benefits.

§ 13. Subdivision 8 of section 157 of the retirement and social security law, as added by section 1 of part C of chapter 399 of the laws of 2011, is amended to read as follows:

8. In determining whether the pension shall be reduced or revoked, the supreme court shall consider and make findings of fact and conclusions of law that include, but shall not be limited to, a consideration of the following factors:

(a) Whether the defendant stands convicted of such a felony of a crime related to public office, and the specific paragraph or paragraphs of subdivision one of section one hundred fifty-six of this article that have been proven or not proven;

(b) The severity of the crime related to public office of which the defendant stands convicted;

(c) The amount of monetary loss suffered by such state or municipality as a result of such crime related to public office;

(d) The degree of public trust reposed in the public official by virtue of the person's position as a public official;

(e) If the crime related to public office was part of a fraudulent scheme against the state or a municipality, the role of the public official in such fraudulent scheme against such state or a municipality;

(f) The defendant's criminal history, if any;

(g) The impact of forfeiture, in whole or in part, on defendant's dependents, present or former spouses, or domestic partners;

(h) The proportionality of forfeiture of all or part of the pension to the crime committed;

(i) The years of service in public office by the defendant where no criminal activity has been found by a court; and

~~[(i)]~~ (j) Any such other factors as, in the judgment of the supreme court, justice may require.

§ 14. The office of court administration shall promulgate rules to effectuate the amendments to section 73-a of the public officers law made by sections two and three of this act which require it to establish a "locked box" and establish a mechanism to process and consider claims by individuals required to file financial disclosure statements for exempting the disclosure of clients.

§ 15. Severability clause. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 16. This act shall take effect immediately; provided, however, the amendments made to subparagraph (c) of paragraph 8 of subdivision 3 of section 73-a of the public officers law by section one of this act shall take effect December 31, 2015; provided, further, that sections ten, eleven, and twelve of this act shall take effect on the first of January next succeeding the date upon which the people shall approve and ratify amendments to section 7 of article V of the constitution by a majority of the electors voting thereon relating to the reduction of pension benefits for public officials convicted of certain felony offenses



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related to public office and shall only apply to offenses committed on or after such first of January.

## PART DD

Section 1. Section 21 of part A of chapter 399 of the laws of 2011, relating to establishing the public integrity reform act of 2011, is amended to read as follows:

§ 21. No later than [~~June 1, 2014~~] May 1, 2015, the governor [~~and~~], the [~~legislative leaders~~] temporary president of the senate and the speaker of the assembly shall jointly appoint a review commission to review and evaluate the activities and performance of the joint commission on public ethics and the legislative ethics commission in implementing the provisions of this act. On or before [~~March~~] November 1, 2015, the review commission shall report to the governor and the legislature on its review and evaluation which report shall include any administrative and legislative recommendations on strengthening the administration and enforcement of the ethics law in New York state. The review commission shall be comprised of eight members and the governor [~~and~~], the [~~legislative leaders~~] temporary president of the senate and the speaker of the assembly shall jointly designate a chair from among the members.

§ 2. This act shall take effect immediately.

## PART EE

Section 1. This act enacts into law components of legislation which are necessary to implement legislation relating to the state fiscal plan. Each component is wholly contained within a Subpart identified as Subparts A through H. The effective date for each particular provision contained within such Subpart is set forth in the last section of such Subpart. Any provision in any section contained within a Subpart, including the effective date of the Subpart, which makes a reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Subpart in which it is found. Section four of this act sets forth the general effective date of this act.

§ 2. This act shall be known as the "education transformation act of 2015".

## SUBPART A

Section 1. The education law is amended by adding a new section 669-f to read as follows:

§ 669-f. New York state masters-in-education teacher incentive scholarship program. 1. Eligibility. Students who are matriculated in an approved master's degree in education program at a New York state public institution of higher education leading to a career as a teacher in public elementary or secondary education shall be eligible for an award under this section, provided the applicant: (a) earned an undergraduate degree from a college located in New York state; (b) was a New York state resident while earning such undergraduate degree; (c) achieved academic excellence as an undergraduate student, as defined by the corporation in regulation; (d) enrolls in full-time study in an approved master's degree in education program at a New York state public institution of higher education leading to a career as a teacher in public

elementary or secondary education; (e) signs a contract with the corporation agreeing to teach in a classroom setting on a full-time basis for five years in a school located within New York state providing public elementary or secondary education recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of this chapter; and (f) complies with the applicable provisions of this article and all requirements promulgated by the corporation for the administration of the program.

2. Within amounts appropriated therefor, awards shall be granted to applicants that the corporation has certified are eligible to receive such awards. Up to five hundred awards may be granted to new recipients annually. Such awards shall be granted upon successful completion of each term, as defined by the corporation.

3. An award shall entitle the recipient to annual payments for not more than two academic years of full-time graduate study leading to certification as an elementary or secondary classroom teacher.

4. The corporation shall grant such awards in an amount equal to the annual tuition charged to state resident students attending a graduate program full-time at the state university of New York, or actual tuition charged, whichever is less; provided, however, (i) a student who receives educational grants and/or scholarships that cover the student's full cost of attendance shall not be eligible for an award under this program; (ii) for a student who receives educational grants and/or scholarships that cover less than the student's full cost of attendance, such grants and/or scholarships shall not be deemed duplicative of this program and may be held concurrently with an award under this program, provided that the combined benefits do not exceed the student's full cost of attendance; and (iii) an award under this program shall be applied to tuition after the application of all other educational grants and scholarships limited to tuition and shall be reduced in an amount equal to such educational grants and/or scholarships. Upon notification of an award under this program, the institution shall defer the amount of tuition equal to the award. No award shall be final until the recipient's successful completion of a term has been certified by the institution. A recipient of an award under this program shall not be eligible for an award under the New York state math and science teaching incentive program.

5. The corporation shall convert to a student loan the full amount of the award granted pursuant to this section, plus interest, according to a schedule to be determined by the corporation if: (a) two years after the completion of the degree program and receipt of initial certification it is found that a recipient is not teaching in a public school located within New York state providing elementary or secondary education recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of this chapter; (b) a recipient has not taught in a public school located within New York state providing elementary or secondary education recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of this chapter, for five of the seven years after the completion of the graduate degree program and receipt of initial certification; (c) a recipient fails to complete his or her graduate degree program in education; (d) a recipient fails to receive or maintain his or her teaching certificate or license in New York state for the required period; or (e) a recipient fails to respond to requests by the



corporation for the status of his or her academic or professional progress. The terms and conditions of this subdivision shall be deferred for any interruption in graduate study or employment as established by the rules and regulations of the corporation. Any obligation to comply with such provisions as outlined in this section shall be cancelled upon the death of the recipient. Notwithstanding any provisions of this subdivision to the contrary, the corporation is authorized to promulgate rules and regulations to provide for the waiver or suspension of any financial obligation which would involve extreme hardship.

6. The corporation is authorized to promulgate rules and regulations, and may promulgate emergency regulations, necessary for the implementation of the provisions of this section including, but not limited to, the criteria for the provision of awards on a competitive basis, and the rate of interest charged for repayment of the student loan.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

#### SUBPART B

Section 1. The education law is amended by adding a new section 210-a to read as follows:

§ 210-a. Admission requirements for graduate-level teacher and educational leader programs. Each institution registered by the department with graduate-level teacher and leader education programs shall adopt rigorous selection criteria geared to predicting a candidate's academic success in its program, including but not limited to, a minimum score on the graduate record examination or a substantially equivalent admission examination, as determined by the institution, and achievement of a cumulative grade point average of 3.0 or higher in the candidate's undergraduate program. Each program may exempt no more than fifteen percent of any incoming class of students from such selection criteria set forth in this section based on a student's demonstration of potential to positively contribute to the teaching profession or other extenuating circumstances pursuant to the regulations of the commissioner. A program shall report to the department the number of students admitted pursuant to such exemption and the selection criteria used for such exemptions.

§ 2. The education law is amended by adding a new section 210-b to read as follows:

§ 210-b. Graduate-level teacher and educational leadership program deregistration and suspension. 1. The department shall suspend a graduate program's authority to admit new students if for three consecutive academic years, fewer than fifty percent of its students who have satisfactorily completed the program pass each examination that they have taken that is required for certification and shall notify currently admitted and enrolled students of such suspension. The graduate program shall be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if they were to attend classes on a full-time basis, to complete the requirements for their degrees. If, at any time during such period, the commissioner determines that student and/or program performance has significantly improved, the commissioner may reinstate the program's ability to admit new students. If the commissioner does not affirmatively reinstate the program's authority to admit new students during such time period, the program shall be deregistered. For purposes of this subdivision, students who have satisfactorily completed the graduate program shall

mean students who have met each educational requirement of the program, excluding any requirement that the student pass each required New York State teacher certification examination for a teaching certificate and/or school building leader examination for a school building leader certificate in order to complete the program. Students satisfactorily meeting each educational requirement may include students who earn a degree or students who complete each educational requirement without earning a degree. When making such a determination, the department shall consider the performance on each certification examination of the cohort of students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September thirtieth following the end of such academic year, where academic year is defined as July first through June thirtieth, and shall consider only the highest score of individuals taking a test more than once. When making such a determination the department may adjust its methodology for determining examination passage rates for one or more certification examinations to account for sample size and accuracy.

2.The institution may submit an appeal of a suspension of a graduate program's ability to admit students or deregistration pursuant to this section in a manner and timeframe as prescribed by the commissioner in regulations. However, a program that has had its ability to admit students suspended shall not admit new students while awaiting the commissioner's decision on any appeal. An institution with a deregistered program shall not admit any new students in such program while awaiting the commissioner's decision on its application for registration.

3.The department may also, as prescribed by the commissioner in regulations, conduct expedited suspension and registration reviews for graduate programs, pursuant to regulations of the commissioner.

§ 3. This act shall take effect July 1, 2015, provided that the provisions of section one of this act shall first apply to admissions requirements for programs commencing instruction on or after July 1, 2016, and provided further that the authority of the board of regents to adopt regulations necessary to implement the provisions of this act on such effective date shall take effect immediately.

#### SUBPART C

Section 1. Section 3006 of the education law is amended by adding a new subdivision 3 to read as follows:

3. Registration. a. Commencing with the two thousand sixteen--two thousand seventeen school year, any holder of a teaching certificate in the classroom teaching service, teaching assistant certificate, or educational leadership certificate that is valid for life as prescribed by the commissioner in regulations shall be required to register with the department every five years in accordance with regulations of the commissioner. Such regulations shall prescribe the date or dates by which applications for initial registration must be submitted and may provide for staggered initial registration and/or rolling re-registration so that re-registrations are distributed as equally as possible throughout the year and across multiple years.

b.The department shall post an application for registration on its website. An application shall be submitted for a registration certificate. Except as otherwise provided in this section, the department shall renew the registration of each certificate holder upon receipt of

a proper application on a form prescribed by the department. Any certificate holder who fails to register by the beginning of the appropriate registration period may be subject to late filing penalties as prescribed by the commissioner. No certificate holder resuming practice after a lapse of registration shall be permitted to practice without verification of re-registration.

c. Any certificate holder who is not engaging in the practice of his or her profession in this state and does not desire to register shall so advise the department. Such certificate holder shall not be subject to penalties as prescribed by the commissioner for failure to register at the beginning of the registration period.

d. Certificate holders shall notify the department of any change of name or mailing address within thirty days of such change. Willful failure to register or provide such notice within one hundred eighty days of such change may constitute grounds for moral character review under subdivision seven of section three hundred five of this chapter.

§ 2. The education law is amended by adding a new section 3006-a to read as follows:

§ 3006-a. Registration and continuing teacher and leader education requirements for holders of professional certificates in the classroom teaching service, holders of level III teaching assistant certificates, holders of professional certificates in the educational leadership service. 1. a. Commencing with the two thousand sixteen--two thousand seventeen school year, each holder of a professional certificate in the classroom teaching service, holder of a level III teaching assistant certificate and holder of a professional certificate in the educational leadership service shall be required to register every five years with the department to practice in the state and shall comply with the provisions of the continuing teacher and leader education requirements set forth in this section.

b. Any of the certified individuals described in paragraph a of this subdivision who do not satisfy the continuing teacher and leader education requirements shall not practice until they have met such requirements and have been issued a registration or conditional registration certificate.

c. In accordance with the intent of this section, adjustments to the continuing teacher and leader education requirement may be granted by the department for reasons of health certified by a health care provider, for extended active duty with armed forces of the United States, or for other good cause acceptable to the department which may prevent compliance.

d. Any certificate holder who is not practicing as a teacher, teaching assistant or educational leader in a school district or board of cooperative educational services in this state shall be exempt from the continuing teacher and leader education requirement upon the filing of a written statement with the department declaring such status. Any holder of a professional certificate in the classroom teaching service, holder of a level III teaching assistant certificate and holder of a professional certificate in the educational leadership service who resumes practice during the five-year registration period shall notify the department prior to resuming practice and shall meet such continuing teacher and leader education requirements as prescribed in regulations of the commissioner.

2.a. During each five-year registration period beginning on or after July first, two thousand sixteen, an applicant for registration shall successfully complete a minimum of one hundred hours of continuing

teacher and leader education, as defined by the commissioner. The department shall issue rigorous standards for courses, programs, and activities, that shall qualify as continuing teacher and leader education pursuant to this section. For purposes of this section, a peer review teacher, or a principal acting as an independent trained evaluator, conducting a classroom observation as part of the teacher evaluation system pursuant to section three thousand twelve-d of this article may credit such time towards his or her continuing teacher and leader effectiveness requirements.

b.Nothing in this section shall limit the ability of local school districts to agree pursuant to collective bargaining to additional hours of professional development or continuing teacher or leader education above the minimum requirements set forth in this section.

c.A certified individual who has not satisfied the continuing teacher and leader education requirements shall not be issued a five-year registration certificate by the department and shall not practice unless and until a registration or conditional registration certificate is issued as provided in subdivision three of this section. For purposes of this subdivision, "continuing teacher and leader education requirements" shall mean activities designed to improve the teacher or leader's pedagogical and/or leadership skills, targeted at improving student performance, including but not limited to formal continuing teacher and leader education activities. Such activities shall promote the professionalization of teaching and be closely aligned to district goals for student performance which meet the standards prescribed by regulations of the commissioner. To fulfill the continuing teacher and leader education requirement, programs must be taken from sponsors approved by the department, which shall include but not be limited to school districts, pursuant to the regulations of the commissioner.

3.The department, in its discretion, may issue a conditional registration to a teacher, teaching assistant or educational leader in a school district or board of cooperative educational services in this state who fails to meet the continuing teacher and leader education requirements established in subdivision two of this section but who agrees to make up any deficiencies and take any additional continuing teacher and leader education which the department may require. The duration of such conditional registration shall be determined by the department. Any holder of a professional certificate in the classroom teaching service, holder of a level III teaching assistant certificate or holder of a professional certificate in the educational leadership service and any other certified individual required by the commissioner to register every five years who is notified of the denial of registration for failure to submit evidence, satisfactory to the department, of required continuing teacher and leader education and who practices without such registration, shall be subject to moral character review under subdivision seven of section three hundred five of this chapter.

§ 3. This act shall take effect July 1, 2015, provided that the provisions of section one of this act shall first apply to admissions requirements for programs commencing instruction on or after July 1, 2016, and provided further that the authority of the board of regents to adopt regulations necessary to implement the provisions of this act on such effective date shall take effect immediately.

#### SUBPART D

Section 1. Paragraphs (a) and (b) of subdivision 1 of section 2509 of the education law, paragraph (a) as amended by chapter 551 of the laws of 1976, and paragraph (b) as amended by chapter 468 of the laws of 1975, are amended to read as follows:

(a) i. Teachers and all other members of the teaching staff<sup>[7]</sup> appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools, for a probationary period of three years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years or as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the probationary period shall be limited to one year; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a of this chapter, the probationary period shall not exceed two years. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education. Each person who is not to be recommended for appointment on tenure shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his probationary period.

ii. Notwithstanding any other provision of law or regulation to the contrary, teachers and all other members of the teaching staff appointed on or after July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools, for a probationary period of four years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years and, if a classroom teacher, has received composite annual professional performance review ratings in each of those years, or has rendered satisfactory service as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the teacher shall be appointed for a probationary period of two years; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the teacher shall be appointed for a probationary period of three years; provided that the teacher demonstrates that he or she received an annual professional performance review rating pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter in his or her final year of service in such other school district or board of cooperative educational services. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools,



by a majority vote of the board of education. Each person who is not to be recommended for appointment on tenure shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his/her probationary period.

(b) i. Administrators, directors, supervisors, principals and all other members of the supervising staff, except associate, assistant and other superintendents<sup>[7]</sup> appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools for a probationary period of three years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

ii. Notwithstanding any other provision of law or regulation to the contrary, administrators, directors, supervisors, principals and all other members of the supervising staff, except associate, assistant and other superintendents, appointed on or after July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools for a probationary period of four years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

§ 2. Subdivision 2 of section 2509 of the education law, as amended by section 6 of part A of chapter 57 of the laws of 2007, is amended to read as follows:

2. a. At the expiration of the probationary term of any persons appointed for such term prior to July first, two thousand fifteen, or within six months prior thereto, the superintendent of schools shall make a written report to the board of education recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory~~[, consistent with any applicable rules of the board of regents adopted pursuant to section three thousand twelve b of this chapter]~~. By a majority vote the board of education may then appoint on tenure any or all of the persons recommended by the superintendent of schools. Such persons and all others employed in the teaching service of the schools of such school district who have served the full probationary period shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of ~~[such law]~~ this chapter. Failure to maintain certification as required by this chapter and the regulations of the commissioner ~~[of education]~~ shall constitute cause for removal.

b. For persons appointed on or after July first, two thousand fifteen, at the expiration of the probationary term of any persons appointed for such term, or within six months prior thereto, the superintendent of schools shall make a written report to the board of education recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory and in the case of a classroom teacher or building principal, who have received annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter, of either effective or highly effective in at least three of the four preceding years, exclusive of

any breaks in service; provided that, notwithstanding any other provision of this section to the contrary, when a teacher or principal receives an effective or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher or principal shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an additional year; provided, however, that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. By a majority vote, the board of education may then appoint on tenure any or all of the persons recommended by the superintendent of schools. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years exclusive of any breaks in service and subject to the terms hereof, during which time a board of education shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the board of education may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons who have been recommended for tenure and all others employed in the teaching service of the schools of such school district who have served the full probationary period as extended pursuant to this subdivision shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this chapter. Failure to maintain certification as required by this chapter and the regulations of the commissioner shall constitute cause for removal.

§ 3. Subdivisions 1, 5 and 6 of section 2573 of the education law, subdivision 1 as amended by chapter 732 of the laws of 1971, paragraph (a) of subdivision 1 as amended by chapter 640 of the laws of 1983, paragraph (b) of subdivision 1 as amended by chapter 468 of the laws of 1975, subdivisions 5 and 6 as amended by section 7 of part A of chapter 57 of the laws of 2007, are amended to read as follows:

1. (a) i. Teachers and all other members of the teaching staff, appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred fifty-four of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools, for a probationary period of three years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years or as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the probationary period shall be limited to one year; provided, however,

that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the probationary period shall not exceed two years; provided, however, that in cities with a population of one million or more, a teacher appointed under a newly created license, for teachers of reading and of the emotionally handicapped, to a position which the teacher has held for at least two years prior to such appointment while serving on tenure in another license area who was not dismissed as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the probationary period shall be one year. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education. Each person who is not to be recommended for appointment on tenure shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his or her probationary period. In city school districts having a population of four hundred thousand or more, persons with licenses obtained as a result of examinations announced subsequent to the twenty-second day of May, nineteen hundred sixty-nine appointed upon conditions that all announced requirements for the position be fulfilled within a specified period of time, shall not acquire tenure unless and until such requirements have been completed within the time specified for the fulfillment of such requirements, notwithstanding the expiration of any probationary period. In all other city school districts subject to the provisions of this article, failure to maintain certification as required by this article and by the regulations of the commissioner [~~of education~~] shall be cause for removal within the meaning of subdivision five of this section.

ii. Teachers and all other members of the teaching staff appointed on or after July first, two thousand fifteen and authorized by section twenty-five hundred fifty-four of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools, for a probationary period of four years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years and, if a classroom teacher, has received annual professional performance review ratings in each of those years, or has rendered satisfactory service as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the teacher shall be appointed for a probationary period of two years; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the teacher shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher, the teacher demonstrates that he or she received an annual professional performance review rating pursuant to section three thousand twelve-c or section three thousand twelve-d of



this chapter in his or her final year of service in such other school district or board of cooperative educational services; provided, however, that in cities with a population of one million or more, a teacher appointed under a newly created license, for teachers of reading and of the emotionally handicapped, to a position which the teacher has held for at least two years prior to such appointment while serving on tenure in another license area who was not dismissed as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this chapter, the teacher shall be appointed for a probationary period of two years. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education. Each person who is not to be recommended for appointment on tenure shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his or her probationary period. In all city school districts subject to the provisions of this article, failure to maintain certification as required by this article and by the regulations of the commissioner shall be cause for removal within the meaning of subdivision five of this section.

(b) i. Administrators, directors, supervisors, principals and all other members of the supervising staff, except executive directors, associate, assistant, district and community superintendents and examiners, appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred fifty-four of this article, shall be appointed by the board of education, upon the recommendation of the superintendent or chancellor of schools, for a probationary period of three years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

ii. Administrators, directors, supervisors, principals and all other members of the supervising staff, except executive directors, associate, assistant, district and community superintendents and examiners, appointed on or after July first, two thousand fifteen and authorized by section twenty-five hundred fifty-four of this article, shall be appointed by the board of education, upon the recommendation of the superintendent or chancellor of schools, for a probationary period of four years provided that such probationary period may be extended in accordance with paragraph (b) of subdivision five of this section. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

5. (a) At the expiration of the probationary term of any persons appointed for such term prior to July first, two thousand fifteen, the superintendent of schools shall make a written report to the board of education recommending for permanent appointment those persons who have been found competent, efficient and satisfactory[~~, consistent with any applicable rules of the board of regents adopted pursuant to section three thousand twelve-b of this chapter~~]. Such persons and all others employed in the teaching, service of the schools of a city, who have served the full probationary period, shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by

section three thousand twenty-a or section three thousand twenty-b of this chapter.

(b) At the expiration of the probationary term of any persons appointed for such term on or after July first, two thousand fifteen, the superintendent of schools shall make a written report to the board of education recommending for permanent appointment those persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, notwithstanding any other provision of this section to the contrary, when a teacher or principal receives an effective and/or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher or principal shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an additional year; provided, however, that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks in service and subject to the terms hereof, during which time a board of education shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the board of education may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons who have been recommended for tenure and all others employed in the teaching service of the schools of such school district who have served the full probationary period as extended pursuant to this subdivision shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this chapter. Failure to maintain certification as required by this chapter and the regulations of the commissioner shall constitute cause for removal.

6. (a) In a city having a population of four hundred thousand or more, at the expiration of the probationary term of any persons appointed for such term prior to July first, two thousand fifteen, the superintendent of schools shall make a written report to the board of education recommending for permanent appointment those persons who have been found satisfactory~~[, consistent with any applicable rules of the board of regents adopted pursuant to section three thousand twelve-b of this chapter]~~, and such board of education shall immediately thereafter issue to such persons permanent certificates of appointment. Such persons and

all others employed in the teaching service of the schools of such city, who have served the full probationary period shall receive permanent certificates to teach issued to them by the certificating authority, except as otherwise provided in subdivision ten-a of this section, and shall hold their respective positions during good behavior and satisfactory teaching service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this chapter.

(b) At the expiration of the probationary term of any persons appointed for such term on or after July first, two thousand fifteen, the superintendent of schools shall make a written report to the board of education recommending for permanent appointment those persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, notwithstanding any other provision of this section to the contrary, when a teacher receives an effective and/or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher or principal shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an additional year; provided, however, that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks in service and subject to the terms hereof, during which time a board of education shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the board of education may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons who have been recommended for tenure and all others employed in the teaching service of the schools of such school district who have served the full probationary period as extended pursuant to this subdivision shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this chapter. Failure to maintain certification as required by this chapter and the regulations of the commissioner shall constitute cause for removal.

§ 4. Section 3012 of the education law, the section heading as amended by chapter 358 of the laws of 1978, subdivision 1 as amended by chapter

442 of the laws of 1980, paragraph (a) of subdivision 1 as amended by chapter 737 of the laws of 1992, subdivision 2 as amended by section 8 of part A of chapter 57 of the laws of 2007, subdivision 3 as added by chapter 859 of the laws of 1955 and as renumbered by chapter 717 of the laws of 1970, is amended to read as follows:

§ 3012. Tenure: certain school districts. 1. (a) i. Teachers and all other members of the teaching staff of school districts, including common school districts and/or school districts employing fewer than eight teachers, other than city school districts, who are appointed prior to July first, two thousand fifteen, shall be appointed by the board of education, or the trustees of common school districts, upon the recommendation of the superintendent of schools, for a probationary period of three years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years or as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools, on an annual salary, the probationary period shall be limited to one year; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this [chapter] article, the probationary period shall not exceed two years. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education or the trustees of a common school district.

ii. Teachers and all other members of the teaching staff of school districts, including common school districts and/or school districts employing fewer than eight teachers, other than city school districts, who are appointed on or after July first, two thousand fifteen, shall be appointed by the board of education, or the trustees of common school districts, upon the recommendation of the superintendent of schools, for a probationary period of four years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years and, if a classroom teacher, has received annual professional performance review ratings in each of those years, or has rendered satisfactory service as a seasonally licensed per session teacher of swimming in day schools who has served in that capacity for a period of two years and has been appointed to teach the same subject in day schools, on an annual salary, the teacher shall be appointed for a probationary period of two years; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this article, the teacher shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher, the teacher demonstrates that he or she received an annual professional performance review rating pursuant to section three thousand twelve-c or section three thousand twelve-d of this chapter in his or her final year of service in such other school district or board of cooperative educational services. The service of a person appointed

to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education or the trustees of a common school district.

(b) i. Principals, administrators, supervisors and all other members of the supervising staff of school districts, including common school districts and/or school districts employing fewer than eight teachers, other than city school districts, who are appointed prior to July first, two thousand fifteen, shall be appointed by the board of education, or the trustees of a common school district, upon the recommendation of the superintendent of schools for a probationary period of three years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education or the trustees of a common school district.

ii. Principals, administrators, supervisors and all other members of the supervising staff of school districts, including common school districts and/or school districts employing fewer than eight teachers, other than city school districts, who are appointed on or after July first, two thousand fifteen, shall be appointed by the board of education, or the trustees of a common school district, upon the recommendation of the superintendent of schools for a probationary period of four years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education or the trustees of a common school district.

(c) Any person previously appointed to tenure or a probationary period pursuant to the provisions of former section three thousand thirteen of this [chapter] article shall continue to hold such position and be governed by the provisions of this section notwithstanding any contrary provision of law.

2. (a) At the expiration of the probationary term of a person appointed for such term prior to July first, two thousand fifteen, subject to the conditions of this section, the superintendent of schools shall make a written report to the board of education or the trustees of a common school district recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory[~~7 consistent with any applicable rules of the board of regents adopted pursuant to section three thousand twelve b of this article~~]. Such persons, and all others employed in the teaching service of the schools of such union free school district, common school district and/or school district employing fewer than eight teachers, who have served the probationary period as provided in this section, shall hold their respective positions during good behavior and efficient and competent service, and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a or section three thousand twenty-b of [~~such law~~] this article: (a) insubordination, immoral character or conduct unbecoming a teacher; (b) inefficiency, incompetency, physical or mental disability, or neglect of duty; (c) failure to maintain certification as required by this chapter and by the regulations of the commissioner. Each person who is not to be recommended for appointment on tenure, shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his probationary period.

(b) At the expiration of the probationary term of a person appointed for such term on or after July first, two thousand fifteen, subject to



the conditions of this section, the superintendent of schools shall make a written report to the board of education or the trustees of a common school district recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this article, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, notwithstanding any other provision of this section to the contrary, when a teacher or principal receives an effective or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher shall not be eligible for tenure but the board of education, in its discretion, may extend the teacher's probationary period for an additional year; provided, however, that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks in service, and subject to the terms hereof, during which time the trustees or board of education shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the trustees or board of education may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons who have been recommended for tenure and all others employed in the teaching service of the schools of such school district who have served the full probationary period as extended pursuant to this subdivision shall hold their respective positions during good behavior and efficient and competent service, and shall not be removable except for cause after a hearing as provided by section three thousand twenty-a or section three thousand twenty-b of this article. Failure to maintain certification as required by this chapter and the regulations of the commissioner shall constitute cause for removal.

3. Notwithstanding any other provision of this section no period in any school year for which there is no required service and/or for which no compensation is provided shall in any event constitute a break or suspension of probationary period or continuity of tenure rights of any of the persons hereinabove described.

§ 5. Section 3014 of the education law, as added by chapter 583 of the laws of 1955, subdivision 1 as amended by chapter 551 of the laws of 1976, subdivision 2 as amended by section 10 of part A of chapter 57 of the laws of 2007, is amended to read as follows:

§ 3014. Tenure: boards of cooperative educational services. 1. (a) Administrative assistants, supervisors, teachers and all other members

of the teaching and supervising staff of the board of cooperative educational services appointed prior to July first, two thousand fifteen, shall be appointed by a majority vote of the board of cooperative educational services upon the recommendation of the district superintendent of schools for a probationary period of not to exceed three years; provided, however, that in the case of a teacher who has been appointed on tenure in a school district within the state, the board of cooperative educational services where currently employed, or another board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a or section three thousand twenty-b of this ~~[chapter]~~ article, the probationary period shall not exceed two years. Services of a person so appointed to any such positions may be discontinued at any time during such probationary period, upon the recommendation of the district superintendent, by a majority vote of the board of cooperative educational services.

(b) Administrative assistants, supervisors, teachers and all other members of the teaching and supervising staff of the board of cooperative educational services appointed on or after July first, two thousand fifteen, shall be appointed by a majority vote of the board of cooperative educational services upon the recommendation of the district superintendent of schools for a probationary period of not to exceed four years; provided, however, that in the case of a teacher who has been appointed on tenure in a school district within the state, the board of cooperative educational services where currently employed, or another board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to section three thousand twenty-a or section three thousand twenty-b of this article, the teacher shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher, the teacher demonstrates that he or she received a composite annual professional performance review rating pursuant to section three thousand twelve-c or three thousand twelve-d of this chapter of either effective or highly effective in his or her final year of service in such other school district or board of cooperative educational services. Services of a person so appointed to any such positions may be discontinued at any time during such probationary period, upon the recommendation of the district superintendent, by a majority vote of the board of cooperative educational services.

2. (a) On or before the expiration of the probationary term of a person appointed for such term prior to July first, two thousand fifteen, the district superintendent of schools shall make a written report to the board of cooperative educational services recommending for appointment on tenure persons who have been found competent, efficient and satisfactory~~[, consistent with any applicable rules of the board of regents adopted pursuant to section three thousand twelve-b of this article]~~. Such persons shall hold their respective positions during good behavior and competent and efficient service and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a or section three thousand twenty-b of ~~[such law]~~ this article: ~~[(a)]~~ (i) Insubordination, immoral character or conduct unbecoming a teacher; ~~[(b)]~~ (ii) Inefficiency, incompetency, ~~[physical or mental disability]~~ or neglect of duty; ~~[(c)]~~ (iii) Failure to maintain certification as required by this chapter and by the regulations of the commissioner. Each person who is not to be so recommended for appointment on tenure shall be so notified in writing by the

district superintendent not later than sixty days immediately preceding the expiration of his or her probationary period.

(b) On or before the expiration of the probationary term of a person appointed for such term on or after July first, two thousand fifteen, the district superintendent of schools shall make a written report to the board of cooperative educational services recommending for appointment on tenure persons who have been found competent, efficient and satisfactory and, in the case of a classroom teacher or building principal, who have received composite annual professional performance review ratings pursuant to section three thousand twelve-c or section three thousand twelve-d of this article, of either effective or highly effective in at least three of the four preceding years, exclusive of any breaks in service; provided that, notwithstanding any other provision of this section to the contrary, when a teacher or principal receives an effective or highly effective rating in each year of his or her probationary service except he or she receives an ineffective rating in the final year of his or her probationary period, such teacher shall not be eligible for tenure but the board of education in its discretion, may extend the teacher's probationary period for an additional year; provided, however that if such teacher or principal successfully appealed such ineffective rating, such teacher or principal shall immediately be eligible for tenure if the rating resulting from the appeal established that such individual has been effective or highly effective in at least three of the preceding four years and was not ineffective in the final year. At the expiration of the probationary period, the classroom teacher or building principal shall remain in probationary status until the end of the school year in which such teacher or principal has received such ratings of effective or highly effective for at least three of the four preceding school years, exclusive of any breaks in service, during which time a board of cooperative educational services shall consider whether to grant tenure for those classroom teachers or building principals who otherwise have been found competent, efficient and satisfactory. Provided, however, that the board of cooperative educational services may grant tenure contingent upon a classroom teacher's or building principal's receipt of a minimum rating in the final year of the probationary period, pursuant to the requirements of this section, and if such contingency is not met after all appeals have been exhausted, the grant of tenure shall be void and unenforceable and the teacher's or principal's probationary period may be extended in accordance with this subdivision. Such persons shall hold their respective positions during good behavior and competent and efficient service and shall not be removed except for any of the following causes, after a hearing, as provided by section three thousand twenty-a or section three thousand twenty-b of this article: (i) Insubordination, immoral character or conduct unbecoming a teacher; (ii) Inefficiency, incompetency, or neglect of duty; (iii) Failure to maintain certification as required by this chapter and by the regulations of the commissioner. Each person who is not to be so recommended for appointment on tenure shall be so notified in writing by the district superintendent not later than sixty days immediately preceding the expiration of his or her probationary period.

§ 6. Subdivision 1 of section 3012-c of the education law, as amended by chapter 21 of the laws of 2012, is amended to read as follows:

1. Notwithstanding any other provision of law, rule or regulation to the contrary, the annual professional performance reviews of all classroom teachers and building principals employed by school districts or boards of cooperative educational services shall be conducted in accord-



ance with the provisions of this section. Such performance reviews which are conducted on or after July first, two thousand eleven, or on or after the date specified in paragraph c of subdivision two of this section where applicable, shall include measures of student achievement and be conducted in accordance with this section. Such annual professional performance reviews shall be a significant factor for employment decisions including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation, which decisions are to be made in accordance with locally developed procedures negotiated pursuant to the requirements of article fourteen of the civil service law where applicable. Provided, however, that nothing in this section shall be construed to affect the unfettered statutory right of a school district or board of cooperative educational services to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reasons [~~other than the performance of the teacher or principal in the classroom or school~~], including but not limited to misconduct and until a tenure decision is made, the performance of the teacher or principal in the classroom. Such performance reviews shall also be a significant factor in teacher and principal development, including but not limited to, coaching, induction support and differentiated professional development, which are to be locally established in accordance with procedures negotiated pursuant to the requirements of article fourteen of the civil service law.

§ 7. Paragraph b of subdivision 5 of section 3012-c of the education law, as added by chapter 21 of the laws of 2012, is amended to read as follows:

b. Nothing in this section shall be construed to alter or diminish the authority of the governing body of a school district or board of cooperative educational services to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons [~~other than~~ including the teacher's or principal's performance that is the subject of the appeal.

§ 8. This act shall take effect immediately.

#### SUBPART E

Section 1. Authority of the commissioner. Notwithstanding any provisions of section 3012-c of the education law to the contrary, the commissioner of the state education department, is hereby authorized and directed to, subject to the provisions of section 207 of the education law, adopt regulations of the commissioner and guidelines no later than June 30, 2015, to implement a statewide annual teacher and principal evaluation system in New York state pursuant to section 3012-d of the education law, as added by this act, after consulting with experts and practitioners in the fields of education, economics and psychometrics and taking into consideration the parameters set forth in the letter from the Chancellor of the Board of Regents and acting commissioner dated December 31, 2014, to the New York State Director of State Operations. The commissioner shall also establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to section 3012-d of the education law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents and shall release the response from the Secretary upon receipt thereof but in any event prior to publication of the regulations hereunder.

§ 2. The education law is amended by adding a new section 3012-d to read as follows:

§ 3012-d. Annual teacher and principal evaluations. 1. General provisions. Notwithstanding any other provision of law, rule or regulation to the contrary, the annual teacher and principal evaluations (hereinafter, evaluations) implemented by districts shall be conducted in accordance with the provisions of this section. Such annual evaluations shall be a significant factor for employment decisions including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation. Such evaluations shall also be a significant factor in teacher and principal development including but not limited to coaching, induction support, and differentiated professional development.

2. Definitions.

a. "District" shall mean school district and/or board of cooperative educational services, except that for purposes of subdivision eleven of this section it shall only mean a school district;

b. "Principal" shall mean a building principal or an administrator in charge of an instructional program of a board of cooperative educational services;

c. "Student growth" shall mean the change in student achievement for an individual student between two or more points in time.

d. "State-designed supplemental assessment" shall mean a selection of state tests or assessments developed or designed by the state education department, or that the state education department purchased or acquired from (i) another state; (ii) an institution of higher education; or (iii) a commercial or not-for-profit entity, provided that such entity must be objective and may not have a conflict of interest or appearance of a conflict of interest; such definition may include tests or assessments that have been previously designed or acquired by local districts, but only if the state education department significantly modifies growth targets or scoring bands for such tests or assessments or otherwise adapts the test or assessment to the state education department's requirements.

3. Ratings. The annual evaluations conducted pursuant to this section shall rate teacher and principal effectiveness using the following categories: highly effective or "H", effective or "E", developing or "D" and ineffective or "I".

4. Categories. The annual evaluation system shall consist of multiple measures in two categories: student performance and teacher observations.

a. Student performance category. Such category shall have at least one subcomponent and an optional second subcomponent as follows:

(1) For the first subcomponent, (A) for a teacher whose course ends in a state-created or administered test for which there is a state-provided growth model, such teacher shall have a state-provided growth score based on such model; and (B) for a teacher whose course does not end in a state-created or administered test such teacher shall have a student learning objective (SLO) consistent with a goal-setting process determined or developed by the commissioner, that results in a student growth score; provided that, for any teacher whose course ends in a state-created or administered assessment for which there is no state-provided growth model, such assessment must be used as the underlying assessment for such SLO;

(2) For the optional second subcomponent, a district may locally select a second measure in accordance with this subparagraph. Such

second measure shall apply in a consistent manner, to the extent practicable, across the district and be either: (A) a second state-provided growth score on a state-created or administered test under clause (A) of subparagraph one of this paragraph, or (B) a growth score based on a state-designed supplemental assessment, calculated using a state-provided or approved growth model. The optional second subcomponent shall provide options for multiple assessment measures that are aligned to existing classroom and school best practices and take into consideration the recommendations in the testing reduction report as required by section one of subpart F of the chapter of the laws of two thousand fifteen which added this section regarding the reduction of unnecessary additional testing.

The commissioner shall determine the weights and scoring ranges for the subcomponent or subcomponents of the student performance category that shall result in a combined category rating. The commissioner shall also set parameters for appropriate targets for student growth for both subcomponents, and the department must affirmatively approve and shall have the authority to disapprove or require modifications of district plans that do not set appropriate growth targets, including after initial approval. The commissioner shall set such weights and parameters consistent with the terms contained herein.

b. Teacher observations category. The observations category for teachers shall be based on a state-approved rubric and shall include up to three subcomponents. Such category must include: (1) a subcomponent based on classroom observations conducted by a principal or other trained administrator and must also include (2) a subcomponent based on classroom observations by an impartial independent trained evaluator or evaluators selected by the district. An independent trained evaluator may be employed within the school district, but not the same school building, as the teacher being evaluated. Such category may also include a subcomponent based on classroom observations conducted by a trained peer teacher rated effective or highly effective from the same school or from another school in the district.

The commissioner shall determine the weights, and/or weighting options and scoring ranges for the subcomponents of the observations category that result in a combined category rating. The commissioner shall also determine the minimum number of observations to be conducted annually, including frequency and duration, and any parameters therefor. The commissioner shall set such weights and scores consistent with the terms contained herein.

5. Rating determination. The overall rating determination shall be determined according to a methodology as follows:

a. The following rules shall apply: a teacher or principal who is (1) rated using two subcomponents in the student performance category and receives a rating of ineffective in such category shall be rated ineffective overall; provided, however, that if the measure used in the second subcomponent is a state-provided growth score on a state-created or administered test pursuant to clause (A) of subparagraph one of paragraph a of subdivision four of this section, a teacher or principal who receives a rating of ineffective in such category shall not be eligible to receive a rating of effective or highly effective overall; (2) rated using only the state measure subcomponent in the student performance category and receives a rating of ineffective in such category shall not be eligible to receive a rating of effective or highly effective overall; and (3) rated ineffective in the teacher observations category

shall not be eligible to receive a rating of effective or highly effective overall.

b. Except as otherwise provided in paragraph a of this subdivision, a teacher's composite score shall be determined as follows:

(1) If a teacher receives an H in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be H;

(2) If a teacher receives an H in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be H;

(3) If a teacher receives an H in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be E;

(4) If a teacher receives an H in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be D;

(5) If a teacher receives an E in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be H;

(6) If a teacher receives an E in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be E;

(7) If a teacher receives an E in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be E;

(8) If a teacher receives an E in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be D;

(9) If a teacher receives a D in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be E;

(10) If a teacher receives a D in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be E;

(11) If a teacher receives a D in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be D;

(12) If a teacher receives a D in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be I;

(13) If a teacher receives an I in the teacher observation category, and an H in the student performance category, the teacher's composite score shall be D;

(14) If a teacher receives an I in the teacher observation category, and an E in the student performance category, the teacher's composite score shall be D;

(15) If a teacher receives an I in the teacher observation category, and a D in the student performance category, the teacher's composite score shall be I;

(16) If a teacher receives an I in the teacher observation category, and an I in the student performance category, the teacher's composite score shall be I.

6. Prohibited elements. The following elements shall no longer be eligible to be used in any evaluation subcomponent pursuant to this section:

a.evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a state-approved rubric where permitted by the department;

b.use of an instrument for parent or student feedback;

c.use of professional goal-setting as evidence of teacher or principal effectiveness;

d.any district or regionally-developed assessment that has not been approved by the department; and

e.any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted here-under.

7.The commissioner shall ensure that the process by which weights and scoring ranges are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year. Such process must ensure that it is possible for a teacher or principal to obtain any number of points in the applicable scoring ranges, including zero, in each subcomponent. The superintendent, district superintendent or chancellor and the representative of the collective bargaining unit (where one exists) shall certify in the district's plan that the evaluation process shall use the standards for the scoring ranges provided by the commissioner. Provided, however, that in any event, the following rules shall apply: a teacher or principal who is:

a.rated using two subcomponents in the student performance category and receives a rating of ineffective in such category shall be rated ineffective overall, except that if the measure used in the second subcomponent is a second state-provided growth score on a state-administered or sponsored test pursuant to clause (A) of subparagraph one of paragraph a of subdivision four of this section, a teacher or principal that receives a rating of ineffective in such category shall not be eligible to receive a rating of effective or highly effective overall;

b.rated using only the state measure subcomponent in the student performance category and receives a rating of ineffective in such category shall not be eligible to receive a rating of effective or highly effective overall; and

c.rated ineffective in the observations category shall not be eligible to receive a rating of effective or highly effective overall.

8.A student may not be instructed, for two consecutive school years, by any two teachers in the same district, each of whom received a rating of ineffective under an evaluation conducted pursuant to this section in the school year immediately prior to the school year in which the student is placed in the teacher's classroom; provided, that if a district deems it impracticable to comply with this subdivision, the district shall seek a waiver from the department from such requirement.

9.Nothing in this section shall be construed to affect the unfettered statutory right of a district to terminate a probationary (non-tenured) teacher or principal for any statutorily and constitutionally permissible reasons.

10.The local collective bargaining representative shall negotiate with the district:

a.whether to use a second measure, and, in the event that a second measure is used, which measure to use, pursuant to subparagraph two of paragraph a of subdivision four of this section and

b.how to implement the provisions of paragraph b of subdivision four of this section, and associated regulations as established by the

commissioner, in accordance with article fourteen of the civil service law.

11. Notwithstanding any inconsistent provision of law, no school district shall be eligible for an apportionment of general support for public schools from the funds appropriated for the 2015--2016 school year and any year thereafter in excess of the amount apportioned to such school district in the respective base year unless such school district has submitted documentation that has been approved by the commissioner by November fifteenth, two thousand fifteen, or by September first of each subsequent year, demonstrating that it has fully implemented the standards and procedures for conducting annual teacher and principal evaluations of teachers and principals in accordance with the requirements of this section and the regulations issued by the commissioner. Provided further that any apportionment withheld pursuant to this section shall not occur prior to April first of the current year and shall not have any effect on the base year calculation for use in the subsequent school year. For purposes of this section, "base year" shall mean the base year as defined in paragraph b of subdivision one of section thirty-six hundred two of this chapter, and "current year" shall mean the current year as defined in paragraph a of subdivision one of section thirty-six hundred two of this chapter.

12. Notwithstanding any other provision of law, rule or regulation to the contrary, all collective bargaining agreements entered into after April first, two thousand fifteen shall be consistent with the requirements of this section, unless the agreement relates to the two thousand fourteen--two thousand fifteen school year only. Nothing in this section shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on April first, two thousand fifteen during the term of such agreement and until the entry into a successor collective bargaining agreement, provided that notwithstanding any other provision of law to the contrary, upon expiration of such term and the entry into a successor collective bargaining agreement the provisions of this section shall apply.

13. Any reference in law to "annual professional performance review" shall be deemed to refer to an annual professional performance review pursuant to section three thousand twelve-c of this article or annual teacher and principal evaluations pursuant to this section and any references to section three thousand twelve-c of this article shall be deemed to refer to section three thousand twelve-c of this article and/or this section, as applicable.

14. The commissioner shall adopt regulations to align the principal evaluation system as set forth in section three thousand twelve-c of this article with the new teacher evaluation system set forth herein.

15. The provisions of paragraphs d, k, k-1, k-2 and l of subdivision two and subdivisions four, five, five-a, nine, and ten of section three thousand twelve-c of this article, as amended, shall apply to this section to the extent determined by the commissioner.

§ 3. This act shall take effect immediately.

#### SUBPART F

Section 1. Testing reduction report. New York families in many districts are expressing significant stress and anxiety from over-testing. The demands of state tests have been growing and there has been an increase in the number of local tests. As a result, testing in many districts has reached a level that is counterproductive and must be



addressed. On or before June 1, 2015, the Chancellor of the Board of Regents shall submit a report to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly outlining recommendations that shall help to: reduce the amount of state and local student testing, improve the quality thereof, and thereby reduce test-related stress and anxiety for students and educators. The report shall outline ways in which any future testing in New York shall be implemented in a manner that minimizes classroom preparation, student stress and student anxiety. The Chancellor shall work with students, parents, educators, school districts, and other relevant stakeholders in preparing the report.

§ 2. This act shall take effect immediately.

#### SUBPART G

Section 1.Subdivision 7-a of section 305 of the education law, as added by chapter 296 of the laws of 2008, is amended to read as follows:

7-a. a. In addition to the authority to revoke and annul a certificate of qualification of a teacher in a proceeding brought pursuant to subdivision seven of this section, the commissioner shall be authorized, and it shall be his or her duty, to revoke and annul in accordance with this subdivision the teaching certificate of a teacher convicted of a sex offense for which registration as a sex offender is required pursuant to article six-C of the correction law or of any other violent felony offense or offenses committed against a child when such child was the intended victim of such offense.

b. As used in this subdivision, the following terms shall have the following meanings:

(1) "conviction" means any conviction whether by plea of guilty or nolo contendere or from a verdict after trial or otherwise;

(2) "sex offense" means an offense set forth in subdivision two or three of section one hundred sixty-eight-a of the correction law, including an offense committed in any jurisdiction for which the offender is required to register as a sex offender in New York;

(3) "teacher" means any professional educator holding a teaching certificate as defined in subparagraph four of this paragraph, including but not limited to a classroom teacher, teaching assistant, pupil personnel services professional, school administrator or supervisor or superintendent of schools; ~~and~~

(4) "teaching certificate" means the certificate or license or other certificate of qualification granted to a teacher by any authority whatsoever; and

(5) "violent felony offense" means any offense as defined in subdivision one of section 70.02 of the penal law.

c. Upon receipt of a certified copy of a criminal history record showing that a teacher has been convicted of a sex offense or sex offenses or a violent felony offense or offenses committed against a child when such child was the intended victim of such offense or upon receipt of notice of such a conviction as provided in paragraph d of this subdivision, the commissioner shall automatically revoke and annul the teaching certificate of such teacher without the right to a hearing. The commissioner shall mail notice of the revocation and annulment pursuant to this subdivision by certified mail, return receipt requested, and by first-class mail directed to the teacher at such teacher's last known address and, if different, the last address filed by the certificate holder with the commissioner and to the teacher's counsel of record in the criminal proceeding as reported in the notice pursuant to paragraph

d of this subdivision. Such notice shall inform the teacher that his or her certificate has been revoked and annulled, identify the sex offense or sex offenses or violent felony offense or offenses committed against a child when such child was the intended victim of such offense of which the teacher has been convicted and shall set forth the procedure to follow if the teacher denies he or she is the person who has been so convicted. If such teacher notifies the commissioner in writing within twenty-five days after the date of receipt of the notice that he or she is not the same person as the convicted offender identified in the criminal record or identified pursuant to paragraph d of this subdivision, provides proof to reasonably support such claim and the commissioner is satisfied the proof establishes such claim, the commissioner shall, within five business days of the receipt of such proof, restore such teacher's teaching certificate retroactive to the date of revocation and annulment.

d. Upon conviction of a teacher of a sex offense defined in this subdivision, the district attorney or other prosecuting authority who obtained such conviction shall provide notice of such conviction to the commissioner identifying the sex offense or sex offenses or violent felony offense or offenses committed against a child when such child was the intended victim of such offense of which the teacher has been convicted, the name and address of such offender and other identifying information prescribed by the commissioner, including the offender's date of birth and social security number, to the extent consistent with federal and state laws governing personal privacy and confidentiality of information. Such notice shall also include the name and business address of the offender's counsel of record in the criminal proceeding.

e. Upon receipt of proof that the conviction or convictions that formed the basis for revocation and annulment of the teacher's teaching certificate pursuant to this subdivision have been set aside upon appeal or otherwise reversed, vacated or annulled, the commissioner shall be required to conduct a due process hearing pursuant to subdivision seven of this section and part eighty-three of title eight of the New York codes, rules and regulations prior to making a determination as to whether to reinstate the teacher's original teaching certificate. Such determination shall be made within ninety days after such proof has been received.

f. Except as provided in paragraph g of this subdivision, and notwithstanding any other provision of law to the contrary, a teacher shall be reinstated to his or her position of employment in a public school, with full back pay and benefits from the date his or her certificate was revoked or annulled to the date of such reinstatement, under the following circumstances:

(i) The termination of employment was based solely on the conviction of a sex offense, or conviction of a violent felony offense or offenses committed against a child when such child was the intended victim of such offense or the revocation or annulment of a certificate based on such conviction, and such conviction has been set aside on appeal or otherwise reversed, vacated or annulled and the commissioner has reinstated the teacher's certification pursuant to paragraph e of this subdivision; or

(ii) The termination of employment was based solely on the conviction of a sex offense or violent felony offense or offenses committed against a child when such child was the intended victim of such offense and it has been determined that the teacher is not the same person as the convicted offender.



g. If a teacher's employment was terminated as a result of a disciplinary proceeding conducted pursuant to section three thousand twenty-a of this chapter or other disciplinary hearing conducted pursuant to any collective bargaining or contractual agreement on one or more grounds other than conviction of a sex offense, or the revocation or annulment of a certificate based on such conviction, then nothing in paragraph f of this subdivision shall require a school district to reinstate employment of such teacher or be liable for back pay or benefits.

h. No provision of this article shall be deemed to preclude the following: (i) the commissioner from conducting a due process hearing pursuant to subdivision seven of this section and part eighty-three of title eight of the New York codes, rules and regulations; or (ii) a school district or employing board from bringing a disciplinary proceeding pursuant to section three thousand twenty-a or three thousand twenty-b of this chapter; or (iii) a school district or employing board from bringing an alternative disciplinary proceeding conducted pursuant to a collective bargaining or contractual agreement.

i. The commissioner shall be authorized to promulgate any regulations necessary to implement the provisions of this subdivision.

§ 2. Subdivision 3 and paragraph a of subdivision 4 of section 3020 of the education law, as amended by chapter 103 of the laws of 2010, are amended to read as follows:

3. Notwithstanding any inconsistent provision of law, the procedures set forth in section three thousand twenty-a of this article and subdivision seven of section twenty-five hundred ninety-j of this chapter may be modified or replaced by agreements negotiated between the city school district of the city of New York and any employee organization representing employees or titles that are or were covered by any memorandum of agreement executed by such city school district and the council of supervisors and administrators of the city of New York on or after December first, nineteen hundred ninety-nine. Where such procedures are so modified or replaced: (i) compliance with such modification or replacement procedures shall satisfy any provision in this chapter that requires compliance with section three thousand twenty-a, (ii) any employee against whom charges have been preferred prior to the effective date of such modification or replacement shall continue to be subject to the provisions of such section as in effect on the date such charges were preferred, (iii) the provisions of subdivisions one and two of this section shall not apply to agreements negotiated pursuant to this subdivision, and (iv) in accordance with paragraph (e) of subdivision one of section two hundred nine-a of the civil service law, such modification or replacement procedures contained in an agreement negotiated pursuant to this subdivision shall continue as terms of such agreement after its expiration until a new agreement is negotiated; provided that any alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after July first, two thousand ten shall provide for an expedited hearing process before a single hearing officer in accordance with subparagraph (i-a) of paragraph c of subdivision three of section three thousand twenty-a of this article in cases in which charges of incompetence are brought against a building principal based solely upon an allegation of a pattern of ineffective teaching or performance as defined in section three thousand twelve-c of this article and shall provide that such a pattern of ineffective teaching or performance shall constitute very significant evidence of incompetence which may form the basis for just cause removal of the building principal and provided further that any alternate disciplinary procedures

contained in a collective bargaining agreement that becomes effective on or after July first, two thousand fifteen shall provide that all hearings pursuant to sections three thousand twenty-a or three thousand twenty-b of this article shall be conducted before a single hearing officer and that two consecutive ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of section three thousand twelve-c or three thousand twelve-d of this article shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal, and that three consecutive ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of section three thousand twelve-c or three thousand twelve-d of this article shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the calculation of one or more of the principal's underlying components on the annual professional performance reviews pursuant to section three thousand twelve-c or three thousand twelve-d of this article was fraudulent, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal. For purposes of this subdivision, fraud shall include mistaken identity. Notwithstanding any inconsistent provision of law, the commissioner shall review any appeals authorized by such modification or replacement procedures within fifteen days from receipt by such commissioner of the record of prior proceedings in the matter subject to appeal. Such review shall have preference over all other appeals or proceedings pending before such commissioner.

a. Notwithstanding any inconsistent provision of law, the procedures set forth in section three thousand twenty-a of this article and subdivision seven of section twenty-five hundred ninety-j of this chapter may be modified by agreements negotiated between the city school district of the city of New York and any employee organization representing employees or titles that are or were covered by any memorandum of agreement executed by such city school district and the united federation of teachers on or after June tenth, two thousand two. Where such procedures are so modified: (i) compliance with such modified procedures shall satisfy any provision of this chapter that requires compliance with section three thousand twenty-a of this article; (ii) any employee against whom charges have been preferred prior to the effective date of such modification shall continue to be subject to the provisions of such section as in effect on the date such charges were preferred; (iii) the provisions of subdivisions one and two of this section shall not apply to agreements negotiated pursuant to this subdivision, except that no person enjoying the benefits of tenure shall be disciplined or removed during a term of employment except for just cause; and (iv) in accordance with paragraph (e) of subdivision one of section two hundred nine-a of the civil service law, such modified procedures contained in an agreement negotiated pursuant to this subdivision shall continue as terms of such agreement after its expiration until a new agreement is negotiated; and provided further that any alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after July first, two thousand ten shall provide for an expedited hearing process before a single hearing officer in accordance with subparagraph (i-a) of paragraph c of subdivision three of section three thousand twenty-a of this article in cases in which charges of incompe-

tence are brought based solely upon an allegation of a pattern of ineffective teaching or performance as defined in section three thousand twelve-c of this article and shall provide that such a pattern of ineffective teaching or performance shall constitute very significant evidence of incompetence which may form the basis for just cause removal, and provided further that any alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after July first, two thousand fifteen shall provide that all hearings pursuant to sections three thousand twenty-a or three thousand twenty-b of this article shall be conducted before a single hearing officer and that two consecutive ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of section three thousand twelve-c or three thousand twelve-d of this article shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal, and that three consecutive ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of section three thousand twelve-c or three thousand twelve-d of this article shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the calculation of one or more of the teacher's underlying components on the annual professional performance reviews pursuant to section three thousand twelve-c or three thousand twelve-d of this article was fraudulent, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal. For purposes of this paragraph, fraud shall include mistaken identity.

§ 3. Section 3020-a of the education law, as amended by section 1 of part B of chapter 57 of the laws of 2012, is amended to read as follows:

§ 3020-a. Disciplinary procedures and penalties. 1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section eleven hundred two, and sections twenty-five hundred nine, twenty-five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of section twenty-five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed.

2. Disposition of charges. a. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant to this section. If such determination is affirmative, a written statement specifying (i) the charges in detail, (ii) the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charges after a hearing and (iii) the employee's rights

under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

b. The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay, except the employee may be suspended without pay if the employee has entered a guilty plea to or has been convicted of a felony crime concerning the criminal sale or possession of a controlled substance, a precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical abuse of a minor or student.

c. Where charges of misconduct constituting physical or sexual abuse of a student are brought on or after July first, two thousand fifteen, the board of education may suspend the employee without pay pending an expedited hearing pursuant to subparagraph (i-a) of paragraph c of subdivision three of this section. Notwithstanding any other law, rule, or regulation to the contrary, the commissioner shall establish a process in regulations for a probable cause hearing before an impartial hearing officer within ten days to determine whether the decision to suspend an employee without pay pursuant to this paragraph should be continued or reversed. The process for selection of an impartial hearing officer shall be as similar as possible to the regulatory framework for the appointment of an impartial hearing officer for due process complaints pursuant to section forty-four hundred four of this chapter. The hearing officer shall determine whether probable cause supports the charges and shall reverse the decision of the board of education to suspend the employee without pay and reinstate such pay upon a finding that probable cause does not support the charges. The hearing officer may also reinstate pay upon a written determination that a suspension without pay is grossly disproportionate in light of all surrounding circumstances. Provided, further, that such an employee shall be eligible to receive reimbursement for withheld pay and accrued interest at a rate of six percent compounded annually if the hearing officer finds in his or her favor, either at the probable cause hearing or in a final determination pursuant to the expedited hearing held pursuant to subparagraph (i-a) of paragraph c of subdivision three of this section. Any suspension without pay shall last no longer than one hundred and twenty days from the decision of the board of education to suspend the employee without pay and such suspension shall only relate to employee compensation, exclusive of other benefits and guarantees. Notwithstanding any other provision of law or regulation to the contrary, any provision of a collective bargaining agreement entered into by the city of New York as of April first, two thousand fifteen, that provides for suspension without pay for offenses as specified in this paragraph shall supersede the provisions hereof and shall continue in effect without modification and may be extended.

d. The employee shall be terminated without a hearing, as provided for in this section, upon conviction of a sex offense, as defined in subparagraph two of paragraph b of subdivision seven-a of section three hundred five of this chapter. To the extent this section applies to an employee acting as a school administrator or supervisor, as defined in subparagraph three of paragraph b of subdivision seven-b of section three hundred five of this chapter, such employee shall be terminated without a hearing, as provided for in this section, upon conviction of a felony offense defined in subparagraph two of paragraph b of subdivision seven-b of section three hundred five of this chapter.

~~[e. Within]~~ e. (i) For hearings commenced by the filing of charges prior to July first, two thousand fifteen, within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges and when the charges concern pedagogical incompetence or issues involving pedagogical judgment, his or her choice of either a single hearing officer or a three member panel, provided that a three member panel shall not be available where the charges concern pedagogical incompetence based solely upon a teacher's or principal's pattern of ineffective teaching or performance as defined in section three thousand twelve-c of this article. All other charges shall be heard by a single hearing officer.

(ii) All hearings commenced by the filing of charges on or after July first, two thousand fifteen shall be heard by a single hearing officer.

~~[d.]~~ f. The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing. Where an employee requests a hearing in the manner provided for by this section, the clerk or secretary of the board shall, within three working days of receipt of the employee's notice or request for a hearing, notify the commissioner of the need for a hearing. If the employee waives his or her right to a hearing the employing board shall proceed, within fifteen days, by a vote of a majority of all members of such board, to determine the case and fix the penalty, if any, to be imposed in accordance with subdivision four of this section.

3. Hearings. a. Notice of hearing. Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner shall forthwith notify the American Arbitration Association (hereinafter "association") of the need for a hearing and shall request the association to provide to the commissioner forthwith a list of names of persons chosen by the association from the association's panel of labor arbitrators to potentially serve as hearing officers together with relevant biographical information on each arbitrator. Upon receipt of said list and biographical information, the commissioner shall forthwith send a copy of both simultaneously to the employing board and the employee. The commissioner shall also simultaneously notify both the employing board and the employee of each potential hearing officer's record in the last five cases of commencing and completing hearings within the time periods prescribed in this section.

b. (i) Hearing officers. All hearings pursuant to this section shall be conducted before and by a single hearing officer selected as provided for in this section. A hearing officer shall not be eligible to serve in such position if he or she is a resident of the school district, other than the city of New York, under the jurisdiction of the employing board, an employee, agent or representative of the employing board or of any labor organization representing employees of such employing board, has served as such agent or representative within two years of the date of the scheduled hearing, or if he or she is then serving as a mediator or fact finder in the same school district.

(A) Notwithstanding any other provision of law, for hearings commenced by the filing of charges prior to April first, two thousand twelve, the hearing officer shall be compensated by the department with the customary fee paid for service as an arbitrator under the auspices of the association for each day of actual service plus necessary travel and other reasonable expenses incurred in the performance of his or her duties. All other expenses of the disciplinary proceedings commenced by

the filing of charges prior to April first, two thousand twelve shall be paid in accordance with rules promulgated by the commissioner. Claims for such compensation for days of actual service and reimbursement for necessary travel and other expenses for hearings commenced by the filing of charges prior to April first, two thousand twelve shall be paid from an appropriation for such purpose in the order in which they have been approved by the commissioner for payment, provided payment shall first be made for any other hearing costs payable by the commissioner, including the costs of transcribing the record, and provided further that no such claim shall be set aside for insufficiency of funds to make a complete payment, but shall be eligible for a partial payment in one year and shall retain its priority date status for appropriations designated for such purpose in future years.

(B) Notwithstanding any other provision of law, rule or regulation to the contrary, for hearings commenced by the filing of charges on or after April first, two thousand twelve, the hearing officer shall be compensated by the department for each day of actual service plus necessary travel and other reasonable expenses incurred in the performance of his or her duties, provided that the commissioner shall establish a schedule for maximum rates of compensation of hearing officers based on customary and reasonable fees for service as an arbitrator and provide for limitations on the number of study hours that may be claimed.

(ii) The commissioner shall mail to the employing board and the employee the list of potential hearing officers and biographies provided to the commissioner by the association, the employing board and the employee, individually or through their agents or representatives, shall by mutual agreement select a hearing officer from said list to conduct the hearing and shall notify the commissioner of their selection.

(iii) Within fifteen days after receiving the list of potential hearing officers as described in subparagraph (ii) of this paragraph, the employing board and the employee shall each notify the commissioner of their agreed upon hearing officer selection. If the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from the list of potential hearing officers, or fail to notify the commissioner of a selection within such fifteen day time period, the commissioner shall appoint a hearing officer from the list. The provisions of this subparagraph shall not apply in cities with a population of one million or more with alternative procedures specified in section three thousand twenty of this article.

(iv) In those cases commenced by the filing of charges prior to July first, two thousand fifteen in which the employee elects to have the charges heard by a hearing panel, the hearing panel shall consist of the hearing officer, selected in accordance with this subdivision, and two additional persons, one selected by the employee and one selected by the employing board, from a list maintained for such purpose by the commissioner. The list shall be composed of professional personnel with administrative or supervisory responsibility, professional personnel without administrative or supervisory responsibility, chief school administrators, members of employing boards and others selected from lists of nominees submitted to the commissioner by statewide organizations representing teachers, school administrators and supervisors and the employing boards. Hearing panel members other than the hearing officer shall be compensated by the department at the rate of one hundred dollars for each day of actual service plus necessary travel and subsistence expenses. The hearing officer shall be compensated as set forth in



this subdivision. The hearing officer shall be the chairperson of the hearing panel.

c. Hearing procedures. (i) (A) The commissioner shall have the power to establish necessary rules and procedures for the conduct of hearings under this section.

(B) The department shall be authorized to monitor and investigate a hearing officer's compliance with statutory timelines pursuant to this section. The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this section for conducting such hearings are to be strictly followed. A record of continued failure to commence and complete hearings within the time periods prescribed in this section shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers sent to the employing board and the employee for such hearings.

(C) Such rules shall not require compliance with technical rules of evidence. Hearings shall be conducted by the hearing officer selected pursuant to paragraph b of this subdivision with full and fair disclosure of the nature of the case and evidence against the employee by the employing board and shall be public or private at the discretion of the employee and provided further that the hearing officer, at the pre-hearing conference, shall set a schedule and manner for full and fair disclosure of the witnesses and evidence to be offered by the employee.

The employee shall have a reasonable opportunity to defend himself or herself and an opportunity to testify in his or her own behalf. The employee shall not be required to testify. Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony taken shall be under oath which the hearing officer is hereby authorized to administer. A child witness under the age of fourteen may be permitted to testify through the use of live, two-way closed-circuit television, as such term is defined in subdivision four of section 65.00 of the criminal procedure law, when the hearing officer, after providing the employee with an opportunity to be heard, determines by clear and convincing evidence that such child witness would suffer serious mental or emotional harm which would substantially impair such child's ability to communicate if required to testify at the hearing without the use of live, two-way closed-circuit television and that the use of such live, two-way closed-circuit television will diminish the likelihood or extent of such harm. In making such determination, the hearing officer shall consider any applicable factors contained in subdivision ten of section 65.20 of the criminal procedure law. Where the hearing officer determines that such child witness will be permitted to testify through the use of live, two-way closed-circuit television, the testimony of such child witness shall be taken in a manner consistent with section 65.30 of the criminal procedure law.

(D) An accurate record of the proceedings shall be kept at the expense of the department at each such hearing in accordance with the regulations of the commissioner. A copy of the record of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved. The department shall be authorized to utilize any new technology or such other appropriate means to transcribe or record such hearings in an accurate, reliable, efficient and cost-effective manner without any charge to the employee or board of education involved.

(i-a) (A) ~~[Where charges of incompetence are brought based solely upon a pattern of ineffective teaching or performance of a classroom teacher or principal, as defined in section three thousand twelve c of this article, the hearing shall be conducted before and by a single hearing officer in an expedited hearing, which shall commence within seven days after the pre hearing conference and shall be completed within sixty days after the pre hearing conference. The hearing officer shall establish a hearing schedule at the pre hearing conference to ensure that the expedited hearing is completed within the required timeframes and to ensure an equitable distribution of days between the employing board and the charged employee. Notwithstanding any other law, rule or regulation to the contrary, no adjournments may be granted that would extend the hearing beyond such sixty days, except as authorized in this subparagraph. A hearing officer, upon request, may grant a limited and time specific adjournment that would extend the hearing beyond such sixty days if the hearing officer determines that the delay is attributable to a circumstance or occurrence substantially beyond the control of the requesting party and an injustice would result if the adjournment were not granted.]~~

~~(B) Such charges shall allege that the employing board has developed and substantially implemented a teacher or principal improvement plan in accordance with subdivision four of section three thousand twelve c of this article for the employee following the first evaluation in which the employee was rated ineffective, and the immediately preceding evaluation if the employee was rated developing. Notwithstanding any other provision of law to the contrary, a pattern of ineffective teaching or performance as defined in section three thousand twelve c of this article shall constitute very significant evidence of incompetence for purposes of this section. Nothing in this subparagraph shall be construed to limit the defenses which the employee may place before the hearing officer in challenging the allegation of a pattern of ineffective teaching or performance.~~

~~(C) The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this subparagraph for conducting expedited hearings are to be strictly followed. A record of continued failure to commence and complete expedited hearings within the time periods prescribed in this subparagraph shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers sent to the employing board and the employee for such expedited hearings.]~~ Where charges of misconduct constituting physical or sexual abuse of a student are brought, the hearing shall be conducted before and by a single hearing officer in an expedited hearing, which shall commence within seven days after the pre-hearing conference and shall be completed within sixty days after the pre-hearing conference. The hearing officer shall establish a hearing schedule at the pre-hearing conference to ensure that the expedited hearing is completed within the required timeframes and to ensure an equitable distribution of days between the employing board and the charged employee. Notwithstanding any other law, rule or regulation to the contrary, no adjournments may be granted that would extend the hearing beyond such sixty days, except as authorized in this subparagraph. A hearing officer, upon request, may grant a limited and time specific adjournment that would extend the hearing beyond such sixty days if the hearing officer determines that the delay is attributable to a circumstance or occurrence substantially



beyond the control of the requesting party and an injustice would result if the adjournment were not granted.

(B) The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this subparagraph for conducting expedited hearings are to be strictly followed and failure to do so shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers sent to the employing board and the employee for such expedited hearings.

(ii) The hearing officer selected to conduct a hearing under this section shall, within ten to fifteen days of agreeing to serve in such position, hold a pre-hearing conference which shall be held in the school district or county seat of the county, or any county, wherein the employing school board is located. The pre-hearing conference shall be limited in length to one day except that the hearing officer, in his or her discretion, may allow one additional day for good cause shown.

(iii) At the pre-hearing conference the hearing officer shall have the power to:

(A) issue subpoenas;

(B) hear and decide all motions, including but not limited to motions to dismiss the charges;

(C) hear and decide all applications for bills of particular or requests for production of materials or information, including, but not limited to, any witness statement (or statements), investigatory statement (or statements) or note (notes), exculpatory evidence or any other evidence, including district or student records, relevant and material to the employee's defense.

(iv) Any pre-hearing motion or application relative to the sufficiency of the charges, application or amendment thereof, or any preliminary matters shall be made upon written notice to the hearing officer and the adverse party no less than five days prior to the date of the pre-hearing conference. Any pre-hearing motions or applications not made as provided for herein shall be deemed waived except for good cause as determined by the hearing officer.

(v) In the event that at the pre-hearing conference the employing board presents evidence that the professional license of the employee has been revoked and all judicial and administrative remedies have been exhausted or foreclosed, the hearing officer shall schedule the date, time and place for an expedited hearing, which hearing shall commence not more than seven days after the pre-hearing conference and which shall be limited to one day. The expedited hearing shall be held in the local school district or county seat of the county or any county, wherein the said employing board is located. The expedited hearing shall not be postponed except upon the request of a party and then only for good cause as determined by the hearing officer. At such hearing, each party shall have equal time in which to present its case.

(vi) During the pre-hearing conference, the hearing officer shall determine the reasonable amount of time necessary for a final hearing on the charge or charges and shall schedule the location, time(s) and date(s) for the final hearing. The final hearing shall be held in the local school district or county seat of the county, or any county, wherein the said employing school board is located. In the event that the hearing officer determines that the nature of the case requires the final hearing to last more than one day, the days that are scheduled for the final hearing shall be consecutive. The day or days scheduled for the final hearing shall not be postponed except upon the request of a

party and then only for good cause shown as determined by the hearing officer. In all cases, the final hearing shall be completed no later than sixty days after the pre-hearing conference unless the hearing officer determines that extraordinary circumstances warrant a limited extension.

(vii) All evidence shall be submitted by all parties within one hundred twenty-five days of the filing of charges and no additional evidence shall be accepted after such time, absent extraordinary circumstances beyond the control of the parties.

d. Limitation on claims. Notwithstanding any other provision of law, rule or regulation to the contrary, no payments shall be made by the department pursuant to this subdivision on or after April first, two thousand twelve for: (i) compensation of a hearing officer or hearing panel member, (ii) reimbursement of such hearing officers or panel members for necessary travel or other expenses incurred by them, or (iii) for other hearing expenses on a claim submitted later than one year after the final disposition of the hearing by any means, including settlement, or within ninety days after the effective date of this paragraph, whichever is later; provided that no payment shall be barred or reduced where such payment is required as a result of a court order or judgment or a final audit.

4. Post hearing procedures. a. The hearing officer shall render a written decision within thirty days of the last day of the final hearing, or in the case of an expedited hearing within ten days of such expedited hearing, and shall forward a copy thereof to the commissioner who shall immediately forward copies of the decision to the employee and to the clerk or secretary of the employing board. The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and shall state what penalty or other action, if any, shall be taken by the employing board. At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the hearing officer ~~[shall]~~ may consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan. In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions. Provided, however, that the hearing officer, in exercising his or her discretion, shall give serious consideration to the penalty recommended by the employing board, and if the hearing officer rejects the recommended penalty such rejection must be based on reasons based upon the record as expressed in a written determination.

b. Within fifteen days of receipt of the hearing officer's decision the employing board shall implement the decision. If the employee is acquitted he or she shall be restored to his or her position with full pay for any period of suspension without pay and the charges expunged from the employment record. If an employee who was convicted of a felony crime specified in paragraph b of subdivision two of this section, has said conviction reversed, the employee, upon application, shall be enti-

tled to have his or her pay and other emoluments restored, for the period from the date of his or her suspension to the date of the decision.

c. The hearing officer shall indicate in the decision whether any of the charges brought by the employing board were frivolous as defined in section eighty-three hundred three-a of the civil practice law and rules. If the hearing officer finds that all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the department the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges. If the hearing officer finds that some but not all of the charges brought against the employee were frivolous, the hearing officer shall order the employing board to reimburse the department a portion, in the discretion of the hearing officer, of the reasonable costs said department incurred as a result of the proceeding and to reimburse the employee a portion, in the discretion of the hearing officer, of the reasonable costs, including but not limited to reasonable attorneys' fees, the employee incurred in defending the charges.

5. Appeal. a. Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the hearing officer pursuant to section seventy-five hundred eleven of the civil practice law and rules. The court's review shall be limited to the grounds set forth in such section. The hearing panel's determination shall be deemed to be final for the purpose of such proceeding.

b. In no case shall the filing or the pendency of an appeal delay the implementation of the decision of the hearing officer.

§ 4. The education law is amended by adding a new section 3020-b to read as follows:

§ 3020-b. Streamlined removal procedures for teachers rated ineffective. 1. Applicability. This section shall apply to classroom teachers and building principals who receive two or more consecutive annual ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of section three thousand twelve-c or three thousand twelve-d of this article.

2. Filing and disposition of charges. a. A school district or employing board may bring charges of incompetence pursuant to this section against any classroom teacher or building principal who receives two consecutive ineffective ratings. A school district or employing board shall bring charges of incompetence pursuant to this section against any classroom teacher or building principal who receives three consecutive ineffective ratings. All charges against a person enjoying the benefits of tenure as provided in subdivision three of section eleven hundred two, and sections twenty-five hundred nine, twenty-five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board. Except as provided in subdivision eight of section twenty-five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency. When such charges are brought, a written statement specifying (i) the charges in detail, (ii) that the penalty that will be imposed by the board if the employee does not request a hearing or that will be sought by the board

after a hearing is dismissal; and (iii) the employee's rights under this section, shall be immediately forwarded to the accused employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

b. The employee may be suspended pending a hearing on the charges and the final determination thereof and such suspension shall be with pay.

c. Within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges. The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing. Where an employee requests a hearing in the manner provided for by this section, the clerk or secretary of the board shall, within three working days of receipt of the employee's notice or request for a hearing, notify the commissioner of the need for a hearing. If the employee waives his or her right to a hearing the employing board shall proceed, within fifteen days, by a vote of a majority of all members of such board, to determine the case and fix the penalty to be imposed in accordance with subdivision four of this section.

d. Charges brought pursuant to this section for two consecutive ineffective ratings shall allege that the employing board has developed and substantially implemented a teacher or principal improvement plan in accordance with section three thousand twelve-c or section three thousand twelve-d of this article for the employee following the first evaluation in which the employee was rated ineffective, and the immediately preceding evaluation if the employee was rated developing.

3. Hearings. a. Notice of hearing. Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner shall forthwith notify the American Arbitration Association (hereinafter "association") of the need for a hearing and shall request that the association provide to the commissioner forthwith a list of names of persons chosen by the association from the association's panel of labor arbitrators to potentially serve as hearing officers together with relevant biographical information on each arbitrator. Upon receipt of said list and biographical information, the commissioner shall, in the case of an employee who has received three consecutive ineffective ratings, directly appoint a hearing officer from the list. In the case of an employee who has received two consecutive ineffective ratings, the commissioner shall forthwith send a copy of the list and biographical information simultaneously to the employing board and the employee. The commissioner shall also simultaneously notify both the employing board and the employee of each potential hearing officer's record in the last five cases of commencing and completing hearings within the time periods prescribed in this section. The commissioner shall establish time periods for the employing board and the employee to notify the commissioner of their agreed upon hearing officer selection. If the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from the list of potential hearing officers, or fail to notify the commissioner of a selection within such established time period, the commissioner shall appoint a hearing officer from the list.

b. Hearing officers. All hearings pursuant to this section shall be conducted before and by a single hearing officer selected as provided for in this section. A hearing officer shall not be eligible to serve in such position if he or she is a resident of the school district, other than the city of New York, under the jurisdiction of the employing

board, an employee, agent or representative of the employing board or of any labor organization representing employees of such employing board, he or she has served as such agent or representative within two years of the date of the scheduled hearing, or if he or she is then serving as a mediator or fact finder in the same school district. Subject to an appropriation, the hearing officer shall be compensated by the department for each day of actual service plus necessary travel and other reasonable expenses incurred in the performance of his or her duties, provided that the commissioner shall establish a schedule for maximum rates of compensation of hearing officers based on customary and reasonable fees for service as an arbitrator and provide for limitations on the number of study hours that may be claimed.

c. Hearing procedures. (i) The commissioner shall have the power to establish necessary rules and procedures for the conduct of hearings under this section, and shall establish timelines in regulations to ensure that the duration of a removal proceeding pursuant to this section, as measured from the date an employee requests a hearing to the final hearing date, is no longer than ninety days in the case of an employee who has received two consecutive ineffective ratings and no longer than thirty days in the case of an employee who has received three consecutive ineffective ratings. The commissioner shall establish timeframes in regulations for a pre-hearing conference wherein a hearing officer shall have the power to issue subpoenas, hear motions and decide on other discovery and evidentiary issues. At such pre-hearing conference, the hearing officer shall establish a hearing schedule at the pre-hearing conference to ensure that the hearing is completed within the required time period and to ensure an equitable distribution of days between the employing board and the charged employee. Notwithstanding any other law, rule or regulation to the contrary, no adjournments may be granted that would extend the hearing beyond such timelines, except as authorized in this subparagraph. A hearing officer may grant a limited and time specific adjournment that would extend the hearing beyond such timelines if the hearing officer determines that the delay is attributable to a circumstance or occurrence substantially beyond the control of the requesting party and an injustice would result if the adjournment were not granted.

(ii) The department shall be authorized to monitor and investigate a hearing officer's compliance with timelines pursuant to this section and to any regulations promulgated by the department. The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this section for conducting such hearings are to be strictly followed. A record of continued failure to commence and complete hearings within the time periods prescribed in this section shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers to be considered for such hearings.

(iii) Such rules shall not require compliance with technical rules of evidence. Hearings shall be conducted by the hearing officer selected pursuant to paragraph a of this subdivision and shall be public or private at the discretion of the employee. The employee shall have a reasonable opportunity to defend himself or herself and an opportunity to testify on his or her own behalf. The employee shall not be required to testify. Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony taken shall be under oath which the hearing officer is hereby authorized to administer.



(iv) An accurate record of the proceedings shall be kept at the expense of the department at each such hearing in accordance with the regulations of the commissioner. A copy of the record of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved. The department shall be authorized to utilize any new technology or such other appropriate means to transcribe or record such hearings in an accurate, reliable, efficient and cost-effective manner without any charge to the employee or board of education involved.

(v) Legal standard. (A) Two consecutive ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of section three thousand twelve-c or three thousand twelve-d of this article shall constitute prima facie evidence of incompetence that can be overcome only by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal. (B) Three consecutive ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of section three thousand twelve-c or three thousand twelve-d of this article shall constitute prima facie evidence of incompetence that can be overcome only by clear and convincing evidence that the calculation of one or more of the teacher's or principal's underlying components on the annual professional performance reviews pursuant to section three thousand twelve-c or three thousand twelve-d of this article was fraudulent, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal. For purposes of this subparagraph, fraud shall include mistaken identity.

4. Post hearing procedures. a. The hearing officer shall render a written decision within ten days of the last day of the final hearing, and shall forward a copy thereof to the commissioner who shall immediately forward copies of the decision to the employee and to the clerk or secretary of the employing board. The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and shall state whether the penalty of dismissal shall be taken by the employing board.

b. Within fifteen days of receipt of the hearing officer's decision the employing board shall implement the decision. If the employee is acquitted he or she shall be restored to his or her position and the charges expunged from the employment record.

5. Appeal. a. Not later than ten days after receipt of the hearing officer's decision, the employee or the employing board may make an application to the New York state supreme court to vacate or modify the decision of the hearing officer pursuant to section seventy-five hundred eleven of the civil practice law and rules. The court's review shall be limited to the grounds set forth in such section. The hearing panel's determination shall be deemed to be final for the purpose of such proceeding.

b. In no case shall the filing or the pendency of an appeal delay the implementation of the decision of the hearing officer.

6. Nothing in this section shall be construed to prevent the use of any evidence of performance to support charges of incompetence brought pursuant to the provisions of section three thousand twenty-a of this article.

§ 5. This act shall take effect July 1, 2015 and shall apply to hearings commenced by the filing or service of charges on or after July 1, 2015, provided that effective immediately, the commissioner of education shall be authorized to promulgate any regulations needed to implement the provisions of this act on such effective date.

#### SUBPART H

Section 1. The education law is amended by adding a new section 211-f to read as follows:

§ 211-f. Takeover and restructuring failing schools. 1. Eligibility for appointment of an external receiver. (a) Failing schools. The commissioner shall designate as failing each of the schools that has been identified under the state's accountability system to be among the lowest achieving five percent of public schools in the state (priority schools) for at least three consecutive school years, or identified as a "priority school" in each applicable year of such period except one school year in which the school was not identified because of an approved closure plan that was not implemented, based upon measures of student achievement and outcomes and a methodology prescribed in the regulations of the commissioner, provided that this list shall not include schools within a special act school district as defined in subdivision eight of section four thousand one of this chapter or schools chartered pursuant to article fifty-six of this chapter. Except as otherwise provided in paragraph (c) of this subdivision, and pursuant to regulations promulgated by the commissioner, a school designated as failing under this paragraph shall be eligible for receivership under this section upon a determination by the commissioner.

(b) Persistently failing schools. Based upon measures of student achievement and outcomes and a methodology prescribed in the regulations of the commissioner, the commissioner shall designate as persistently failing each of the schools that have been identified under the state's accountability system to be among the lowest achieving public schools in the state for ten consecutive school years, based upon identification of the school by the commissioner as: a "priority school" for each applicable year from the two thousand twelve--two thousand thirteen school year to the current school year, or identified as a "priority school" in each applicable year of such period except one year in which the school was not identified because of an approved closure plan that was not implemented; and as a "School Requiring Academic Progress Year 5", "School Requiring Academic Progress Year 6", "School Requiring Academic Progress Year 7" and/or a "School in Restructuring," for each applicable year from the two thousand six--two thousand seven school year to the two thousand eleven--two thousand twelve school year. This designation shall not include schools within a special act school district as defined in subdivision eight of section four thousand one of this chapter or schools chartered pursuant to article fifty-six of this chapter.

(c) Specific provisions. (i) For schools designated as persistently failing pursuant to paragraph (b) of this subdivision, the local district shall continue to operate the school for an additional school year provided that there is a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, including but not limited to measures of student academic achievement and outcomes including those set forth in subdivision six of this section. Notwithstanding any other provision of law, rule or regulation to the contrary, the superintendent shall be vested

with all powers granted to a receiver appointed pursuant to this section for such time period; provided, however that such superintendent shall not be allowed to override any decision of the board of education with respect to his or her employment status. At the end of such year, the department shall conduct a performance review in consultation and cooperation with the district and school staff to determine, based on the performance metrics in the school's model or plan, whether (1) the designation of persistently failing should be removed; (2) the school should remain under continued school district operation with the superintendent vested with the powers of a receiver; or (3) the school should be placed into receivership; provided, however, that a school that makes demonstrable improvement based on the performance metrics and goals herein shall remain under district operation for an additional school year and if such school remains under district operation, it shall continue to be subject to annual review by the department, in consultation and cooperation with the district, under the same terms and conditions.

(ii) For schools designated as failing, but not persistently failing, the local district shall continue to operate the school for two additional school years provided that there is a department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, including but not limited to measures of student academic achievement and outcomes including those set forth in subdivision six of this section. Notwithstanding any other provision of law, rule or regulation to the contrary, the superintendent shall be vested with all powers granted to a receiver appointed pursuant to this section; provided, however that such superintendent shall not be allowed to override any decision of the board of education with respect to his or her employment status. At the end of such two years, the department shall conduct a school performance review in consultation and cooperation with the district and school staff to determine, based on the performance metrics in the school's model or plan, whether (1) the designation of failing should be removed; (2) the school should remain under continued school district operation with the superintendent vested with the powers of a receiver; or (3) the school should be placed into receivership; provided, however, that a school that makes demonstrable improvement based on the performance metrics and goals herein shall remain under district operation for an additional school year and if such school remains under district operation, it shall continue to be subject to such annual review by the department under the same terms and conditions. For schools newly designated as failing after the two thousand sixteen--two thousand seventeen school year, the school shall be immediately eligible for receivership upon such designation.

(iii) Nothing in this paragraph shall be construed to limit (1) a school district's ability to modify, subject to approval by the department, such department approved intervention model or comprehensive education plan, or (2) the commissioner's ability to require a school district to modify such department approved intervention model or comprehensive education plan and require his or her approval of such modifications.

(iv) The district shall provide notice to parents and guardians of the students of the school which may be placed into receivership pursuant to this subdivision and provided further that the district or the commissioner shall hold a public meeting or hearing for purposes of discussing the performance of the school and the construct of receivership.



1-a. Community engagement team. Upon designation as failing or persistently failing pursuant to subdivision one of this section, the district shall establish a community engagement team which shall include community stakeholders, including but not limited to the school principal, parents and guardians, teachers and other school staff and students. Membership of such team may be modified at any time. Such team shall develop recommendations for improvement of the school and shall solicit input through public engagement. The team shall present its recommendations periodically to the school leadership and, as applicable, the receiver.

2.Appointment of a receiver. (a) Upon a determination by the commissioner that a school shall be placed into receivership, the applicable school district shall appoint an independent receiver, subject to the approval of the commissioner, to manage and operate all aspects of the school and to develop and implement a school intervention plan for the school that shall consider the recommendations developed by the community engagement team when creating such plan. The independent receiver may be a non-profit entity, another school district, or an individual. If the school district fails to appoint an independent receiver that meets with the commissioner's approval within sixty days of such determination, the commissioner shall appoint the receiver.

(b) The receiver shall be authorized to manage and operate the failing or persistently failing school and shall have the power to supersede any decision, policy or regulation of the superintendent of schools or chief school officer, or of the board of education or another school officer or the building principal that in the sole judgment of the receiver conflicts with the school intervention plan; provided however that the receiver may not supersede decisions that are not directly linked to the school intervention plan, including but not limited to building usage plans, co-location decisions and transportation of students. The receiver shall have authority to review proposed school district budgets prior to presentation to the district voters, or in the case of a city school district in a city having a population of one hundred twenty-five thousand or more, of the adoption of a contingency budget, prior to approval by the board of education, and to modify the proposed budget to conform to the school intervention plan provided that such modifications shall be limited in scope and effect to the failing or persistently failing school and may not unduly impact other schools in the district. A school under receivership shall operate in accordance with laws regulating other public schools, except as such provisions may conflict with this section.

(c) The commissioner shall contract with the receiver, and the compensation and other costs of the receiver appointed by the commissioner shall be paid from a state appropriation for such purpose, or by the school district, as determined by the commissioner, provided that costs shall be paid by the school district only if there is an open administrative staffing line available for the receiver, and the receiver will be taking on the responsibilities of such open line. Notwithstanding any other provision of law to the contrary, the receiver and any of its employees providing services in the receivership shall be entitled to defense and indemnification by the school district to the same extent as a school district employee. The receiver's contract may be terminated by the commissioner for a violation of law or the commissioner's regulations or for neglect of duty. A receiver appointed to operate a district under this section shall have full managerial and operational control over such school; provided, however, that the board of education

shall remain the employer of record, and provided further that any employment decisions of the board of education may be superseded by the receiver. It shall be the duty of the board of education and the superintendent of schools to fully cooperate with the receiver and willful failure to cooperate or interference with the functions of the receiver shall constitute willful neglect of duty for purposes of section three hundred six of this title. The receiver or the receiver's designee shall be an ex officio non-voting member of the board of education entitled to attend all meetings of the board of education.

3. Before developing the school intervention plan, the receiver shall consult with local stakeholders such as: (a) the board of education; (b) the superintendent of schools; (c) the building principal; (d) teachers assigned to the school and their collective bargaining representative; (e) school administrators assigned to the school and their collective bargaining representative; (f) parents and guardians of students attending the school or their representatives; (g) representatives of applicable state and local social service, health and mental health agencies; (h) as appropriate, representatives of local career education providers, state and local workforce development agencies and the local business community; (i) for elementary schools, representatives of local prekindergarten programs; (j) students attending the school as appropriate; (k) as needed for middle schools, junior high schools, central schools or high schools, representatives of local higher education institutions; and (l) the school stakeholder team set forth in subdivision one-a of this section.

4. In creating the school intervention plan, the receiver shall (i) consider the recommendations developed by the community engagement team set forth in subdivision one-a of this section; (ii) include provisions intended to maximize the rapid academic achievement of students at the school; and (iii) ensure that the plan addresses school leadership and capacity, school leader practices and decisions, curriculum development and support, teacher practices and decisions, student social and emotional developmental health, and family and community engagement. The receiver shall, to the extent practicable, base the plan on the findings of any recent diagnostic review or assessment of the school that has been conducted and, as applied to the school, student outcome data including, but not limited to: (a) student achievement growth data based on state measures; (b) other measures of student achievement; (c) student promotion and graduation rates; (d) achievement and growth data for the subgroups of students used in the state's accountability system; (e) student attendance; and (f) long-term and short-term suspension rates.

5.(a) The receiver shall include the following in the school intervention plan: (i) measures to address social service, health and mental health needs of students in the school and their families in order to help students arrive and remain at school ready to learn; provided that this may include mental health and substance abuse screening; (ii) measures to improve or expand access to child welfare services and, as appropriate, services in the school community to promote a safe and secure learning environment; (iii) as applicable, measures to provide greater access to career and technical education and workforce development services provided to students in the school and their families in order to provide students and families with meaningful employment skills and opportunities; (iv) measures to address achievement gaps for English language learners, students with disabilities and economically disadvantaged students, as applicable; (v) measures to address school climate

and positive behavior support, including mentoring and other youth development programs; and (vi) a budget for the school intervention plan.

(b) As necessary, the commissioner and the commissioners of the department of health, the office of children and family services, the department of labor and other applicable state and local social service, health, mental health and child welfare officials shall coordinate regarding the implementation of the measures described in subparagraphs (i) through (iii) of paragraph (a) of this subdivision that are included in the school intervention plan and shall, subject to appropriation, reasonably support such implementation consistent with the requirements of state and federal law applicable to the relevant programs that each such official is responsible for administering, and grant failing schools priority in competitive grants, as allowable before and during the period of receivership.

6. In order to assess the school across multiple measures of school performance and student success, the school intervention plan shall include measurable annual goals including, but not limited to, the following: (a) student attendance; (b) student discipline including but not limited to short-term and long-term suspension rates; (c) student safety; (d) student promotion and graduation and drop-out rates; (e) student achievement and growth on state measures; (f) progress in areas of academic underperformance; (g) progress among the subgroups of students used in the state's accountability system; (h) reduction of achievement gaps among specific groups of students; (i) development of college and career readiness, including at the elementary and middle school levels; (j) parent and family engagement; (k) building a culture of academic success among students; (l) building a culture of student support and success among faculty and staff; (m) using developmentally appropriate child assessments from pre-kindergarten through third grade, if applicable, that are tailored to the needs of the school; and (n) measures of student learning.

7. (a) Notwithstanding any general or special law to the contrary, in creating and implementing the school intervention plan, the receiver shall, after consulting with stakeholders and the community engagement team, convert schools to community schools to provide expanded health, mental health and other services to the students and their families.

In addition, the receiver may: (i) review and if necessary expand, alter or replace the curriculum and program offerings of the school, including the implementation of research-based early literacy programs, early interventions for struggling readers and the teaching of advanced placement courses or other rigorous nationally or internationally recognized courses, if the school does not already have such programs or courses; (ii) replace teachers and administrators, including school leadership who are not appropriately certified or licensed; (iii) increase salaries of current or prospective teachers and administrators to attract and retain high-performing teachers and administrators; (iv) establish steps to improve hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure; (v) reallocate the uses of the existing budget of the school; (vi) expand the school day or school year or both of the school; (vii) for a school that offers the first grade, add pre-kindergarten and full-day kindergarten classes, if the school does not already have such classes; (viii) in accordance with paragraphs (b) and (c) of this subdivision, to abolish the positions of all members of the teaching and administrative and supervisory staff assigned to the failing or persistently failing

school and terminate the employment of any building principal assigned to such a school, and require such staff members to reapply for their positions in the school if they so choose; (ix) include a provision of a job-embedded professional development for teachers at the school, with an emphasis on strategies that involve teacher input and feedback; (x) establish a plan for professional development for administrators at the school, with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership; and/or (xi) order the conversion of a school in receivership that has been designated as failing or persistently failing pursuant to this section into a charter school, provided that such conversion shall be subject to article fifty-six of this chapter and provided further that such charter conversion school shall operate pursuant to such article and provided further that such charter conversion school shall operate consistent with a community schools model and provided further that such conversion charter school shall be subject to the provisions in subdivisions three, four, five, six, nine, ten, eleven, twelve and thirteen of this section.

(b) Notwithstanding any other provision of law, rule or regulation to the contrary, upon designation of any school of the school district as a failing or persistently failing school pursuant to this section, the abolition of positions of members of the teaching and administrative and supervisory staff of the school shall thereafter be governed by the applicable provisions of section twenty-five hundred ten, twenty-five hundred eighty-five, twenty-five hundred eighty-eight or three thousand thirteen of this chapter as modified by this paragraph. A classroom teacher or building principal who has received two or more composite ratings of ineffective on an annual professional performance review shall be deemed not to have rendered faithful and competent service within the meaning of section twenty-five hundred ten, twenty-five hundred eighty-five, twenty-five hundred eighty-eight or three thousand thirteen of this chapter. When a position of a classroom teacher or building principal is abolished, the services of the teacher or administrator or supervisor within the tenure area of the position with the lowest rating on the most recent annual professional performance review shall be discontinued, provided that seniority within the tenure area of the position shall be used solely to determine which position should be discontinued in the event of a tie.

(c) The receiver may abolish the positions of all teachers and pedagogical support staff, administrators and pupil personnel service providers assigned to a school designated as failing or persistently failing pursuant to this section and require such staff members to reapply for new positions if they so choose. The receiver shall define new positions for the school aligned with the school intervention plan, including selection criteria and expected duties and responsibilities for each position. For administrators and pupil personnel service providers, the receiver shall have full discretion over all such rehiring decisions. For teachers and pedagogical support staff, the receiver shall convene a staffing committee including the receiver, two appointees of the receiver and two appointees selected by the school staff or their collective bargaining unit. The staffing committee will determine whether former school staff reapplying for positions are qualified for the new positions. The receiver shall have full discretion regarding hiring decisions but must fill at least fifty percent of the newly defined positions with the most senior former school staff who are determined by the staffing committee to be qualified. Any remaining vacancies shall be filled by the receiver in consultation with the

staffing committee. Notwithstanding any other provision of law to the contrary, a member of the teaching and pedagogical support, administrative, or pupil personnel service staff who is not rehired pursuant to this paragraph shall not have any right to bump or displace any other person employed by the district, but shall be placed on a preferred eligibility list in accordance with the applicable provisions of section twenty-five hundred ten, twenty-five hundred eighty-five, twenty-five hundred eighty-eight or three thousand thirteen of this chapter. Teachers rehired pursuant to this paragraph shall maintain their prior status as tenured or probationary, and a probationary teacher's probation period shall not be changed.

(d) For a school with English language learners, the professional development and planning time for teachers and administrators identified in clauses (vi) and (vii) of the closing paragraph of paragraph (a) of this subdivision, shall include specific strategies and content designed to maximize the rapid academic achievement of the English language learners.

8.(a) In order to maximize the rapid achievement of students at the applicable school, the receiver may request that the collective bargaining unit or units representing teachers and administrators and the receiver, on behalf of the board of education, negotiate a receivership agreement that modifies the applicable collective bargaining agreement or agreements with respect to any failing schools in receivership applicable during the period of receivership. The receivership agreement may address the following subjects: the length of the school day; the length of the school year; professional development for teachers and administrators; class size; and changes to the programs, assignments, and teaching conditions in the school in receivership. The receivership agreement shall not provide for any reduction in compensation unless there shall also be a proportionate reduction in hours and shall provide for a proportionate increase in compensation where the length of the school day or school year is extended. The receivership agreement shall not alter the remaining terms of the existing/underlying collective bargaining agreement which shall remain in effect.

(b) The bargaining shall be conducted between the receiver and the collective bargaining unit in good faith and completed not later than thirty days from the point at which the receiver requested that the bargaining commence. The agreement shall be subject to ratification within ten business days by the bargaining unit members in the school. If the parties are unable to reach an agreement within thirty days or if the agreement is not ratified within ten business days by the bargaining unit members of the school, the parties shall submit any remaining unresolved issues to the commissioner who shall resolve any unresolved issues within five days, in accordance with standard collective bargaining principles.

(c) For purposes only for schools designated as failing pursuant to subparagraph (ii) of paragraph (c) of subdivision one of this section, bargaining shall be conducted between the receiver and the collective bargaining unit in good faith and completed not later than thirty days from the point at which the receiver requested that the bargaining commence. The agreement shall be subject to ratification within ten business days by the bargaining unit members of the school. If the parties are unable to reach an agreement within thirty days or if the agreement is not ratified within ten business days by the bargaining unit members of the school, a conciliator shall be selected through the American Arbitration Association, who shall forthwith forward to the



parties a list of three conciliators, each of whom shall have professional experience in elementary and secondary education, from which the parties may agree upon a single conciliator provided, however, that if the parties cannot select a conciliator from among the three within three business days, the American Arbitration Association shall select a conciliator from the list of names within one business day, and the conciliator shall resolve all outstanding issues within five days. After such five days, if any unresolved issues remain, the parties shall submit such issues to the commissioner who shall resolve such issues within five days, in accordance with standard collective bargaining principles.

9.A final school intervention plan shall be submitted to the commissioner for approval and, upon approval, shall be issued by the receiver within six months of the receiver's appointment. A copy of such plan shall be provided to the board of education, the superintendent of schools and the collective bargaining representatives of teachers and administrators of the school district. The plan shall be publicly available and shall be posted on the department's website and the school district's website, and the school district shall provide notice to parents of such school intervention plan and its availability.

10.Each school intervention plan shall be authorized for a period of not more than three years. The receiver may develop additional components of the plan and shall develop annual goals for each component of the plan in a manner consistent with this section, all of which must be approved by the commissioner. The receiver shall be responsible for meeting the goals of the school intervention plan.

11.The receiver shall provide a written report to the board of education, the commissioner, and the board of regents on a quarterly basis to provide specific information about the progress being made on the implementation of the school intervention plan. One of the quarterly reports shall be the annual evaluation of the intervention plan under subdivision twelve of this section.

12.(a) The commissioner shall, in consultation and cooperation with the district and the school staff, evaluate each school with an appointed receiver at least annually. The purpose of the evaluation shall be to determine whether the school has met the annual goals in its school intervention plan and to assess the implementation of the plan at the school. The evaluation shall be in writing and shall be submitted to the superintendent and the board of education not later than September first for the preceding school year. The evaluation shall be submitted in a format determined by the commissioner.

(b) If the commissioner determines that the school has met the annual performance goals stated in the school intervention plan, the evaluation shall be considered sufficient and the implementation of the school intervention plan shall continue. If the commissioner determines that the school has not met one or more goals in the plan, the commissioner may require modification of the plan.

13.Upon the expiration of a school intervention plan for a school with an appointed receiver, the commissioner, in consultation and cooperation with the district, shall conduct an evaluation of the school to determine whether the school has improved sufficiently, requires further improvement or has failed to improve. On the basis of such review, the commissioner, in consultation and cooperation with the district, may: (a) renew the plan with the receiver for an additional period of not more than three years; (b) if the failing or persistently failing school remains failing and the terms of the plan have not been substantially

met, terminate the contract with the receiver and appoint a new receiver; or (c) determine that the school has improved sufficiently for the designation of failing or persistently failing to be removed.

14.Nothing in this section shall prohibit the commissioner or a local district from closing a school pursuant to the regulations of the commissioner.

15.The commissioner shall be authorized to adopt regulations to carry out the provisions of this section.

16.The commissioner shall report annually to the governor and the legislature on the implementation and fiscal impact of this section. The report shall include, but not be limited to, a list of all schools currently designated as failing or persistently failing and the strategies used in each of the schools to maximize the rapid academic achievement of students.

17.The commissioner shall provide any relevant data that is needed to implement and comply with the requirements of the chapter of the laws of two thousand fifteen which added this section to any school district that has a school or schools designated as failing or persistently failing pursuant to this section by August fifteenth of each year, to the fullest extent practicable. Provided that the commissioner shall provide guidance to districts and may establish a model intervention plan. And provided further, that the commissioner shall make available to the public any school intervention plan, or other department-approved intervention model or comprehensive education plan of a school or district provided that such measures are consistent with all federal and state privacy laws.

§ 2. This act shall take effect immediately.

§ 3. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 4. This act shall take effect immediately provided, however, that the applicable effective date of Subparts A through H of this act shall be as specifically set forth in the last section of such Subparts.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through EE of this act shall be as specifically set forth in the last section of such Parts.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS

### Temporary President of the Senate

CARL E. HEASTIE

Speaker of the Assembly



Memo Text Not Found for Bill S2006B

# Exhibit d

# STATE OF NEW YORK

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S. 2010

A. 3010

## SENATE - ASSEMBLY

January 21, 2015

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INSENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

INASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

ANACT to amend the education law, in relation to admission requirements for graduate-level teacher education programs, institution deregistration and suspension, teacher registration and continuing teacher education requirements (Subpart A); to amend the education law, in relation to establishing the New York state masters-in-education teacher incentive scholarship program (Subpart B); to amend the education law, in relation to the appointment of teachers, principals, administrators, supervisors and all other members of the teaching and supervising staff of school districts (Subpart C); to amend the education law, in relation to takeover and restructuring of failing school districts (Subpart D); to amend the education law, in relation to disciplinary procedures for ineffective teaching or performance by a building principal or teacher (Subpart E); and to amend the education law, in relation to charter schools (Subpart F) (Part A); to amend the education law, in relation to annual professional performance reviews for classroom teachers and building principals (Part B); to amend chapter 91 of the laws of 2002 amending the education law and other laws relating to the reorganization of the New York city school construction authority, board of education and community boards, in relation to the effectiveness thereof; and to amend chapter 345 of the laws of 2009 amending the education law relating to the New York city board of education, chancellor, community councils and community superintendents, in relation to the effectiveness thereof (Part C); and to amend the education law, in relation to school aid increase linkage and to amend part A of chapter 57 of the laws of 2013 relating to school district eligibility for an increase in apportionment of school aid and implementation of standards for conducting annual professional performance reviews to determine teacher and principal effectiveness, in relation to apportionment of general support for public schools (Part D)

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EXPLANATION--Matter in italics (underscored) is new; matter in  
brackets [ ] is old law to be omitted.

LBD12575-01-5

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. This act enacts into law major components of legislation  
2 which are necessary to implement the state fiscal plan for the 2015-2016  
3 state fiscal year. Each component is wholly contained within a Part  
4 identified as Parts A through D. The effective date for each particular  
5 provision contained within such Part is set forth in the last section of  
6 such Part. Any provision in any section contained within a Part, includ-  
7 ing the effective date of the Part, which makes a reference to a section  
8 "of this act", when used in connection with that particular component,  
9 shall be deemed to mean and refer to the corresponding section of the  
10 Part in which it is found. Section three of this act sets forth the  
11 general effective date of this act.

12 PART A

13 Section 1. This act enacts into law components of legislation which  
14 are necessary to implement the provisions relating to the prosecution of  
15 misconduct by public officials. Each component is wholly contained with-  
16 in a Subpart identified as Subparts A through F. The effective date for  
17 each particular provision contained within such Subpart is set forth in  
18 the last section of such Subpart. Any provision in any section contained  
19 within a Subpart, including the effective date of the Subpart, which  
20 makes a reference to a section "of this act", when used in connection  
21 with that particular component, shall be deemed to mean and refer to the  
22 corresponding section of the Subpart in which it is found. Section three  
23 of this act sets forth the general effective date of this act.

24 SUBPART A

25 Section 1. The education law is amended by adding a new section 210-a  
26 to read as follows:

27 § 210-a. Admission requirements for graduate-level teacher education  
28 programs. Each institution registered by the department with graduate-  
29 level teacher education programs shall adopt rigorous selection criteria  
30 geared to predicting a candidate's academic success in its program,  
31 including but not limited to, a minimum score on the graduate record  
32 examination and/or a substantially equivalent admission examination, as  
33 determined by the institution, and achievement of a cumulative grade  
34 point average of 3.0 or higher in the candidate's undergraduate program.

35 § 2. The education law is amended by adding a new section 210-b to  
36 read as follows:

37 § 210-b. Institution deregistration and suspension. 1. The department  
38 shall de-register and suspend the operation of an institution if for  
39 three consecutive academic years, fewer than fifty percent of its  
40 students pass each examination that they have taken that is required for  
41 certification. Provided, however, the institution may be permitted to  
42 continue operations if the institution makes a written request to the  
43 department to be permitted to continue operations and the commissioner  
44 grants such a request and in writing states specific reasons for allow-  
45 ing the institution to continue operations. For purposes of this para-  
46 graph, students who have satisfactorily completed the institution's

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47 program shall mean students who have met each educational requirement of  
48 the program, excluding any institutional requirement that the student  
49 pass each required New York State teacher certification examination for

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1 a teaching certificate and/or school building leader examination for a  
2 school building leader certificate in order to complete the program.  
3 Students satisfactorily meeting each educational requirement may include  
4 students who earn a degree or students who complete each educational  
5 requirement without earning a degree. When making such a determination,  
6 the department shall consider the performance on each certification  
7 examination of those students completing an examination not more than  
8 three years before the end of the academic year in which the program is  
9 completed or not later than the September thirtieth following the end of  
10 such academic year, where academic year is defined as July first through  
11 June thirtieth, and shall consider only the highest score of individuals  
12 taking a test more than once.

13 2. The institution may submit an appeal as prescribed by the commis-  
14 sioner in regulations. A de-registered institution shall cease oper-  
15 ations and shall not educate any students while awaiting the commis-  
16 sioner's decision on their application for re-registration.

17 3. The department may also, as prescribed by the commissioner in regu-  
18 lations, conduct expedited registration reviews for institutions that  
19 have demonstrated poor performance on student outcomes.

20 § 3. Section 3006 of the education law is amended by adding a new  
21 subdivision 3 to read as follows:

22 3. Registration. a. Commencing with the two thousand fifteen--two  
23 thousand sixteen school year, any holder of a teaching certificate in  
24 the classroom teaching service, teaching assistant certificate, or  
25 educational leadership certificate that is valid for life as prescribed  
26 by the commissioner in regulations shall be required to register with  
27 the department every five years in accordance with regulations of the  
28 commissioner. Such regulations shall prescribe the date or dates by  
29 which applications for initial registration must be submitted and may  
30 provide for staggered initial registration and/or rolling re-registra-  
31 tion so that re-registrations are distributed as equally as possible  
32 throughout the year.

33 b. The department shall post an application for registration on its  
34 website. An application for registration and the required registration  
35 fee shall be submitted together with or as part of the application for a  
36 registration certificate. A person initially certified or resuming prac-  
37 tice after a lapse in registration during the last two years of a five-  
38 year registration period shall receive a prorated refund of one-fifth of  
39 the total registration fee for each full year of the registration period  
40 that elapsed prior to the date of registration. Except as otherwise  
41 provided in this section, the department shall renew the registration of  
42 each certificate holder upon receipt of a proper application, on a form  
43 prescribed by the department, and the registration fee. Any certificate  
44 holder who fails to register by the beginning of the appropriate regis-  
45 tration period shall be required to pay an additional fee for the late  
46 filing of ten dollars for each month that registration has been delayed.  
47 No licensee resuming practice after a lapse of registration shall be  
48 permitted to practice without actual possession of the registration  
49 certificate.

50 c. Any certificate holder who is not engaging in the practice of his  
51 or her profession in this state and does not desire to register shall so  
52 advise the department. Such certificate holder shall not be required to  
53 pay an additional fee for failure to register at the beginning of the

54 registration period.

55 d. Certificate holders shall notify the department of any change of

56 name or mailing address within thirty days of such change. Failure to



1 register or provide such notice within one hundred eighty days of such  
2 change shall constitute grounds for moral character review under subdi-  
3 vision seven of section three hundred five of this title.

4 e. The fee for replacement of a lost registration certificate or  
5 license or for registration of an additional office shall be ten  
6 dollars.

7 f. An additional fee of twenty-five dollars shall be charged for the  
8 registration of any applicant whose check has been dishonored, or in the  
9 case of a credit card payment, where the payment is contested and is not  
10 honored by the credit card company.

11 § 4. The education law is amended by adding a new section 3006-a to  
12 read as follows:

13 § 3006-a. Registration and continuing teacher education requirements  
14 for holders of professional certificates in the classroom teaching  
15 service, holders of level III teaching assistant certificates, holders  
16 of professional certificates in the educational leadership service. 1.

17 a. Each holder of a professional certificate in the classroom teaching  
18 service, holder of a level III teaching assistant certificate and holder  
19 of a professional certificate in the educational leadership service  
20 shall be required to register every five years with the department to  
21 practice in the state and shall comply with the provisions of the  
22 continuing teacher education requirements set forth in this section.

23 b. Any of the certified individuals described in paragraph a of this  
24 section who do not satisfy the continuing teacher education requirements  
25 shall not practice until they have met such requirements, have paid all  
26 applicable fees, and have been issued a registration or conditional  
27 registration certificate.

28 c. Holders of a professional certificate in the classroom teaching  
29 service, holders of a level III teaching assistance certificate and  
30 holders of a professional certificate in the educational leadership  
31 service and any other certified individual required by the commissioner  
32 to register triennially shall be exempt from the continuing teacher  
33 education requirement for the five-year registration period during which  
34 they are first licensed by the department. In accordance with the intent  
35 of this section, adjustments to the continuing teacher education  
36 requirement may be granted by the department for reasons of health  
37 certified by a physician, for extended active duty with armed forces of  
38 the United States, or for other good cause acceptable to the department  
39 which may prevent compliance.

40 d. Certificate holders who are not practicing as a teacher, teaching  
41 assistant or educational leader in a school district or board of cooper-  
42 ative educational services in this state shall be exempt from the  
43 continuing teacher education requirement upon the filing of a written  
44 statement with the department declaring such status. Any holder of a  
45 professional certificate in the classroom teaching service, holder of a  
46 level III teaching assistant certificate and holder of a professional  
47 certificate in the educational leadership service who resumes practice  
48 during the five-year registration period shall notify the department  
49 prior to resuming practice and shall pay the current continuing teacher  
50 education fee and shall meet such continuing teacher education require-  
51 ments as prescribed in regulations of the commissioner.

52 2. a. During each five-year registration period beginning on or after  
53 July first, two thousand fifteen, an applicant for registration shall

54 successfully complete a minimum of 100 hours of continuing teacher  
55 education, as defined by the commissioner. The department shall issue

1 rigorous standards for courses and programs that shall qualify as  
2 continuing teacher education pursuant to this section.

3 b. A certified individual who has not satisfied the continuing teacher  
4 education requirements shall not be issued a five-year registration  
5 certificate by the department and shall not practice unless and until a  
6 registration or conditional registration certificate is issued as  
7 provided in subdivision three of this section. For purposes of this  
8 subdivision, "continuing teacher education requirements" shall mean  
9 formal programs of learning which contribute to growth in the profes-  
10 sional knowledge and professional competence of the certificate holder  
11 which meet the standards prescribed by regulations of the commissioner.  
12 To fulfill the continuing teacher education requirement, programs must  
13 be taken from sponsors approved by the department, pursuant to the regu-  
14 lations of the commissioner.

15 3. The department, in its discretion, may issue a conditional regis-  
16 tration to a teacher, teaching assistant or educational leader in a  
17 school district or BOCES in this state who fails to meet the continuing  
18 education requirements established in subdivision two of this section  
19 but who agrees to make up any deficiencies and take any additional  
20 education which the department may require. The fee for such a condi-  
21 tional registration shall be the same as, and in addition to, the fee  
22 for the triennial registration. The duration of such conditional regis-  
23 tration shall be determined by the department. Any holder of a profes-  
24 sional certificate in the classroom teaching service, holder of a level  
25 III teaching assistant certificate or holder of a professional certif-  
26 icate in the educational leadership service and any other certified  
27 individual required by the commissioner to register triennially who is  
28 notified of the denial of registration for failure to submit evidence,  
29 satisfactory to the department, of required continuing education and who  
30 practices without such registration, shall be subject to moral character  
31 review under subdivision seven of section three hundred five of this  
32 title.

33 4. The registration fee shall be determined by the regents, and shall  
34 be payable on or before the first day of each triennial registration  
35 period.

36 § 5. This act shall take effect July 1, 2015, provided that the  
37 authority of the board of regents to adopt regulations necessary to  
38 implement the provisions of this act on such effective date shall take  
39 effect immediately.

#### SUBPART B

41 Section 1. The education law is amended by adding a new section 669-f  
42 to read as follows:

43 § 669-f. New York state masters-in-education teacher incentive schol-  
44 arship program. 1. Eligibility. Students who are matriculated in an  
45 approved master's degree in education program at a New York state public  
46 institution of higher education leading to a career as a teacher in  
47 public elementary or secondary education shall be eligible for an award  
48 under this section, provided the applicant: (a) earned an undergraduate  
49 degree from a college located in New York state; (b) was a New York  
50 state resident while earning such undergraduate degree; (c) achieved  
51 academic excellence as an undergraduate student, as defined by the

52 corporation in regulation; (d) enrolls in full-time study in an approved  
53 master's degree in education program at a New York state public institu-  
54 tion of higher education leading to a career as a teacher in public

1 elementary or secondary education; (e) signs a contract with the corpo-  
2 ration agreeing to teach in a classroom setting on a full-time basis for  
3 five years in a school located within New York state providing public  
4 elementary or secondary education recognized by the board of regents or  
5 the university of the state of New York, including charter schools  
6 authorized pursuant to article fifty-six of this chapter; and (f)  
7 complies with the applicable provisions of this article and all require-  
8 ments promulgated by the corporation for the administration of the  
9 program.

10 2. Within amounts appropriated therefor, awards shall be granted to  
11 applicants that the corporation has certified are eligible to receive  
12 such awards. Up to five hundred awards may be granted to new recipients  
13 annually. Such awards shall be granted upon successful completion of  
14 each term, as defined by the corporation.

15 3. An award shall entitle the recipient to annual payments for not  
16 more than two academic years of full-time graduate study leading to  
17 certification as an elementary or secondary classroom teacher.

18 4. The corporation shall grant such awards in an amount equal to the  
19 annual tuition charged to state resident students attending a graduate  
20 program full-time at the state university of New York, or actual tuition  
21 charged, whichever is less; provided, however, (i) a student who  
22 receives educational grants and/or scholarships that cover the student's  
23 full cost of attendance shall not be eligible for an award under this  
24 program; (ii) for a student who receives educational grants and/or scho-  
25 larships that cover less than the student's full cost of attendance,  
26 such grants and/or scholarships shall not be deemed duplicative of this  
27 program and may be held concurrently with an award under this program,  
28 provided that the combined benefits do not exceed the student's full  
29 cost of attendance; and (iii) an award under this program shall be  
30 applied to tuition after the application of all other educational grants  
31 and scholarships limited to tuition and shall be reduced in an amount  
32 equal to such educational grants and/or scholarships. Upon notification  
33 of an award under this program, the institution shall defer the amount  
34 of tuition equal to the award. No award shall be final until the recipi-  
35 ent's successful completion of a term has been certified by the institu-  
36 tion. A recipient of an award under this program shall not be eligible  
37 for an award under the New York state math and science teaching incen-  
38 tive program.

39 5. The corporation shall convert to a student loan the full amount of  
40 the award granted pursuant to this section, plus interest, according to  
41 a schedule to be determined by the corporation if: (a) two years after  
42 the completion of the degree program and receipt of initial certifi-  
43 cation it is found that a recipient is not teaching in a public school  
44 located within New York state providing elementary or secondary educa-  
45 tion recognized by the board of regents or the university of the state  
46 of New York, including charter schools authorized pursuant to article  
47 fifty-six of this chapter; (b) a recipient has not taught in a public  
48 school located within New York state providing elementary or secondary  
49 education recognized by the board of regents or the university of the  
50 state of New York, including charter schools authorized pursuant to  
51 article fifty-six of this chapter for five of the seven years after the  
52 completion of the graduate degree program and receipt of initial certifi-  
53 cation; (c) a recipient fails to complete his or her graduate degree

54 program in education; (d) a recipient fails to receive or maintain his  
55 or her teaching certificate or license in New York state; or (e) a  
56 recipient fails to respond to requests by the corporation for the status

1 of his or her academic or professional progress. The terms and condi-  
2 tions of this subdivision shall be deferred for any interruption in  
3 graduate study or employment as established by the rules and regulations  
4 of the corporation. Any obligation to comply with such provisions as  
5 outlined in this section shall be cancelled upon the death of the recip-  
6 ient. Notwithstanding any provisions of this subdivision to the contra-  
7 ry, the corporation is authorized to promulgate rules and regulations to  
8 provide for the waiver or suspension of any financial obligation which  
9 would involve extreme hardship.

10 6. The corporation is authorized to promulgate rules and regulations,  
11 and may promulgate emergency regulations, necessary for the implementa-  
12 tion of the provisions of this section including, but not limited to,  
13 the criteria for the provision of awards on a competitive basis, and the  
14 rate of interest charged for repayment of the student loan.

15 § 2. This act shall take effect immediately and shall be deemed to  
16 have been in full force and effect on and after April 1, 2015.

#### SUBPART C

18 Section 1. Paragraphs (a) and (b) of subdivision 1 of section 2509 of  
19 the education law, paragraph (a) as amended by chapter 551 of the laws  
20 of 1976, and paragraph (b) as amended by chapter 468 of the laws of  
21 1975, are amended to read as follows:

22 (a) i. Teachers and all other members of the teaching staff[,]  
23 appointed prior to July first, two thousand fifteen and authorized by  
24 section twenty-five hundred three of this article, shall be appointed by  
25 the board of education, upon the recommendation of the superintendent of  
26 schools, for a probationary period of three years, except that in the  
27 case of a teacher who has rendered satisfactory service as a regular  
28 substitute for a period of two years or as a seasonally licensed per  
29 session teacher of swimming in day schools who has served in that capac-  
30 ity for a period of two years and has been appointed to teach the same  
31 subject in day schools on an annual salary, the probationary period  
32 shall be limited to one year; provided, however, that in the case of a  
33 teacher who has been appointed on tenure in another school district  
34 within the state, the school district where currently employed, or a  
35 board of cooperative educational services, and who was not dismissed  
36 from such district or board as a result of charges brought pursuant to  
37 subdivision one of section three thousand twenty-a of this chapter, the  
38 probationary period shall not exceed two years. The service of a person  
39 appointed to any of such positions may be discontinued at any time  
40 during such probationary period, on the recommendation of the super-  
41 intendent of schools, by a majority vote of the board of education. Each  
42 person who is not to be recommended for appointment on tenure shall be  
43 so notified by the superintendent of schools in writing not later than  
44 sixty days immediately preceding the expiration of his probationary  
45 period.

46 ii. Notwithstanding any other provision of law or regulation to the  
47 contrary, teachers and all other members of the teaching staff appointed  
48 on or after July first, two thousand fifteen and authorized by section  
49 twenty-five hundred three of this article, shall be appointed by the  
50 board of education, upon the recommendation of the superintendent of  
51 schools, for a probationary period of five years, except that in the

52 case of a teacher who has rendered satisfactory service as a regular  
53 substitute for a period of two years or as a seasonally licensed per  
54 session teacher of swimming in day schools who has served in that capac-



ity for a period of two years and has been appointed to teach the same subject in day schools on an annual salary, the teacher shall be appointed for a probationary period of three years; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a of this chapter, the teacher shall be appointed for a probationary period of four years. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation of the superintendent of schools, by a majority vote of the board of education. Each person who is not to be recommended for appointment on tenure shall be so notified by the superintendent of schools in writing not later than sixty days immediately preceding the expiration of his/her probationary period.

(b) i. Administrators, directors, supervisors, principals and all other members of the supervising staff, except associate, assistant and other superintendents[,], appointed prior to July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools for a probationary period of three years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

ii. Notwithstanding any other provision of law or regulation to the contrary, administrators, directors, supervisors, principals and all other members of the supervising staff, except associate, assistant and other superintendents, appointed on or after July first, two thousand fifteen and authorized by section twenty-five hundred three of this article, shall be appointed by the board of education, upon the recommendation of the superintendent of schools for a probationary period of five years. The service of a person appointed to any of such positions may be discontinued at any time during the probationary period on the recommendation of the superintendent of schools, by a majority vote of the board of education.

§ 2. Subdivision 2 of section 2509 of the education law, as amended by section 6 of part A of chapter 57 of the laws of 2007, is amended to read as follows:

2. a. At the expiration of the probationary term of any persons appointed for such term prior to July first, two thousand fifteen, or within six months prior thereto, the superintendent of schools shall make a written report to the board of education recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory[, consistent with any applicable rules of the board of regents adopted pursuant to section three thousand twelve-b of this chapter]. By a majority vote the board of education may then appoint on tenure any or all of the persons recommended by the superintendent of schools. Such persons and all others employed in the teaching service of the schools of such school district who have served the full probationary period shall hold their respective positions during good behavior and efficient and competent service, and shall not be

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54 removable except for cause after a hearing as provided by section three  
55 thousand twenty-a of [such law] this chapter. Failure to maintain

1 certification as required by this chapter and the regulations of the  
2 commissioner of education shall constitute cause for removal.

3     b. For persons appointed on or after July first, two thousand fifteen,  
4 at the expiration of the probationary term of any persons appointed for  
5 such term, or within six months prior thereto, the superintendent of  
6 schools shall make a written report to the board of education recommend-  
7 ing for appointment on tenure those persons who have been found compe-  
8 tent, efficient and satisfactory and in the case of a classroom teacher  
9 or building principal, who have received composite annual professional  
10 performance review ratings pursuant to three thousand twelve-c of this  
11 chapter, of either effective or highly effective in each of the five  
12 preceding years. By a majority vote, the board of education may then  
13 appoint on tenure any or all of the persons recommended by the super-  
14 intendent of schools. Notwithstanding any other provision of law, rule  
15 or regulation to the contrary, if no affirmative action is taken by the  
16 board of education to terminate a classroom teacher or building princi-  
17 pal, or to approve or deny tenure to a classroom teacher or building  
18 principal at the expiration of the probationary period, the classroom  
19 teacher or building principal shall remain in probationary status until  
20 the end of the school year in which such teacher or principal has  
21 received such ratings of effective or highly effective for the five  
22 preceding school years, during which time a board of education shall  
23 either discontinue the services of such person, deny tenure or approve  
24 tenure for those classroom teachers or building principals who otherwise  
25 have been found competent, efficient and satisfactory. Provided, howev-  
26 er, that the board of education may grant tenure contingent upon a  
27 classroom teacher's or building principal's receipt of such a rating of  
28 effective or highly effective in the fifth year, and if such contingency  
29 is not met, the grant of tenure shall be void and unenforceable and the  
30 teacher's or principal's probationary period shall be extended in  
31 accordance with this subdivision. Such persons who have been recommended  
32 for tenure and all others employed in the teaching service of the  
33 schools of such school district who have served the full probationary  
34 period as extended pursuant to this subdivision shall hold their respec-  
35 tive positions during good behavior and efficient and competent service,  
36 and shall not be removable except for cause after a hearing as provided  
37 by section three thousand twenty-a of this chapter. Failure to maintain  
38 certification as required by this chapter and the regulations of the  
39 commissioner of education shall constitute cause for removal.

40     § 3. Subdivisions 1, 5 and 6 of section 2573 of the education law,  
41 subdivision 1 as amended by chapter 732 of the laws of 1971, paragraph  
42 (a) of subdivision 1 as amended by chapter 640 of the laws of 1983,  
43 paragraph (b) of subdivision 1 as amended by chapter 468 of the laws of  
44 1975, subdivision 5 and 6 as amended by section 7 of part A of chapter  
45 57 of the laws of 2007, are amended to read as follows:

46     1. (a) i. Teachers and all other members of the teaching staff,  
47 appointed prior to July first, two thousand fifteen and authorized by  
48 section twenty-five hundred fifty-four of this article, shall be  
49 appointed by the board of education, upon the recommendation of the  
50 superintendent of schools, for a probationary period of three years,  
51 except that in the case of a teacher who has rendered satisfactory  
52 service as a regular substitute for a period of two years or as a  
53 seasonally licensed per session teacher of swimming in day schools who

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54 has served in that capacity for a period of two years and has been  
55 appointed to teach the same subject in day schools on an annual salary,  
56 the probationary period shall be limited to one year; provided, however,

1 that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently  
2 employed, or a board of cooperative educational services, and who was  
3 not dismissed from such district or board as a result of charges brought  
4 pursuant to subdivision one of section three thousand twenty-a of this  
5 chapter, the probationary period shall not exceed two years; provided,  
6 however, that in cities with a population of one million or more, a  
7 teacher appointed under a newly created license, for teachers of reading  
8 and of the emotionally handicapped, to a position which the teacher has  
9 held for at least two years prior to such appointment while serving on  
10 tenure in another license area who was not dismissed as a result of  
11 charges brought pursuant to subdivision one of section three thousand  
12 twenty-a of this chapter, the probationary period shall be one year. The  
13 service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation  
14 of the superintendent of schools, by a majority vote of the board of  
15 education. Each person who is not to be recommended for appointment on  
16 tenure shall be so notified by the superintendent of schools in writing  
17 not later than sixty days immediately preceding the expiration of his  
18 probationary period. In city school districts having a population of  
19 four hundred thousand or more, persons with licenses obtained as a  
20 result of examinations announced subsequent to the twenty-second day of  
21 May, nineteen hundred sixty-nine appointed upon conditions that all  
22 announced requirements for the position be fulfilled within a specified  
23 period of time, shall not acquire tenure unless and until such requirements  
24 have been completed within the time specified for the fulfillment  
25 of such requirements, notwithstanding the expiration of any probationary  
26 period. In all other city school districts subject to the provisions of  
27 this article, failure to maintain certification as required by this  
28 article and by the regulations of the commissioner of education shall be  
29 cause for removal within the meaning of subdivision five of this  
30 section.

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33 ii. Teachers and all other members of the teaching staff appointed on  
34 or after July first, two thousand fifteen and authorized by section  
35 twenty-five hundred fifty-four of this article, shall be appointed by  
36 the board of education, upon the recommendation of the superintendent of  
37 schools, for a probationary period of five years, except that in the  
38 case of a teacher who has rendered satisfactory service as a regular  
39 substitute for a period of two years or as a seasonally licensed per  
40 session teacher of swimming in day schools who has served in that capacity  
41 for a period of two years and has been appointed to teach the same  
42 subject in day schools on an annual salary, the teacher shall be  
43 appointed for a probationary period of three years; provided, however,  
44 that in the case of a teacher who has been appointed on tenure in another  
45 school district within the state, the school district where currently  
46 employed, or a board of cooperative educational services, and who was  
47 not dismissed from such district or board as a result of charges brought  
48 pursuant to subdivision one of section three thousand twenty-a of this  
49 chapter, the teacher shall be appointed for a probationary period of  
50 four years; provided, however, that in cities with a population of one  
51 million or more, a teacher appointed under a newly created license, for  
52 teachers of reading and of the emotionally handicapped, to a position  
53 which the teacher has held for at least two years prior to such appoint-

54 ment while serving on tenure in another license area who was not  
55 dismissed as a result of charges brought pursuant to subdivision one of  
56 section three thousand twenty-a of this chapter, the teacher shall be

1 appointed for a probationary period of three years. The service of a  
2 person appointed to any of such positions may be discontinued at any  
3 time during such probationary period, on the recommendation of the  
4 superintendent of schools, by a majority vote of the board of education.  
5 Each person who is not to be recommended for appointment on tenure shall  
6 be so notified by the superintendent of schools in writing not later  
7 than sixty days immediately preceding the expiration of his probationary  
8 period. In all city school districts subject to the provisions of this  
9 article, failure to maintain certification as required by this article  
10 and by the regulations of the commissioner of education shall be cause  
11 for removal within the meaning of subdivision five of this section.

12 (b) i. Administrators, directors, supervisors, principals and all  
13 other members of the supervising staff, except executive directors,  
14 associate, assistant, district and community superintendents and examin-  
15 ers, appointed prior to July first, two thousand fifteen and authorized  
16 by section twenty-five hundred fifty-four of this article, shall be  
17 appointed by the board of education, upon the recommendation of the  
18 superintendent or chancellor of schools, for a probationary period of  
19 three years. The service of a person appointed to any of such positions  
20 may be discontinued at any time during the probationary period on the  
21 recommendation of the superintendent of schools, by a majority vote of  
22 the board of education.

23 ii. Administrators, directors, supervisors, principals and all other  
24 members of the supervising staff, except executive directors, associate,  
25 assistant, district and community superintendents and examiners,  
26 appointed on or after July 1, 2015 and authorized by section twenty-five  
27 hundred fifty-four of this article, shall be appointed by the board of  
28 education, upon the recommendation of the superintendent or chancellor  
29 of schools, for a probationary period of five years provided that such  
30 probationary period may be extended in accordance with paragraph (b) of  
31 subdivision five of this section. The service of a person appointed to  
32 any of such positions may be discontinued at any time during the proba-  
33 tionary period on the recommendation of the superintendent of schools,  
34 by a majority vote of the board of education.

35 5. (a) At the expiration of the probationary term of any persons  
36 appointed for such term prior to July first, two thousand fifteen, the  
37 superintendent of schools shall make a written report to the board of  
38 education recommending for permanent appointment those persons who have  
39 been found competent, efficient and satisfactory[, consistent with any  
40 applicable rules of the board of regents adopted pursuant to section  
41 three thousand twelve-b of this chapter]. Such persons and all others  
42 employed in the teaching, service of the schools of a city, who have  
43 served the full probationary period, shall hold their respective posi-  
44 tions during good behavior and efficient and competent service, and  
45 shall not be removable except for cause after a hearing as provided by  
46 section three thousand twenty-a of this chapter.

47 (b) At the expiration of the probationary term of any persons  
48 appointed for such term on or after July first, two thousand fifteen,  
49 the superintendent of schools shall make a written report to the board  
50 of education recommending for permanent appointment those persons who  
51 have been found competent, efficient and satisfactory and, in the case  
52 of a classroom teacher or building principal, who have received compos-  
53 ite annual professional performance review ratings pursuant to section

54 three thousand twelve-c of this chapter, of either effective or highly  
55 effective in each of the five preceding years. Notwithstanding any other  
56 provision of law, rule or regulation to the contrary, if no affirmative



1 action is taken by the board of education to terminate a classroom  
2 teacher or building principal, or to approve or deny tenure to a class-  
3 room teacher or building principal at the expiration of the probationary  
4 period, the classroom teacher or building principal shall remain in  
5 probationary status until the end of the school year in which such  
6 teacher or principal has received such ratings of effective or highly  
7 effective for the five preceding school years, during which time a board  
8 of education shall either discontinue the services of such person, deny  
9 tenure or approve tenure for those classroom teachers or building prin-  
10 cipals who otherwise have been found competent, efficient and satisfac-  
11 tory. Provided, however, that the board of education may grant tenure  
12 contingent upon a classroom teacher's or building principal's receipt of  
13 such a rating of effective or highly effective in the fifth year, and if  
14 such contingency is not met, the grant of tenure shall be void and unen-  
15 forceable and the teacher's or principal's probationary period shall be  
16 extended in accordance with this subdivision. Such persons who have been  
17 recommended for tenure and all others employed in the teaching service  
18 of the schools of such school district who have served the full proba-  
19 tionary period as extended pursuant to this subdivision shall hold their  
20 respective positions during good behavior and efficient and competent  
21 service, and shall not be removable except for cause after a hearing as  
22 provided by section three thousand twenty-a of this chapter. Failure to  
23 maintain certification as required by this chapter and the regulations  
24 of the commissioner of education shall constitute cause for removal.

25 6. (a) In a city having a population of four hundred thousand or more,  
26 at the expiration of the probationary term of any persons appointed for  
27 such term prior to July first, two thousand fifteen, the superintendent  
28 of schools shall make a written report to the board of education recom-  
29 mending for permanent appointment those persons who have been found  
30 satisfactory[, consistent with any applicable rules of the board of  
31 regents adopted pursuant to section three thousand twelve-b of this  
32 chapter], and such board of education shall immediately thereafter issue  
33 to such persons permanent certificates of appointment. Such persons and  
34 all others employed in the teaching service of the schools of such city,  
35 who have served the full probationary period shall receive permanent  
36 certificates to teach issued to them by the certificating authority,  
37 except as otherwise provided in subdivision ten-a of this section, and  
38 shall hold their respective positions during good behavior and satisfac-  
39 tory teaching service, and shall not be removable except for cause after  
40 a hearing as provided by section three thousand twenty-a of this chap-  
41 ter.

42 (b) At the expiration of the probationary term of any persons  
43 appointed for such term on or after July first, two thousand fifteen,  
44 the superintendent of schools shall make a written report to the board  
45 of education recommending for permanent appointment those persons who  
46 have been found competent, efficient and satisfactory and, in the case  
47 of a classroom teacher or building principal, who have received compos-  
48 ite annual professional performance review ratings pursuant to section  
49 three thousand twelve-c of this chapter, of either effective or highly  
50 effective in each of the five preceding years. Notwithstanding any other  
51 provision of law, rule or regulation to the contrary, if no affirmative  
52 action is taken by the board of education to terminate a classroom  
53 teacher or building principal, or to approve or deny tenure to a class-

54 room teacher or building principal at the expiration of the probationary  
55 period, the classroom teacher or building principal shall remain in  
56 probationary status until the end of the school year in which such

1 teacher or principal has received such ratings of effective or highly  
2 effective for the five preceding school years, during which time a board  
3 of education shall either discontinue the services of such person, deny  
4 tenure or approve tenure for those classroom teachers or building prin-  
5 cipals who otherwise have been found competent, efficient and satisfac-  
6 tory. Provided, however, that the board of education may grant tenure  
7 contingent upon a classroom teacher's or building principal's receipt of  
8 such a rating of effective or highly effective in the fifth year, and if  
9 such contingency is not met, the grant of tenure shall be void and unen-  
10 forceable and the teacher's or principal's probationary period shall be  
11 extended in accordance with this subdivision. Such persons who have been  
12 recommended for tenure and all others employed in the teaching service  
13 of the schools of such school district who have served the full proba-  
14 tionary period as extended pursuant to this subdivision shall hold their  
15 respective positions during good behavior and efficient and competent  
16 service, and shall not be removable except for cause after a hearing as  
17 provided by section three thousand twenty-a of this chapter. Failure to  
18 maintain certification as required by this chapter and the regulations  
19 of the commissioner of education shall constitute cause for removal.

20 § 4. Section 3012 of the education law, the section heading as amended  
21 by chapter 358 of the laws of 1978, subdivision 1 as amended by chapter  
22 442 of the laws of 1980, paragraph (a) of subdivision 1 as amended by  
23 chapter 737 of the laws of 1992, subdivision 2 as amended by section 8  
24 of part A of chapter 57 of the laws of 2007, subdivision 3 as added by  
25 chapter 859 of the laws of 1955 and as renumbered by chapter 717 of the  
26 laws of 1970, is amended to read as follows:

27 § 3012. Tenure: certain school districts. 1. (a) i. Teachers and all  
28 other members of the teaching staff of school districts, including  
29 common school districts and/or school districts employing fewer than  
30 eight teachers, other than city school districts, who are appointed  
31 prior to July first, two thousand fifteen, shall be appointed by the  
32 board of education, or the trustees of common school districts, upon the  
33 recommendation of the superintendent of schools, for a probationary  
34 period of three years, except that in the case of a teacher who has  
35 rendered satisfactory service as a regular substitute for a period of  
36 two years or as a seasonally licensed per session teacher of swimming in  
37 day schools who has served in that capacity for a period of two years  
38 and has been appointed to teach the same subject in day schools, on an  
39 annual salary, the probationary period shall be limited to one year;  
40 provided, however, that in the case of a teacher who has been appointed  
41 on tenure in another school district within the state, the school  
42 district where currently employed, or a board of cooperative educational  
43 services, and who was not dismissed from such district or board as a  
44 result of charges brought pursuant to subdivision one of section three  
45 thousand twenty-a of this [chapter] article, the probationary period  
46 shall not exceed two years. The service of a person appointed to any of  
47 such positions may be discontinued at any time during such probationary  
48 period, on the recommendation of the superintendent of schools, by a  
49 majority vote of the board of education or the trustees of a common  
50 school district.

51 ii. Teachers and all other members of the teaching staff of school  
52 districts, including common school districts and/or school districts  
53 employing fewer than eight teachers, other than city school districts,

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54 who are appointed on or after July first, two thousand fifteen, shall be  
55 appointed by the board of education, or the trustees of common school  
56 districts, upon the recommendation of the superintendent of schools, for

1 a probationary period of five years, except that in the case of a teach-  
2 er who has rendered satisfactory service as a regular substitute for a  
3 period of two years or as a seasonally licensed per session teacher of  
4 swimming in day schools who has served in that capacity for a period of  
5 two years and has been appointed to teach the same subject in day  
6 schools, on an annual salary, the teacher shall be appointed for a  
7 probationary period of three years; provided, however, that in the case  
8 of a teacher who has been appointed on tenure in another school district  
9 within the state, the school district where currently employed, or a  
10 board of cooperative educational services, and who was not dismissed  
11 from such district or board as a result of charges brought pursuant to  
12 subdivision one of section three thousand twenty-a of this article, the  
13 teacher shall be appointed for a probationary period of four years. The  
14 service of a person appointed to any of such positions may be discontin-  
15 ued at any time during such probationary period, on the recommendation  
16 of the superintendent of schools, by a majority vote of the board of  
17 education or the trustees of a common school district.

18 (b) i. Principals, administrators, supervisors and all other members  
19 of the supervising staff of school districts, including common school  
20 districts and/or school districts employing fewer than eight teachers,  
21 other than city school districts, who are appointed prior to July first,  
22 two thousand fifteen, shall be appointed by the board of education, or  
23 the trustees of a common school district, upon the recommendation of the  
24 superintendent of schools for a probationary period of three years. The  
25 service of a person appointed to any of such positions may be discontin-  
26 ued at any time during the probationary period on the recommendation of  
27 the superintendent of schools, by a majority vote of the board of educa-  
28 tion or the trustees of a common school district.

29 ii. Principals, administrators, supervisors and all other members of  
30 the supervising staff of school districts, including common school  
31 districts and/or school districts employing fewer than eight teachers,  
32 other than city school districts, who are appointed on or after July  
33 first, two thousand fifteen, shall be appointed by the board of educa-  
34 tion, or the trustees of a common school district, upon the recommenda-  
35 tion of the superintendent of schools for a probationary period of five  
36 years. The service of a person appointed to any of such positions may be  
37 discontinued at any time during the probationary period on the recommen-  
38 dation of the superintendent of schools, by a majority vote of the board  
39 of education or the trustees of a common school district.

40 (c) Any person previously appointed to tenure or a probationary period  
41 pursuant to the provisions of former section three thousand thirteen of  
42 this [chapter] article shall continue to hold such position and be  
43 governed by the provisions of this section notwithstanding any contrary  
44 provision of law.

45 2. (a) At the expiration of the probationary term of a person  
46 appointed for such term prior to July first, two thousand fifteen,  
47 subject to the conditions of this section, the superintendent of schools  
48 shall make a written report to the board of education or the trustees of  
49 a common school district recommending for appointment on tenure those  
50 persons who have been found competent, efficient and satisfactory[,  
51 consistent with any applicable rules of the board of regents adopted  
52 pursuant to section three thousand twelve-b of this article]. Such  
53 persons, and all others employed in the teaching service of the schools

54 of such union free school district, common school district and/or school  
55 district employing fewer than eight teachers, who have served the proba-  
56 tionary period as provided in this section, shall hold their respective

1 positions during good behavior and efficient and competent service, and  
2 shall not be removed except for any of the following causes, after a  
3 hearing, as provided by section three thousand twenty-a of [such law]  
4 this article: (a) insubordination, immoral character or conduct unbe-  
5 coming a teacher; (b) inefficiency, incompetency, physical or mental  
6 disability, or neglect of duty; (c) failure to maintain certification as  
7 required by this chapter and by the regulations of the commissioner.  
8 Each person who is not to be recommended for appointment on tenure,  
9 shall be so notified by the superintendent of schools in writing not  
10 later than sixty days immediately preceding the expiration of his proba-  
11 tionary period.

12 (b) At the expiration of the probationary term of a person appointed  
13 for such term on or after July first, two thousand fifteen, subject to  
14 the conditions of this section, the superintendent of schools shall make  
15 a written report to the board of education or the trustees of a common  
16 school district recommending for appointment on tenure those persons who  
17 have been found competent, efficient and satisfactory and, in the case  
18 of a classroom teacher or building principal, who have received compos-  
19 ite annual professional performance review ratings pursuant to section  
20 three thousand twelve-c of this article, of either effective or highly  
21 effective in each of the five preceding years. Notwithstanding any other  
22 provision of law, rule or regulation to the contrary, if no affirmative  
23 action is taken by the trustees or board of education to terminate a  
24 classroom teacher or building principal, or to approve or deny tenure to  
25 a classroom teacher or building principal at the expiration of the  
26 probationary period, the classroom teacher or building principal shall  
27 remain in probationary status until the end of the school year in which  
28 such teacher or principal has received such ratings of effective or  
29 highly effective for the five preceding school years, during which time  
30 the trustees or board of education shall either discontinue the services  
31 of such person, deny tenure or approve tenure for those classroom teach-  
32 ers or building principals who otherwise have been found competent,  
33 efficient and satisfactory. Provided, however, that the trustees or  
34 board of education may grant tenure contingent upon a classroom teach-  
35 er's or building principal's receipt of such a rating of effective or  
36 highly effective in the fifth year, and if such contingency is not met,  
37 the grant of tenure shall be void and unenforceable and the teacher's or  
38 principal's probationary period shall be extended in accordance with  
39 this subdivision. Such persons who have been recommended for tenure and  
40 all others employed in the teaching service of the schools of such  
41 school district who have served the full probationary period as extended  
42 pursuant to this subdivision shall hold their respective positions  
43 during good behavior and efficient and competent service, and shall not  
44 be removable except for cause after a hearing as provided by section  
45 three thousand twenty-a of this article. Failure to maintain certif-  
46 ication as required by this chapter and the regulations of the commis-  
47 sioner of education shall constitute cause for removal.

48 3. Notwithstanding any other provision of this section no period in  
49 any school year for which there is no required service and/or for which  
50 no compensation is provided shall in any event constitute a break or  
51 suspension of probationary period or continuity of tenure rights of any  
52 of the persons hereinabove described.

53 § 5. Section 3014 of the education law, as added by chapter 583 of the

54 laws of 1955, subdivision 1 as amended by chapter 551 of the laws of  
55 1976, subdivision 2 as amended by section 10 of part A of chapter 57 of  
56 the laws of 2007, is amended to read as follows:



1     § 3014. Tenure: boards of cooperative educational services. 1. (a)  
2     Administrative assistants, supervisors, teachers and all other members  
3     of the teaching and supervising staff of the board of cooperative educa-  
4     tional services appointed prior to July first, two thousand fifteen,  
5     shall be appointed by a majority vote of the board of cooperative educa-  
6     tional services upon the recommendation of the district superintendent  
7     of schools for a probationary period of not to exceed three years;  
8     provided, however, that in the case of a teacher who has been appointed  
9     on tenure in a school district within the state, the board of cooper-  
10    ative educational services where currently employed, or another board of  
11    cooperative educational services, and who was not dismissed from such  
12    district or board as a result of charges brought pursuant to subdivision  
13    one of section three thousand twenty-a of this [chapter] article, the  
14    probationary period shall not exceed two years. Services of a person so  
15    appointed to any such positions may be discontinued at any time during  
16    such probationary period, upon the recommendation of the district super-  
17    intendent, by a majority vote of the board of cooperative educational  
18    services.

19    (b) Administrative assistants, supervisors, teachers and all other  
20    members of the teaching and supervising staff of the board of cooper-  
21    ative educational services appointed on or after July first, two thou-  
22    sand fifteen, shall be appointed by a majority vote of the board of  
23    cooperative educational services upon the recommendation of the district  
24    superintendent of schools for a probationary period of not to exceed  
25    five years; provided, however, that in the case of a teacher who has  
26    been appointed on tenure in a school district within the state, the  
27    board of cooperative educational services where currently employed, or  
28    another board of cooperative educational services, and who was not  
29    dismissed from such district or board as a result of charges brought  
30    pursuant to subdivision one of section three thousand twenty-a of this  
31    article, the teacher shall be appointed for a probationary period of  
32    four years. Services of a person so appointed to any such positions may  
33    be discontinued at any time during such probationary period, upon the  
34    recommendation of the district superintendent, by a majority vote of the  
35    board of cooperative educational services.

36    2. (a) On or before the expiration of the probationary term of a  
37    person appointed for such term prior to July first, two thousand  
38    fifteen, the district superintendent of schools shall make a written  
39    report to the board of cooperative educational services recommending for  
40    appointment on tenure persons who have been found competent, efficient  
41    and satisfactory[, consistent with any applicable rules of the board of  
42    regents adopted pursuant to section three thousand twelve-b of this  
43    article]. Such persons shall hold their respective positions during good  
44    behavior and competent and efficient service and shall not be removed  
45    except for any of the following causes, after a hearing, as provided by  
46    section three thousand twenty-a of [such law] this article: [(a)] (i)  
47    Insubordination, immoral character or conduct unbecoming a teacher;  
48    [(b)] (ii) Inefficiency, incompetency, physical or mental disability or  
49    neglect of duty; [(c)] (iii) Failure to maintain certification as  
50    required by this chapter and by the regulations of the commissioner.  
51    Each person who is not to be so recommended for appointment on tenure  
52    shall be so notified in writing by the district superintendent not later  
53    than sixty days immediately preceding the expiration of his probationary

54 period.

55 (b) On or before the expiration of the probationary term of a person  
56 appointed for such term on or after July first, two thousand fifteen,

1 the district superintendent of schools shall make a written report to  
2 the board of cooperative educational services recommending for appoint-  
3 ment on tenure persons who have been found competent, efficient and  
4 satisfactory and, in the case of a classroom teacher or building princi-  
5 pal, who have received composite annual professional performance review  
6 ratings pursuant to three thousand twelve-c of this article, of either  
7 effective or highly effective in each of the five preceding years.  
8 Notwithstanding any other provision of law, rule or regulation to the  
9 contrary, if no affirmative action is taken by the board of cooperative  
10 educational services to terminate a classroom teacher or building prin-  
11 cipal, or to approve or deny tenure to a classroom teacher or building  
12 principal at the expiration of the probationary period, the classroom  
13 teacher or building principal shall remain in probationary status until  
14 the end of the school year in which such teacher or principal has  
15 received such ratings of effective or highly effective for the five  
16 preceding school years, during which time a board of cooperative educa-  
17 tional services shall either discontinue the services of such person,  
18 deny tenure or approve tenure for those classroom teachers or building  
19 principals who otherwise have been found competent, efficient and satis-  
20 factory. Provided, however, that the board of cooperative educational  
21 services may grant tenure contingent upon a classroom teacher's or  
22 building principal's receipt of such a rating of effective or highly  
23 effective in the fifth year, and if such contingency is not met, the  
24 grant of tenure shall be void and unenforceable and the teacher's or  
25 principal's probationary period shall be extended in accordance with  
26 this subdivision. Such persons shall hold their respective positions  
27 during good behavior and competent and efficient service and shall not  
28 be removed except for any of the following causes, after a hearing, as  
29 provided by section three thousand twenty-a of this article: (i) Insub-  
30 ordination, immoral character or conduct unbecoming a teacher; (ii)  
31 Inefficiency, incompetency, physical or mental disability or neglect of  
32 duty; (iii) Failure to maintain certification as required by this chap-  
33 ter and by the regulations of the commissioner. Each person who is not  
34 to be so recommended for appointment on tenure shall be so notified in  
35 writing by the district superintendent not later than sixty days imme-  
36 diately preceding the expiration of his probationary period.

37 § 6. Subdivision 1 of section 3012-c of the education law, as amended  
38 by chapter 21 of the laws of 2012, is amended to read as follows:

39 1. Notwithstanding any other provision of law, rule or regulation to  
40 the contrary, the annual professional performance reviews of all class-  
41 room teachers and building principals employed by school districts or  
42 boards of cooperative educational services shall be conducted in accord-  
43 ance with the provisions of this section. Such performance reviews which  
44 are conducted on or after July first, two thousand eleven, or on or  
45 after the date specified in paragraph c of subdivision two of this  
46 section where applicable, shall include measures of student achievement  
47 and be conducted in accordance with this section. Such annual profes-  
48 sional performance reviews shall be a significant factor for employment  
49 decisions including but not limited to, promotion, retention, tenure  
50 determination, termination, and supplemental compensation, which deci-  
51 sions are to be made in accordance with locally developed procedures  
52 negotiated pursuant to the requirements of article fourteen of the civil  
53 service law where applicable. Provided, however, that nothing in this

54 section shall be construed to affect the unfettered statutory right of a  
55 school district or board of cooperative educational services to termi-  
56 nate a probationary teacher or principal for any statutorily and consti-

1 tutionally permissible reasons [other than the performance of the teach-  
2 er or principal in the classroom or school], including but not limited  
3 to misconduct and until a tenure decision is made at the  
4 end/expiration/conclusion of the probationary period, the performance of  
5 the teacher or principal in the classroom. Such performance reviews  
6 shall also be a significant factor in teacher and principal development,  
7 including but not limited to, coaching, induction support and differen-  
8 tiated professional development, which are to be locally established in  
9 accordance with procedures negotiated pursuant to the requirements of  
10 article fourteen of the civil service law.

11 § 7. Paragraph b of subdivision 5 of section 3012-c of the education  
12 law, as added by chapter 21 of the laws of 2012, is amended to read as  
13 follows:

14 b. Nothing in this section shall be construed to alter or diminish the  
15 authority of the governing body of a school district or board of cooper-  
16 ative educational services to grant or deny tenure to or terminate  
17 probationary teachers or probationary building principals during the  
18 pendency of an appeal pursuant to this section for statutorily and  
19 constitutionally permissible reasons [other than] including the teach-  
20 er's or principal's performance that is the subject of the appeal.

21 § 8. This act shall take effect immediately.

#### 22 SUBPART D

23 Section 1. The education law is amended by adding a new section 211-g  
24 to read as follows:

25 § 211-g. Takeover and restructuring failing school districts. 1. (a) A  
26 school district, other than a special act school district as defined in  
27 subdivision eight of section four thousand one of this chapter, shall be  
28 deemed eligible for designation as failing upon a determination by the  
29 commissioner, pursuant to regulations adopted by such commissioner, that  
30 the school district has scored in the lowest two and one-half percent of  
31 school districts statewide when compared to other districts based on  
32 metrics of student achievement and outcomes prescribed in such regu-  
33 lations which may include but shall not be limited to performance on  
34 state assessments, graduation rates and drop-out rates and/or perform-  
35 ance of the district over time in such measures of student academic  
36 achievement and outcomes. In making such determination the commissioner  
37 shall consider the severity and duration of the deficiencies in student  
38 achievement and outcomes of the district.

39 (b) For any school district deemed eligible for a designation as fail-  
40 ing, the commissioner shall appoint a district review team to assess and  
41 report on the reasons for the chronic underperformance and the prospects  
42 for improvement, unless such an assessment, which is deemed adequate by  
43 the commissioner, has been previously completed by a district review  
44 team, integrated intervention team or distinguished educator within the  
45 previous year.

46 (i) The district review team shall have the membership prescribed by  
47 the commissioner, provided that it shall include at least one person  
48 with expertise in the education of English language learners and at  
49 least one person with expertise in the education of students with disa-  
50 bilities.

51 (ii) Pursuant to regulations adopted by the commissioner, the district

52 review team shall evaluate the performance of the district based on  
53 multiple indicators of district quality including student attendance,  
54 short-term and long-term suspension rates, student promotion and gradu-

1 ation rates in the district, or the lack of demonstrated significant  
2 improvement for two or more consecutive years in English language arts  
3 and mathematics, either in the aggregate or among all the student  
4 subgroups used in the state's accountability system. The district review  
5 team shall also consider district leadership and capacity, school leader  
6 practices and decisions, curriculum development and support, teacher  
7 practices and decisions, student social and emotional developmental  
8 health and family and community engagement.

9 (c) Upon review of the findings of the district review team, the  
10 commissioner may declare a district as failing. Not more than two and  
11 one-half percent of the total number of school districts within the  
12 state may be designated as failing at any given time.

13 2. (a) Upon designation as a failing school district, the commissioner  
14 shall appoint a receiver for the school district who shall possess and  
15 maintain all of the powers vested in the superintendent of schools, or  
16 other chief school officer of the district, and the board of education,  
17 and shall have the power to supersede any decision of such superinten-  
18 dent or chief school officer, or of the board of education. The receiver  
19 shall have authority to review proposed school district budgets prior to  
20 presentation to the district voters, or in the case of a city school  
21 district in a city having a population of one hundred twenty-five thou-  
22 sand or more or the adoption of a contingency budget, prior to approval  
23 by the board of education, and to modify the proposed budget to conform  
24 to the district turnaround plan.

25 (b) The commissioner shall contract with the receiver, and the compen-  
26 sation and other costs of the receiver appointed by the commissioner  
27 shall be paid from a state appropriation for such purpose, or by the  
28 school district, as determined by the commissioner. Notwithstanding any  
29 other provision of law to the contrary, the receiver and any of its  
30 employees providing services in the receivership shall be entitled to  
31 defense and indemnification by the school district to the same extent as  
32 a school district employee.

33 (c) The receiver shall be a non-profit entity, another school  
34 district, or an individual, who shall operate independently, but whose  
35 contract may be terminated by the commissioner for a violation of law or  
36 the commissioner's regulations or for neglect of duty. An external  
37 receiver appointed by the commissioner to operate a district under this  
38 section shall have full managerial and operational control over such  
39 district; provided, however, that the board of education shall remain  
40 the employer of record, and provided further that any employment deci-  
41 sions of the board of education may be superseded by the receiver. It  
42 shall be the duty of the board of education and the superintendent of  
43 schools to fully cooperate with the receiver and willful failure to  
44 cooperate or interference with the functions of the receiver shall  
45 constitute willful neglect of duty for purposes of section three hundred  
46 six of this title. The receiver or the receiver's designee shall be an  
47 ex officio non-voting member of the board of education entitled to  
48 attend all meetings of the board of education.

49 3. The receiver shall create a district turnaround plan to promote the  
50 rapid improvement of the failing district and submit it to the commis-  
51 sioner for approval. The plan shall specifically focus on the school or  
52 schools in the district that have been identified as being in account-  
53 ability status under the state's accountability system and the district

54 policies or practices that have contributed to chronic underperformance.  
55 4. Before creating the district turnaround plan required by this  
56 subdivision, the receiver shall consult with local stakeholders, such



1 as: (a) the board of education; (b) the superintendent of schools; (c)  
2 building principals and other school leaders; (d) teachers and their  
3 collective bargaining representatives; (e) school administrators and  
4 their collective bargaining representatives; (f) parents of students  
5 attending the school or their representatives; (g) representatives of  
6 applicable state and local social services, health, and/or mental health  
7 agencies; (h) as appropriate, representatives of local providers of  
8 career and technical education services, state or local workforce devel-  
9 opment agencies and the local business community; (i) representatives of  
10 local prekindergarten programs; and (j) representatives from local  
11 institutions of higher education.

12 5. (a) In the development of the district turnaround plan for a fail-  
13 ing school district, the receiver shall include measures intended to  
14 maximize the rapid improvement of the academic achievement of students  
15 in the district and shall ensure that the plan addresses district lead-  
16 ership and capacity, school leader practices and decisions, curriculum  
17 development and support, teacher practices and decisions, student social  
18 and emotional developmental well-being, health and family and community  
19 engagement. To the extent practicable, the receiver shall base the plan  
20 on student outcome data, including, but not limited to: (i) student  
21 achievement growth data based on state assessments; (ii) other measures  
22 of student achievement; (iii) student promotion and graduation rates;  
23 (iv) achievement and growth data for the subgroups of students used in  
24 the state's accountability system; (v) student attendance; and (vi)  
25 long-term and short-term suspension rates.

26 (b) The district turnaround plan shall, after consideration of the  
27 recommendations made by the local stakeholder group, include the follow-  
28 ing: (i) steps to address social service, health and mental health needs  
29 of students in the district and their families in order to help students  
30 arrive and remain at school ready to learn; provided, however, that this  
31 may include mental health and substance abuse screening; (ii) steps to  
32 improve or expand access to child welfare services and, as appropriate,  
33 services in the school district community to promote a safe and secure  
34 learning environment; (iii) as applicable, steps to provide greater  
35 access to career and technical education and workforce development  
36 services provided to students in the district and their families in  
37 order to provide students and families with meaningful employment skills  
38 and opportunities; (iv) steps to address achievement gaps for English  
39 language learners, students with disabilities and economically disadvan-  
40 taged students, as applicable; (v) steps to address school climate and  
41 positive behavior support; and (vi) a budget for the district turnaround  
42 plan.

43 (c) As necessary, the commissioners of the department of health, the  
44 office of children and family services, the department of labor and  
45 other applicable state and local social service, health, mental health  
46 and child welfare officials shall coordinate with the commissioner  
47 regarding the implementation of the strategies described in subpara-  
48 graphs (i) through (iii) of paragraph (b) of this subdivision that are  
49 included in the district turnaround plan and shall, subject to appropri-  
50 ation, reasonably support the implementation consistent with the  
51 requirements of state and federal law applicable to the relevant  
52 programs that each such official is responsible for administering and  
53 grant failing schools priority access to competitive grants to the

54 extent allowable.

55 (d) In order to assess the school district across multiple indicators

56 of district performance and student success, the district turnaround

1 plan shall include, measurable annual goals including, but not limited  
2 to, the following: (i) student attendance; (ii) short-term and long-term  
3 suspension rates; (iii) student safety and discipline; (iv) student  
4 promotion and graduation and drop-out rates; (v) student achievement and  
5 growth on state assessments; (vi) progress in areas of academic under-  
6 performance; (vii) progress among the subgroups of students used in the  
7 state's accountability system; (viii) reduction of achievement gaps  
8 among different groups of students; (ix) development of college and  
9 career readiness, including at the elementary and middle school levels;  
10 (x) parent and family engagement; (xi) building a culture of academic  
11 success among students; (xii) building a culture of student support and  
12 success among faculty and staff; and (xiii) using developmentally appro-  
13 priate child assessments from pre-kindergarten through third grade, if  
14 applicable.

15 (e) Notwithstanding any other applicable law to the contrary, in  
16 creating the district turnaround plan, the receiver shall: (i) establish  
17 community schools at schools in the district to provide expanded health,  
18 mental health and other services to the community; (ii) expand, alter or  
19 replace the curriculum and program offerings of the district or of a  
20 school in the district, including the implementation of research-based  
21 early literacy programs, early interventions for struggling readers and  
22 the teaching of advanced placement courses or other rigorous nationally  
23 or internationally recognized courses, if the district or schools in the  
24 district do not already have such programs or courses; (iii) replace  
25 unqualified teachers and administrators, including school leadership;  
26 (iv) provide funds, subject to appropriation to increase salaries of  
27 current or prospective teachers or administrators in the district work-  
28 ing in a school in accountability status; and (v) establish steps to  
29 improve hiring, induction, teacher evaluation, professional development,  
30 teacher advancement, school culture and organizational structure.

31 In addition to these interventions, the receiver may take other  
32 actions to support the turnaround plan including but not limited to: (i)  
33 reallocate the uses of the existing budget of the district; (ii) expand  
34 the school day or school year or both of schools in the district; (iii)  
35 limit, suspend or change one or more provisions of any contract or  
36 collective bargaining agreement in the district; provided, however, that  
37 the receiver shall not reduce the compensation of an administrator,  
38 teacher or staff member unless the hours of the person are proportion-  
39 ately reduced; (iv) add full-day pre-kindergarten and full-day kinder-  
40 garten programs, if the district does not already have such programs;  
41 (v) direct the receiver, in accordance with paragraphs (f) and (g) of  
42 this subdivision, to abolish the positions of all members of the teach-  
43 ing and administrative and supervisory staff assigned to a school desig-  
44 nated as a failing school pursuant to section two hundred eleven-f of  
45 this part, and terminate the employment of any building principal  
46 assigned to such a school and require them to reapply for their posi-  
47 tions in the district, with full discretion vested in the receiver  
48 regarding any such reapplications; (vi) include a provision of job-em-  
49 bedded professional development for teachers in the district, with an  
50 emphasis on strategies that involve teacher input and feedback; (vii)  
51 establish a plan for professional development for administrators in the  
52 district, with an emphasis on strategies that develop leadership skills  
53 and use the principles of distributive leadership; and/or (viii) order

54 the conversion of a district school that has been designated as failing  
55 pursuant to section two hundred eleven-f of this part without a vote of  
56 the parents of the school, provided that notwithstanding any other

1 provision of the law to the contrary, the board of regents shall be the  
2 charter entity for such charter school and the provisions of paragraph  
3 (b) and subparagraph (i) of paragraph (b-1) of subdivision three of  
4 section twenty-eight hundred fifty-four of this chapter shall not apply  
5 to such a conversion charter school.

6 (f) Notwithstanding any other provision of law, rule or regulation to  
7 the contrary, upon designation of a school district as a failing school  
8 district pursuant to section two hundred eleven-g of this part, the  
9 abolition of positions of members of the teaching and administrative and  
10 supervisory staff of the school district shall thereafter be governed by  
11 the applicable provisions of section twenty-five hundred ten, twenty-  
12 five hundred eighty-five, twenty-five hundred eighty-eight or three  
13 thousand thirteen of this chapter. A classroom teacher or building prin-  
14 cipal who has received two or more composite ratings of ineffective on  
15 an annual professional performance review or who has never received an  
16 effective or highly effective rating on such a review shall be deemed  
17 not to have rendered faithful and competent service within the meaning  
18 of section twenty-five hundred ten, twenty-five hundred eighty-five,  
19 twenty-five hundred eighty-eight or three thousand thirteen of this  
20 chapter. When a position of a classroom teacher or building principal is  
21 abolished, the services of the teacher or administrator or supervisor  
22 within the tenure area of the position with the lowest score on the  
23 state growth and other comparable measures subcomponent of the most  
24 recent annual professional performance review shall be discontinued,  
25 provided that seniority within the tenure of the position shall be used  
26 solely to determine which position should be discontinued in the event  
27 of a tie.

28 (g) The receiver may abolish the positions of all members of the  
29 teaching and supervisory staff assigned to a school designated as fail-  
30 ing pursuant to section two hundred eleven-f of this part, and terminate  
31 any building principal assigned to such school who is not in a tenured  
32 position, and require them to reapply for probationary appointment. The  
33 receiver shall have the same discretion upon such reapplication as the  
34 board of education has with any candidate for a probationary appoint-  
35 ment. A determination of the receiver not to rehire a teacher, adminis-  
36 trator or supervisor may be appealed to the commissioner pursuant to  
37 section three hundred ten of this title, provided that such determi-  
38 nation may only be set aside upon a finding that the receiver's determi-  
39 nation was made in bad faith or for constitutional or statutory reasons.  
40 Notwithstanding any other provision of law to the contrary, a member of  
41 the teaching or administrative staff who is not rehired pursuant to this  
42 paragraph shall not have any right to bump or displace any other person  
43 employed by the district, but shall be placed on a preferred eligibility  
44 list in accordance with the applicable provisions of section twenty-five  
45 hundred ten, twenty-five hundred eighty-five, twenty-five hundred eight-  
46 y-eight or three thousand thirteen of this chapter.

47 (h) For a district with English language learners, the professional  
48 development and planning time for teachers and administrators identified  
49 in subparagraphs (ix) through (xi), inclusive, of paragraph (d) of this  
50 subdivision shall include specific strategies and content designed to  
51 maximize the rapid academic achievement of English language learners in  
52 the district.

53 6. A final district turnaround plan shall be issued by the receiver

54 within six months of designation of the district as a failing school  
55 district. A copy of such plan shall be provided to the board of educa-  
56 tion, the superintendent of schools and the collective bargaining repre-

1 sentatives of teachers and administrators of the school district. The  
2 plan shall be publicly available and shall be posted on the department's  
3 website and the school district's website, and the school district shall  
4 provide notice to parents of such district turnaround plan and its  
5 availability.

6 7. The district turnaround plan shall be authorized for a period of  
7 not more than three years. The receiver may develop additional compo-  
8 nents of the plan and shall develop annual goals for each component of  
9 the plan in a manner consistent with the provisions of this section. The  
10 receiver shall be responsible for meeting the goals of the district  
11 turnaround plan.

12 8. The receiver shall provide a written report to the board of educa-  
13 tion on a quarterly basis to provide specific information about the  
14 progress being made on the implementation of the district's district  
15 turnaround plan. One of the quarterly reports shall be the annual evalu-  
16 ation required in subdivision nine of this section.

17 9. The commissioner shall evaluate the performance of the receiver on  
18 not less than an annual basis. The purpose of such evaluation shall be  
19 to assess the implementation of the district turnaround plan and deter-  
20 mine whether the district has met the annual goals contained in the  
21 district turnaround plan. The evaluation shall be in writing and submit-  
22 ted to the commissioner and the board of education of the school  
23 district no later than July first for the preceding school year. If the  
24 commissioner determines that the district has met the annual performance  
25 goals stated in the district turnaround plan, the evaluation shall be  
26 considered sufficient and the implementation of the district turnaround  
27 plan shall continue. If the commissioner determines that the receiver  
28 has not met one or more goals in the plan and the failure to meet the  
29 goals may be corrected through reasonable modification of the plan, the  
30 commissioner may require the receiver to amend the district turnaround  
31 plan, as necessary. If the commissioner determines that the receiver has  
32 substantially failed to meet multiple goals in the district turnaround  
33 plan, the commissioner may terminate the contract of such receiver;  
34 provided, however, that the termination shall not occur before the  
35 completion of the first full school year of the receivership of the  
36 district.

37 10. After the period of receivership, the commissioner shall conduct a  
38 reevaluation of a district's status as failing pursuant to this section.  
39 The commissioner shall adopt regulations providing for: the removal of  
40 a designation of a district as chronically underperforming; and the  
41 transfer of the operation of a chronically underperforming district from  
42 an external receiver back to the superintendent of schools and the board  
43 of education of the school district, based on the measurable improvement  
44 of the district.

45 (a) The regulations shall include provisions to allow a district to  
46 retain measures adopted in a district turnaround plan for a transitional  
47 period if, in the judgment of the commissioner, the measures would  
48 contribute to the continued improvement of the district. Such regu-  
49 lations shall also include provisions that clearly identify the condi-  
50 tions under which such a transitional period shall end and the powers  
51 granted to the commissioner under this section shall cease to apply to a  
52 district previously designated as a failing school district.

53 (b) Pursuant to the regulations promulgated by the commissioner, at

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54 any time after a failing district has been placed in receivership, the  
55 board of education of the school district may petition the commissioner  
56 for a determination as to whether the district turnaround plan should be



1 modified or eliminated and whether the school district shall no longer  
2 be designated as failing. The board of education of a failing school  
3 district may seek review by commissioner following an adverse determi-  
4 nation.

5 (c) If, pursuant to the regulations adopted by the commissioner, a  
6 district has not improved sufficiently to remove the designation of the  
7 district as failing, the commissioner may: (i) jointly determine subse-  
8 quent annual goals for each component of the district turnaround plan  
9 with the receiver and renew the district turnaround plan for an addi-  
10 tional period of not more than three years; or (ii) terminate the  
11 contract of the receiver, appoint a new receiver and create a new or  
12 modified district turnaround plan, consistent with the requirements of  
13 this section.

14 § 2. The education law is amended by adding a new section 211-f to  
15 read as follows:

16 § 211-f. Take over and restructuring failing schools. 1. (a) The  
17 commissioner shall designate as failing each of the schools that have  
18 been identified under the state's accountability system to be among the  
19 lowest achieving five percent of public schools in the state (priority  
20 schools) for at least three years based upon measures of student  
21 achievement and outcomes and a methodology prescribed in the regulations  
22 of the commissioner, provided that this list shall not include schools  
23 within a special act school district as defined in subdivision eight of  
24 section four thousand one of this chapter or schools chartered pursuant  
25 to article fifty-six of this chapter.

26 (b) A failing school shall operate in accordance with laws regulating  
27 other public schools, except as such provisions may conflict with this  
28 section or any school intervention plans created thereunder.

29 (c) Upon the designation of a school as a failing school in accordance  
30 with regulations developed pursuant to this section, the commissioner  
31 shall appoint an external receiver to manage and operate the school and  
32 to develop and implement a school intervention plan for the school. The  
33 commissioner shall make such appointments as expeditiously as possible,  
34 and in prioritizing schools for appointments the commissioner shall give  
35 priority based on the severity and duration of the school's deficiencies  
36 in student achievement and outcomes.

37 2. (a) The receiver shall be authorized to manage and operate the  
38 failing school and shall have the power to supersede any decision of the  
39 superintendent of schools or chief school officer, or of the board of  
40 education or of the building principal that in the judgment of the  
41 receiver conflicts with the school improvement plan. The receiver shall  
42 have authority to review proposed school district budgets prior to pres-  
43 entation to the district voters, or in the case of a city school  
44 district in a city having a population of one hundred twenty-five thou-  
45 sand or more or the adoption of a contingency budget, prior to approval  
46 by the board of education, and to modify the proposed budget to conform  
47 to the school intervention plan.

48 (b) The provisions of paragraphs (b) and (c) of subdivision two of  
49 section two hundred eleven-g of this part shall apply to receivers  
50 appointed pursuant to this section.

51 3. Before developing the school intervention plan, the receiver shall  
52 consult with local stakeholders such as: (a) the board of education; (b)  
53 the superintendent of schools; (c) the building principal; (d) teachers

54 assigned to the school and their collective bargaining representative;  
55 (e) school administrators assigned to the school and their collective  
56 bargaining representative; (f) parents of students attending the school

1 or their representatives; (g) representatives of applicable state and  
2 local social service, health and mental health agencies; (h) as appro-  
3 priate, representatives of local career education providers, state and  
4 local workforce development agencies and the local business community;  
5 (i) for elementary schools, representatives of local prekindergarten  
6 programs and, (j) as needed for middle schools or high schools, repre-  
7 sentatives of local higher education institutions.

8 4. In creating the school intervention plan, the receiver shall  
9 include provisions intended to maximize the rapid academic achievement  
10 of students at the school and shall ensure that the plan addresses  
11 district leadership and capacity, school leader practices and decisions,  
12 curriculum development and support, teacher practices and decisions,  
13 student social and emotional developmental health and family and commu-  
14 nity engagement. The receiver shall, to the extent practicable, base the  
15 plan on the findings of any recent diagnostic review or assessment of  
16 the school that has been conducted and, as applied to the school,  
17 student outcome data as specified in paragraph (a) of subdivision five  
18 of section two hundred eleven-g of this part.

19 5. (a) The receiver shall address in the school intervention plan the  
20 strategies set forth in paragraph (b) of subdivision five of section two  
21 hundred eleven-g of this part, as applied to the school, except that  
22 instead of the school district budget, the school intervention plan  
23 shall include a financial plan.

24 (b) As necessary, the commissioners of the department of health, the  
25 office of children and family services, the department of labor and  
26 other applicable state and local social service, health, mental health  
27 and child welfare officials shall coordinate with the receiver regarding  
28 the implementation of the strategies described in subparagraphs (i)  
29 through (iii) of paragraph (b) of subdivision five of section two  
30 hundred eleven-g of this part that are included in the school inter-  
31 vention plan and shall, subject to appropriation, reasonably support the  
32 implementation consistent with the requirements of state and federal law  
33 applicable to the relevant programs that each such official is responsi-  
34 ble for administering, and grant community schools access to competitive  
35 grants, as allowable.

36 6. In order to assess the school across multiple measures of school  
37 performance and student success, the school intervention plan shall  
38 include measurable annual goals, as set forth in paragraph (d) of subdi-  
39 vision five of section two hundred eleven-g of this part, that are  
40 tailored to the needs of the school.

41 7. (a) Notwithstanding any general or special law to the contrary, in  
42 creating and implementing the school intervention plan, the receiver  
43 shall, after consulting with stakeholders: (i) convert schools to commu-  
44 nity schools to provide expanded health, mental health and other  
45 services to the community; (ii) expand, alter or replace the curriculum  
46 and program offerings of the school, including the implementation of  
47 research-based early literacy programs, early interventions for struggl-  
48 ing readers and the teaching of advanced placement courses or other  
49 rigorous nationally or internationally recognized courses, if the school  
50 does not already have such programs or courses; (iii) replace unquali-  
51 fied teachers and administrators, including school leadership; (iv)  
52 increase salaries of current or prospective teachers and administrators;  
53 and (v) improved hiring, induction, teacher evaluation, professional

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54 development, teacher advancement, school culture and organizational  
55 structure.

1 In addition to the above interventions, the receiver may also: (i)  
2 reallocate the uses of the existing budget of the school; (ii) expand  
3 the school day or school year or both of the school; (iii) for a school  
4 that offers the first grade, add pre-kindergarten and full-day kinder-  
5 garten classes, if the school does not already have such classes; (iv)  
6 limit, suspend, or change one or more provisions of any contract or  
7 collective bargaining agreement, as the contract or agreement applies to  
8 the school; provided, however, that the receiver shall not reduce the  
9 compensation of an administrator, teacher or staff member unless the  
10 hours of the person are proportionately reduced; and provided further,  
11 that upon request of the receiver the public employment relations board  
12 shall require the board of education and any applicable collective  
13 bargaining representatives to bargain in good faith for at least thirty  
14 days before exercising authority pursuant to this clause; (v) in accord-  
15 ance with paragraphs (b) and (c) of this subdivision, to abolish the  
16 positions of all members of the teaching and administrative and supervi-  
17 sory staff assigned to the failing school and terminate the employment  
18 of any building principal assigned to such a school, and require them to  
19 reapply for their positions in the district; (vi) include a provision of  
20 job-embedded professional development for teachers at the school, with  
21 an emphasis on strategies that involve teacher input and feedback; (vii)  
22 establish a plan for professional development for administrators at the  
23 school, with an emphasis on strategies that develop leadership skills  
24 and use the principles of distributive leadership; and/or (viii) order  
25 the conversion of a district school that has been designated as failing  
26 pursuant to this section without a vote of the parents of the school,  
27 provided that notwithstanding any other provision of law to the contra-  
28 ry, the board of regents shall be the charter entity for such charter  
29 school and the provisions of paragraph (b) and subparagraph (i) of para-  
30 graph (b-1) of subdivision three of section twenty-eight hundred fifty-  
31 four of this chapter shall not apply to such a conversion charter  
32 school.

33 (b) Notwithstanding any other provision of law, rule or regulation to  
34 the contrary, upon designation of any school of the school district as a  
35 failing school pursuant to this section, the abolition of positions of  
36 members of the teaching and administrative and supervisory staff of the  
37 school district shall thereafter be governed by the applicable  
38 provisions of section twenty-five hundred ten, twenty-five hundred  
39 eighty-five, twenty-five hundred eighty-eight or three thousand thirteen  
40 of this chapter as modified by this paragraph. A classroom teacher or  
41 building principal who has received two or more composite ratings of  
42 ineffective on an annual professional performance review or who has  
43 never received an effective or highly effective rating on such a review  
44 shall be deemed not to have rendered faithful and competent service  
45 within the meaning of section twenty-five hundred ten, twenty-five  
46 hundred eighty-five, twenty-five hundred eighty-eight or three thousand  
47 thirteen of this chapter. When a position of a classroom teacher or  
48 building principal is abolished, the services of the teacher or adminis-  
49 trator or supervisor within the tenure area of the position with the  
50 lowest score on the state growth and other comparable measures subcompo-  
51 nent of the most recent annual professional performance review shall be  
52 discontinued, provided that seniority within the tenure of the position  
53 shall be used solely to determine which position should be discontinued

54 in the event of a tie.

55 (c) The receiver may abolish the positions of all members of the

56 teaching and supervisory staff assigned to a school designated as fail-

1 ing pursuant to this section, and terminate any building principal  
2 assigned to such school who is not in a tenured position, and require  
3 them to reapply for a probationary appointment. The board shall have  
4 the same discretion upon such reapplication as it has with any candidate  
5 for a probationary appointment. A determination of the board not to  
6 rehire a teacher, administrator or supervisor may be appealed to the  
7 commissioner pursuant to section three hundred ten of this title,  
8 provided that such determination may only be set aside upon a finding  
9 that the board's determination was made in bad faith or for constitu-  
10 tionally or statutorily impermissible reasons. Notwithstanding any other  
11 provision of law to the contrary, a member of the teaching or adminis-  
12 trative staff who is not rehired pursuant to this paragraph shall not  
13 have any right to bump or displace any other person employed by the  
14 district, but shall be placed on a preferred eligibility list in accord-  
15 ance with the applicable provisions of section twenty-five hundred ten,  
16 twenty-five hundred eighty-five, twenty-five hundred eighty-eight or  
17 three thousand thirteen of this chapter.

18 (d) For a school with English language learners, the professional  
19 development and planning time for teachers and administrators identified  
20 in clauses (vi) through (viii) of the closing paragraph of paragraph (a)  
21 of this subdivision, shall include specific strategies and content  
22 designed to maximize the rapid academic achievement of the English  
23 language learners.

24 (e) If the receiver proposes to reallocate funds to the school from  
25 the budget of the district under clause (i) of the closing paragraph of  
26 paragraph (a) of this subdivision, the receiver shall notify the board  
27 of education, in writing, of the amount of and rationale for the reallo-  
28 cation.

29 8. A final school intervention plan shall be issued by the receiver  
30 within six months of designation of the school as a failing school. A  
31 copy of such plan shall be provided to the board of education, the  
32 superintendent of schools and the collective bargaining representatives  
33 of teachers and administrators of the school district. The plan shall be  
34 publicly available and shall be posted on the department's website and  
35 the school district's website, and the school district shall provide  
36 notice to parents of such school intervention plan and its availability.

37 9. Each school intervention plan shall be authorized for a period of  
38 not more than three years. The external receiver, as applicable, may  
39 develop additional components of the plan and shall develop annual goals  
40 for each component of the plan in a manner consistent with this section,  
41 all of which must be approved by the commissioner. The external receiv-  
42 er, as applicable, shall be responsible for meeting the goals of the  
43 school intervention plan.

44 10. The external receiver shall provide a written report to the board  
45 of education on a quarterly basis to provide specific information about  
46 the progress being made on the implementation of the school's school  
47 intervention plan. One of the quarterly reports shall be the annual  
48 evaluation under subdivision eleven of this section.

49 11. (a) The commissioner shall evaluate each failing school at least  
50 annually. The purpose of the evaluation shall be to determine whether  
51 the school has met the annual goals in its school intervention plan and  
52 assess the implementation of the plan at the school. The review shall be  
53 in writing and shall be submitted to the superintendent and the board of

54 education not later than July first for the preceding school year. The  
55 review shall be submitted in a format determined by the commissioner.



1 (b) If the commissioner determines that the school has met the annual  
2 performance goals stated in the school intervention plan, the review  
3 shall be considered sufficient and the implementation of the school  
4 intervention plan shall continue. If the commissioner determines that  
5 the school has not met one or more goals in the plan, the commissioner  
6 may modify the plan.

7 12. Upon the expiration of a school intervention plan for a failing  
8 school, the commissioner shall conduct a review of the school to deter-  
9 mine whether the school has improved sufficiently, requires further  
10 improvement or has failed to improve. On the basis of such review, the  
11 commissioner may: (a) on the basis of the external receiver's progress  
12 in successfully meeting the terms of the plan, renew the plan with the  
13 external receiver for an additional period of not more than three years;  
14 (b) if the failing school remains failing and the terms of the plan have  
15 not been substantially met, terminate the contract with the receiver and  
16 appoint a new external receiver; or (c) determine that the school has  
17 improved sufficiently for the designation of failing to be removed.

18 13. The commissioner shall be authorized to adopt regulations to carry  
19 out the provisions of this section.

20 14. The commissioner shall report annually to the governor and the  
21 legislature on the implementation and fiscal impact of this section and  
22 section two hundred eleven-g of this part. The report shall include, but  
23 not be limited to, a list of all schools currently designated as fail-  
24 ing, a list of all districts currently designated as failing, and the  
25 strategies used in each of the schools and districts to maximize the  
26 rapid academic achievement of students.

27 § 3. This act shall take effect July 1, 2015; provided, however, that  
28 effective immediately, the addition, amendment and/or repeal of any rule  
29 or regulation necessary for the implementation of this act on its effec-  
30 tive date is authorized and directed to be made and completed on or  
31 before such date.

#### 32 SUBPART E

33 Section 1. Subdivision 7-a of section 305 of the education law, as  
34 added by chapter 296 of the laws of 2008, is amended to read as follows:

35 7-a. a. In addition to the authority to revoke and annul a certificate  
36 of qualification of a teacher in a proceeding brought pursuant to subdi-  
37 vision seven of this section, the commissioner shall be authorized, and  
38 it shall be his or her duty, to revoke and annul in accordance with this  
39 subdivision the teaching certificate of a teacher convicted of a sex  
40 offense for which registration as a sex offender is required pursuant to  
41 article six-C of the correction law or of any other violent felony  
42 offense in which a child was a victim.

43 b. As used in this subdivision, the following terms shall have the  
44 following meanings:

45 (1) "conviction" means any conviction whether by plea of guilty or  
46 nolo contendere or from a verdict after trial or otherwise;

47 (2) "sex offense" means an offense set forth in subdivision two or  
48 three of section one hundred sixty-eight-a of the correction law,  
49 including an offense committed in any jurisdiction for which the offen-  
50 der is required to register as a sex offender in New York;

51 (3) "teacher" means any professional educator holding a teaching

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52 certificate as defined in subparagraph four of this paragraph, including  
53 but not limited to a classroom teacher, teaching assistant, pupil

1 personnel services professional, school administrator or supervisor or  
2 superintendent of schools; [and]

3 (4) "teaching certificate" means the certificate or license or other  
4 certificate of qualification granted to a teacher by any authority what-  
5 soever; and

6 (5) "violent felony offense" means any offense as defined in subdivi-  
7 sion one of section 70.02 of the penal law.

8 c. Upon receipt of a certified copy of a criminal history record show-  
9 ing that a teacher has been convicted of a sex offense or sex offenses  
10 or a violent felony offense in which a child was a victim or upon  
11 receipt of notice of such a conviction as provided in paragraph d of  
12 this subdivision, the commissioner shall automatically revoke and annul  
13 the teaching certificate of such teacher without the right to a hearing.  
14 The commissioner shall mail notice of the revocation and annulment  
15 pursuant to this subdivision by certified mail, return receipt  
16 requested, and by first-class mail directed to the teacher at such  
17 teacher's last known address and, if different, the last address filed  
18 by the certificate holder with the commissioner and to the teacher's  
19 counsel of record in the criminal proceeding as reported in the notice  
20 pursuant to paragraph d of this subdivision. Such notice shall inform  
21 the teacher that his or her certificate has been revoked and annulled,  
22 identify the sex offense or sex offenses or violent felony offense or  
23 offenses in which a child was a victim of which the teacher has been  
24 convicted and shall set forth the procedure to follow if the teacher  
25 denies he or she is the person who has been so convicted. If such teach-  
26 er notifies the commissioner in writing within twenty-five days after  
27 the date of receipt of the notice that he or she is not the same person  
28 as the convicted offender identified in the criminal record or identi-  
29 fied pursuant to paragraph d of this subdivision, provides proof to  
30 reasonably support such claim and the commissioner is satisfied the  
31 proof establishes such claim, the commissioner shall, within five busi-  
32 ness days of the receipt of such proof, restore such teacher's teaching  
33 certificate retroactive to the date of revocation and annulment.

34 d. Upon conviction of a teacher of a sex offense defined in this  
35 subdivision, the district attorney or other prosecuting authority who  
36 obtained such conviction shall provide notice of such conviction to the  
37 commissioner identifying the sex offense or sex offenses or violent  
38 felony offense or offenses in which a child was a victim of which the  
39 teacher has been convicted, the name and address of such offender and  
40 other identifying information prescribed by the commissioner, including  
41 the offender's date of birth and social security number, to the extent  
42 consistent with federal and state laws governing personal privacy and  
43 confidentiality of information. Such notice shall also include the name  
44 and business address of the offender's counsel of record in the criminal  
45 proceeding.

46 e. Upon receipt of proof that the conviction or convictions that  
47 formed the basis for revocation and annulment of the teacher's teaching  
48 certificate pursuant to this subdivision have been set aside upon appeal  
49 or otherwise reversed, vacated or annulled, the commissioner shall be  
50 required to conduct a due process hearing pursuant to subdivision seven  
51 of this section and part eighty-three of title eight of the New York  
52 codes, rules and regulations prior to making a determination as to  
53 whether to reinstate the teacher's original teaching certificate. Such

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54 determination shall be made within ninety days after such proof has been  
55 received.

AB

1 f. Except as provided in paragraph g of this subdivision, and notwith-  
2 standing any other provision of law to the contrary, a teacher shall be  
3 reinstated to his or her position of employment in a public school, with  
4 full back pay and benefits from the date his or her certificate was  
5 revoked or annulled to the date of such reinstatement, under the follow-  
6 ing circumstances:

7 (i) The termination of employment was based solely on the conviction  
8 of a sex offense, or conviction of a violent felony offense or offenses  
9 in which a child was a victim, or the revocation or annulment of a  
10 certificate based on such conviction, and such conviction has been set  
11 aside on appeal or otherwise reversed, vacated or annulled and the  
12 commissioner has reinstated the teacher's certification pursuant to  
13 paragraph e of this subdivision; or

14 (ii) The termination of employment was based solely on the conviction  
15 of a sex offense or violent felony offense or offenses in which a child  
16 was a victim and it has been determined that the teacher is not the same  
17 person as the convicted offender.

18 g. If a teacher's employment was terminated as a result of a discipli-  
19 nary proceeding conducted pursuant to section three thousand twenty-a of  
20 this chapter or other disciplinary hearing conducted pursuant to any  
21 collective bargaining or contractual agreement on one or more grounds  
22 other than conviction of a sex offense, or the revocation or annulment  
23 of a certificate based on such conviction, then nothing in paragraph f  
24 of this subdivision shall require a school district to reinstate employ-  
25 ment of such teacher or be liable for back pay or benefits.

26 h. No provision of this article shall be deemed to preclude the  
27 following: (i) the commissioner from conducting a due process hearing  
28 pursuant to subdivision seven of this section and part eighty-three of  
29 title eight of the New York codes, rules and regulations; or (ii) a  
30 school district or employing board from bringing a disciplinary proceed-  
31 ing pursuant to section three thousand twenty-a of this chapter; or  
32 (iii) a school district or employing board from bringing an alternative  
33 disciplinary proceeding conducted pursuant to a collective bargaining or  
34 contractual agreement.

35 i. The commissioner shall be authorized to promulgate any regulations  
36 necessary to implement the provisions of this subdivision.

37 § 2. Subdivision 3 and paragraph a of subdivision 4 of section 3020 of  
38 the education law, as amended by chapter 103 of the laws of 2010, are  
39 amended to read as follows:

40 3. Notwithstanding any inconsistent provision of law, the procedures  
41 set forth in section three thousand twenty-a of this article and subdi-  
42 vision seven of section twenty-five hundred ninety-j of this chapter may  
43 be modified or replaced by agreements negotiated between the city school  
44 district of the city of New York and any employee organization repres-  
45 enting employees or titles that are or were covered by any memorandum of  
46 agreement executed by such city school district and the council of  
47 supervisors and administrators of the city of New York on or after  
48 December first, nineteen hundred ninety-nine. Where such procedures are  
49 so modified or replaced: (i) compliance with such modification or  
50 replacement procedures shall satisfy any provision in this chapter that  
51 requires compliance with section three thousand twenty-a, (ii) any  
52 employee against whom charges have been preferred prior to the effective  
53 date of such modification or replacement shall continue to be subject to

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54 the provisions of such section as in effect on the date such charges  
55 were preferred, (iii) the provisions of subdivisions one and two of this  
56 section shall not apply to agreements negotiated pursuant to this subdi-

1 vision, and (iv) in accordance with paragraph (e) of subdivision one of  
2 section two hundred nine-a of the civil service law, such modification  
3 or replacement procedures contained in an agreement negotiated pursuant  
4 to this subdivision shall continue as terms of such agreement after its  
5 expiration until a new agreement is negotiated; provided that any alter-  
6 nate disciplinary procedures contained in a collective bargaining agree-  
7 ment that becomes effective on or after July first, two thousand ten  
8 shall provide for an expedited hearing process before a single hearing  
9 officer in accordance with subparagraph (i-a) of paragraph c of subdivi-  
10 sion three of section three thousand twenty-a of this article in cases  
11 in which charges of incompetence are brought against a building princi-  
12 pal based solely upon an allegation of a pattern of ineffective teaching  
13 or performance as defined in section three thousand twelve-c of this  
14 article and shall provide that such a pattern of ineffective teaching or  
15 performance shall constitute very significant evidence of incompetence  
16 which may form the basis for just cause removal of the building princi-  
17 pal and provided further that any alternate disciplinary procedures  
18 contained in a collective bargaining agreement that becomes effective on  
19 or after April first, two thousand fifteen shall provide that all hear-  
20 ings shall be conducted before a single hearing officer and that such a  
21 pattern of ineffective teaching or performance by a building principal  
22 shall constitute prima facie evidence of incompetence that can only be  
23 rebutted by clear and convincing evidence that the calculation of one or  
24 more of the teacher's or principal's underlying composite ratings on the  
25 annual professional performance reviews pursuant to section three thou-  
26 sand twelve-c of this article was fraudulent, and if not successfully  
27 rebutted, the finding, absent extraordinary circumstances, shall be just  
28 cause for removal. Notwithstanding any inconsistent provision of law,  
29 the commissioner shall review any appeals authorized by such modifica-  
30 tion or replacement procedures within fifteen days from receipt by such  
31 commissioner of the record of prior proceedings in the matter subject to  
32 appeal. Such review shall have preference over all other appeals or  
33 proceedings pending before such commissioner.

34 a. Notwithstanding any inconsistent provision of law, the procedures  
35 set forth in section three thousand twenty-a of this article and subdivi-  
36 sion seven of section twenty-five hundred ninety-j of this chapter may  
37 be modified by agreements negotiated between the city school district of  
38 the city of New York and any employee organization representing employ-  
39 ees or titles that are or were covered by any memorandum of agreement  
40 executed by such city school district and the united federation of  
41 teachers on or after June tenth, two thousand two. Where such proce-  
42 dures are so modified: (i) compliance with such modified procedures  
43 shall satisfy any provision of this chapter that requires compliance  
44 with section three thousand twenty-a of this article; (ii) any employee  
45 against whom charges have been preferred prior to the effective date of  
46 such modification shall continue to be subject to the provisions of such  
47 section as in effect on the date such charges were preferred; (iii) the  
48 provisions of subdivisions one and two of this section shall not apply  
49 to agreements negotiated pursuant to this subdivision, except that no  
50 person enjoying the benefits of tenure shall be disciplined or removed  
51 during a term of employment except for just cause; and (iv) in accord-  
52 ance with paragraph (e) of subdivision one of section two hundred nine-a  
53 of the civil service law, such modified procedures contained in an

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54 agreement negotiated pursuant to this subdivision shall continue as  
55 terms of such agreement after its expiration until a new agreement is  
56 negotiated; and provided further that any alternate disciplinary proce-



1 dures contained in a collective bargaining agreement that becomes effective on or after July first, two thousand ten shall provide for an expedited hearing process before a single hearing officer in accordance with  
2  
3 subparagraph (i-a) of paragraph c of subdivision three of section three thousand twenty-a of this article in cases in which charges of incompetence are brought based solely upon an allegation of a pattern of ineffective teaching or performance as defined in section three thousand  
4  
5 twelve-c of this article and shall provide that such a pattern of ineffective teaching or performance shall constitute very significant  
6  
7 evidence of incompetence which may form the basis for just cause removal, and provided further that any alternate disciplinary procedures  
8  
9 contained in a collective bargaining agreement that becomes effective on or after April first, two thousand fifteen shall provide that all hearings shall be conducted before a single hearing officer and that such a pattern of ineffective teaching or performance shall constitute prima facie evidence of incompetence that can only be rebutted by clear and convincing evidence that the calculation of one or more of the teacher's or principal's underlying composite ratings on the annual professional performance reviews pursuant to section three thousand twelve-c of this article was fraudulent, and if not successfully rebutted, the finding, absent extraordinary circumstances, shall be just cause for removal.

10  
11 § 3. Section 3020-a of the education law, as amended by section 1 of part B of chapter 57 of the laws of 2012, is amended to read as follows:

12  
13 § 3020-a. Disciplinary procedures and penalties. 1. Filing of charges. All charges against a person enjoying the benefits of tenure as provided  
14  
15 in subdivision three of section eleven hundred two, and sections twenty-five hundred nine, twenty-five hundred seventy-three, twenty-five hundred ninety-j, three thousand twelve and three thousand fourteen of  
16  
17 this chapter shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the  
18  
19 actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in subdivision eight of  
20  
21 section twenty-five hundred seventy-three and subdivision seven of section twenty-five hundred ninety-j of this chapter, no charges under  
22  
23 this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of  
24  
25 misconduct constituting a crime when committed.

26  
27 2. Disposition of charges. a. Upon receipt of the charges, the clerk or secretary of the school district or employing board shall immediately  
28  
29 notify said board thereof. Within five days after receipt of charges, the employing board, in executive session, shall determine, by a vote of  
30  
31 a majority of all the members of such board, whether probable cause exists to bring a disciplinary proceeding against an employee pursuant  
32  
33 to this section. If such determination is affirmative, a written statement specifying (i) the charges in detail, (ii) the maximum penalty  
34  
35 which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found  
36  
37 guilty of the charges after a hearing and (iii) the employee's rights under this section, shall be immediately forwarded to the accused  
38  
39 employee by certified or registered mail, return receipt requested or by personal delivery to the employee.

40  
41 b. The employee may be suspended pending a hearing on the charges and the final determination thereof. The suspension shall be with pay,  
42  
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54 except the employee may be suspended without pay if the employee has  
55 entered a guilty plea to or has been convicted of a felony crime  
56 concerning the criminal sale or possession of a controlled substance, a

precursor of a controlled substance, or drug paraphernalia as defined in article two hundred twenty or two hundred twenty-one of the penal law; or a felony crime involving the physical abuse of a minor or student. The suspension shall also be without pay if the employee is charged with misconduct constituting physical or sexual abuse of a student and is suspended pending an expedited hearing pursuant to subparagraph (i-b) of paragraph c of subdivision three of this section, provided that such an employee shall be eligible to receive reimbursement for withheld pay if the hearing officer finds in his favor. The employee shall be terminated without a hearing, as provided for in this section, upon conviction of a sex offense, as defined in subparagraph two of paragraph b of subdivision seven-a of section three hundred five of this chapter. To the extent this section applies to an employee acting as a school administrator or supervisor, as defined in subparagraph three of paragraph b of subdivision seven-b of section three hundred five of this chapter, such employee shall be terminated without a hearing, as provided for in this section, upon conviction of a felony offense defined in subparagraph two of paragraph b of subdivision seven-b of section three hundred five of this chapter.

c. [Within] (i) For hearings commenced by the filing of charges prior to April first, two thousand fifteen, within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges and when the charges concern pedagogical incompetence or issues involving pedagogical judgment, his or her choice of either a single hearing officer or a three member panel, provided that a three member panel shall not be available where the charges concern pedagogical incompetence based solely upon a teacher's or principal's pattern of ineffective teaching or performance as defined in section three thousand twelve-c of this article. All other charges shall be heard by a single hearing officer.

(ii) All hearings commenced by the filing of charges on or after April first, two thousand fifteen shall be heard by a single hearing officer.

d. The unexcused failure of the employee to notify the clerk or secretary of his or her desire for a hearing within ten days of the receipt of charges shall be deemed a waiver of the right to a hearing. Where an employee requests a hearing in the manner provided for by this section, the clerk or secretary of the board shall, within three working days of receipt of the employee's notice or request for a hearing, notify the commissioner of the need for a hearing. If the employee waives his or her right to a hearing the employing board shall proceed, within fifteen days, by a vote of a majority of all members of such board, to determine the case and fix the penalty, if any, to be imposed in accordance with subdivision four of this section.

3. Hearings. a. Notice of hearing. Upon receipt of a request for a hearing in accordance with subdivision two of this section, the commissioner shall forthwith notify the American Arbitration Association (hereinafter "association") of the need for a hearing and shall request the association to provide to the commissioner forthwith a list of names of persons chosen by the association from the association's panel of labor arbitrators to potentially serve as hearing officers together with relevant biographical information on each arbitrator. Upon receipt of said list and biographical information, the commissioner shall forthwith

54 send a copy of both simultaneously to the employing board and the  
55 employee. The commissioner shall also simultaneously notify both the  
56 employing board and the employee of each potential hearing officer's

1 record in the last five cases of commencing and completing hearings  
2 within the time periods prescribed in this section.

3 b. (i) Hearing officers. All hearings pursuant to this section shall  
4 be conducted before and by a single hearing officer selected as provided  
5 for in this section. A hearing officer shall not be eligible to serve in  
6 such position if he or she is a resident of the school district, other  
7 than the city of New York, under the jurisdiction of the employing  
8 board, an employee, agent or representative of the employing board or of  
9 any labor organization representing employees of such employing board,  
10 has served as such agent or representative within two years of the date  
11 of the scheduled hearing, or if he or she is then serving as a mediator  
12 or fact finder in the same school district.

13 (A) Notwithstanding any other provision of law, for hearings commenced  
14 by the filing of charges prior to April first, two thousand twelve, the  
15 hearing officer shall be compensated by the department with the custom-  
16 ary fee paid for service as an arbitrator under the auspices of the  
17 association for each day of actual service plus necessary travel and  
18 other reasonable expenses incurred in the performance of his or her  
19 duties. All other expenses of the disciplinary proceedings commenced by  
20 the filing of charges prior to April first, two thousand twelve shall be  
21 paid in accordance with rules promulgated by the commissioner. Claims  
22 for such compensation for days of actual service and reimbursement for  
23 necessary travel and other expenses for hearings commenced by the filing  
24 of charges prior to April first, two thousand twelve shall be paid from  
25 an appropriation for such purpose in the order in which they have been  
26 approved by the commissioner for payment, provided payment shall first  
27 be made for any other hearing costs payable by the commissioner, includ-  
28 ing the costs of transcribing the record, and provided further that no  
29 such claim shall be set aside for insufficiency of funds to make a  
30 complete payment, but shall be eligible for a partial payment in one  
31 year and shall retain its priority date status for appropriations desig-  
32 nated for such purpose in future years.

33 (B) Notwithstanding any other provision of law, rule or regulation to  
34 the contrary, for hearings commenced by the filing of charges on or  
35 after April first, two thousand twelve, the hearing officer shall be  
36 compensated by the department for each day of actual service plus neces-  
37 sary travel and other reasonable expenses incurred in the performance of  
38 his or her duties, provided that the commissioner shall establish a  
39 schedule for maximum rates of compensation of hearing officers based on  
40 customary and reasonable fees for service as an arbitrator and provide  
41 for limitations on the number of study hours that may be claimed.

42 (ii) The commissioner shall mail to the employing board and the  
43 employee the list of potential hearing officers and biographies provided  
44 to the commissioner by the association, the employing board and the  
45 employee, individually or through their agents or representatives, shall  
46 by mutual agreement select a hearing officer from said list to conduct  
47 the hearing and shall notify the commissioner of their selection.

48 (iii) Within fifteen days after receiving the list of potential hear-  
49 ing officers as described in subparagraph (ii) of this paragraph, the  
50 employing board and the employee shall each notify the commissioner of  
51 their agreed upon hearing officer selection. If the employing board and  
52 the employee fail to agree on an arbitrator to serve as a hearing offi-  
53 cer from the list of potential hearing officers, or fail to notify the

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54 commissioner of a selection within such fifteen day time period, the  
55 commissioner shall appoint a hearing officer from the list. The  
56 provisions of this subparagraph shall not apply in cities with a popu-

1 lation of one million or more with alternative procedures specified in  
2 section three thousand twenty of this article.

3 (iv) In those cases commenced by the filing of charges prior to April  
4 first, two thousand fifteen in which the employee elects to have the  
5 charges heard by a hearing panel, the hearing panel shall consist of the  
6 hearing officer, selected in accordance with this subdivision, and two  
7 additional persons, one selected by the employee and one selected by the  
8 employing board, from a list maintained for such purpose by the commis-  
9 sioner. The list shall be composed of professional personnel with admin-  
10 istrative or supervisory responsibility, professional personnel without  
11 administrative or supervisory responsibility, chief school administra-  
12 tors, members of employing boards and others selected from lists of  
13 nominees submitted to the commissioner by statewide organizations  
14 representing teachers, school administrators and supervisors and the  
15 employing boards. Hearing panel members other than the hearing officer  
16 shall be compensated by the department at the rate of one hundred  
17 dollars for each day of actual service plus necessary travel and subsis-  
18 tence expenses. The hearing officer shall be compensated as set forth in  
19 this subdivision. The hearing officer shall be the chairperson of the  
20 hearing panel.

21 c. Hearing procedures. (i) (A) The commissioner shall have the power  
22 to establish necessary rules and procedures for the conduct of hearings  
23 under this section.

24 (B) The department shall be authorized to monitor and investigate a  
25 hearing officer's compliance with statutory timelines pursuant to this  
26 section. The commissioner shall annually inform all hearing officers who  
27 have heard cases pursuant to this section during the preceding year that  
28 the time periods prescribed in this section for conducting such hearings  
29 are to be strictly followed. A record of continued failure to commence  
30 and complete hearings within the time periods prescribed in this section  
31 shall be considered grounds for the commissioner to exclude such indi-  
32 vidual from the list of potential hearing officers sent to the employing  
33 board and the employee for such hearings.

34 (C) Such rules shall not require compliance with technical rules of  
35 evidence. Hearings shall be conducted by the hearing officer selected  
36 pursuant to paragraph b of this subdivision [with full and fair disclo-  
37 sure of the nature of the case and evidence against the employee by the  
38 employing board] and shall be public or private at the discretion of the  
39 employee. Full and fair disclosure of the witnesses and evidence shall  
40 be made by both parties in the manner prescribed in articles three and  
41 four of the state administrative procedure act. The employee shall have  
42 a reasonable opportunity to defend himself or herself and an opportunity  
43 to testify in his or her own behalf. The employee shall not be required  
44 to testify. Each party shall have the right to be represented by coun-  
45 sel, to subpoena witnesses, and to cross-examine witnesses. All testimo-  
46 ny taken shall be under oath which the hearing officer is hereby author-  
47 ized to administer. Children shall be permitted to testify through sworn  
48 written or video statements.

49 (D) An accurate record of the proceedings shall be kept at the expense  
50 of the department at each such hearing in accordance with the regu-  
51 lations of the commissioner. A copy of the record of the hearings shall,  
52 upon request, be furnished without charge to the employee and the board  
53 of education involved. The department shall be authorized to utilize any

54 new technology or such other appropriate means to transcribe or record  
55 such hearings in an accurate, reliable, efficient and cost-effective



1 manner without any charge to the employee or board of education  
2 involved.

3 (i-a)(A) Where charges of incompetence are brought based solely upon a  
4 pattern of ineffective teaching or performance of a classroom teacher or  
5 principal, as defined in section three thousand twelve-c of this arti-  
6 cle, the hearing shall be conducted before and by a single hearing offi-  
7 cer in an expedited hearing, which shall commence within seven days  
8 after the pre-hearing conference and shall be completed within sixty  
9 days after the pre-hearing conference. The hearing officer shall estab-  
10 lish a hearing schedule at the pre-hearing conference to ensure that the  
11 expedited hearing is completed within the required timeframes and to  
12 ensure an equitable distribution of days between the employing board and  
13 the charged employee. Notwithstanding any other law, rule or regulation  
14 to the contrary, no adjournments may be granted that would extend the  
15 hearing beyond such sixty days, except as authorized in this subpara-  
16 graph. A hearing officer, upon request, may grant a limited and time  
17 specific adjournment that would extend the hearing beyond such sixty  
18 days if the hearing officer determines that the delay is attributable to  
19 a circumstance or occurrence substantially beyond the control of the  
20 requesting party and an injustice would result if the adjournment were  
21 not granted.

22 (B) Such charges shall allege that the employing board has developed  
23 and substantially implemented a teacher or principal improvement plan in  
24 accordance with subdivision four of section three thousand twelve-c of  
25 this article for the employee following the first evaluation in which  
26 the employee was rated ineffective, and the immediately preceding evalu-  
27 ation if the employee was rated developing. Notwithstanding any other  
28 provision of law to the contrary, a pattern of ineffective teaching or  
29 performance as defined in section three thousand twelve-c of this arti-  
30 cle shall [constitute very significant evidence of incompetence for  
31 purposes of this section] constitute prima facie evidence of incompe-  
32 tence that can only be rebutted by clear and convincing evidence that  
33 the calculation of one or more of the teacher's or principal's underly-  
34 ing composite ratings on the annual professional performance reviews  
35 pursuant to section three thousand twelve-c of this article was fraudu-  
36 lent, and if not successfully rebutted, the finding, absent extraor-  
37 inary circumstances, shall be just cause for removal. Nothing in this  
38 subparagraph shall be construed to otherwise limit the defenses which  
39 the employee may place before the hearing officer in challenging the  
40 allegation of a pattern of ineffective teaching or performance, except  
41 that failure of the employing board to rehabilitate the teacher or prin-  
42 cipal and correct his or her deficiencies shall not be a defense.

43 (C) The commissioner shall annually inform all hearing officers who  
44 have heard cases pursuant to this section during the preceding year that  
45 the time periods prescribed in this subparagraph for conducting expe-  
46 dited hearings are to be strictly followed. A record of continued fail-  
47 ure to commence and complete expedited hearings within the time periods  
48 prescribed in this subparagraph shall be considered grounds for the  
49 commissioner to exclude such individual from the list of potential hear-  
50 ing officers sent to the employing board and the employee for such expe-  
51 dited hearings.

52 (i-b)(A) Where charges of misconduct constituting physical or sexual  
53 abuse of a student are brought, the hearing shall be conducted before

54 and by a single hearing officer in an expedited hearing, which shall  
55 commence within seven days after the pre-hearing conference and shall be  
56 completed within sixty days after the pre-hearing conference. The hear-

ing officer shall establish a hearing schedule at the pre-hearing conference to ensure that the expedited hearing is completed within the required timeframes and to ensure an equitable distribution of days between the employing board and the charged employee. Notwithstanding any other law, rule or regulation to the contrary, no adjournments may be granted that would extend the hearing beyond such sixty days, except as authorized in this subparagraph. A hearing officer, upon request, may grant a limited and time specific adjournment that would extend the hearing beyond such sixty days if the hearing officer determines that the delay is attributable to a circumstance or occurrence substantially beyond the control of the requesting party and an injustice would result if the adjournment were not granted.

(B) The commissioner shall annually inform all hearing officers who have heard cases pursuant to this section during the preceding year that the time periods prescribed in this subparagraph for conducting expedited hearings are to be strictly followed and failure to do so shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers sent to the employing board and the employee for such expedited hearings.

(ii) The hearing officer selected to conduct a hearing under this section shall, within ten to fifteen days of agreeing to serve in such position, hold a pre-hearing conference which shall be held in the school district or county seat of the county, or any county, wherein the employing school board is located. The pre-hearing conference shall be limited in length to one day except that the hearing officer, in his or her discretion, may allow one additional day for good cause shown.

(iii) At the pre-hearing conference the hearing officer shall have the power to:

(A) issue subpoenas;

(B) hear and decide all motions, including but not limited to motions to dismiss the charges;

(C) hear and decide all applications for bills of particular or requests for production of materials or information, including, but not limited to, any witness statement (or statements), investigatory statement (or statements) or note (notes), exculpatory evidence or any other evidence, including district or student records, relevant and material to the employee's defense.

(iv) Any pre-hearing motion or application relative to the sufficiency of the charges, application or amendment thereof, or any preliminary matters shall be made upon written notice to the hearing officer and the adverse party no less than five days prior to the date of the pre-hearing conference. Any pre-hearing motions or applications not made as provided for herein shall be deemed waived except for good cause as determined by the hearing officer.

(v) In the event that at the pre-hearing conference the employing board presents evidence that the professional license of the employee has been revoked and all judicial and administrative remedies have been exhausted or foreclosed, the hearing officer shall schedule the date, time and place for an expedited hearing, which hearing shall commence not more than seven days after the pre-hearing conference and which shall be limited to one day. The expedited hearing shall be held in the local school district or county seat of the county or any county, wherein the said employing board is located. The expedited hearing shall not

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54 be postponed except upon the request of a party and then only for good  
55 cause as determined by the hearing officer. At such hearing, each party  
56 shall have equal time in which to present its case.

(vi) During the pre-hearing conference, the hearing officer shall determine the reasonable amount of time necessary for a final hearing on the charge or charges and shall schedule the location, time(s) and date(s) for the final hearing. The final hearing shall be held in the local school district or county seat of the county, or any county, wherein the said employing school board is located. In the event that the hearing officer determines that the nature of the case requires the final hearing to last more than one day, the days that are scheduled for the final hearing shall be consecutive. The day or days scheduled for the final hearing shall not be postponed except upon the request of a party and then only for good cause shown as determined by the hearing officer. In all cases, the final hearing shall be completed no later than sixty days after the pre-hearing conference unless the hearing officer determines that extraordinary circumstances warrant a limited extension.

(vii) All evidence shall be submitted by all parties within one hundred twenty-five days of the filing of charges and no additional evidence shall be accepted after such time, absent extraordinary circumstances beyond the control of the parties.

d. Limitation on claims. Notwithstanding any other provision of law, rule or regulation to the contrary, no payments shall be made by the department pursuant to this subdivision on or after April first, two thousand twelve for: (i) compensation of a hearing officer or hearing panel member, (ii) reimbursement of such hearing officers or panel members for necessary travel or other expenses incurred by them, or (iii) for other hearing expenses on a claim submitted later than one year after the final disposition of the hearing by any means, including settlement, or within ninety days after the effective date of this paragraph, whichever is later; provided that no payment shall be barred or reduced where such payment is required as a result of a court order or judgment or a final audit.

4. Post hearing procedures. a. The hearing officer shall render a written decision within thirty days of the last day of the final hearing, or in the case of an expedited hearing within ten days of such expedited hearing, and shall forward a copy thereof to the commissioner who shall immediately forward copies of the decision to the employee and to the clerk or secretary of the employing board. The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and shall state what penalty or other action, if any, shall be taken by the employing board. [At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the hearing officer shall consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan.] Failure of the employing board to remediate or correct the behavior of the employee shall not be a defense to any charges and shall not be considered by the hearing officer in determining the penalty or other action to be imposed. In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer[, where he or she deems appropri-

54 ate,] may impose upon the employee remedial action including but not  
55 limited to leaves of absence with or without pay, continuing education  
56 and/or study, a requirement that the employee seek counseling or medical

1 treatment or that the employee engage in any other remedial or combina-  
2 tion of remedial actions. Provided, however, that the hearing officer  
3 shall adopt the penalty recommended by the employing board except where  
4 the hearing officer concludes that the board acted in bad faith or there  
5 are extraordinary circumstances in which the recommended penalty would  
6 be so disproportionate to the offenses proven as to be shocking to the  
7 conscience of the hearing officer.

8 b. Within fifteen days of receipt of the hearing officer's decision  
9 the employing board shall implement the decision. If the employee is  
10 acquitted he or she shall be restored to his or her position with full  
11 pay for any period of suspension without pay and the charges expunged  
12 from the employment record. If an employee who was convicted of a felony  
13 crime specified in paragraph b of subdivision two of this section, has  
14 said conviction reversed, the employee, upon application, shall be enti-  
15 tled to have his or her pay and other emoluments restored, for the peri-  
16 od from the date of his or her suspension to the date of the decision.

17 c. The hearing officer shall indicate in the decision whether any of  
18 the charges brought by the employing board were frivolous as defined in  
19 section eighty-three hundred three-a of the civil practice law and  
20 rules. If the hearing officer finds that all of the charges brought  
21 against the employee were frivolous, the hearing officer shall order the  
22 employing board to reimburse the department the reasonable costs said  
23 department incurred as a result of the proceeding and to reimburse the  
24 employee the reasonable costs, including but not limited to reasonable  
25 attorneys' fees, the employee incurred in defending the charges. If the  
26 hearing officer finds that some but not all of the charges brought  
27 against the employee were frivolous, the hearing officer shall order the  
28 employing board to reimburse the department a portion, in the discretion  
29 of the hearing officer, of the reasonable costs said department incurred  
30 as a result of the proceeding and to reimburse the employee a portion,  
31 in the discretion of the hearing officer, of the reasonable costs,  
32 including but not limited to reasonable attorneys' fees, the employee  
33 incurred in defending the charges.

34 5. Appeal. a. Not later than ten days after receipt of the hearing  
35 officer's decision, the employee or the employing board may make an  
36 application to the New York state supreme court to vacate or modify the  
37 decision of the hearing officer pursuant to section seventy-five hundred  
38 eleven of the civil practice law and rules. The court's review shall be  
39 limited to the grounds set forth in such section. The hearing panel's  
40 determination shall be deemed to be final for the purpose of such  
41 proceeding.

42 b. In no case shall the filing or the pendency of an appeal delay the  
43 implementation of the decision of the hearing officer.

44 § 4. Paragraph j of subdivision 5-a of section 3012-c of the education  
45 law, as added by chapter 21 of the laws of 2012, is amended to read as  
46 follows:

47 j. If a teacher receives an ineffective rating for a school year in  
48 which the teacher is in year two status and the independent validator  
49 agrees, the district may bring a proceeding pursuant to sections three  
50 thousand twenty and three thousand twenty-a of this article based on a  
51 pattern of ineffective teaching or performance. In such proceeding, the  
52 charges shall allege that the employing board has developed and substan-  
53 tially implemented a teacher improvement plan in accordance with subdi-

54 vision four of this section for the employee following the evaluation  
55 made for the year in which the employee was in year one status and was  
56 rated ineffective. The pattern of ineffective teaching or performance



1 shall [give rise to a rebuttable presumption of incompetence and if the  
2 presumption is not successfully rebutted, the finding, absent extraor-  
3 dinary circumstances, shall be just cause for removal] constitute prima  
4 facie evidence of incompetence that can only be rebutted by clear and  
5 convincing evidence that the calculation of one or more of the teacher's  
6 or principal's underlying composite ratings on the annual professional  
7 performance reviews pursuant to this section was fraudulent, and if not  
8 successfully rebutted, the finding, absent extraordinary circumstances,  
9 shall be just cause for removal. In these hearings, the teacher shall  
10 have up to three days to present his or her case for every one day used  
11 by the district to present its case. The hearing officer shall render a  
12 written decision within ten days of the last day of the hearing.

13 § 5. This act shall take effect April 1, 2015 and shall apply to hear-  
14 ings commenced by the filing or service of charges on or after April 1,  
15 2015, provided that effective immediately, the commissioner of education  
16 shall be authorized to promulgate any regulations needed to implement  
17 the provisions of this act on such effective date.

#### 18 SUBPART F

19 Section 1. Paragraph (a) of subdivision 1 of section 2856 of the  
20 education law, as amended by section 3 of part BB of chapter 56 of the  
21 laws of 2014, is amended to read as follows:

22 (a) The enrollment of students attending charter schools shall be  
23 included in the enrollment, attendance, membership and, if applicable,  
24 count of students with disabilities of the school district in which the  
25 pupil resides. The charter school shall report all such data to the  
26 school districts of residence in a timely manner. Each school district  
27 shall report such enrollment, attendance and count of students with  
28 disabilities to the department. The school district of residence shall  
29 pay directly to the charter school for each student enrolled in the  
30 charter school who resides in the school district the charter school  
31 basic tuition, which shall be:

32 (i) for school years prior to the two thousand nine--two thousand ten  
33 school year and for school years following the two thousand sixteen--two  
34 thousand seventeen school year, an amount equal to one hundred percent  
35 of the amount calculated pursuant to paragraph f of subdivision one of  
36 section thirty-six hundred two of this chapter for the school district  
37 for the year prior to the base year increased by the percentage change  
38 in the state total approved operating expense calculated pursuant to  
39 paragraph t of subdivision one of section thirty-six hundred two of this  
40 chapter from two years prior to the base year to the base year;

41 (ii) for the two thousand nine--two thousand ten school year, the  
42 charter school basic tuition shall be the amount payable by such  
43 district as charter school basic tuition for the two thousand eight--two  
44 thousand nine school year;

45 (iii) for the two thousand ten--two thousand eleven through two thou-  
46 sand thirteen--two thousand fourteen school years, the charter school  
47 basic tuition shall be the basic tuition computed for the two thousand  
48 ten--two thousand eleven school year pursuant to the provisions of  
49 subparagraph (i) of this paragraph;

50 (iv) for the two thousand fourteen--two thousand fifteen, two thousand  
51 fifteen--two thousand sixteen and two thousand sixteen--two thousand

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52 seventeen school years, the charter school basic tuition shall be the  
53 sum of the lesser of the charter school basic tuition computed for the  
54 two thousand ten--two thousand eleven school year pursuant to the

1 provisions of subparagraph (i) of this paragraph or the charter school  
2 basic tuition computed for the current year pursuant to the provisions  
3 of subparagraph (i) of this paragraph plus the supplemental basic  
4 tuition.

5 For the purposes of this subdivision, the "supplemental basic tuition"  
6 shall be (A) for a school district for which the charter school basic  
7 tuition computed for the current year is greater than or equal to the  
8 charter school basic tuition for the two thousand ten--two thousand  
9 eleven school year pursuant to the provisions of subparagraph (i) of  
10 this paragraph, (1) for the two thousand fourteen--two thousand fifteen  
11 school year two hundred and fifty dollars, and (2) for the two thousand  
12 fifteen--two thousand sixteen school year [three hundred and fifty] four  
13 hundred twenty-five dollars, and (3) for the two thousand sixteen--two  
14 thousand seventeen school year five hundred seventy-five dollars, and  
15 (B) for a school district for which the charter school basic tuition for  
16 the two thousand ten--two thousand eleven school year is greater than  
17 the charter school basic tuition for the current year pursuant to the  
18 provisions of subparagraph (i) of this paragraph, the positive differ-  
19 ence of the charter school basic tuition for the two thousand ten--two  
20 thousand eleven school year minus the charter school basic tuition for  
21 the current year pursuant to the provisions of subparagraph (i) of this  
22 paragraph.

23 § 2. Paragraph (a) of subdivision 1 of section 2856 of the education  
24 law, as amended by section 4 of part BB of chapter 56 of the laws of  
25 2014, is amended to read as follows:

26 (a) The enrollment of students attending charter schools shall be  
27 included in the enrollment, attendance, membership and, if applicable,  
28 count of students with disabilities of the school district in which the  
29 pupil resides. The charter school shall report all such data to the  
30 school districts of residence in a timely manner. Each school district  
31 shall report such enrollment, attendance and count of students with  
32 disabilities to the department. The school district of residence shall  
33 pay directly to the charter school for each student enrolled in the  
34 charter school who resides in the school district the charter school  
35 basic tuition which shall be:

36 (i) for school years prior to the two thousand nine--two thousand ten  
37 school year and for school years following the two thousand sixteen--two  
38 thousand seventeen school year, an amount equal to one hundred percent  
39 of the amount calculated pursuant to paragraph f of subdivision one of  
40 section thirty-six hundred two of this chapter for the school district  
41 for the year prior to the base year increased by the percentage change  
42 in the state total approved operating expense calculated pursuant to  
43 paragraph t of subdivision one of section thirty-six hundred two of this  
44 chapter from two years prior to the base year to the base year;

45 (ii) for the two thousand nine--two thousand ten school year, the  
46 charter school basic tuition shall be the amount payable by such  
47 district as charter school basic tuition for the two thousand eight--two  
48 thousand nine school year;

49 (iii) for the two thousand ten--two thousand eleven through two thou-  
50 sand thirteen--two thousand fourteen school years, the charter school  
51 basic tuition shall be the basic tuition computed for the two thousand  
52 ten--two thousand eleven school year pursuant to the provisions of  
53 subparagraph (i) of this paragraph;

54 (iv) for the two thousand fourteen--two thousand fifteen, two thousand  
55 fifteen--two thousand sixteen and two thousand sixteen--two thousand  
56 seventeen school years, the charter school basic tuition shall be the

1 sum of the lesser of the charter school basic tuition computed for the  
2 two thousand ten--two thousand eleven school year pursuant to the  
3 provisions of subparagraph (i) of this paragraph or the charter school  
4 basic tuition computed for the current year pursuant to the provisions  
5 of subparagraph (i) of this paragraph plus the supplemental basic  
6 tuition.

7 For the purposes of this subdivision, the "supplemental basic tuition"  
8 shall be (A) for a school district for which the charter school basic  
9 tuition computed for the current year is greater than or equal to the  
10 charter school basic tuition for the two thousand ten--two thousand  
11 eleven school year pursuant to the provisions of subparagraph (i) of  
12 this paragraph, (1) for the two thousand fourteen--two thousand fifteen  
13 school year two hundred and fifty dollars, and (2) for the two thousand  
14 fifteen--two thousand sixteen school year [three hundred and fifty] four  
15 hundred twenty-five dollars, and (3) for the two thousand sixteen--two  
16 thousand seventeen school year five hundred seventy-five dollars, and  
17 (B) for a school district for which the charter school basic tuition for  
18 the two thousand ten--two thousand eleven school year is greater than  
19 the charter school basic tuition for the current year pursuant to the  
20 provisions of subparagraph (i) of this paragraph, the positive differ-  
21 ence of the charter school basic tuition for the two thousand ten--two  
22 thousand eleven school year minus the charter school basic tuition for  
23 the current year pursuant to the provisions of subparagraph (i) of this  
24 paragraph.

25 § 3. Subdivisions 9 and 9-a of section 2852 of the education law,  
26 subdivision 9 as amended and subdivision 9-a as added by chapter 101 of  
27 the laws of 2010, paragraph (a) of subdivision 9-a as amended by chapter  
28 221 of the laws of 2010, paragraph (f) of subdivision 9-a as amended by  
29 chapter 102 of the laws of 2010, are amended to read as follows:

30 9. The total number of charters issued pursuant to this article state-  
31 wide shall not exceed [four] five hundred sixty. (a) [One hundred of  
32 such charters shall be issued on the recommendation of the charter enti-  
33 ty described in paragraph (b) of subdivision three of section twenty-  
34 eight hundred fifty-one of this article; (b) one hundred of such char-  
35 ters shall be issued on the recommendation of the other charter entities  
36 set forth in subdivision three of section twenty-eight hundred fifty-one  
37 of this article; (c) up to fifty of the additional charters authorized  
38 to be issued by the chapter of the laws of two thousand seven which  
39 amended this subdivision effective July first, two thousand seven shall  
40 be reserved for a city school district of a city having a population of  
41 one million or more; (d) one hundred thirty charters shall be issued by  
42 the board of regents pursuant to a competitive process in accordance  
43 with subdivision nine-a of this section, provided that no more than  
44 fifty-seven of such charters shall be granted to a charter for a school  
45 to be located in a city having a population of one million or more; (e)  
46 one hundred thirty charters shall be issued by the board of regents on  
47 the recommendation of the board of trustees of the state university of  
48 New York pursuant to a competitive process in accordance with subdivi-  
49 sion nine-a of this section, provided that no more than fifty-seven of  
50 such charters shall be granted to a charter for a school to be located  
51 in a city having a population of one million or more] All charters  
52 issued on or after February first, two thousand fifteen and counted  
53 toward the numerical limits established by this subdivision shall be

54 issued by the board of regents upon application directly to the board of  
55 regents or on the recommendation of the board of trustees of the state  
56 university of New York pursuant to a competitive process in accordance

1 with subdivision nine-a of this section. The failure of any body to  
2 issue the regulations authorized pursuant to this article shall not  
3 affect the authority of a charter entity to propose a charter to the  
4 board of regents or the board of regents' authority to grant such char-  
5 ter. A conversion of an existing public school to a charter school or  
6 the renewal or extension of a charter approved by any charter entity  
7 shall not be counted toward the numerical limits established by this  
8 subdivision.

9 (b) A charter school whose charter has been surrendered, revoked or  
10 terminated, including a charter that has not been renewed by action of  
11 its charter entity, shall not be counted toward the numerical limits  
12 established by this subdivision and instead shall be returned to the  
13 statewide pool and may be reissued by the board of regents either upon  
14 application directly to the board of regents or on the recommendation of  
15 the board of trustees of the state university of New York pursuant to a  
16 competitive process in accordance with subdivision nine-a of this  
17 section.

18 (c) For purposes of determining the total number of charters issued  
19 within the numerical limits established by this subdivision, the  
20 approval date of the chartering entity shall be the determining factor.

21 9-a. (a) The board of regents is hereby authorized and directed to  
22 issue [two] up to five hundred sixty charters upon either applications  
23 submitted directly to the board of regents or applications recommended  
24 by the board of trustees of the state university of New York pursuant to  
25 a competitive request for proposals process.

26 [(i) Commencing on August first, two thousand ten through September  
27 first, two thousand thirteen, the board of regents and the board of  
28 trustees of the state university of New York shall each issue a request  
29 for proposals in accordance with this subdivision and this subparagraph:

30 (1) Each request for proposals to be issued by the board of regents  
31 and the board of trustees of the state university of New York on August  
32 first, two thousand ten shall be for a maximum of thirty-two charters to  
33 be issued for charter schools which would commence instructional opera-  
34 tion by the September of the next calendar year.

35 (2) Each request for proposals to be issued by the board of regents  
36 and the board of trustees of the state university of New York on January  
37 first, two thousand eleven shall be for a maximum of thirty-three char-  
38 ters to be issued for charter schools which would commence instructional  
39 operation by the September of the next calendar year.

40 (3) Each request for proposals to be issued by the board of regents  
41 and the board of trustees of the state university of New York on January  
42 first, two thousand twelve shall be for a maximum of thirty-two charters  
43 to be issued for charter schools which would commence instructional  
44 operation by the September of the next calendar year.

45 (4) Each request for proposals to be issued by the board of regents  
46 and the board of trustees of the state university of New York on Septem-  
47 ber first, two thousand thirteen shall be for a maximum of thirty-three  
48 charters to be issued for charter schools which would commence instruc-  
49 tional operation by the September of the next calendar year.

50 (ii) If after September first, two thousand thirteen, either the board  
51 of regents or the board of trustees of the state university of New York  
52 have any charters which have not yet been issued, they may be issued  
53 pursuant to requests for proposals issued in each succeeding year, with-

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54 out limitation as to when such requests for proposals may be issued, or  
55 a limitation on the number of charters which may be issued.

AB



(iii) Notwithstanding the provisions of clauses one, two, three and four of subparagraph (i) of this paragraph and subparagraph (ii) of this paragraph, if fewer charters are issued than were requested in such request for proposals, the difference may be added to the number of charters requested in the request for proposals issued in each succeeding year.

(iv)] The board of regents shall make a determination to issue a charter pursuant to a request for proposals no later than December thirty-first of each year.

(b) The board of regents and the board of trustees of the state university of New York shall each develop such request for proposals in a manner that facilitates a thoughtful review of charter school applications, considers the demand for charter schools by the community, and seeks to locate charter schools in a region or regions where there may be a lack of alternatives and access to charter schools would provide new alternatives within the local public education system that would offer the greatest educational benefit to students. Applications shall be evaluated in accordance with the criteria and objectives contained within a request for proposals. The board of regents and the board of trustees of the state university of New York shall not consider any applications which do not rigorously demonstrate that they have met the following criteria:

(i) that the proposed charter school would meet or exceed enrollment and retention targets, as prescribed by the board of regents or the board of trustees of the state university of New York, as applicable, of students with disabilities, English language learners, and students who are eligible applicants for the free and reduced price lunch program. When developing such targets, the board of regents and the board of trustees of the state university of New York, shall ensure (1) that such enrollment targets are comparable to the enrollment figures of such categories of students attending the public schools within the school district, or in a city school district in a city having a population of one million or more inhabitants, the community school district, in which the proposed charter school would be located; and (2) that such retention targets are comparable to the rate of retention of such categories of students attending the public schools within the school district, or in a city school district in a city having a population of one million or more inhabitants, the community school district, in which the proposed charter school would be located; and

(ii) that the applicant has conducted public outreach, in conformity with a thorough and meaningful public review process prescribed by the board of regents and the board of trustees of the state university of New York, to solicit community input regarding the proposed charter school and to address comments received from the impacted community concerning the educational and programmatic needs of students.

(c) The board of regents and the board of trustees of the state university of New York shall grant priority based on a scoring rubric to those applications that best demonstrate how they will achieve the following objectives, and any additional objectives the board of regents and the board of trustees of the state university of New York, may prescribe:

(i) increasing student achievement and decreasing student achievement gaps in reading/language arts and mathematics;

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54 (ii) increasing high school graduation rates and focusing on serving  
55 specific high school student populations including, but not limited to,  
56 students at risk of not obtaining a high school diploma, re-enrolled

1 high school drop-outs, and students with academic skills below grade  
2 level;

3 (iii) focusing on the academic achievement of middle school students  
4 and preparing them for a successful transition to high school;

5 (iv) utilizing high-quality assessments designed to measure a  
6 student's knowledge, understanding of, and ability to apply, critical  
7 concepts through the use of a variety of item types and formats;

8 (v) increasing the acquisition, adoption, and use of local instruc-  
9 tional improvement systems that provide teachers, principals, and admin-  
10 istrators with the information and resources they need to inform and  
11 improve their instructional practices, decision-making, and overall  
12 effectiveness;

13 (vi) partnering with low performing public schools in the area to  
14 share best educational practices and innovations;

15 (vii) demonstrating the management and leadership techniques necessary  
16 to overcome initial start-up problems to establish a thriving, finan-  
17 cially viable charter school;

18 (viii) demonstrating the support of the school district in which the  
19 proposed charter school will be located and the intent to establish an  
20 ongoing relationship with such school district.

21 (d) No later than November first, two thousand ten, and of each  
22 succeeding year, after a thorough review of applications received, the  
23 board of trustees of the state university of New York shall recommend  
24 for approval to the board of regents the qualified applications that it  
25 has determined rigorously demonstrate the criteria and best satisfy the  
26 objectives contained within a request for proposals, along with support-  
27 ing documentation outlining such determination.

28 (e) Upon receipt of a proposed charter to be issued pursuant to this  
29 subdivision submitted by a charter entity, the board of regents or the  
30 board of trustees of the state university of New York, shall review,  
31 recommend and issue, as applicable, such charters in accordance with the  
32 standards established in this subdivision.

33 (f) The board of regents shall be the only entity authorized to issue  
34 a charter pursuant to this article. The board of regents shall consider  
35 applications submitted directly to the board of regents and applications  
36 recommended by the board of trustees of the state university of New  
37 York. Provided, however, that all such recommended applications shall be  
38 deemed approved and issued pursuant to the provisions of subdivisions  
39 five, five-a and five-b of this section.

40 (g) Each application submitted in response to a request for proposals  
41 pursuant to this subdivision shall also meet the application require-  
42 ments set out in this article and any other applicable laws, rules and  
43 regulations.

44 (h) During the development of a request for proposals pursuant to this  
45 subdivision the board of regents and the board of trustees of the state  
46 university of New York shall each afford the public an opportunity to  
47 submit comments and shall review and consider the comments raised by all  
48 interested parties.

49 § 4. Paragraph (b) of subdivision 2 of section 2854 of the education  
50 law, as amended by chapter 101 of the laws of 2010, is amended to read  
51 as follows:

52 (b) Any child who is qualified under the laws of this state for admis-  
53 sion to a public school is qualified for admission to a charter school.

54 Applications for admission to a charter school shall be submitted on a  
55 uniform application form created by the department and shall be made  
56 available by a charter school in languages predominately spoken in the

1 community in which such charter school is located. The school shall  
2 enroll each eligible student who submits a timely application by the  
3 first day of April each year, unless the number of applications exceeds  
4 the capacity of the grade level or building. In such cases, students  
5 shall be accepted from among applicants by a random selection process,  
6 provided, however, that an enrollment preference shall be provided to  
7 pupils returning to the charter school in the second or any subsequent  
8 year of operation and pupils residing in the school district in which  
9 the charter school is located, and siblings of pupils already enrolled  
10 in the charter school. Preference shall also be provided to (i) students  
11 who are eligible applicants for the free and reduced price lunch  
12 program, (ii) students who are currently attending or would otherwise  
13 attend a school district or school designated as chronically underper-  
14 forming pursuant to sections two hundred eleven-f and two hundred  
15 eleven-g of this chapter, and (iii) children of employees of the charter  
16 school, provided that such children of employees may only constitute a  
17 small percentage of the charter school's total enrollment. The commis-  
18 sioner shall establish regulations to require that the random selection  
19 process conducted pursuant to this paragraph be performed in a transpar-  
20 ent and equitable manner and to require that the time and place of the  
21 random selection process be publicized in a manner consistent with the  
22 requirements of section one hundred four of the public officers law and  
23 be open to the public. For the purposes of this paragraph and paragraph  
24 (a) of this subdivision, the school district in which the charter school  
25 is located shall mean, for the city school district of the city of New  
26 York, the community district in which the charter school is located.

27 § 5. Paragraphs (d) and (e) of subdivision 1 of section 2855 of the  
28 education law, paragraph (d) as amended and paragraph (e) as added by  
29 chapter 101 of the laws of 2010, are amended, and a new paragraph (f) is  
30 added to read as follows:

31 (d) When the public employment relations board makes a determination  
32 that the charter school demonstrates a practice and pattern of egregious  
33 and intentional violations of subdivision one of section two hundred  
34 nine-a of the civil service law involving interference with or discrimi-  
35 nation against employee rights under article fourteen of the civil  
36 service law; [or]

37 (e) Repeated failure to comply with the requirement to meet or exceed  
38 enrollment and retention targets of students with disabilities, English  
39 language learners, and students who are eligible applicants for the free  
40 and reduced price lunch program pursuant to targets established by the  
41 board of regents or the board of trustees of the state university of New  
42 York, as applicable. Provided, however, if no grounds for terminating a  
43 charter are established pursuant to this section other than pursuant to  
44 this paragraph, and the charter school demonstrates that it has made  
45 extensive efforts to recruit and retain such students, including  
46 outreach to parents and families in the surrounding communities, widely  
47 publicizing the lottery for such school, and efforts to academically  
48 support such students in such charter school, then the charter entity or  
49 board of regents may retain such charter[.]; or

50 (f) Repeated failure to comply with the data reporting requirements  
51 prescribed in subdivisions two and two-a of section twenty-eight hundred  
52 fifty-seven of this article, including but not limited to the end of the  
53 year reporting requirements on the enrollment and retention of students

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54 with limited English proficiency; the number of students with disabili-  
55 ties and the number of students identified as eligible for free and  
56 reduced price lunches.

1     § 6. Section 2857 of the education law is amended by adding a new  
2     subdivision 2-a to read as follows:

3     2-a. No later than the first day of August of each school year, (for  
4     data for the preceding school year) and bi-monthly thereafter for the  
5     current school year data, each charter school shall submit to the board  
6     of regents data on enrollment rates, including but not limited to the  
7     number of students with limited English proficiency; the number of  
8     students with disabilities and the number of students identified as  
9     eligible for free and reduced price lunches and any other additional  
10    requirements prescribed by the board of regents in the rules of the  
11    board of regents.

12    § 7. This act shall take effect immediately; provided that the amend-  
13    ments to subdivision 1 of section 2856 of the education law made by  
14    section one of this act shall be subject to the expiration and reversion  
15    of such subdivision pursuant to subdivision d of section 27 of chapter  
16    378 of the laws of 2007, as amended, when upon such date the provisions  
17    of section two of this act shall take effect.

18    § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
19    sion, section or part of this act shall be adjudged by any court of  
20    competent jurisdiction to be invalid, such judgment shall not affect,  
21    impair, or invalidate the remainder thereof, but shall be confined in  
22    its operation to the clause, sentence, paragraph, subdivision, section  
23    or part thereof directly involved in the controversy in which such judg-  
24    ment shall have been rendered. It is hereby declared to be the intent of  
25    the legislature that this act would have been enacted even if such  
26    invalid provisions had not been included herein.

27    § 3. This act shall take effect immediately provided, however, that  
28    the applicable effective date of Subparts A through F of this act shall  
29    be as specifically set forth in the last section of such Subparts.

30                                   PART B

31    Section 1. Subparagraph 1 of paragraph a of subdivision 2 of section  
32    3012-c of the education law, as amended by chapter 21 of the laws of  
33    2012, is amended to read as follows:

34    (1) [The] (i) For school years prior to the two thousand fifteen--two  
35    thousand sixteen school year, annual professional performance reviews  
36    conducted pursuant to this section for classroom teachers and building  
37    principals shall differentiate teacher and principal effectiveness using  
38    the following quality rating categories: highly effective, effective,  
39    developing and ineffective, with explicit minimum and maximum scoring  
40    ranges for each category, for the state assessments and other comparable  
41    measures subcomponent of the evaluation and for the locally selected  
42    measures of student achievement subcomponent of the evaluation, as  
43    prescribed in the regulations of the commissioner. There shall be:  
44    [(i)] (A) a state assessments and other comparable measures subcomponent  
45    which shall comprise twenty or twenty-five percent of the evaluation;  
46    [(ii)] (B) a locally selected measures of student achievement subcompo-  
47    nent which shall comprise twenty or fifteen percent of the evaluation;  
48    and [(iii)] (C) an other measures of teacher or principal effectiveness  
49    subcomponent which shall comprise the remaining sixty percent of the  
50    evaluation, which in sum shall constitute the composite teacher or prin-  
51    icipal effectiveness score. Such annual professional performance reviews

52 shall result in a single composite teacher or principal effectiveness  
53 score, which incorporates multiple measures of effectiveness related to  
54 the criteria included in the regulations of the commissioner.



(ii) For the two thousand fifteen--two thousand sixteen school year and thereafter, annual professional performance reviews conducted pursuant to this section for classroom teachers and building principals shall differentiate teacher and principal effectiveness using the following quality rating categories: highly effective, effective, developing and ineffective, with explicit minimum and maximum scoring ranges for each category, for the state assessments and other comparable measures subcomponent and the other measures of teacher and leader effectiveness subcomponent, as prescribed in the regulations of the commissioner. There shall be: (A) a state assessments and other comparable measures subcomponent which shall comprise fifty percent of the evaluation; and (B) an other measures of teacher or principal effectiveness subcomponent which shall comprise the remaining fifty percent of the evaluation, pursuant to criteria included in the regulations of the commissioner.

§ 2. Subparagraphs 3, 4, 5, 6, 7 and 8 of paragraph a of subdivision 2 of section 3012-c of the education law, as amended by chapter 21 of the laws of 2012, are amended to read as follows:

(3) For annual professional performance reviews conducted in accordance with paragraph b of this subdivision for the two thousand eleven--two thousand twelve school year and for annual professional performance reviews conducted in accordance with paragraph f of this subdivision for the two thousand twelve--two thousand thirteen [school year], two thousand thirteen--two thousand fourteen and two thousand fourteen--two thousand fifteen school years for classroom teachers in subjects and grades for which the board of regents has not approved a value-added model and for building principals employed in schools or programs for which there is no approved principal value-added model, the scoring ranges for the student growth on state assessments or other comparable measures subcomponent shall be in accordance with this subparagraph. A classroom teacher and building principal shall receive:

(A) a highly effective rating in this subcomponent if the teacher's or principal's results are well-above the state average for similar students and they achieve a subcomponent score of 18-20;

(B) an effective rating in this subcomponent if the teacher's or principal's results meet the state average for similar students and they achieve a subcomponent score of 9-17; or

(C) a developing rating in this subcomponent if the teacher's or principal's results are below the state average for similar students and they achieve a subcomponent score of 3-8; or

(D) an ineffective rating in this subcomponent, if the teacher's or principal's results are well-below the state average for similar students and they achieve a subcomponent score of 0-2.

(4) For annual professional performance reviews conducted in accordance with paragraph g of this subdivision for the two thousand twelve--two thousand thirteen [school year], two thousand thirteen--two thousand fourteen and two thousand fourteen--two thousand fifteen school years for classroom teachers in subjects and grades for which the board of regents has approved a value-added model and for building principals employed in schools or programs for which there is an approved principal value-added model, the scoring ranges for the student growth on state assessments or other comparable measures subcomponent shall be in accordance with this subparagraph. A classroom teacher and building principal shall receive:

54 (A) a highly effective rating in this subcomponent if the teacher's or  
55 principal's results are well-above the state average for similar  
56 students and they achieve a subcomponent score of 22-25;

1 (B) an effective rating in this subcomponent if the teacher's or prin-  
2 cipal's results meet the state average for similar students and they  
3 achieve a subcomponent score of 10-21; or

4 (C) a developing rating in this subcomponent if the teacher's or prin-  
5 cipal's results are below the state average for similar students and  
6 they achieve a subcomponent score of 3-9; or

7 (D) an ineffective rating in this subcomponent, if the teacher's or  
8 principal's results are well-below the state average for similar  
9 students and they achieve a subcomponent score of 0-2.

10 (5) For annual professional performance reviews conducted in accord-  
11 ance with paragraph b of this subdivision for the two thousand eleven--  
12 two thousand twelve school year and for annual professional performance  
13 reviews conducted in accordance with paragraph f of this subdivision for  
14 the two thousand twelve--two thousand thirteen [school year], two thou-  
15 sand thirteen--two thousand fourteen and two thousand fourteen--two  
16 thousand fifteen school years for classroom teachers in subjects and  
17 grades for which the board of regents has not approved a value-added  
18 model and for building principals employed in schools or programs for  
19 which there is no approved principal value-added model, the scoring  
20 ranges for the locally selected measures of student achievement subcom-  
21 ponent shall be in accordance with this subparagraph. A classroom teach-  
22 er and building principal shall receive:

23 (A) a highly effective rating in this subcomponent if the results are  
24 well-above district-adopted expectations for student growth or achieve-  
25 ment and they achieve a subcomponent score of 18-20; or

26 (B) an effective rating in this subcomponent if the results meet  
27 district-adopted expectations for growth or achievement and they achieve  
28 a subcomponent score of 9-17; or

29 (C) a developing rating in this subcomponent if the results are below  
30 district-adopted expectations for growth or achievement and they achieve  
31 a subcomponent score of 3-8; or

32 (D) an ineffective rating in this subcomponent if the results are  
33 well-below district-adopted expectations for growth or achievement and  
34 they achieve a subcomponent score of 0-2.

35 (6) For annual professional performance reviews conducted in accord-  
36 ance with paragraph b of this subdivision for the two thousand eleven--  
37 two thousand twelve school year and for annual professional performance  
38 reviews conducted in accordance with paragraph g of this subdivision for  
39 the two thousand twelve--two thousand thirteen [school year], two thou-  
40 sand thirteen--two thousand fourteen and two thousand fourteen--two  
41 thousand fifteen school years for classroom teachers in subjects and  
42 grades for which the board of regents has approved a value-added model  
43 and for building principals employed in schools or programs for which  
44 there is an approved principal value-added model, the scoring ranges for  
45 the locally selected measures of student achievement subcomponent shall  
46 be in accordance with this subparagraph. A classroom teacher and build-  
47 ing principal shall receive:

48 (A) a highly effective rating in this subcomponent if the results are  
49 well-above district-adopted expectations for student growth or achieve-  
50 ment and they achieve a subcomponent score of 14-15; or

51 (B) an effective rating in this subcomponent if the results meet  
52 district-adopted expectations for growth or achievement and they achieve  
53 a subcomponent score of 8-13; or

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54 (C) a developing rating in this subcomponent if the results are below  
55 district-adopted expectations for growth or achievement and they achieve  
56 a subcomponent score of 3-7; or

1 (D) an ineffective rating in this subcomponent if the results are  
2 well-below district-adopted expectations for growth or achievement and  
3 they achieve a subcomponent score of 0-2.

4 (7) (A) For the two thousand thirteen--two thousand fourteen [school  
5 year] and two thousand fourteen--two thousand fifteen school years and  
6 thereafter, the commissioner shall review the specific scoring ranges  
7 for each of the rating categories annually before the start of each  
8 school year and shall recommend any changes to the board of regents for  
9 consideration.

10 (B) Notwithstanding any other provision of law to the contrary, for  
11 the two thousand fifteen--two thousand sixteen school year and thereaft-  
12 er, a classroom teacher and building principal shall receive ratings on  
13 the state growth or other comparable measures subcomponent and the other  
14 measures of teacher and principal effectiveness subcomponent pursuant to  
15 scoring ranges prescribed by the commissioner in regulations. The  
16 commissioner shall review the overall composite scoring ranges annually  
17 before the start of each school year and may issue new regulations as he  
18 or she deems warranted. Provided; however, if a classroom teacher or  
19 building principal receives an ineffective rating on any one of these  
20 subcomponents, the highest overall composite rating he or she may  
21 receive is developing.

22 (8) Except for the student growth measures on the state assessments or  
23 other comparable measures of student growth prescribed in paragraphs e,  
24 f and g of this subdivision, the [elements comprising the composite  
25 effectiveness score and the] process by which points are assigned to  
26 subcomponents shall be locally developed, consistent with the standards  
27 prescribed in the regulations of the commissioner and the requirements  
28 of this section, through negotiations conducted, pursuant to the  
29 requirements of article fourteen of the civil service law.

30 § 3. Subparagraphs 2 and 3 of paragraph c of subdivision 2 of section  
31 3012-c of the education law, as amended by chapter 21 of the laws of  
32 2012, are amended to read as follows:

33 (2) Subject to paragraph k of this subdivision, for the two thousand  
34 twelve--two thousand thirteen and the two thousand thirteen--two thou-  
35 sand fourteen school years, the entire annual professional performance  
36 review shall be completed and provided to the teacher or principal as  
37 soon as practicable but in no case later than September first of the  
38 school year next following the school year for which the classroom  
39 teacher or building principal's performance is being measured. The  
40 teacher's and principal's score and rating on the locally selected meas-  
41 ures subcomponent, if available, and on the other measures of teacher  
42 and principal effectiveness subcomponent for a teacher's or principal's  
43 annual professional performance review shall be computed and provided to  
44 the teacher or principal, in writing, by no later than the last day of  
45 the school year for which the teacher or principal is being measured.  
46 Nothing in this subdivision shall be construed to authorize a teacher or  
47 principal to trigger the appeal process prior to receipt of his or her  
48 composite effectiveness score and rating.

49 (3) Each such annual professional performance review shall be based on  
50 the state assessments or other comparable measures subcomponent, the  
51 locally selected measures of student achievement subcomponent in school  
52 years where applicable, and the other measures of teacher and principal  
53 effectiveness subcomponent, determined in accordance with the applicable

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54 provisions of this section and the regulations of the commissioner, for  
55 the school year for which the teacher's or principal's performance is  
56 measured.

1 § 4. Subparagraph 1 of paragraph f of subdivision 2 of section 3012-c  
2 of the education law, as amended by chapter 21 of the laws of 2012, is  
3 amended to read as follows:

4 (1) For annual professional performance reviews conducted in accord-  
5 ance with paragraph c of this subdivision for the two thousand twelve--  
6 two thousand thirteen [school year and thereafter], two thousand thir-  
7 teen--two thousand fourteen and two thousand fourteen--two thousand  
8 fifteen school years for classroom teachers in subjects and grades for  
9 which the board of regents has not approved a value-added model and for  
10 building principals employed in schools or programs for which there is  
11 no approved principal value-added model, forty percent of the composite  
12 score of effectiveness shall be based on student achievement measures as  
13 follows: (i) twenty percent of the evaluation shall be based upon  
14 student growth data on state assessments as prescribed by the commis-  
15 sioner or a comparable measure of student growth if such growth data is  
16 not available; and (ii) twenty percent shall be based on other locally  
17 selected measures of student achievement that are determined to be  
18 rigorous and comparable across classrooms in accordance with the regu-  
19 lations of the commissioner and as are developed locally in a manner  
20 consistent with procedures negotiated pursuant to the requirements of  
21 article fourteen of the civil service law.

22 § 5. Paragraph f of subdivision 2 of section 3012-c of the education  
23 law is amended by adding a new subparagraph 5 to read as follows:

24 (5) For the two thousand fifteen--two thousand sixteen school year and  
25 thereafter, fifty percent of a classroom teacher's or building princi-  
26 pal's composite effectiveness score shall be based on student growth on  
27 state assessments, where applicable, or other comparable measures of  
28 student growth, as prescribed by the commissioner in regulations;  
29 provided that such regulations shall require that any comparable meas-  
30 ures of student growth be measured on an annual basis. For the two thou-  
31 sand fifteen--two thousand sixteen school year and thereafter, there  
32 shall be no locally selected measures of student achievement subcompo-  
33 nent.

34 § 6. Paragraphs h, i and j of subdivision 2 of section 3012-c of the  
35 education law, paragraph h as amended and paragraph j as added by chap-  
36 ter 21 of the laws of 2012 and paragraph i as added by chapter 103 of  
37 the laws of 2010, are amended to read as follows:

38 h. [The] For school years prior to the two thousand fifteen--two thou-  
39 sand sixteen school year, the remaining sixty percent of the evalu-  
40 ations, ratings and effectiveness scores shall be locally developed, and  
41 for the two thousand fifteen--two thousand sixteen school year and ther-  
42 eafter, the remaining fifty percent of the evaluations, ratings and  
43 effectiveness scores shall be locally developed, consistent with the  
44 standards prescribed in the regulations of the commissioner, through  
45 negotiations conducted pursuant to article fourteen of the civil service  
46 law, except as otherwise provided in this section.

47 (1) [A] (i) For school years prior to the two thousand fifteen--two  
48 thousand sixteen school year, a majority of the sixty points for class-  
49 room teachers shall be based on multiple classroom observations  
50 conducted by a principal or other trained administrator, which may be  
51 performed in-person or by video. For evaluations for the two thousand  
52 twelve--two thousand thirteen school year and thereafter, at least one  
53 such observation shall be an unannounced visit.

54 (ii) For the two thousand fifteen--two thousand sixteen school year  
55 and thereafter, a minimum of thirty-five of the fifty points must be  
56 based on one or more classroom observations conducted by an independent



1 evaluator, at least one of which must be unannounced. An independent  
2 evaluator shall be one of the following:

3 (A) a building principal or other trained administrator within or  
4 outside the school district, with a demonstrated record of effectiveness  
5 as determined by the commissioner, and who is not currently assigned as  
6 a principal or administrator in the school in which he or she is  
7 conducting the evaluation; or

8 (B) a trained independent evaluator from a list of entities and/or  
9 evaluators with a demonstrated record of effectiveness and expertise in  
10 teacher training, observation, or effectiveness, as determined by the  
11 commissioner including but not limited to retired teachers and adminis-  
12 trators; or

13 (C) appointed faculty at a State University of New York or a City  
14 University of New York school of education. Provided however that, the  
15 department shall provide technical assistance for school districts and  
16 boards of cooperative educational services including but not limited to:

17 (a) facilitating partnerships for school districts to implement shared  
18 service agreements in order to access neighboring principals or trained  
19 administrators;

20 (b) developing and maintaining a list of entities and/or evaluators  
21 with a demonstrated record of effectiveness and expertise in teacher  
22 training, observation, or effectiveness; or

23 (c) assisting school districts in developing schedules for sharing  
24 administrators within a school district; or

25 (d) coordinating with boards of cooperative educational services to  
26 provide additional technical assistance.

27 (2) For the remaining portion of these sixty points for evaluations  
28 for the two thousand eleven--two thousand twelve school year, the  
29 commissioner's regulation shall prescribe the other forms of evidence of  
30 teacher and principal effectiveness that may be used.

31 (3) For evaluations of classroom teachers for the two thousand twelve-  
32 --two thousand thirteen [school year and thereafter] two thousand thir-  
33 teen--two thousand fourteen and two thousand fourteen--two thousand  
34 fifteen school years, the remaining portion of these sixty points shall  
35 be based on one or more of the following:

36 (i) one or more classroom observations by independent trained evalu-  
37 ators selected by the school district or board of cooperative educa-  
38 tional services who are teachers or former teachers with a demonstrated  
39 record of effectiveness and have no prior affiliation with the school in  
40 which they are conducting the evaluation and no other relationship with  
41 the teachers being evaluated that would affect their impartiality;

42 (ii) classroom observations by trained in-school peer teachers; and/or

43 (iii) use of a state-approved instrument for parent or student feed-  
44 back; and/or

45 (iv) evidence of student development and performance through lesson  
46 plans, student portfolios and other artifacts of teacher practices  
47 through a structured review process.

48 (4) [A] For evaluations of classroom teachers for the two thousand  
49 fifteen--two thousand sixteen school year and thereafter, the remaining  
50 portion of the fifty points shall be based on one or more classroom  
51 observations conducted by a principal or other trained administrator,  
52 which may be performed in-person or by video and at least one such  
53 observation shall be an unannounced visit.

54     (5)   (i) For school years prior to the two thousand fifteen--two thou-  
55     sand sixteen school year, a majority of these sixty points for building  
56     principals shall be based on a broad assessment of the principal's lead-

ership and management actions based on the principal practice rubric by the building principal's supervisor, a trained administrator or a trained independent evaluator, with one or more visits conducted by the supervisor, and, for evaluations for the two thousand twelve--two thousand thirteen school year and thereafter, that such assessment must incorporate multiple school visits by a supervisor, a trained administrator or other trained evaluator, with at least one visit conducted by the supervisor and at least one unannounced visit. For the remaining portion of these sixty points for evaluations for the two thousand eleven--two thousand twelve school year, such regulations shall also prescribe the other forms of evidence of principal effectiveness that may be used consistent with the standards prescribed by the commissioner.

[(5)] (6) For evaluations of building principals for the two thousand fifteen--two thousand sixteen school year and thereafter, a minimum of thirty-five of the fifty points shall be based on a broad assessment of the principal's leadership and management actions based on the principal practice rubric as determined by an independent observer following one or more school visits, at least one of which must be unannounced. An independent observer shall be one of the following:

(i) A superintendent or other trained administrator that supervises principals from outside the school district or board of cooperative educational services with a demonstrated record of effectiveness, or

(ii) A trained independent evaluator from a list of entities and/or evaluators with a demonstrated record of effectiveness and expertise in school building leader training, observation, or effectiveness, as determined by the commissioner, or

(iii) appointed faculty at a State University of New York or a City University of New York school of education.

Provided that, the department shall provide technical assistance for school districts including but not limited to:

(A) facilitating partnerships for school districts to implement shared service agreements in order to access neighboring superintendents or other trained administrators that supervise principals; or

(B) developing and maintaining a list of entities and/or evaluators with a demonstrated record of effectiveness and expertise in school building leader training, observation, or effectiveness, as determined by the commissioner, including but not limited to retired administrators; or

(C) assisting school districts in developing schedules for sharing non-supervising administrators within a school district, if applicable; or

(D) coordinating with boards of cooperative educational services to provide additional technical assistance.

(7) For evaluations of building principals for the two thousand twelve--two thousand thirteen [school year and thereafter], two thousand thirteen--two thousand fourteen and the two thousand fourteen--two thousand fifteen school years, the remaining portion of these sixty points shall include, in addition to the requirements of subparagraph three of this paragraph, at least two other sources of evidence from the following options: feedback from teachers, students, and/or families using state-approved instruments; school visits by other trained evaluators; and/or review of school documents, records, and/or state accountability proc-

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54 esses. Any such remaining points shall be assigned based on the results  
55 of one or more ambitious and measurable goals set collaboratively with

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1 principals and their superintendents or district superintendents as  
2 follows:

3 (i) at least one goal must address the principal's contribution to  
4 improving teacher effectiveness, which shall include one or more of the  
5 following: improved retention of high performing teachers, the corre-  
6 lation between student growth scores of teachers granted tenure as  
7 opposed to those denied tenure; or improvements in the proficiency  
8 rating of the principal on specific teacher effectiveness standards in  
9 the principal practice rubric.

10 (ii) any other goals shall address quantifiable and verifiable  
11 improvements in academic results or the school's learning environmental  
12 such as student or teacher attendance.

13 [(6) The] (8) For evaluations of building principals for the two thou-  
14 sand fifteen--two thousand sixteen school year and thereafter, the  
15 remaining portion of the fifty points shall be based on a broad assess-  
16 ment of the principal's leadership and management actions based on the  
17 principal practice rubric by the building principal's supervisor, with  
18 at least one unannounced visit.

19 (9) For school years prior to the two thousand fifteen--two thousand  
20 sixteen school year, the district or board of cooperative educational  
21 services shall establish specific minimum and maximum scoring ranges for  
22 each performance level within this subcomponent before the start of each  
23 school year and shall assign points to a teacher or principal for this  
24 subcomponent based on the standards prescribed in the regulations of the  
25 commissioner, all in accordance with, and subject to, the requirements  
26 of paragraph j of this subdivision. For the two thousand fifteen--six-  
27 teen school year and thereafter, the commissioner shall establish in  
28 regulations the minimum and maximum scoring ranges for each performance  
29 level within this subcomponent.

30 i. For purposes of this section, student growth means the change in  
31 student achievement for an individual student between two or more points  
32 in time.

33 j. (1) The process by which points are assigned in subcomponents and  
34 the scoring ranges for the subcomponents must be transparent and avail-  
35 able to those being rated before the beginning of each school year. The  
36 process by which points are assigned in the respective subcomponents are  
37 to be determined as follows:

38 (i) For the state assessment or other comparable measures subcompo-  
39 nent, that process shall be formulated by the commissioner with the  
40 approval of the board of regents.

41 (ii) For school years prior to the two thousand fifteen--two thousand  
42 sixteen school year, for the locally selected measures of the student  
43 achievement subcomponent, that process shall be established locally  
44 through negotiations conducted under article fourteen of the civil  
45 service law.

46 (iii) For the other measures of teacher and principal effectiveness  
47 subcomponent, that process shall be established locally through negoti-  
48 ations conducted under article fourteen of the civil services law.

49 (2) Such process must ensure that it is possible for a teacher or  
50 principal to obtain each point in the applicable scoring ranges, includ-  
51 ing zero, for the state assessment or other comparable measures subcom-  
52 ponent, the locally selected measures of student achievement subcompo-  
53 nent in school years where applicable, and the overall rating

54 categories. The process must also ensure that it is possible for a  
55 teacher or principal to obtain each point in the scoring ranges  
56 prescribed by the district or board of cooperative educational services

1 for the other measures of teacher and principal effectiveness subcompo-  
2 nent.

3 (3) The superintendent, district superintendent or chancellor and the  
4 president of the collective bargaining representative (where one exists)  
5 shall certify in its plan that the process will use the narrative  
6 descriptions of the standards for the scoring ranges provided in the  
7 regulations of the commissioner to effectively differentiate a teacher  
8 or principal's performance in each of the subcomponents and in their  
9 overall ratings to improve student learning and instruction.

10 (4) [The] For school years prior to the two thousand fifteen--two  
11 thousand sixteen school year, scoring ranges for the other measures of  
12 teacher and principal effectiveness subcomponent shall be established  
13 locally through negotiations conducted under article fourteen of the  
14 civil service law. For the two thousand fifteen--two thousand sixteen  
15 school year and thereafter, the scoring ranges for the other measures of  
16 teacher and principal effectiveness subcomponent shall be established by  
17 the commissioner in regulations.

18 § 7. Section 3012-c of the education law is amended by adding a new  
19 subdivision 11 to read as follows:

20 11. a. A student may not be instructed for two consecutive school  
21 years by two consecutive classroom teachers in the same district, each  
22 of whom received a final quality rating of ineffective under an annual  
23 professional performance review conducted pursuant to this section in  
24 the school year immediately before the school year in which the student  
25 is placed in the respective classroom teacher's class.

26 b. If a classroom teacher did not instruct students in the school year  
27 immediately before the school year in which the students are placed in  
28 the teacher's class, the teacher's rating in the most recent year in  
29 which the teacher instructed students, instead of the school year imme-  
30 diately before the school year in which students are placed in the  
31 classroom teacher's class, shall be used in determining the ratings for  
32 purposes of this subdivision.

33 § 8. This act shall take effect immediately.

34 PART C

35 Section 1. Section 34 of chapter 91 of the laws of 2002 amending the  
36 education law and other laws relating to the reorganization of the New  
37 York city school construction authority, board of education and communi-  
38 ty boards, as amended by chapter 345 of the laws of 2009, is amended to  
39 read as follows:

40 § 34. This act shall take effect July 1, 2002; provided, that sections  
41 one through twenty, twenty-four, and twenty-six through thirty of this  
42 act shall expire and be deemed repealed June 30, [2015] 2018; provided,  
43 further, that notwithstanding any provision of article 5 of the general  
44 construction law, on June 30, [2015] 2018 the provisions of subdivisions  
45 3, 5, and 8, paragraph b of subdivision 13, subdivision 14, paragraphs  
46 b, d, and e of subdivision 15, and subdivisions 17 and 21 of section  
47 2554 of the education law as repealed by section three of this act,  
48 subdivision 1 of section 2590-b of the education law as repealed by  
49 section six of this act, paragraph (a) of subdivision 2 of section  
50 2590-b of the education law as repealed by section seven of this act,  
51 section 2590-c of the education law as repealed by section eight of this

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52 act, paragraph c of subdivision 2 of section 2590-d of the education law  
53 as repealed by section twenty-six of this act, subdivision 1 of section  
54 2590-e of the education law as repealed by section twenty-seven of this



1 act, subdivision 28 of section 2590-h of the education law as repealed  
2 by section twenty-eight of this act, subdivision 30 of section 2590-h of  
3 the education law as repealed by section twenty-nine of this act, subdi-  
4 vision 30-a of section 2590-h of the education law as repealed by  
5 section thirty of this act shall be revived and be read as such  
6 provisions existed in law on the date immediately preceding the effec-  
7 tive date of this act; provided, however, that sections seven and eight  
8 of this act shall take effect on November 30, 2003; provided further  
9 that the amendments to subdivision 25 of section 2554 of the education  
10 law made by section two of this act shall be subject to the expiration  
11 and reversion of such subdivision pursuant to section 12 of chapter 147  
12 of the laws of 2001, as amended, when upon such date the provisions of  
13 section four of this act shall take effect.

14 § 2. Subdivision 12 of section 17 of chapter 345 of the laws of 2009  
15 amending the education law relating to the New York city board of educa-  
16 tion, chancellor, community councils, and community superintendents, is  
17 amended to read as follows:

18 12. any provision in sections one, two, three, four, five, six, seven,  
19 eight, nine, ten and eleven of this act not otherwise set to expire  
20 pursuant to section 34 of chapter 91 of the laws of 2002, as amended, or  
21 section 17 of chapter 123 of the laws of 2003, as amended, shall expire  
22 and be deemed repealed June 30, [2015] 2018.

23 § 3. This act shall take effect immediately.

24 PART D

25 Section 1. As used in this section, "current year" and "base year"  
26 shall have the same meanings as defined in paragraphs a and b, respec-  
27 tively, of subdivision 1 of section 3602 of the education law.

28 1. Notwithstanding any provision of law to the contrary, a school  
29 district shall not be eligible for an apportionment of general support  
30 for public schools for the 2015-16 school year or any school year there-  
31 after in excess of the amount apportioned to such school district in the  
32 base year, unless the following eligibility criteria and conditions have  
33 been met:

34 (a) For all school districts, the director of the budget has notified  
35 the commissioner of education in writing that by March 31, 2015 the  
36 legislature has enacted a chapter or chapters of law identical to part A  
37 and part B of this act as proposed in legislative bill numbers S.2010  
38 and A.3010 and submitted in support of the executive budget for the  
39 2015-16 state fiscal year; and

40 (b) For all school districts, the school district has submitted  
41 documentation that has been approved by the commissioner of education,  
42 by September 1 of the current year, demonstrating that it has fully  
43 implemented the standards and procedures for conducting annual profes-  
44 sional performance reviews of classroom teachers and building principals  
45 in accordance with the requirements of section 3012-c of the education  
46 law, as amended by part B of this act as proposed in legislative bill  
47 numbers S.2010 and A.3010 and submitted in support of the executive  
48 budget for the 2015-16 state fiscal year, and the commissioner of  
49 education's regulations; and

50 (c) For a school district in a city with a population of one million  
51 or more, the director of the budget has notified the commissioner of  
52 education in writing that by March 31, 2015 the legislature has enacted

AB

S. 2010

11

A. 3010

53 a chapter or chapters of law identical to part C of this act as proposed  
54 in legislative bill numbers S.2010 and A.3010 and submitted in support  
55 of the executive budget for the 2015-16 state fiscal year.

AB

1 2. If any payments of ineligible amounts pursuant to subdivision one  
2 of this section were made, the total amount of such payments shall be  
3 deducted from future payments to the school district; provided that, if  
4 the amount of the deduction is greater than the sum of the amounts  
5 available for such deductions in the applicable school year, the remain-  
6 der of the deduction shall be withheld from payments scheduled to be  
7 made to the school district pursuant to section 3609-a of the education  
8 law for the subsequent school year.

9 3. Notwithstanding any provision of law to the contrary, any appor-  
10 tionment withheld pursuant to this section shall not have any effect on  
11 the base year calculation for use in the subsequent school year.

12 § 2. Subdivision 2 of section 1 of part A of chapter 57 of the laws of  
13 2013 relating to school district eligibility for an increase in appor-  
14 tionment of school aid and implementation of standards for conducting  
15 annual professional performance reviews to determine teacher and princi-  
16 pal effectiveness is amended to read as follows:

17 2. Notwithstanding any inconsistent provision of law, no school  
18 district shall be eligible for an apportionment of general support for  
19 public schools from the funds appropriated for the 2013-14 school year  
20 [and thereafter] or the 2014-15 school year in excess of the amount  
21 apportioned to such school district in the base year unless such school  
22 district has submitted documentation that has been approved by the  
23 commissioner of education by September 1 of the current year, demon-  
24 strating that it has fully implemented the standards and procedures for  
25 conducting annual professional performance reviews of classroom teachers  
26 and building principals in accordance with the requirements of section  
27 3012-c of the education law and the commissioner of education's regu-  
28 lations. Any apportionment withheld pursuant to this section shall not  
29 occur prior to April 1 of the current year and shall not have any effect  
30 on the base year calculation for use in the subsequent school year.

31 § 3. This act shall take effect immediately.

32 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
33 sion, section or part of this act shall be adjudged by any court of  
34 competent jurisdiction to be invalid, such judgment shall not affect,  
35 impair, or invalidate the remainder thereof, but shall be confined in  
36 its operation to the clause, sentence, paragraph, subdivision, section  
37 or part thereof directly involved in the controversy in which such judg-  
38 ment shall have been rendered. It is hereby declared to be the intent of  
39 the legislature that this act would have been enacted even if such  
40 invalid provisions had not been included herein.

41 § 3. This act shall take effect immediately provided, however, that  
42 the applicable effective date of Parts A through D of this act shall be  
43 as specifically set forth in the last section of such Parts.

# Exhibit e

SUPREME COURT OF THE NEW YORK  
COUNTY OF RICHMOND : DCM PART 6

---

MYMOENA DAVIDS, her and natural guardian  
MIAMONA DAVIDS, DAVIDS, by his parent  
and natural guardian MIAMONA DAVIDS, ALEXIS  
PERALTA, by her and natural guardian  
ANGELA PERALTA PERALTA, by her  
and natural guardian PERALTA,  
LENORA 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, 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 NEW YORK, 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 American  
Federation of Teachers, AFL-CIO,

Intervenor-Defendant,

- and -

SETH COHEN, DANIEL DELEHANTY, ASHLI

RECEIVED  
CIVIL TERM CLERKS OFFICE

OCT 30

RICHMOND COUNTY  
SUPREME COURT

**NOTICE OF STATE  
DEFENDANTS'  
MOTION TO DISMISS**

[Index No. 101 105/14

(Minardo, J.S.C.)

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,

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants.

-----X

-----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,

SETH COHEN, DANIEL DELEHANTY, ASHLI  
RA DREHER, KATHLEEN FERGUSON, ISRAEL  
MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE  
R. TUCK, and KAREN 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.

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 upon the Amended Verified Complaint filed by plaintiffs Mymoena Davids, Eric Davids, Miamona Davids, Alexis Peralta, Stacy Peralta, Lenora Peralta, Angela Peralta, Andrew Henson, Christine Henson, Adrian Colson, Darius Colson, Jacqueline Colson, Samantha Pirozzolo, Franklin Pirozzolo, Sam Pirozzolo, Izaiyah Ewers, and Kendra Oke in this consolidated action; the Complaint for Declaratory and Injunctive Relief filed by plaintiffs John Keoni Wright, Ginet Borrero, Tauana Goins, Nina Doster, Carla Williams, Mona Pradia, and Angeles Barragan in this consolidated action; the Affirmation of Assistant Attorney General Steven L. Banks, dated October 28, 2014, and the exhibits annexed thereto; Memorandum of Law in Support of State Defendants' Motion to Dismiss the Consolidated Complaint and upon all other papers and proceedings herein, the undersigned on behalf of defendants THE STATE OF NEW YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (also sued here as "THE UNIVERSITY OF THE STATE OF NEW YORK STATE BOARD OF REGENTS"); MERRYL H. L. in her official capacity

as Chancellor of the Board of Regents; THE N  
ATION  
DEPARTMENT; and JOHN B. KING, JR., in of  
Education of the State of New York (collectively the "State Defendants") will move Court  
on I 0:00 a.m.. or as soon may heard, at  
the Courthouse, 10 Richmond Terrace, Staten Island, New York, in DCM Part 6, for an order  
dismissing the respective consolidated complaints pursuant to CPLR Rules 3211(a)(2), (a)(3),  
and (a)(7) for lack of standing, lack of justiciability, and failure to state a cause of action, and  
for such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** pursuant to the briefing schedule approved  
by the Court, opposition papers are to be served by December 5, and reply papers are to  
be served by December 15, 2015.

Dated: New York, New York  
October 28, 2014

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  
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I 416-8621

TO: JONATHAN W. TRIBIANO, PLLC  
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(718) 530-1445  
Attn: Jonathan W. Tribiano, Esq. ~~W. Tribiano~~ ~~Jonathan W. Tribiano~~



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Corporation Counsel for the City of New York  
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**AFFIRMATION OF SERVICE TO NOTICE OF STATE DEFENDANTS' MOTION TO DISMISS**

New York Supreme, Richmond County Index No.: 101105/14 (Minardo, J.S.C.)

STEVEN L. BANKS, an attorney duly admitted to practice and plead in the Courts of the State of New York, affirms under penalty of perjury, the following:

I am an Assistant Attorney General in the office of ERIC T. SCHNEIDERMAN, the Attorney General of the State of New York and attorney for the State Defendants herein. On the 28<sup>th</sup> day of October, served an electronic copy, pursuant to pre-approved stipulation, of the NOTICE OF STATE DEFENDANTS' MOTION TO DISMISS upon the following:

TO: JONATHAN W. TRIBIANO, PLLC  
Attorney for Plaintiffs in Davids v. State  
1811 Victory Boulevard Suite One  
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(718) 530-1445  
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ZACHARY W. CARTER  
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Maxwell Leighton, Sr. Counsel ([Maxwell.Leighton@nyc.gov](mailto:Maxwell.Leighton@nyc.gov)) !!ID!)

STROOCK & STROOCK & LAVAN LLP  
Attorneys for Intervenor-Defendant Michael Mulgrew  
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(212) 806-5400  
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(518) 213-6000; (copy: Jennifer Coffey, [jcoffey@nysutmail.org](mailto:jcoffey@nysutmail.org))

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School Administrators Association of New York State  
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(518) 782-0600 ([AScheuermann@saanys.org](mailto:AScheuermann@saanys.org))

attorneys for the above-referenced parties in the within entitled proceeding by electronically transmitting a true and correct copy thereof, in Adobe Acrobat PDF format, to the email addresses designated by said attorneys for the parties within the State of New York and designated by each for that purpose.

Dated: New York, New York  
October 29, 2014

  
STEVEN L. BANKS  
Assistant Attorney General

# Exhibit f

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for State Defendants  
120 Broadway – 24<sup>th</sup> Floor  
New York, New York 10271  
STEVEN L. BANKS  
Assistant Attorney General, of Counsel

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, 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., :

Intervenors-Defendants, :

- and - :

PHILIP A. CAMMARATA and MARK MAMBRETTI, :

Intervenors-Defendants. :

-----X

**MEMORANDUM OF  
LAW IN SUPPORT OF  
STATE DEFENDANTS'  
MOTION TO DISMISS  
THE CONSOLIDATED  
COMPLAINTS**

Index No. 101105/14

(Minardo, J.S.C.)

(Caption continued on next page)

|                                             |   |
|---------------------------------------------|---|
| -----X                                      |   |
| JOHN KEONI WRIGHT; <u>et al.</u> ;          | : |
| Plaintiffs,                                 | : |
| - against -                                 | : |
| THE STATE OF NEW YORK; <u>et al.</u> ;      | : |
| Defendants,                                 | : |
| - and -                                     | : |
| SETH COHEN, <u>et al.</u> ,                 | : |
| 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                                      |   |

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Defendants THE STATE OF NEW YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (“Board of Regents”); MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents; THE NEW YORK STATE EDUCATION DEPARTMENT (“SED”); and JOHN B. KING, JR., in his official capacity as the Commissioner of Education of the State of New York (collectively the “State Defendants”) respectfully submit this memorandum of law in support of their motion to dismiss each respective complaint filed in this consolidated action, pursuant to CPLR Rules 3211(a)(2), (a)(3), and (a)(7) for lack of standing, lack of justiciability, and failure to state a cause of action. Also submitted in support of the present motion, for the limited purpose of providing the Court with copies of the complaints and other documents entered in this action that are referenced herein, is the Affirmation of Assistant Attorney General Steven L. Banks (“Banks Aff.”), dated October 28, 2014.

### **PRELIMINARY STATEMENT**

The Court of Appeals has held that New York’s teacher tenure system is “a legislative expression of a firm public policy determination that the interests of the public in the education of our youth can best be served by a system 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. Bd. of Educ. of the City Sch. Dist. of the City of New York, 47 N.Y.2d 385, 391 (1979). Despite the Court of Appeals’ prior recognition of the legitimate and rational purposes behind tenure protections for public school teachers, Plaintiffs<sup>1</sup> in this consolidated action seek to excise those parts of the Education Law that pertain to teacher tenure, discipline, and “last-in-first-out” seniority protections, alleging that these

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<sup>1</sup> The plaintiffs in Davids v. State of New York and the plaintiffs in Wright v. State of New York are to be collectively referred to herein as “Plaintiffs.”

statutory provisions violate the rights of public school students under the “Education Article” of the New York Constitution. For the reasons set forth below, the allegations in the consolidated complaints<sup>2</sup> fail to provide a basis for Plaintiffs to obtain the extraordinary relief requested.

First, the Court of Appeals has made it clear that in order to state a claim under the Education Article, the Plaintiffs must set forth allegations demonstrating that they have been denied the opportunity for a sound basic education. Plaintiffs here do not state a cognizable claim under the Education Article and do not satisfy the heavy burden placed on litigants seeking to judicially invalidate statutory law as unconstitutional, particularly as New York’s teacher tenure system has already been found by the Court of Appeals to be rationally related to the State’s educational policy interests. *Infra*, Pt. I. Second, Plaintiffs have not identified a particular injury to themselves attributable to the challenged statutes, and, thus, they lack the necessary standing to obtain judicial review of these statutes. *Infra*, Pt. II. Third, the question raised by Plaintiffs, namely whether public school teachers in New York State should continue to receive tenure protection is a nonjusticiable policy question that lies beyond the judiciary’s power to decide. *Infra*, Pt. III.

Finally, if the Court were to decline to dismiss Plaintiffs’ respective complaints, because Plaintiffs’ claims directly challenge statutory law, dismissal is nonetheless required of the claims asserted against SED, the Board of Regents, Chancellor Tisch, and State Education Commissioner King, who were not involved in the enactment of the challenged statutes and who cannot grant the relief requested by Plaintiffs. *Infra*, Pt. IV.

Accordingly, the Court should grant State Defendants’ motion and dismiss this action with prejudice. Dismissal would not prevent Plaintiffs, or other parents and students in the

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<sup>2</sup> Copies of the Amended Complaint filed by the plaintiffs in *Davids v. State of New York* and the Complaint filed by the plaintiffs in *Wright v. State of New York* are attached to the Banks Affirmation as Exhibits A and B, respectively.

public school system, from seeking action from the New York State legislature, which is the only proper entity that could make the amendments to the Education Law sought by Plaintiffs.

### **LEGAL BACKGROUND**

New York has enacted a comprehensive statutory and regulatory framework to ensure that only qualified individuals teach in the State's almost 700 public school districts, and to provide procedures governing the actions of local school districts and boards of education with respect to teacher tenure, discipline, and dismissal. As noted below, while the possibility of tenure exists for teachers at any public school district in the State, there are several different statutory provisions that pertain to tenure and tenured public school teachers, any one of which may be relevant to a particular teacher depending on the size and nature of the employing school district or board of education.

As this consolidated action attacks the very concept of tenure protections for public school teachers, Plaintiffs' respective complaints concern multiple provisions of the Education Law. The amended complaint filed by the plaintiffs in Dauids specifies that they are challenging the constitutionality of Education Law §§ 1102(3), 2509, 2573, 2590-j, 3012, 3013(2), 3014, and 3020-a. See Banks Aff., Ex. A, p. 3 n. 1. The complaint filed by the plaintiffs in Wright specifies that they are challenging the constitutionality of Education Law §§ 2509, 2510, 2573, 2588, 2590, 3012, 3012-c, 3020, and 3020-a. See Banks Aff., Ex. B, ¶ 6.

#### **Tenure Eligibility for Public School Teachers in New York State (Education Law §§ 1102, 2509, 2573, 3012 and 3014)**

The Education Law includes a number of separate, though parallel, statutory provisions that provide for the conferral of tenure on teachers and other members of the teaching staff (as well as principals, administrators and other members of the supervisory staff) of various sizes of school districts and certain other public educational entities. These tenure statutes are § 2573

(for city school districts in cities with more than 125,000 inhabitants), § 2509 (for city school districts in cities with less than 125,000 inhabitants) § 3012 (for school districts other than city districts, i.e., common, union free, central and central high school districts), § 1102(3) (for county vocational education and extension boards (“CVEEB”)), and § 3014 (for boards of cooperative educational services (“BOCES”)). There are slight differences among these statutes, but, however, all of the tenure statutes provide that, upon certification and appointment, teachers go through a period of probation, which is generally three years for new teachers,<sup>3</sup> during which time they may be terminated for any constitutionally and statutorily permissible reason, and that, upon successful completion of their probationary period, teachers will be granted tenure and can thereafter be removed only for cause, including incompetency, following a hearing as described in § 3020-a. See Educ. Law §§ 1102(3); 2509(2); 2573(5); 3012(2) and 3014(2).

The main tenure provision for teachers within § 3012, which relates to tenure decisions in non-city school districts, is typical and provides in relevant part:

Teachers and all other members of the teaching staff of school districts . . . shall be appointed by the board of education, or the trustees of common school districts, upon the recommendation of the superintendent of schools, for a probationary period of three years, except that in the case of a teacher who has rendered satisfactory service as a regular substitute for a period of two years . . . the probationary period shall be limited to one year; provided, however, that in the case of a teacher who has been appointed on tenure in another school district within the state, the school district where currently employed, or a board of cooperative educational services, and who was not dismissed from such district or board as a result of charges brought pursuant to subdivision one of section three thousand twenty-a of this chapter, the probationary period shall not exceed two years. The service of a person appointed to any of such positions may be discontinued at any time during such probationary period, on the recommendation

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<sup>3</sup> In addition to the shorter probationary periods for certain experienced or substitute teachers, see, e.g., Educ. Law § 3012(1)(a), New York courts have held that “a probationary teacher who is aware that a board of education intends to deny him tenure, may validly waive his right to tenure and be employed for an additional year without acquiring tenure as a quid pro quo for re-evaluation and reconsideration of the tenure determination at the end of the extra year.” Mtr. of Juul v. Bd. of Educ. of the Hempstead Sch. Dist. No. 1, 76 A.D.2d 837, 838 (2d Dep’t 1980), aff’d, 55 N.Y.2d 648 (1981). Thus, for certain teachers, the probationary period may be as long as four years.



of the superintendent of schools, by a majority vote of the board of education or the trustees of a common school district.

Educ. Law § 3012(1)(a). At the expiration of the probationary term, tenure will be granted on the recommendation of the superintendent of schools based upon a finding that the candidate for tenure is “competent, efficient and satisfactory.” Educ. Law § 3012(2). Teachers recommended for tenure by the superintendent of schools “shall hold their respective positions during good behavior and efficient and competent service, and shall not be removed except for” any of the causes enumerated in the statute, including inefficiency and incompetency, “after a hearing, as provided by [Education Law § 3020-a].” *Id.*

**Statutory Procedures for Removing a Tenured Public School Teacher**  
**(Education Law §§ 2590, 2590-j, 3020, and 3020-a)**

Tenured teachers, regardless of the size of the school district, have statutory due process protections governing discipline or removal. In particular, under § 3020(1) tenured teachers can only be disciplined or terminated “for just cause and in accordance with the procedures specified in section three thousand twenty-a of this article or in accordance with alternate disciplinary procedures contained in a collective bargaining agreement . . . provided, however, that any such alternate disciplinary procedures contained in a collective bargaining agreement . . . must result in a disposition of the disciplinary charge within the amount of time allowed under such section three thousand twenty-a[.]” Additionally, Article 52-A of the Education Law which applies to “the city school district of the [C]ity of New York,” Educ. Law § 2590, includes specific procedures relating to charges brought by community superintendents against teachers in community school districts in New York City. As is relevant to the present litigation, Education Law § 2590-j(7) provides that “[n]o member of the teaching or supervisory staff of schools who has served the full and appropriate probationary period prescribed by, or in accordance with law,

shall be found guilty of any charges except after a hearing as provided by [Education Law § 3020-a],” including charges for “[i]ncompetent or inefficient service.” Educ. Law §§ 2590-j(7)(a), (7)(b)(4).

Section 3020-a describes the administrative process for removing a tenured teacher and requires, *inter alia*, formal written charges be filed with “the clerk or secretary of the school district or employing board;” a determination by the employing board of education “whether probable cause exists to bring a disciplinary proceeding;” and the employee’s right to request an administrative hearing to contest the charges before an impartial hearing officer from a list of names supplied by the American Arbitration Association.<sup>4</sup> See Educ. Law §§ 3020-a(1), (2)(a), (2)(c), (3)(a). Firm time limits are set forth in the statute for the completion of each step in the administrative process: (1) the board of education must make a probable cause determination within five days after receipt of the charges; (2) the employee must make known any request for a hearing within ten days after receipt of the statement of charges; (3) the board of education and employee must select a hearing officer within fifteen days after receipt of the list of potential hearing officers; (4) “within ten to fifteen days of agreeing to serve,” the hearing officer is required to hold a pre-hearing conference to address the need for subpoenas, motions, and requests for information; (5) “[a]ll evidence” must be “submitted by all parties within one hundred twenty-five days of the filing of charges and no additional evidence shall be accepted after such time, absent extraordinary circumstances beyond the control of the parties;” (6) the hearing officer must render a written decision within thirty days after the last day of the hearing; and (7) either party who wishes to challenge a hearing officer’s decision must apply to the Supreme Court of the State of New York within ten days of receipt of the decision. *Id.* §§ 3020-

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<sup>4</sup> In New York City, the collective bargaining agreement with the teachers’ union provides that hearing officers are to be selected from a permanent twenty-member arbitration panel whose members are jointly appointed by the New York City Department of Education and the United Federation of Teachers.

a(1), (2)(a), (2)(c), (3)(b)(iii), (3)(c)(ii), (3)(c)(vii), (4)(a), (5)(a).

**Seniority Protections Afforded Public School Teachers  
(Education Law §§ 2510, 2585, 2588, and 3013)**

If a local school district decides to eliminate one or more teaching positions, the Education Law mandates the termination of teachers with the least seniority in the position's particular area of instruction. As with the statutory provisions governing appointment with tenure, there are distinct, but similarly worded, statutory provisions governing the abolition of teaching positions based on the size of the city in which the school district is located, or whether the affected position is employed by a BOCES. See Educ. Law § 2510 (for cities with less than 125,000 residents); § 2585 (for cities with more than 125,000 residents); § 2588 (for school districts in cities with more than 1,000,000 inhabitants); § 3013 (for non-city school districts and BOCES).

**FACTUAL BACKGROUND**

On September 18, 2014, the Court granted the State Defendants' motion and consolidated two separately filed actions pursuant to CPLR § 602: Mymoena Davids, et al., v. The State of New York, et al., which had been commenced in Richmond County, and John Keoni Wright, et al., v. State of New York, et al., which had been commenced in Albany County. See Banks Aff., Ex. C (Order). In their amended complaint, the plaintiffs in Davids are identified as ten students who attend public school in New York City and their parents, and one child, Andrew Henson, who allegedly resides in New York State but for whom no information is provided regarding his school placement. See Banks Aff., Ex. A, ¶¶ 8-18. No other relevant information is provided about the plaintiffs in Davids. Indeed, there is a complete absence of information about the Davids plaintiffs' assigned teachers, their educational environment, and their academic progress. See Banks Aff., Ex. A, passim.

In their complaint, the plaintiffs in Wright are identified as seven parents who have sued on behalf of their children, five of whom are schooled in the New York City public school system, one of whom is schooled in the Rochester public school system, and one of whom attends a private school in Rochester. See Banks Aff., Ex. B, ¶¶ 10-16. As with the plaintiffs in Dauids, the complaint filed in the Wright action contains very few allegations about the individually named plaintiffs. Other than for plaintiff John Wright’s daughters, Kyler and Kaylah, no information is provided in the complaint about the teachers assigned to teach the children of the other named plaintiffs, or about their educational environment and academic progress. See Banks Aff., Ex. B, passim. Even for Kyler and Kaylah, the complaint simply alleges, without more, that Kaylah was assigned last year to an effective teacher and that Kyler was assigned last year to an ineffective teacher. See Banks Aff., Ex. B., ¶¶ 4-5.

### **STANDARD OF REVIEW**

“On a motion to dismiss pursuant to CPLR Rule 3211, the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” Wiesen v. New York Univ., 304 A.D.2d 459, 460 (1st Dep’t 2003) (citing Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994)) (quotation and additional citations omitted). See also Mazzei v. Kyriacou, 98 A.D.3d 1088, 1090 (2d Dep’t 2012) (finding that the trial court should have dismissed counterclaims because “[e]ven accepting as true the facts alleged in support of the . . . counterclaims, and according the defendants the benefit of every possible inference, the . . . counterclaims are not supported by sufficiently particular allegations that the plaintiff” was liable to the defendants). However, courts are “not required to accept factual allegations that are contradicted by documentary evidence, or legal conclusions that are unsupportable in the face of

undisputed facts.” Zanett Lombardier, Ltd. v. Maslow, 29 A.D.3d 495 (1st Dep’t 2006) (citation omitted). Further, “claims consisting of bare legal conclusions with no factual specificity--are insufficient to survive a motion to dismiss.” Godfrey v. Spano, 13 N.Y.3d 358, 373 (2009) (citation omitted). The actual content of laws, regulations and judicial opinions are subject to judicial notice without request. See CPLR Rule 4511.

## **ARGUMENT**

### **POINT I**

#### **PLAINTIFFS’ ALLEGATIONS FAIL TO STATE A MERITORIOUS BASIS FOR CHALLENGING THE CONSTITUTIONALITY OF NEW YORK’S TEACHER TENURE STATUTES.**

Both the Davids and Wright plaintiffs seek to strip the current protections for tenured public school teachers from the Education Law. Specifically, the Davids plaintiffs seek a judgment declaring as unconstitutional, and an order enjoining the State of New York from enforcing or implementing, the current statutes that pertain to the dismissal of tenured teachers (identified in the Davids amended complaint as Education Law §§ 1102(3), 2509, 2573, 2590-j, 3012, 3014, and 3020-a) and “last-in-first-out” seniority protection (identified in the Davids amended complaint as Education Law § 3013(2)). See Banks Aff., Ex. A, ¶¶ 37, 44 & p. 18. The Davids plaintiffs seek to have this Court compel the State to provide public school teachers with no greater procedural rights than are provided to New York civil service employees. Id., p. 18.

The Wright plaintiffs seek a judgment declaring as unconstitutional, and an order enjoining the State of New York from enforcing or implementing, the current statutes that govern the appointment of a teacher with tenure (identified in the Wright complaint as Education Law §§ 2509, 2573, 3012, 3012-c), the dismissal of tenured teachers (identified in the Wright

complaint as Education Law §§ 2590, 3020, 3020-a), and “last-in-first-out” seniority protection for public school teachers (identified in the Wright complaint as Education Law §§ 2510, 2585, 2588). See Banks Aff., Ex. B, ¶¶ 6, 34, 49, 66 & pp. 22-23. While their complaint is not clear, it appears that the Wright plaintiffs would have this Court remove all procedural protections for public school teachers resulting in an universal “at will” employment status for public school teachers in New York State. Id., ¶¶ 32-33.

Not surprisingly, judicial action striking down statutory law is an extraordinary remedy available only when the statute clearly violates the constitution, see Peo. v. Borriello, 155 Misc.2d 261, 262 (Sup. Ct. Kings Co. 1992), and “only as a last unavoidable result,” Mtr. of Van Berkel v. Power, 16 N.Y.2d 37, 40 (1965) (citations omitted). Indeed, “[i]t is well settled that ‘legislative enactments enjoy a strong presumption of constitutionality,’” Mtr. of N.Y. Charter Schs. Ass’n, Inc. v. Dinapoli, 13 N.Y.3d 120, 130 (2009) (quoting LaValle v. Hayden, 98 N.Y.2d 155, 161 (2002)), and courts must avoid, if possible, interpreting a presumptively valid statute in a way that might “needlessly render it unconstitutional,” LaValle, 98 N.Y.2d at 161. Parties seeking, as here, to mount a facial challenge to statutory law must rebut the presumption of validity “by proving that the invalidity of the law is beyond a reasonable doubt.” N.Y. Charter Schs. Ass’n, Inc., 13 N.Y.3d at 130 (citations omitted). See also Mtr. of State of New York v. Enrique T., 93 A.D.3d 158, 167 (1st Dep’t 2012) (reversing lower court’s order that had found statute providing for civil detention of sex offenders to be unconstitutional and specifically noting that the “heavy burden of a challenger is to establish that ‘no set of circumstances exists under which the statute would be valid.’”) (quoting United States v. Salerno, 481 U.S. 739, 745 (1987)).

This appears to be one of only two cases in which the constitutionality of a tenure statute has been challenged under the New York Constitution's Education Article. In the other, Brady v. A Certain Teacher, 166 Misc. 2d 566 (Sup. Ct. Suffolk Co. 1995), the Patchogue-Medford Union Free School brought a declaratory judgment action against one of its teachers asserting, inter alia, that Education Law §§ 3012 and 3020-a "violate [the Education Article] in that the burden of proof set forth therein and imposed upon boards of education which seek to terminate employment of a tenured teacher acts to limit the rights of students of such a teacher to obtain public education and instruction within the meaning" of the Education Article, id. at 574. In finding that the plaintiff school district had "failed to meet their heavy burden of demonstrating the constitutional infirmity of section 3020-a of the Education Law beyond a reasonable doubt," the court observed that:

[T]he Court of Appeals having rendered decisions in the area of each constitutional challenge to section 3020-a of the Education Law and having implicitly upheld the validity of the present version of section 3020-a by virtue of such version being a codification of some 20 years of developing, affirming and reaffirming the principle that the pay of a tenured teacher suspended pursuant to section 3020-a(2) of the Education Law pending hearing and determination of disciplinary charges may not be withheld, this court was presented with a substantial basis to find that section 3020-a could withstand each constitutional challenge.

Id. at 574-575.

As Plaintiffs in the present action also fail to allege facts which state a cause of action under the Education Article, and as the tenure protections for public school teachers are longstanding and previously recognized as having a rational basis, their constitutionality claims should be dismissed.

**A. Plaintiffs must set forth specific factual allegations demonstrating the denial of the opportunity for a sound basic education.**

The Education Article of the New York Constitution, states, in 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.” See N.Y. Const. Art. XI, § 1. The Court of Appeals has held that the Education Article “requires the State to offer all children the opportunity of a sound basic education.” Campaign for Fiscal Equity, Inc. v. State of New York, 86 N.Y.2d 307, 316 (1995) (“CFE I”).

The State must assure that some essentials are provided. Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.

Id. at 317. According to the Court of Appeals, the State’s obligation under the Education Article is to systemically provide the opportunity to obtain “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.” Id. at 316.

The Court of Appeals has recognized that, under the Education Article, “students have a constitutional right to a ‘sound basic education’ and could prove a violation of this right by demonstrating ‘gross and glaring inadequacy’ in their schools.” Paynter v. State of New York, 100 N.Y.2d 434, 439 (2003) (quoting Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist, 57 N.Y.2d 27, 48 (1982)).

Fundamentally, an Education Article claim requires two elements: the deprivation of a sound basic education, and causes attributable to the State. As our case law makes clear, even gross educational inadequacies are not, standing alone, enough



to state a claim under the Education Article. Plaintiffs' failure to sufficiently plead causation by the State is fatal to their claim.

N.Y. Civil Liberties Union v. State of New York, 4 N.Y.3d 175, 178-179 (2005). See also Paynter, 100 N.Y.2d at 440.

The case law makes clear that an entitlement to the opportunity for a sound basic education is not an entitlement to receipt of the education and educational services each student prefers at all times, nor to absolute equality of educational opportunities at all times between all students. See Levittown, 57 N.Y.2d at 47-48 ("There is, of course, a system of free schools in the State of New York. The Legislature has made prescriptions . . . with reference to the minimum number of days of school attendance, required courses, textbooks, qualifications of teachers and of certain nonteaching personnel, pupil transportation, and other matters. If what is made available by this system (which is what is to be maintained and supported) may properly be said to constitute an education, the constitutional mandate is satisfied."); N.Y. Civil Liberties Union, 4 N.Y.3d at 178 (noting that "the Constitution does not require equality of educational offerings throughout the state"). Because rights under the Education Article concern the educational system provided by the State, and not a student's individual educational experience, courts have held that to state a cause of action, the allegations of deficient educational inputs and outputs must be sufficiently detailed and specific to the school district represented by the plaintiff. See N.Y. State Ass'n of Small City Sch. Dists. v. State of New York, 42 A.D.3d 648, 652 (3d Dep't 2007) (affirming dismissal of complaint for failure to state a cause of action under the Education Article).

[While] the amended complaint alleges deficiencies in the quality of teaching, facilities and resources in small city school districts, that these deficiencies have resulted in poor outputs, such as low standard test results and low high school completion rates, and that such failings are caused by the funding of small city schools at a lower per-student rate than noncity schools, it fails to include any

factual allegations which are specific to the four school districts represented by the remaining plaintiffs. To state a cause of action under the Education Article, it is not enough to allege inequalities in the educational opportunities offered by different school districts. Further, even where--as here--deficiencies in both [educational] inputs and outputs are alleged, the allegations must demonstrate that plaintiffs are harmed by some district-wide failure.

Id. (citations omitted). See also N.Y. Civil Liberties Union, 4 N.Y.3d at 181-182 (finding that plaintiffs failed to state a cause of action under the Education Article because “plaintiffs do not allege any district-wide failure” but “instead seeks to mandate that the State provide money or other resources directly to individual schools”).

Therefore, in order to state a claim under the Education Article, Plaintiffs are required to set forth factual allegations of systemic gross and glaring deficiencies which deny them the opportunity for a sound basic education as a result of the teacher tenure and seniority laws that they challenge. As set forth below, they have utterly failed to carry this burden.

**B. Plaintiffs’ allegations fail to state a cause of action under the Education Article, or a legal basis for uprooting New York’s statutory tenure protections.**

**1. The tenure provisions are rationally related to protecting competent and experienced teachers from “the whim of their supervisors.”**

To prevail on a facial constitutional challenge, such as is presented here, a plaintiff must demonstrate that the challenged statute “in any degree and in every conceivable application would be unconstitutional.” McGowan v. Burstein, 71 N.Y.2d 729, 733 (1988). Facial invalidation is “an extraordinary remedy” that is disfavored. Enrique T., 93 A.D.3d at 167.

The Court of Appeals has already had occasion to review issues involving teacher tenure and has unreservedly found that tenure protection is a “legislative expression of a firm public policy determination that the interests of the public in the education of our youth can best be served by a system 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, 47 N.Y.2d at 391. Plaintiffs’ requests that the Court declare the range of New York’s tenure statutes unconstitutional and enjoin their enforcement cannot conceivably succeed. Quite simply, the statutes have a judicially recognized, rational purpose of ensuring that tenured teachers are protected from dismissal decisions based on favoritism or other improper motivations. Similarly, courts have found that the “last-in-first-out” seniority preferences for teachers are rationally related to protecting such teachers from abuse. See Mtr. of Madison-Oneida Bd. of Cooperative Educ. Servs. v. Mills, 4 N.Y.3d 51, 60 n. 9 (2004) (discussing legislative history of seniority preferences contained in Education Law § 3013 including the need to “prevent the use of favoritism” and to prevent “school boards from abolishing a position as means for disposing of unwanted tenured personnel, when in fact, no savings in cost or increase in efficiency is expected to be realized.”).

Even if Plaintiffs could establish the factual allegations in their complaints that the present tenure protections hinder efforts to remove some ineffective teachers, at most Plaintiffs would establish that the tenure system is not perfect, far short of satisfying the “heavy burden” placed on plaintiffs making a facial challenge “to establish that no set of circumstances exists under which the statute would be valid.” Enrique T., 93 A.D.3d at 167 (citation and quotation omitted).

2. **Plaintiffs’ allegations do not establish that the statutory tenure protections deprive students in the represented school districts of a sound basic education.**

The focus of a claim under the Education Article is on ensuring that the state has in place a system to provide a minimal, constitutionally sufficient education, and determining whether there is a “gross and glaring inadequacy” in the provision of educational services by the relevant school district. Paynter, 100 N.Y.2d at 439. The Education Article, as explained by the courts,

does not require that the State provide every student with an optimal education, or that educational opportunities be uniform throughout the State. See Levittown, 57 N.Y.2d at 48.

Here, Plaintiffs' complaints make only the barest, generalized assertions that New York's system of tenure protections deprives students of the opportunity for a sound basic education. See, e.g., Banks Aff., Ex. A, ¶¶ 29-31; Ex. B, ¶ 23. The amended complaint in Dauids even acknowledges that "the majority of teachers in New York are providing students with a quality education[.]" Banks Aff., Ex. A, ¶ 4. To the extent that Plaintiffs' complaints discuss the provision of a sound basic education at all, the allegations are conclusory or based on information from years ago that cannot possibly be used as evidence of educational quality today. For example, the amended complaint in Dauids cites a 2003 opinion of the Court of Appeals in the Campaign for Fiscal Equity litigation as support for the allegation that "some New York K-12 public school students are being taught by teachers who fail to provide their students with the knowledge and skills necessary to be meaningful civic participants and competitive job applicants." Banks Aff., Ex. A, ¶ 4 (citing Campaign for Fiscal Equity, Inc. v. State of New York, 100 N.Y.2d 893, 905 (2003) ("CFE II")). However, the Court in CFE II was addressing data from the 1997-1998 school year, more than 16 years before the commencement of Dauids. See Campaign for Fiscal Equity, Inc. v. State of New York, 8 N.Y.3d 14, 20 (2006) ("CFE III").

Likewise, the complaint in Wright merely alleges that "the Challenged Statutes deprive New York students of a sound basic education, providing no true means for administrators to remove teachers with track record of ineffectiveness, and causing too many students to remain in the classroom with ineffective teachers." See Banks Aff., Ex. B, ¶ 33. While the complaint in Wright also cites a number of scholarly articles and studies that purportedly show that teaching

quality generally affects student achievement, id. at ¶¶ 28-31, these allegations fail to satisfy the burden placed on litigants seeking to state a cause of action under the Education Article of presenting specific factual allegations of a “district-wide failure” specific to the school districts represented by the plaintiffs. See N.Y. State Ass’n of Small City Sch. Dists., 42 A.D.3d at 652.

Neither set of plaintiffs have set forth the specific factual allegations of the deprivation of a sound basic education in their particular school districts that are necessary to state a cause of action under the Education Article. Compare with CFE I, 86 N.Y.2d at 318-319 (finding that the plaintiffs had stated a cause of action under Education Article by alleging that “New York City students are not receiving the opportunity to obtain an education that enables them 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” and “support[ing] these allegations with fact-based claims of inadequacies in physical facilities, curricula, numbers of qualified teachers, availability of textbooks, library books, etc.”).

While Plaintiffs also contend that ineffective teachers--a term that Plaintiffs do not define--remain in classrooms because of tenure protections, and that these ineffective teachers do not educate their students as well as effective teachers, see, e.g., Banks Aff., Ex. A, ¶ 3, comparisons between the effectiveness of individual teachers or between the academic progress of individual students is irrelevant in determining whether the State has met its obligation under the Education Article to provide a sound basic education. The case law makes clear that the State is obligated only to ensure that school districts are able, on a district wide basis, to teach “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.” CFE I, 86 N.Y.2d at 316. As Plaintiffs fail to allege that their school districts, New York City and Rochester, fail to deliver a sound basic education, as defined by the Court of Appeals, their Education Article claims are subject to dismissal.

**3. Plaintiffs’ allegations do not establish that the tenure statutes cause a deprivation of a sound basic education.**

“Fundamentally, an Education Article claim requires two elements: the deprivation of a sound basic education, and causes attributable to the State.” N.Y. Civil Liberties Union, 4 N.Y.3d at 178-179. In the present action, even if the Court were to find that Plaintiffs had adequately plead a deprivation of a sound basic education, their own allegations and the plain language of the tenure statutes show that such deprivation is not caused by the State’s tenure statutes.

Significantly, public school teachers are employees of local school districts or boards of education, that are responsible for hiring teachers, evaluating teachers, making decisions on tenure, and, if necessary, initiating administrative action to remove teachers. If there are ineffective tenured public school teachers in the classrooms in New York State, their employment has far more to do with the actions of the local school district or board of education than State statute. This is particularly true since the statutes at issue compel local school districts at every turn to consider teacher effectiveness and competency when making employment decisions. In particular, the Education Law: (1) provides local school districts and boards of education three years to evaluate probationary teachers, with the possibility of a fourth probationary year, Juul, 76 A.D.2d at 838, during which time the teacher may be terminated for any lawful reason, and authorizes them to grant appointment with tenure to those teachers who have demonstrated “competent, efficient and satisfactory” performance during the probationary

period, see §§ 2509(2), 2573(5), 3012(2), 3014(2); (2) mandates that school districts and BOCES conduct annual professional performance evaluations that identify public school teachers as “highly effective,” “effective,” “developing,” or “ineffective,” § 3012-c(2)(a)(1); and (3) permits school districts to remove a tenured teacher for incompetency following a hearing, see §§ 2590-j(7)(b)(4), 2509(2), 2573(5), 3012(2), 3014(2). Under § 3012-c(1), the annual professional performance reviews are to be a “significant factor” in tenure, retention, and other employment decisions.

Plaintiffs appear to acknowledge that the plain language of the Education Law does not immunize ineffective teachers from removal, since they can only assert that the tenure statutes “effectively prevent the removal of ineffective teachers,” see Banks Aff., Ex. A, ¶ 5, and that tenure protections “hamstring” school administrators and gives tenured public school teachers “essentially permanent employment,” see Banks Aff., Ex. B, ¶¶ 3, 24. In other words, if there is a problem with ineffective teachers in New York public schools, the problem is a result of school districts and boards of education not making use of the administrative process set forth in the Education Law and not the statutes themselves. See Donnelly v. Greenburgh Cent. Sch. Dist. No. 7, 691 F.3d 134, 148-149 (2d Cir. 2012) (noting that tenured public school teachers are removable for cause under Education Law § 3012, and finding that “it is . . . not clear that the ‘tenure’ offered to teachers . . . offers materially more job protection than is common to unionized public sector employees outside the educational context”).

Further, the State has taken positive action to enhance the quality of teachers in New York State, and to expedite the administrative procedures for addressing charges of teacher incompetence and inefficiency. Notably, New York State requires public school teachers, before they enter the classroom, have demonstrated certain minimum knowledge, skills and abilities

through education, experience and the State’s certification examinations. See, e.g., 8 N.Y.C.R.R. §§ 80-1.5(a); 80-3.3; 80-3.4. Once a public school teacher receives a professional certificate, the teacher must satisfy “the professional development requirement prescribed by” state regulations, id., § 80-3.4(a)(1), including, most significantly, 175 hours of professional development during a five-year period.<sup>5</sup> Id., § 80-3.6(b)(1)(i).

In the last few years, New York State has made significant changes to the Education Law to better evaluate public school teachers and to improve the efficiency of the administrative hearing process when a teacher is charged with incompetency, including the introduction of annual professional performance evaluations for teachers, see Educ. Law § 3012-c; the establishment of firm timelines for the administrative teacher discipline/removal procedure set forth in Education Law § 3020-a; and the use of greater oversight by SED over the individual hearing officers who conduct the administrative hearings required by Education Law § 3020-a. See, e.g., L. 2010, Ch. 103; L. 2012, Ch. 21; L. 2012, Ch. 57. As a result of these recent enactments, the Education Law provides for an expedited hearing process on charges of incompetence that are brought based on a pattern of ineffective teaching as defined in §3012-c, see Educ. Law § 3020-a(3)(c)(i-a), and requires that collectively bargained, alternate disciplinary procedures provide for such an expedited hearing in cases based on a pattern of ineffective teaching, see Educ. Law § 3020 (4). The expedited hearing process requires charges to be heard by a single hearing officer instead of a three-member panel, see Educ. Law § 3020-a(2)(c), a firm sixty-day deadline to complete the hearing process with limitations on the granting of adjournments, see Educ. Law § 3020-a(3)(C)(i-a)(A), and a requirement that the Commissioner of Education notify hearing officers of their obligation to strictly follow the time periods for an

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<sup>5</sup> This exceeds the continuing education requirements of other professions. For example, experienced attorneys are required to complete 24 hours of continuing legal education for each biennial registration period. See 22 N.Y.C.R.R. § 1500.22.



expedited hearing, and authorizes the Commissioner to remove hearing officers from the list of eligible hearing officers for continued failure to comply with those expedited timelines, see Educ. Law §§ 3020-a(3)(c)(i)(B), (3)(c)(i-a)(C). Given these recent changes to the Education Law, and the State's continuing efforts to enhance teacher quality, the studies that Plaintiffs cite in their complaints are not relevant or applicable. See, e.g., Banks Aff., Ex. A, ¶ 39 (citing 2007 study concerning the cost and length of time to complete administrative dismissal process).

Accordingly, for the foregoing reasons, Plaintiffs cannot satisfy the causation element of a claim under the Education Article.

**C. Plaintiffs cannot rely upon Vergara v. State of California to support their claims.**

On June 10, 2014, in Vergara v. State of California, the Superior Court of California, Los Angeles County, issued a tentative decision invalidating five California tenure-related statutes as violative of the Equal Protection Clause of the California State Constitution. The tentative decision is embodied in a final judgment and decision entered August 27, 2014. See Banks Aff., Ex. D (Vergara decision). That decision is unavailing in this case for a number of reasons. First, the decision from the lower court is on appeal and has been stayed pending the outcome of that appeal. Additionally, Vergara was decided on the basis of the Equal Protection Clause of the California State Constitution, under which the right to an education is fundamental, and, thus, the court found that the challenged statutes would be subject to strict scrutiny. Here, no party asserts an equal protection claim and, in any event, education is not recognized as a fundamental right under New York law and, thus, any statute challenged under the Equal Protection Clause of the New York Constitution would be subject to rational basis review. See, e.g., Paynter, 100 N.Y.2d at 449; CFE I, 86 N.Y.2d at 319; Levittown, 57 N.Y.2d at 44. As stated above, affording teachers tenure protections has already been found to be rational by the Court of Appeals. See

Ricca, 47 N.Y.2d at 391. Further, the tenure provisions challenged here are much different than those challenged in Vergara. New York’s tenure review period is significantly longer than California’s, as the Vergara decision noted, and New York has revised its procedures for teacher discipline, which have reduced the costs and length of disciplinary hearings. Therefore, to the extent that Plaintiffs presume to assert a challenge to teacher tenure based upon the Vergara decision, such argument must fail.

Accordingly, for all of the foregoing reasons, the State Defendants’ motion should be granted and the Plaintiffs’ respective complaints dismissed for failure to state a cause of action.

## **POINT II**

### **PLAINTIFFS LACK STANDING TO CHALLENGE THE CONSTITUTIONALITY OF NEW YORK’S TEACHER TENURE STATUTES.**

The complainant’s standing “is an aspect of justiciability which, when challenged, must be considered at the outset of any litigation.” Soc’y of Plastics Indus., Inc. v. County of Suffolk, 77 N.Y.2d 761, 769 (1991) (citation omitted). A motion to dismiss for lack of standing is properly brought pursuant to CPLR Rule 3211(a)(3). See Brach v. Harmony Servs. Inc., 93 A.D.3d 748, 750 (2d Dep’t 2012); Sterling v. Minskoff, 226 A.D.2d 125 (1st Dep’t 1996). Once defendants raise the issue of plaintiffs’ standing, plaintiffs bear the burden of demonstrating that they have standing to raise each of the issues for which they seek judicial review. See N.Y. State Ass’n of Nurse Anesthetists v. Novello, 2 N.Y.3d 207, 211 (2004); Soc’y of Plastics Indus., Inc., 77 N.Y.2d at 773; Uhlfelder v. Weinshall, 47 A.D.3d 169, 181 (1st Dep’t 2007).

New York courts apply a two-part test to determine whether a plaintiff has standing. “A plaintiff has standing to maintain an action upon alleging [1] an injury in fact that [2] falls within his or her zone of interest.” Silver v. Pataki, 96 N.Y.2d 532, 539 (2001). See also N.Y. State

Ass'n of Nurse Anesthetists, 2 N.Y.3d at 211 (discussing test for standing and finding that professional association representing certified registered nurse anesthetists lacked standing to challenge Department of Health guidelines concerning that the administration of anesthesia in doctors' offices). Even assuming that Plaintiffs' educational interests fall within the zone of interests protected by the Education Article of the New York Constitution, Plaintiffs nonetheless lack standing because none of them has alleged a specific injury as a result of the challenged tenure statutes that is more than conjectural. See Soc'y of Plastics Indus., Inc., 77 N.Y.2d at 772.

**A. Plaintiffs' status as students in the public school system is insufficient in itself to give them standing to challenge the tenure statutes.**

“The existence of an injury in fact--an actual legal stake in the matter being adjudicated--ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute ‘in a form traditionally capable of judicial resolution.’” Soc'y of Plastics Indus., Inc., 77 N.Y.2d at 772 (quoting Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 220-221 (1974)). Most relevant to the present action, “the constitutionality of a State statute may be tested only by one personally aggrieved thereby, and then only if the determination of the grievance requires a determination of constitutionality.” St. Clair v. Yonkers Raceway, Inc., 13 N.Y.2d 72, 76 (1963). In other words, to have standing the injury suffered by the plaintiff must be “distinct from that of the general public.” Mtr. of Transactive Corp. v. N.Y. State Dep't of Soc. Servs., 92 N.Y.2d 579, 587 (1998).

Even without addressing the heavy burden Plaintiffs face in pleading a claim under the Education Article, none of the Plaintiffs have alleged a specific injury traceable to the tenure statutes that they are challenging in this lawsuit. Crucially, while Plaintiffs' theory is that “students taught by ineffective teachers who continue teaching as a result of the Challenged Statutes are denied” a sound basic education, Banks Aff., Ex. A, ¶ 7, and that New York's tenure

statutes “hamstring school administrators from making employment decisions based on student need and obstruct them from restoring the quality of the New York public education system,” Banks Aff., Ex. B, ¶ 3, there are no allegations whatsoever in either Davids or Wright that a plaintiff or a plaintiff’s child has been instructed by a teacher whom the local school district had identified as being incompetent but then failed to remove because of the perceived time and expense necessary to comply with the administrative hearing process set forth in Education Law § 3020-a. See Banks Aff., Ex. A, ¶¶ 8-18; Ex. B, passim. Nor are there are any allegations that any plaintiff or plaintiff’s child has been taught by an incompetent teacher who retained his or her teaching position because of the seniority protections set forth in Education Law §§ 2510, 2585, 2588, 3013.

Indeed, there is only one student identified by Plaintiffs, plaintiff John Keoni Wright’s daughter Kyler, who is alleged to have been “assigned to an ineffective teacher.” See Banks Aff. Ex. B, ¶ 4. However, the relationship between Kyler’s allegedly ineffective teacher and the challenged tenure statutes or the relief requested in this lawsuit is not articulated. No information is provided whatsoever about the teacher’s tenure status, the reasons for plaintiff Wright’s conclusion that the teacher is ineffective, any complaints by plaintiff Wright to the New York City Department of Education about this allegedly incompetent teacher, or any action considered by the New York City Department of Education to remove Kyler’s teacher. As noted, because Plaintiffs’ claim is that incompetent tenured teachers remain employed because local school districts are reluctant to expend the time and effort to pursue the administrative hearing process required by Education Law § 3020-a, to be aggrieved by the challenged statutes and possibly have standing, it is not enough for a plaintiff or a plaintiff’s child to be taught by an allegedly ineffective teacher, but rather there must be an allegation that the child’s assignment to

an ineffective teacher was caused by the challenged statute. None of the plaintiffs, including plaintiff Wright, can meet this initial threshold requirement.

At most, Plaintiffs contend that, because of the statutory protections afforded tenured public school teachers, they or their children face the possibility in the future of being assigned to a class taught by an ineffective teacher. See Banks Aff., Ex. A, ¶ 54; Ex. B, ¶ 33. However, even if having an allegedly ineffective teacher were sufficient to confer standing under the Education Article, which it is not, it is black letter law that a conjectural injury is insufficient to satisfy the “injury in fact” element for standing, and thus the mere chance of assignment to such a teacher is not sufficient to establish injury. See N.Y. State Ass’n of Nurse Anesthetists, 2 N.Y.3d at 211, 213-214; Mtr. of Gym Door Repairs Inc. v. New York City Dep’t of Educ., 112 A.D.3d 1198, 1199 (3d Dep’t 2013) (finding that petitioner, an installer of electric partitions used in school gymnasiums, lacked standing to sue local school districts for an alleged failure to comply with state law regarding the installation of electric partitions because petitioner’s articulated injury, namely risks “that their employees might get hurt working on improperly maintained safety devices, [and] they are potentially exposed to litigation if a device installed by them is not properly maintained by respondents and causes injury,” was “too speculative and conjectural to satisfy the injury-in-fact requirement”); Roberts v. N.Y. City Health & Hosps. Corp., 87 A.D.3d 311, 320 (1st Dep’t 2011) (no standing where the alleged injury is “potential, not actual”); Mtr. of McAllan v. New York State Dep’t of Health, 60 A.D.3d 464 (1st Dep’t 2009) (petitioner lacked standing to challenge changes to the way New York City deploys its paramedics finding that petitioner’s “concern that the Health Department’s determination might adversely affect him, as a citizen, if he requires an ambulance or a fire engine in the future, is too speculative”). Thus, Plaintiffs’ stated concern that they or their children may at some point in

the future be assigned to an ineffective teacher who retained his or her job due to the challenged laws is insufficient to permit this lawsuit to continue. See also Lujan v. Defenders of Wildlife, 504 U.S. 555, 564 (1992) (“‘some day’ intentions--without any description of concrete plans, or indeed even any specification of when the some day will be--do not support a finding of the ‘actual or imminent’ injury that our cases require” for standing) (citation omitted) (emphasis in original); L.A. v. Lyons, 461 U.S. 95, 105-106 (1983) (finding that plaintiff lacked standing to seek injunction against the use of chokeholds by Los Angeles police because plaintiff could not “establish a real and immediate threat that he would again be stopped for a traffic violation . . . by an officer or officers who would illegally choke him into unconsciousness without any provocation or resistance on his part”).

In any event, even if one of the Plaintiffs could allege an assignment to an ineffective teacher as a result of one of the tenure statutes being challenged in this lawsuit, that would not be sufficient to state an injury under the Education Article. The law is clear that in order to have standing to assert this constitutional challenge, Plaintiffs must demonstrate that the alleged unconstitutional statutes have had an “adverse impact” upon their rights. See, e.g., Islip v. Cuomo, 147 A.D.2d 56, 66-67 (2d Dep’t 1989) (citing Ulster County Court v. Allen, 442 U.S. 140, 154 (1979) (“As a general rule, if there is no constitutional defect in the application of the statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations.”); Broadrick v Oklahoma, 413 U.S. 601, 611 (1973) (holding that a “person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court[.] These principles . . . reflect the conviction that under our constitutional system courts are not roving commissions assigned to pass judgment on

the validity of the Nation's laws.”)). As already noted, to state a claim under the Education Article requires that the plaintiff allege that there exist significant and district-wide deficiencies in the educational opportunities present in the plaintiff's school district. See CFE I, 86 N.Y. 2d at 318-319; N.Y. State Ass'n of Small City Sch. Dists., 42 A.D.3d at 652. It has never been held, and would be incongruous with the language of the Education Article, that a student's individual educational experience can give rise to a facial constitutional challenge under the Education Article. As Plaintiffs have failed to allege individual injuries attributable to the tenure statutes, and have failed to alleged district-wide failures in the educational opportunities offered to students in the school districts of New York City and Rochester, they lack the standing necessary for this lawsuit to proceed.

**B. Plaintiffs lack standing to challenge any statute that does not affect either the New York City or Rochester public school districts.**

As more fully described above, supra, the Education Law contains different tenure statutes applicable to large city school districts and smaller school districts. Thus, even if any of the Plaintiffs could allege a specific injury traceable to New York's tenure system, because none of the Plaintiffs are alleged to be schooled outside of New York City or Rochester, they would nonetheless lack standing to challenge any of the identified statutes that pertain only to non-city school districts, small city school districts, CVEEBs, or BOCES, including Education Law §§ 1102, 2509, 2510, 3012, 3013, 3014. Quite simply, because Plaintiffs are schooled in two of the largest school districts in the State, and do not receive educational services from a CVEEB or BOCES, whatever injuries they may articulate are certainly not traceable to statutory provisions that only pertain to smaller school districts, CVEEBs or BOCES.

**C. The two plaintiffs who are not enrolled in the public school system lack standing to challenge any tenure statute.**

Similarly, the tenure protections set forth in the Education Law and challenged in this consolidated lawsuit only pertain to teachers employed by a public school district, a CVEEB, or BOCES. Therefore, the child of a named plaintiff in Wright who is alleged to attend a private school, Adia-Jendayi Pradia, and the named plaintiff in Dauids who is not alleged to attend public school at all, Andrew Henson, see Banks Aff., Ex. A, ¶ 13; Ex. B, 15, clearly lack standing to challenge statutory provisions on tenure that only pertain to public school teachers.

Accordingly, for all of the foregoing reasons, Plaintiffs' claims challenging the constitutionality of statutory provisions in the Education Law that pertain to teacher tenure, teacher discipline, and teacher dismissal should be dismissed for lack of standing.

**POINT III**

**PLAINTIFFS' BROAD CHALLENGE TO NEW YORK STATE'S TENURE STATUTES PRESENTS NONJUSTICIABLE POLICY QUESTIONS THAT ARE PROPERLY IN THE PURVIEW OF THE LEGISLATURE AND EXECUTIVE BRANCHES.**

The subject matter jurisdiction of New York State courts extends only to justiciable controversies. See Jonas v. Beame, 45 N.Y.2d 402, 408-409 (1978). Although it is recognized that justiciability is a "nebulous" concept, Klostermann v. Cuomo, 61 N.Y.2d 525, 535 (1984), justiciable controversies exclude "political questions." Jonas, 45 N.Y.2d at 408 (citing Flast v. Cohen, 392 U.S. 83, 95 (1968)). Additionally, within the concept of justiciability is the "paramount concern . . . that the judiciary not undertake tasks that the other branches are better suited to perform." Klostermann, 61 N.Y.2d at 535. "[T]he court as a policy matter, even apart from principles of subject matter jurisdiction, will abstain from venturing into areas if it is ill-equipped to undertake the responsibility and other branches of government are far more suited to



the task.” Jonas, 45 N.Y.2d at 408-409 (dismissing two separate complaints, one in which the plaintiffs challenged the way in which municipal zoos were operated by New York City and the other in which the plaintiffs challenged the manner in which the State discharged mental patients, finding that “the courts are the wrong forum for resolution of the disputes” and that “[t]he proper forums are the Legislature and the elected officials of the State and local government”).

When addressing claims asserted under the Education Article, the role of the courts is limited to determining whether the plaintiffs can show that students in the relevant school district are being denied the opportunity to receive a sound basic education, and not to formulate educational policy, determine the best way to provide a sound basic education, or consider strategies for optimizing the educational services provided to school children. See CFE III, 8 N.Y.3d at 27 (in an educational funding case, holding that the role of the courts “is not . . . to determine the best way to calculate the cost of a sound basic education in New York City schools, but to determine whether the State’s proposed calculation of that cost is rational”). The law dictates that once a court has determined that a school district is providing a sound basic education, the minimum required under the Education Article, then the court’s inquiry is complete. See Levittown, 57 N.Y.2d at 48.

In this action, while Plaintiffs’ complaints include conclusory references to a sound basic education, see, e.g., Banks Aff., Ex. A, ¶ 4, they make no real attempt to connect the tenure protections afforded New York public school teachers to the deprivation of a sound basic education in their representative school districts, as it has been defined by the Court of Appeals. See CFE I, 86 N.Y.2d at 316. Rather, Plaintiffs’ assertion is that ineffective teachers, again, a term they do not define, remain in classrooms because of tenure protections, and that these

ineffective teachers do not educate their students as well as effective teachers. See Banks Aff., Ex. A, ¶¶ 3 (“Students taught by effective teachers are more likely to attend college, attend higher-quality colleges, earn more, live in higher socioeconomic status neighborhoods, save more for retirement, and are less likely to have children during their teenage years”), 29 (effective teachers “get an entire year’s worth of additional learning out of their students”), 30 (“a student in New York who is taught by a single ineffective teacher misses out on six or more months of learning in a single school year”) (emphasis in original); Ex. B, ¶¶ 5 (because of alleged ineffective teacher “Kyler fell behind and is still struggling to catch up with her twin”), 29 (“effective teachers provide tangible educational results in the form of higher test scores and higher graduation rates”), 30 (“students taught by effective teachers are . . . less likely to become teenage parents and more likely to progress in their education, attending college and matriculating at colleges of higher quality”). Plaintiffs fail to appreciate the nature of the educational opportunities that the Court of Appeals has held is required under the Education Article for the State to meet its obligations to provide a sound basic education. The State is obligated only to ensure that school districts are able to teach “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.” CFE I, 86 N.Y.2d at 316. Under the relevant case law, the Education Article does not require the State to optimize student educational opportunities, or take measures to ensure that students attend college, save for retirement, or avoid teenage pregnancy.

Thus, in the absence of any showing that tenure protections have denied students of a sound basic education, Plaintiffs are asking the Court to make decisions regarding New York’s educational policy, and the role of tenure in that policy, that are properly left to the legislature

and the executive. If this action was to go forward, this Court would necessarily have to consider the soundness of New York's tenure system, including a balancing the recognized benefits of tenure to the quality of education in New York's public school system with any detrimental effects shown by Plaintiffs to be caused by New York's tenure system. See Ricca, 47 N.Y.2d at 391 (tenure is "a system 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"); Peo. ex rel. Callahan v. Bd. of Educ. of the City of New York, 174 N.Y. 169, 178 (1903) ("[w]e think . . . that the purpose of section 1117 [of the Greater New York charter (L. 1897, ch. 378), providing tenure protections to teachers in New York City including the need for 'charges to be preferred against a teacher,' and 'a formal trial'] was to get the best work from all teachers by assuring them of safety and protection, without resort to outside influence, so long as they maintain a high standard of conduct and efficiency"). This is a quintessential policymaking decision that is reserved to the legislative and executive branches. See Peo. v. Parilla, 109 A.D.3d 20, 29 (1st Dep't 2013) ("[I]n assessing the constitutionality of a statute, this Court does not review the merits or wisdom of the legislature's decisions on matters of public policy") (citation omitted); Roberts, 87 A.D.3d at 323 ("[C]ourts at all levels are enjoined not to substitute their judgment for that of the coordinate branch of government to whom such judgment has been . . . primarily entrusted") (quotation and citation omitted).

Accordingly, for these reasons, Plaintiffs' claims challenging the constitutionality of statutory provisions in the Education Law that pertain to teacher tenure, teacher discipline, and teacher dismissal should be dismissed as nonjusticiable.

#### **POINT IV**

#### **PLAINTIFFS HAVE IMPROPERLY BROUGHT SUIT AGAINST SED, THE BOARD OF REGENTS, CHANCELLOR TISCH, AND COMMISSIONER KING, AND THE CLAIMS AGAINST THEM SHOULD BE DISMISSED.**

Declaratory judgment actions require the joinder of “all persons who may be affected thereby and who may question in a court the existence and scope of the rights declared[.]” Cadman Mem. Congregational Soc’y of Brooklyn v. Kenyon, 279 A.D. 1015, 1016 (2d Dep’t 1952). In the present action, State Defendants do not dispute that the State of New York is a proper and necessary party. See Cass v. State of New York, 58 N.Y.2d 460, 463 (1983) (State of New York is a proper party to a declaratory judgment action challenging the constitutionality of a statute “because of its obvious interest in and right to be heard on matters concerning the constitutionality of its statutes”). However, none of the other named State Defendants are necessary to this litigation and should be dismissed. Notably, the Board of Regents, Chancellor Merryl H. Tisch, State Education Commissioner John B. King, Jr., and the State Education Department, did not enact the challenged statutes, could not enact any successor statutes, and are not authorized to implement a system of teacher employment by contract. See Banks Aff., Ex. A, p. 18 (¶ “3”). As such their presence in this lawsuit is not necessary if Plaintiffs were to receive the relief requested, which solely involves declaratory and injunctive relief relating to the challenged tenure statutes. Moreover, because Chancellor Tisch and Commissioner King are sued in their official capacities only, and because the Board of Regents and State Education Department cannot enforce or implement tenure provisions that are inconsistent with the tenure statutes, any relief Plaintiffs may recover against the State of New York would bind them and their future actions as well.

Accordingly, should the Court decide not to dismiss Plaintiffs' complaints in their entirety, the Court should nonetheless dismiss the claims asserted against defendants SED, the Board of Regents, Chancellor Merryl H. Tisch, and State Education Commissioner John B. King, Jr.

### CONCLUSION

For the foregoing reasons, State Defendants respectfully request that the Court grant their motion and dismiss Plaintiffs' claims, with prejudice, in their entirety, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 28, 2014

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for State Defendants  
By:

A handwritten signature in dark ink, appearing to read 'Steven L. Banks', is written over a horizontal line.

STEVEN L. BANKS  
Assistant Attorney General  
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Steven.Banks@ag.ny.gov

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# Exhibit g

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, 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., :

Intervenors-Defendants, :

- and - :

PHILIP A. CAMMARATA and MARK MAMBRETTI, :

Intervenors-Defendants. :

-----X

-----X

JOHN KEONI WRIGHT; et al.; :

Plaintiffs, :

- against - :

THE STATE OF NEW YORK; et al.; :

Defendants, :

**AFFIRMATION OF  
ASSISTANT ATTORNEY  
GENERAL STEVEN L.  
BANKS IN SUPPORT OF  
STATE DEFENDANTS'  
MOTION TO DISMISS**

Index No. 101105/14

(Minardo, J.S.C.)

|                                                                                                                              |   |
|------------------------------------------------------------------------------------------------------------------------------|---|
| - and -                                                                                                                      | : |
| SETH COHEN, <u>et al.</u> ,                                                                                                  | : |
| 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<br>FEDERATION OF TEACHERS, Local 2, American<br>Federation of Teachers, AFL-CIO, | : |
| Intervenor-Defendant.                                                                                                        | : |
| -----X                                                                                                                       | : |

STEVEN L. BANKS, an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms under penalty of perjury:

1. I am an Assistant Attorney General in the office of ERIC T. SCHNEIDERMAN, the Attorney General of the State of New York, attorney for defendants THE STATE OF NEW YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (also sued here as “The New York State Board of Regents”); MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents; THE NEW YORK STATE EDUCATION DEPARTMENT; and JOHN B. KING, JR., in his official capacity as the Commissioner of Education of the State of New York (collectively the “State Defendants”). I



submit this affirmation in support of State Defendants' motion to dismiss the complaints filed in this consolidated action, for the limited purpose of providing the Court with true and accurate copies of documents previously filed in this action and copies of documents in the public record that are cited in the accompanying memorandum of law.

2. Attached hereto as Exhibit A is a copy of the Amended Verified Complaint filed in this action by the Davids plaintiffs, dated July 24, 2014.

3. Attached hereto as Exhibit B is a copy of the Complaint for Declaratory and Injunctive Relief filed by the Wright plaintiffs, dated July 28, 2014, and consolidated into this action by Order dated September 18, 2014.

4. Attached hereto as Exhibit C is a copy of the Order, dated September 18, 2014 and entered September 25, 2014, consolidating the separate actions commenced by the Wright plaintiffs and commenced by the Davids plaintiffs.

5. Attached hereto as Exhibit D is a copy of the Judgment and Decision of the Superior Court of the State of California, County of Los Angeles, in Vergara v. State of California, entered August 27, 2014.

For the reasons set forth in the accompanying memorandum of law, State Defendants' motion to dismiss the respective complaints in this consolidated action should be granted.

Dated: New York, New York  
October 28, 2014

A handwritten signature in black ink, appearing to read "Steven L. Banks", written over a horizontal line.

STEVEN L. BANKS  
Assistant Attorney General  
120 Broadway - 24th Floor  
New York, New York 10271  
(212) 416-8621

Printed on Recycled Paper

# Exhibit h

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

-----X  
MYMOENA 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.,

Intervenors-Defendants

- and -

PHILIP A. CAMMARATA and MARK  
MAMBRETTI,

Intervenors-Defendants.  
-----X

Index No. 101105-2014

Justice: Hon. Philip G. Minardo

***DAVIDS* PLAINTIFFS'  
MEMORANDUM OF LAW IN  
OPPOSITION TO  
DEFENDANTS' AND  
INTERVENORS-DEFENDANTS'  
MOTIONS TO DISMISS THE  
ACTION**

----- ) (   
JOHN KEONI WRIGHT, et al.,

Plaintiffs,

- against -

THE STATE OF NEW YORK, et al.,

Defendants,

- and -

SETH COHEN, et al.,

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.

----- ) (   
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## **PRELIMINARY STATEMENT**

Enshrined in the New York State Constitution is a fundamental guarantee that the State will provide its students a sound basic education in the public primary and secondary school settings.<sup>1</sup> Elementary, Intermediate and High School Students in New York Public Schools must be guaranteed a sound basic education. The failure to equip our youth with the tools necessary to meet minimum standards as informed civic participants capable of voting in elections and serving on juries when called is a fundamental threat to social order and a civil society. This minimum educational standard cannot be legislated away. Nor can a "wait and see" approach be permitted where there is the substantial possibility that the State has failed to deliver on its Constitutional mandate. The stakes are high as the failure to discharge the New York State Constitution's minimum educational guarantee threaten to saddle the jury rolls with unqualified jurors and the voting polls with incapable voters for years to come. The Courts stand in the unique position to safeguard the educational promise enshrined in the New York State Constitution that serves as a basis for our civil society and our social order.

Collectively, a set of statutes<sup>2</sup> (the "Challenged Statutes") operate to undermine the social order and deny New York schoolchildren their Constitutional right to a sound basic education. The Defendants would like to make this case about "tenure" and would use "teacher tenure" as a pretext and an "attack on organized labor" as a smokescreen to cloud the issues surrounding the Challenged Statutes, allowing their white-shoe attorneys to pick up with the Courts where their high-priced lobbyists left off with the Legislative and Executive Branches of the New York State Government.

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<sup>1</sup> New York State Constitution, Article XI § I ("Article XI")

<sup>2</sup> New York Education Law Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014, 3020-a, and 3013(2)

Subterfuge aside, make no mistake about it - the Challenged Statutes erode the New York State Constitution's minimum educational guarantee of a sound basic education in three substantial ways: 1) by compelling school districts to grant permanent, lifetime tenure to nearly all junior teachers; 2) by preventing the removal of ineffective teachers from the classroom; and 3) mandate that layoffs be based on seniority alone, rather than by effectiveness or some other measure or range of measures. As the *Dauids* Plaintiffs allege in their Amended Complaint (the "Complaint"), the Challenged Statutes-individually and as-applied in combination-prevent the minor children for whom the Plaintiffs bring this action from obtaining the sound basic education guaranteed under Article XI.

In their Complaint, the Plaintiffs cite to vast academic, educational and social sciences authority that shows teacher effectiveness is the single most influential school-based variable (or input) in the adequacy of a child's education. Plaintiffs also cite to studies and investigations that show the *de facto* impossibility that the Challenged Statutes create in the dismissal of a teacher that, by any measure, fails to discharge the Constitutionally-mandated minimum standards in education. Once the issues in this matter are joined and discovery can begin, Plaintiffs plan to assemble expert and lay testimony alike to support the allegations made in the Complaint. Plaintiffs will show, *inter alia*, that for the all-too-many New York schoolchildren taught by ineffective teachers who fail to discharge the Constitutionally-mandated minimum standards in education, the damage to their educational advancement is significant and long-lasting. And what is more, this damage is not contained to the individual, but this damage threatens the social order and the very fabric of our civil society contemplated by the guarantees of the New York State Constitution. Plaintiffs should be afforded the opportunity to prove, among other important factors, the likely failures in the administration of justice, the likely rising



monetary costs in court administration, and the intolerably high social cost in the undermining of jury verdicts<sup>3</sup> and election results<sup>4</sup> as a direct result of an educational system that fails to discharge the Constitutionally-mandated minimum standard of a sound basic education.

Defendants seek to dismiss Plaintiffs' Complaint. Their arguments are simultaneously voluminous and spurious. None of Defendants' arguments in support of their motions has merit.

Plaintiffs have adequately stated claims upon which relief may be granted. Plaintiffs seek declaratory judgment that the Challenged Statutes are unconstitutional and allege that Defendants' implementation of the Challenged Statutes has resulted in the failure of the Defendants to deliver the sound basic education guaranteed by the New York State Constitution. The Defendants' failure is based on the retention of ineffective teachers who otherwise would not remain in the classroom but for the framework provided by the Challenged Statutes, and that this ongoing status quo amounts to a Constitutional violation. Cumulatively, the Challenged Statutes make it nearly impossible for school administrators to hire and retain teachers based on effectiveness or to dismiss or discipline teachers with a proven track record of ineffectiveness or misconduct. By requiring school districts to apply the Challenged Statutes, the State is protecting ineffective teachers at the expense of their students' futures, depriving those students of quality teachers-the most important "input" of a sound basic education, and depriving civil

---

<sup>3</sup> What is clear is that a criminal conviction based on the unanimous decision of illiterates does not in any way, shape or form comport with the guarantees of the New York State Constitution, the due process requirements of the Federal Constitution nor their original understanding. However, how long is it before there are regular post-verdict motions that amount in sum and substance to: "The jury was a pack of illiterates" – thus placing additional onus on the State to prove that the jury is or was not so.

The electoral process is historically wrnught with chicanery and subterfuge by political operators. How can any election results be certified if the same are shown to be substantially related to the action or inaction of illiterates?

society of functional future members who can help to uphold the social order and discharge basic civic responsibilities of serving on a jury and voting in an election.

The Plaintiffs' claims are clearly justiciable. Defendants essentially urge that the Legislature should be free to determine education policy without constitutional review or judicial oversight of any kind. This notion is abhorrent to the separation of powers and the independence of the judiciary-the branch that is constitutionally charged with the defense of the minimum requirements of the New York State Constitution and the proper administration justice. The Courts have long recognized that Article XI guarantees the State discharge a sound basic education and that it is the Court's obligation to monitor compliance with that charge – lest social order and our entire civic establishment be placed in jeopardy. Defendants' mischaracterizations aside, this case is not a policy crusade against tenure or due process protections for teachers – even though they would like it to be to help further rattle the sabre and commit their patrons to the further commitment of resources in tilting at a windmill that - by their own accounts -will destroy collective bargaining. Back here in reality, Plaintiffs have filed suit because protections that go beyond the requirements of due process must not be implemented at the expense of the Constitutional right guaranteed under Article XI. The merits of *that* Constitutional claim are for the Court, not the Legislature, to evaluate.

The Plaintiffs have standing and the issues in this case are ripe for review. The *Davids* Plaintiffs-through their respective parents and natural guardians-are the very schoolchildren guaranteed a sound basic education under the Article XI. The *Davids* Plaintiffs have alleged the Challenged Statutes as applied violate each Plaintiff's Constitutional rights protected under Article XI. The Plaintiffs have cited numerous credible studies, articles and alarming statistics that sufficiently show a direct correlation between the Challenged Statutes, the retention of

ineffective teachers and the impact on students (both short term impacts with development and long term socioeconomic impacts). As students in New York public schools, each and every one of the Plaintiffs has been harmed, or is at substantial risk of being harmed, as a result of the Challenged Statutes. Further, Plaintiffs have plead an injury in fact that falls within their "zone of interest" as required. Accordingly, Plaintiffs have standing.

Procedurally, at this point in the case, Plaintiffs need only show they have standing, the issue is ripe for review, and adequately plead a justiciable cause of action-the Plaintiffs have done this. Indeed, Plaintiffs are entitled to all reasonable inferences in their favor. Plaintiffs have cited numerous studies and statistics showing the correlation between the application of the Challenged Statutes, the systemic failure of the State to discharge its duty to provide a sound basic education and the impact it has a New York public schoolchildren-thus satisfying its burden.

#### **SUPPLEMENTAL MEMORANDUM OF LAW**

This Memorandum of Law by the  *Davids*  Plaintiffs in Opposition to the several Defendants' Motions to Dismiss shall serve to supplement the Memorandum of Law by the  *Wright*  Plaintiffs. As the legal issues presented are substantially similar, the  *Davids*  Plaintiffs join in and adopt the legal arguments of the  *Wright*  Plaintiffs. The  *Davids*  Plaintiffs present this Memorandum of Law in further opposition to the Defendants' motions.

#### **THE CHALLENGED STATUTES**

Plaintiffs' Complaint challenges the constitutionality of New York Education Law Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014, 3020-a, and 3013(2). Collectively, the Challenged

Statutes fail to provide the minimum standard of education—a sound basic education—as enshrined in Article XI.

As a result of the Challenged Statutes, both individually and collectively, a certain number of ineffective teachers retain employment in the New York public school system despite their ineffective performance. In the absence of the Challenged Statutes, most, if not all, of these ineffective teachers would be dismissed for their poor performance. In addition, in the absence of the Challenged Statutes, school administrators would have the flexibility to attract teachers of superior performance to New York's public schools, retain high-performing teachers even during economic layoffs, and provide incentives to encourage teachers to become or remain high performers. Instead, the Challenged Statutes prevent school administrators from making employment and dismissal decisions that serve the interest of New York's students in having effective teachers. Such a system has a substantially negative impact on the education that certain New York public school students receive.

Students taught by ineffective teachers are not "afford[ed] . . . the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants" or "prepare[s] [them] to compete for jobs that enable them to support themselves." *CFE II*, 100 N.Y.2d at 906, 908. As the Court of Appeals has held, "a high school level education is now all but indispensable" for students, yet students taught by ineffective teachers are less likely to graduate from high school. And even if they graduate, such students are less likely to have gained the knowledge expected of a high school graduate. To the contrary, students taught by ineffective teachers lose six or more months of learning in a single school year and never catch up to their peers. Moreover, these negative effects persist beyond high school, reducing students' college attendance rates, college graduation rates, and lifetime earnings. All

of these negative effects constitute the denial of a sound basic education, in violation of the New York Constitution.

As students in New York public schools, each and every one of the Plaintiffs has been harmed, or is at substantial risk of being harmed, as a result of the Challenged Statutes.

#### **A. New York's Dismissal Statutes**

Teachers in the State of New York are afforded "super" due process rights that are codified primarily in New York Education Law Sections 1102(3), 2509, 2573, 2590G), 3012, 3014, and 3020-a (the "Dismissal Statutes"). The Dismissal Statutes provide New York teachers with an insurmountable array of additional rights and privileges that are significantly greater than traditional due process. Indeed, unlike private companies, public employees in New York cannot be dismissed for unsatisfactory performance or otherwise, unless they are afforded certain due process rights-which include notice of the proposed action, the reasons for the action, and the right to respond before the proposed discipline or termination can be made effective. *See Beck-Nichols v. Bianco*, 20 N.Y.3d 540, 559 (2013). While the *Davids* Plaintiffs do not challenge that teachers should be afforded due process rights, they do challenge the Dismissal Statutes' scope and application.

The Dismissal Statutes create an inordinate amount of obstacles to navigate before a district can dismiss an ineffective teacher. These obstacles result in a labyrinthine dismissal process requiring investigations, hearings, union grievances, administrative appeals, court challenges, and re-hearings-all of which can and often do take multiple years and cost hundreds of thousands of dollars.<sup>5</sup>

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<sup>5</sup> One study concluded that the average cost of dismissing a teacher for ineffectiveness in New York is \$313,000, and takes an average of 830 days. *See* New York State School Boards

As a result of the Dismissal Statutes' difficulty, complexity, cost, and length of time associated with the removal process, dismissal proceedings are rarely initiated to remove an unsatisfactory teacher. Further, when administrators do initiate dismissal proceedings based upon teacher performance, it rarely results in teacher dismissal because the burden on the administrators is unnecessarily burdensome.<sup>6</sup>

If the Dismissal Statutes were declared unconstitutional, teachers would still retain similar due process right other public employees enjoy. However, administrators would be given the autonomy to identify and remove teachers that fail to afford New York schoolchildren the minimum standard of education guaranteed to them under Article XI.

The current dismissal system as written and applied ensures that a certain number of ineffective teachers remain in New York classrooms providing our children with a substandard education. Accordingly, the Dismissal Statutes foster an environment where students are ill prepared to compete in the economic marketplace or to participate in a democracy.

#### **B. New York's Last-In First-Out ("LIFO") Statute**

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Association, *Accountability for All* (March 2007), available at [http://www.nyssba.org/clientuploads/gr\\_3020a\\_reform.pdf](http://www.nyssba.org/clientuploads/gr_3020a_reform.pdf). The same study concluded that, between 1995 and 2006, just 547 teachers statewide-out of nearly 220,000 teachers total-were dismissed via the Dismissal Statutes, either because they were ineffective or for other reasons, such as misconduct. The dismissal process has not improved in the years since 2007. See Katharine B. Stevens, *Firing Teachers: Mission Impossible*, N.Y. Daily News, Feb. 17, 2014, available at <http://www.nydailynews.com/opinion/firing-teachers-mission-impossible-article-1.1615003>.

<sup>6</sup> When an administrator does feel a teacher is ineffective, the Dismissal Statutes require the administrator to leave that teacher in the classroom for one to two years in order to gather enough evidence in order to initiate and prevail in the dismissal proceeding. Indeed, even after dismissal proceedings are initiated against an ineffective teacher, that teacher often remains in the classroom.

New York Education Law § 3013, subdivision (2) (the "LIFO Statute") defines how district-wide layoffs are conducted. The LIFO Statute is a seniority-based layoff system, regardless of a teacher's performance, effectiveness, or quality. It states: "Whenever a trustee, board of trustee, board of education or board of cooperative educational services abolishes a provision under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued." N.Y. Educ. Law § 3013, subd. (2).

Seniority is not an accurate predictor of teacher effectiveness, as recent studies have demonstrated. Yet the LIFO Statute mandates that layoffs be governed exclusively by seniority. This prevents a good teacher's effectiveness from being the yardstick by which other teachers are measured for layoff purposes. Ultimately, pursuant to the LIFO Statute, districts are being forced to keep ineffective senior teachers while laying off top-performing teachers with less seniority. The impact of the LIFO Statutes on schoolchildren is profound.<sup>7</sup>

On information and belief, in the absence of the LIFO Statute, school administrators, when forced to conduct layoffs would have the opportunity to base their decision on the performance and effectiveness of a teacher-not be bound by seniority alone.

The LIFO Statute, alone and in conjunction with the other statutes at issue, ensures that a certain number of ineffective teachers who are unable to prepare students to compete in the economic marketplace or to participate in a democracy retain employment in the New York school system. This substantially reduces the overall quality of the teacher workforce in New York public schools and violates the Plaintiffs' Constitutional rights.

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<sup>7</sup>One recent study demonstrated that making layoff decisions based on teachers' seniority instead of teachers' performance costs students \$2.1 million in lifetime earnings per teacher laid off.

## STANDARD OF REVIEW

It is well settled that "On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction." *Leon v Martinez*, 84 NY2d 83, 87 (1994); *see* CPLR § 3026. Courts must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Leon*, 84 NY2d at 87-88; *ABN AMRO Bank, N V v MBIA Inc.*, 17 NY3d 208, 227 (2011). "The criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one." *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17; *Rovella v. Orofino Realty Co.*, *supra*, 40 N.Y.2d at 636, 389 N.Y.S.2d 314, 357 N.E.2d 970; *Leon v Martinez*, 84 NY2d 83, 88 (1994).

## ARGUMENT

### I. THE COMPLAINT STATES A CAUSE OF ACTION

Plaintiffs' Complaint seeks declaratory relief that the Challenged Statutes, as written and as applied, violate the Plaintiffs' Constitutional rights by failing to provide Plaintiffs with a sound basic education pursuant to Article XI. This satisfies Plaintiffs' requirement to plead a cause of action pursuant to Article XI. Accordingly, Defendants' motions to dismiss must be denied.

An Article XI claim requires: (1) the deprivation of a sound basic education; and (2) causes attributable to the State. *New York Civil Liberties Union v. State*, 4 N.Y. 3d 175, 179 (2005). Here, Plaintiffs plead a systemic failure by the State to provide a sound basic education through the State's application of the Challenged Statutes. The Plaintiffs have cited numerous credible studies and statistics in support of their claims. As stated above, the question in whether





the "facts as alleged fit within any cognizable legal theory." *Leon*, 84 NY2d at 87-88). The Plaintiffs' need not prove their case at this procedural juncture. The Court need only determine, under the facts and law in the Complaint, if Plaintiffs' have a claim based upon any cognizable legal theory.

Moreover, the Plaintiffs seek Declaratory Judgment under CPLR § 3001 as to the Constitutional claims presented. Declaratory judgment is the appropriate vehicle for examination of the constitutionality of legislation. *Borvyszewski v. Brvdges*, 37 N.Y.2d 361 (N.Y. 1975). Where the differences between the parties on a motion to dismiss revolve exclusively around questions of law and once it has been determined that the case is properly one for declaratory relief, the court may properly proceed, on a motion to dismiss in an action for a declaratory judgment, to a consideration of the sufficiency of the plaintiff's claims on the merits.

*Id*

In the instant case, the several Defendants' moving papers have made clear that Defendants will not stipulate to or admit the facts as presented by Plaintiffs and, as such, there are substantial questions of facts that must be resolved through discovery. Additionally, where necessary information is contained in books or documents in the exclusive possession of an opposing party, it is a settled matter of law that a party is entitled to inspect such books and documents in order to gain the necessary information. *Albany Brass & Iron Co. v. Hoffman*, 12 Misc. 167 (N.Y. Sup. Ct. 1895). Here, the development of the facts will entail extensive discovery of materials that are in the sole and exclusive possession of the Defendants.

Accordingly, dismissal of Plaintiffs' complaint at this point would be abhorrent to the administration of justice.

## II. THE COMPLAINT DOES NOT RAISE A POLITICAL QUESTION

The Complaint does not raise a political question that would preclude this Court from granting Plaintiffs' request for declaratory relief. As stated above, the judiciary is the sole arbiter of the constitutionality of the Challenged Statutes and their application. The Defendants' claim that Plaintiffs' Complaint contains non-justiciable policy questions more appropriately handled in the Legislature is without merit. Plaintiffs' claims are constitutional in nature. Under the system of checks and balances, the judiciary, not the executive or legislative branches, is entrusted with reviewing alleged deprivations of constitutional rights.

The paramount concern is that the judiciary not undertake tasks that the other branches are better suited to perform. *Klostermann v. Cuomo*, 61 N.Y.2d 525, 535-536 (N.Y. 1984). The line separating the justiciable from the nonjusticiable has been subtle. The United States Supreme Court identified several factors that relate to the justiciability of a matter in *Baker v. Carr*, 369 U.S. 186, 208-237 (U.S. 1962), and the New York State Court of Appeals has looked to these factors in the justiciability doctrine developed under New York State law. See *Klostermann, supra*. These *Baker v. Carr* factors include:

1. A textually demonstrable constitutional commitment of the issue to a coordinate political department;
2. A lack of judicially discoverable and manageable standards for resolving it;
3. The impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion;
4. The impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;
5. An unusual need for unquestioning adherence to a political decision already made;
6. The potentiality of embarrassment from multifarious pronouncements by various departments on one question.

The central question in this matter is based on the State's delivery of a "sound basic education." The State must ensure that New York's public schools are able to teach 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. Campaign for Fiscal Equity, Inc. v. State of New York, 8 N.Y.3d 14 (N.Y. 2006) ("CFE III"). In assessing adequacy of education, this standard is the constitutional minimum or floor. Id. A sound basic education consists of teaching skills that enable students to undertake civil responsibilities meaningfully. Id. It is the opportunity for a meaningful high school education, one which prepares children to function productively as civic participants. Id. Upon the development of a full factual record, the Court is keenly capable of determining whether the State is able to keep its promise of a sound basic education under the education clause of the New York State Constitution in the face of the Challenged Statutes. This is particularly so because the stakes involved will be shown to undermine the ability of New York's primary and secondary public education students – the future civic participants, voters and jurors – to be able to discharge their responsibilities in any meaningful way. The courts are the defenders of the social order and the promised Constitutional guarantees under Article XI. The Court can and should decide this justiciable matter.

The Court of Appeals has recognized the tension between the judiciary's responsibility to safeguard rights and the necessary deference of the Courts to the policies of the legislature. Id. The manner by which the State addresses complex societal and governmental issues is a subject left to the discretion of the political branches of government. When a court reviews the acts of the legislature and the executive, it does so to protect rights, not to make policy. Id. The relief

requested by the Plaintiffs seeks only to protect the basic and fundamental rights in the New York State Constitution to a sound basic education.

Despite Defendants' attempt to persuade the Court that the Legislature had numerous policy reasons for enacting the Challenged Statutes, there is no policy argument that can shield a statute that violates a constitutional right from judicial review.

### **III. PLAINTIFFS HAVE STANDING**

Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria. *Matter of Association fOr a Better Long Is.. Inc. v. New York State Dept. of Env'tl. Conservation*, 23 N.Y.3d 1 (N.Y. 2014). Standing rules should not be heavy-handed. Courts have been reluctant to apply standing principles in an overly restrictive manner where the result would be to completely shield a particular action from judicial review.

Here, the Plaintiffs have the burden of establishing both an injury in fact and that the asserted injury is within the zone of interests sought to be protected by the education article of the New York State Constitution as alleged. See, e.g., *Soc'y of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761 (N.Y. 1991). Plaintiffs are clearly within the class specifically meant to be protected under Article XI-children attending public schools in the State of New York. Plaintiffs alleged claims that are within the zone of interests protected by Article XI, as the Court of Appeals has recognized the right to a sound basic education enshrined in the New York State Constitution. See, e.g., *CFE III*. The Plaintiffs have plead a cognizable claim for the failure of the State to deliver on its Constitutional educational promise of a sound basic education by the systemic failure of the State in the application of the Challenged Statutes.

Contrary to what the several Defendants have said, Plaintiffs need not allege that they have had a specific ineffective teacher to have standing. Plaintiffs need only allege that they are within the protected class and that their claims are within the zone of interests protected by Article XI – viz. – that they are at imminent risk of being assigned to an ineffective teacher who is incapable of discharging the minimum Constitutional educational standard. The Plaintiffs' pleadings have alleged numerous studies and statistics that show the correlation between the Challenged Statutes and their application and the effect on the education system in New York- specifically, the retention of ineffective teachers and the impact that it has on the delivery of a sound basic education to New York public school students.

Accordingly, Defendants' argument that Plaintiffs do not have standing is without merit.

**IV. DEFENDANTS FAIL TO MEET THEIR BURDEN TO HAVE THE MATTER DISMISSED AND PLAINTIFFS SHOULD BE AFFORDED THE RIGHT TO FURTHER DEVELOP THEIR CLAIMS IN DISCOVERY**

Several of the Intervening Parties attempt to further their smoke-screen strategy by claiming that collectively-bargained contracts between state entities and teachers' unions in some way bear relevance to their arguments to dismiss the Plaintiff's Complaint. Boiled down, the arguments amount to: this Court should not even entertain the potential New York State Constitutional violations because so doing may affect the several Teachers Unions' existing collective bargaining agreements.

It is a matter of hornbook law that impossibility of performance obviates a contractual requirement to perform where the specific term is limited by operation of law. See, *International Paper Co. v. Rockefeller*, 161 A.D. 180 (N.Y. App. Div. 1914); 6 Williston, Contracts (Rev. ed.), §1935; 10 N. Y. Jur., Contracts, § 357; Restatement, Contracts, § 457. In effect, the Intervening

Parties would argue that even entertaining a Constitutional violation that may potentially invalidate certain portions of existing collective bargaining agreements - because the terms are based upon an illegal and unconstitutional understanding - makes it inappropriate for the Court to continue to entertain this matter. The argument is patently absurd, as it elevates a collective bargaining agreement between private parties to the level of Constitutional command. In reality, if the New York State Constitution is to have any meaning whatsoever, it cannot and should not be steered in its interpretation by the whims of private parties over the sovereign rights granted to the citizens of the State of New York.

## CONCLUSION

For the foregoing reasons, the Court should deny the Defendants' motion to dismiss.

Dated: Staten Island, New York  
December 5, 2014

JONATHAN W. TRIBIANO, PLLC

By: Jonathan W. Tribiano

Jonathan W. Tribiano, Esq.  
*Attorney for the Davids Plaintiffs*  
1811 Victory Boulevard, Suite One  
Staten Island, New York 10314  
Tel.: (718) 530-1445  
Fax: (718) 865-5191



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

Index No.: 101105/14

MYMOENA DAVIDS, et al.,

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.,

Defendants.

-and-

JOHN KEONI WRIGHT, et al.,

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al.,

Defendants.

## MEMORANDUM OF LAW

### JONATHAN W. TRIBIANO, PLLC

1811 VICTORY BOULEYARD, SUITE ONE

STATEN ISLAND, NEW YORK 10314

Telephone: (718) 530-1445

Facsimile: (718) 865-5191

To: Service of a copy of the within  
is hereby admitted.

Dated: \_\_\_\_\_ 20\_\_\_\_

Attorney(s) for:

#### PLEASE TAKE NOTICE:

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions herein contained in the annexed documents are not frivolous.

#### [ ] NOTICE OF ENTRY

That the within is a (certified) true copy of a

Duly entered in the office of the clerk of the within named court on \_\_\_\_\_ 20\_\_\_\_

#### [ ] NOTICE OF SETTLEMENT

That an order of which the within is a true copy will be presented for settlement to the HON.

one of the judges of the within named Court, at

on \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ M.

#### AFFIRMATION OF SERVICE

The Undersigned attorney duly admitted to practice law in the Courts of the State of New York linon-party to this action over 18 years of age and residing in Staten Island, New York, did serve the papers herein contained by:

[ ] Personal Service on \_\_\_\_\_  
at \_\_\_\_\_

[ ] Overnight Mail Service by mailing a true copy of the attached papers, enclosed and properly sealed in a postpaid envelope, which I deposited, on \_\_\_\_\_, in an offiCial depository under the exclusive care and custody of the Overnight Carrier and mailed to \_\_\_\_\_

( X ) By electronic mail, as per stipulation, to all parties in the action on December 5, 2014.

Dated: Staten Island, New York  
December 5, 2014

Yours, etc.

**W**

JONATHAN W. TRIBIANO, ESQ.

# Exhibit i

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

-----X  
MYMOENA 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.,

Intervenors-Defendants

- and -

PHILIP A. CAMMARATA and MARK  
MAMBRETTI,

Intervenors-Defendants.

-----X

-----X

Index No. 101105-2014

Justice: Hon. Philip G. Minardo

***DAVIDS* PLAINTIFFS'  
AFFIRMATION IN  
OPPOSITION TO  
DEFENDANTS' AND  
INTERVENORS-DEFENDANTS'  
MOTIONS TO DISMISS THE  
ACTION**

---

JOHN KEONI WRIGHT, et al.,

Plaintiffs,

- against -

THE STATE OF NEW YORK, et al.,

Defendants,

- and -

SETH COHEN, et al.,

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

---

JONATHAN W. TRIBIANO, an attorney duly admitted to practice law before the Courts of this State, affirms to the truth of the following under the penalty of perjury:

1. I am an attorney at Jonathan W. Tribiano, PLLC and licensed to practice law in the State of New York.

2. I make this Affirmation in support of the *Davids* Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Complaint.

3. I am fully familiar with the proceedings in this case and the facts set forth herein.

4. Annexed hereto as Exhibit "A" is a true and accurate copy of the Complaint filed in this action.

5. The *Davids* Complaint herein is verified. Accordingly, pursuant to the CPLR § 3020, the statements contained therein are sworn to be true upon the personal knowledge of the Plaintiffs as plead.

6. The Court is refer to the *Davids* Complaint for the facts and law in support of Plaintiffs' opposition-which is incorporated by reference and made a part hereof. (*See* Exhibit "A").

7. In further support, the *Davids* Plaintiffs submit a Supplemental Memorandum of Law in Opposition to Defendants' Motion to Dismiss the Complaint.

8. In addition, the *Davids* Plaintiffs rely upon and adopt the *Wright* Plaintiffs' Memorandum of Law in Opposition to the Defendants' Motion to Dismiss and offer same in further support of the *Davids* Plaintiffs' Opposition to Defendants' Motion to Dismiss Plaintiffs' Complaint-which is incorporated by reference and made a part hereof.

## CONCLUSION

For the foregoing reasons set forth in the accompanying supplemental memorandum of law, Plaintiffs' Complaint, and the *Wright* Plaintiffs' memorandum of law, the Court should deny the Defendants' motion to dismiss.

Dated: Staten Island, New York  
December 5, 2014

JONATHAN W. TRIBIANO, PLLC

\  
**By:** (s) J.,

Jonathan W. Tribiano, Esq.  
*Attorney for the Davids Plaintiffs*  
1811 Victory Boulevard, Suite One  
Staten Island, New York 10314  
Tel.: (718) 530-1445  
Fax: (718) 865-5191

Exhibit "A"

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MYMOENA DAVIDS, by her parent and natural guardian MIA MONA 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,

**SUMMONS**

-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.

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TO: Office of the Attorney General  
120 Broadway, 24th Floor  
New York, NY 10271



The New York State Board of Regents  
State Education Building  
89 Washington Avenue, Room 110  
Albany, New York 12234

The New York State Education Department  
State Education Building  
89 Washington Avenue, Room 110  
Albany, New York 12234

Corporation Counsel of the City of New York  
100 Church Street  
New York, NY 10007

The New York City Department of Education  
65 Court Street  
Brooklyn, New York, 11201

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within 20 days after service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is plaintiffs residence.

Dated: July 24, 2014

Yours, etc.

Staten Island, New York

**JONATHAN W. TRIBIANO, PLLC**

  
O AJHAN W. TRIBIANO, ESQ.  
1811 Victory Boulevard, Suite One  
Staten Island, New York 10314  
Tel.: (718) 530-1445

SUPREME COURT OF THE STATE OF  
NEW YORK COUNTY OF RICHMOND

Index No.: 101105/14

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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 his parent and natural  
guardian SAM PIROZZOLO, IZAIYAH  
EWERS, by his parent and natural guardian  
KENDRA OKE,

Plaintiffs,

**VERIFIED AMENDED COMPLAINT**

-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.

---

## **PRELIMINARY STATEMENT**

1. The New York Court of Appeals has recognized that a child's right to a "sound basic education" is a fundamental interest guaranteed by the New York Constitution. *Campaign for Fiscal Equity, Inc. v. State ("CFE I")*, 86 N.Y.2d 307, 315 (1995). The Court has "unanimous[ly] recognize[ed] . . . the importance of education in our democracy." *Campaign for Fiscal Equity, Inc. v. State ("CFE II")*, 100 N.Y.2d 893, 906 (2003). Education is necessary "to enable children to eventually function productively as civic participants capable of voting and serving on a jury." *CFE I*, 86 N.Y.2d at 317; *see also CFE II*, N.Y.2d at 905. And it is an "indispensable" part of preparing students "to compete for jobs that enable them to support themselves." *Id.* at 906. Indeed, the "problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before." *Id.* (internal citations and quotation marks omitted).

2. In addition, "the State has obligated itself constitutionally to ensure the availability of a 'sound basic education' to all its children." *CFE II*, 100 N.Y.2d at 902. The State "has ultimate responsibility for the schools" that cannot be delegated. *Id.* at 924.

3. New York's public school teachers play a vital role in providing New York students with the education to which they are entitled. "The first and surely most important input [in determining whether children are receiving a sound basic education] is teaching." *CFE II*, 100 N.Y.2d at 909. Recent studies have confirmed that the key determinant of educational effectiveness is teacher quality. *See, e.g.,* Raj Chetty et al., *The Long-Term Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood*, American Economic Review (forthcoming), available at [http://obs.rc.fas.harvard.edu/chetty/wl\\_9424.pdf](http://obs.rc.fas.harvard.edu/chetty/wl_9424.pdf). Students taught by effective teachers are more likely to attend college, attend higher-quality colleges, earn more,

live in higher socioeconomic status neighborhoods, save more for retirement, and are less likely to have children during their teenage years. *Id.*

4. Although the majority of teachers in New York are providing students with a quality education, some New York K-12 public school students are being taught by teachers who fail to provide their students with the knowledge and skills necessary to be meaningful civic participants and competitive job applicants. *CFE II*, 100 N.Y. at 905. The impact of these ineffective teachers on students is enormous. Even when they are well-intentioned, as most teachers are, such ineffective teachers have an enduring and negative effect on the lives of their students.

5. A "substantial cause," *CFE II*, 100 N.Y. at 903, of the continued employment of these ineffective teachers in the New York public school system is the continued enforcement of certain New York statutes (the "Challenged Statutes") that effectively prevent the removal of ineffective teachers from the classroom, and, in economic downturns, require layoffs of more competent teachers.<sup>1</sup> The Challenged Statutes prevent school administrators from prioritizing- or even meaningfully considering-the interests of their students in having effective teachers when making employment and dismissal decisions. By forcing these critical decisions to be made primarily or exclusively on grounds *other* than students' need for effective teachers, and therefore perpetuating the employment within the school system of a number of ineffective teachers who do not serve students' needs and who, in fact, have a substantially negative impact on students' education, these laws infringe upon New York students' fundamental right to a sound basic education.

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<sup>1</sup> The Challenged Statutes are New York Education Law Sections 1102(3), 2509, 2573, 25900), 3012, 3014, 3020-a, and 3013(2).

6. For example, in New York City, the largest school district in the State with over 75,000 teachers, only 12 teachers were dismissed "for incompetent teaching" over the entire decade from 1997 to 2007--only 1.2 teachers per year. See Katharine B. Stevens, *Firing Teachers: Mission Impossible*, N.Y. Daily News, Feb. 17, 2014, available at <http://www.nydailynews.com/opinion/firing-teachers-mission-impossible-article-1.1615003>.

On information and belief, there were far more than 12 ineffective teachers in the New York City school district over that ten year period.

7. The Challenged Statutes are therefore unconstitutional. New York students taught by ineffective teachers who continue teaching as a result of the Challenged Statutes are denied the fundamental right to a sound basic education required by Article XI, § 1 of the New York Constitution. For these reasons, Plaintiffs ask this Court to declare the Challenged Statutes unconstitutional and to permanently enjoin their enforcement.

#### **PARTIES**

8. Plaintiff Mymoena Davids is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Mymoena Davids is African-American and attends public school in New York City. Miamona Davids, is a single, unemployed mother, is the parent and natural guardian of Plaintiff Mymoena Davids and intends to file a petition with the court to act as guardian ad litem.

9. Plaintiff Eric Davids is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Eric Davids is African-American and attends public school in New York City. Miamona Davids, an unemployed single mother, is the parent and natural guardian of Plaintiff Eric Davids and intends to file a petition with the court to act as guardian ad litem.

10. Plaintiff Alexis Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Alexis Peralta attends public school in New York City. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Alexis Peralta and intends to file a petition with the court to act as *guardian ad litem*.

11. Plaintiff Stacy Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Stacy Peralta attends public school in New York City. Plaintiff Stacy Peralta has special needs. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Stacy Peralta and intends to file a petition with the court to act as *guardian ad litem*.

12. Plaintiff Lenora Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Lenora Peralta attends public school in New York City. Plaintiff Lenora Peralta attends public school in New York City. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Lenora Peralta and intends to file a petition with the court to act as *guardian ad litem*.

13. Plaintiff Andrew Henson is a child who resides in the State of New York and is guaranteed a sound basic education. Christine Henson is the parent and natural guardian of Plaintiff Andrew Henson and intends to file a petition with the court to act as *guardian ad litem*.

14. Plaintiff Adrian Colson is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Adrian Colson attends public school in New York City. Jacqueline Colson is the parent and natural guardian of Plaintiff Adrian Colson and intends to file a petition with the court to act as *guardian ad litem*.

15. Plaintiff Darius Colson is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Darius Colson attends public school in New York City. Jacqueline Colson is the parent and natural guardian of Plaintiff Darius Colson and intends to file a petition with the court to act as guardian ad litem.

16. Plaintiff Samantha Pirozzolo is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Samantha Pirozzolo attends public school in New York City. Sam Pirozzolo is the parent and natural guardian of Plaintiff Samantha Pirozzolo and intends to file a petition with the court to act as guardian ad litem.

17. Plaintiff Franklin Pirozzolo is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Franklin Pirozzolo attends public school in New York City. Sam Pirozzolo is the parent and natural guardian of Plaintiff Franklin Pirozzolo and intends to file a petition with the court to act as guardian ad litem.

18. Plaintiff Izaiyah Ewers is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Izaiyah Ewers attends public school in New York City. Kendra Oke is the parent and natural guardian of Plaintiff Izaiyah Ewers and intends to file a petition with the court to act as guardian ad litem.

19. Defendant the State of New York (the "State") is responsible for the operation, financing and administration of the New York State public school system.

20. Defendant Regents of the University of the State of New York ("Board of Regents") is an executive department of the State of New York. Its offices are located at State Education Building, 89 Washington Avenue, Room 110, Albany, New York 12234. Pursuant to

the power delegated to it by the New York Legislature, the Board of Regents determines educational policies, and promulgates rules to effectuate New York State education laws and policies. The Board of Regents presides over the New York Education Department and appoints a Commissioner of Education who is responsible for the direct management of the New York Education Department N.Y. Const. Art V, § 4; N.Y. Education Law § 207.

21. Defendant the New York State Education Department (the "NYSED") is an executive agency of the State of New York. Its office is located at State Education Building, 89 Washington Avenue, Room 110, Albany, New York 12234. The Education Department implements the policies of the Board of Regents under the Commissioner's direction.

22. Defendant the City of New York (the "City") is responsible for the operation, financing and administration of the New York City public school system.

23. Defendant the New York City Department of Education ("NYCDOE") is an administrative agency of the City of New York. It has offices located at 65 Court Street, Brooklyn, New York, 11201.

24. Defendants, and those subject to their supervision, direction, and control, are responsible for the enforcement of the statutes challenged herein. Except where otherwise specified, the relief requested in this action is sought against each Defendant, as well as against each Defendant's officer's employees, and agents, and against all persons acting in cooperation with Defendant(s), under their supervision, at their direction, or under their control.

#### **JURISDICTION AND VENUE**

25. The New York State Supreme Court is the court of original jurisdiction in causes of action for declaratory judgment and injunctive relief for applications involving the interpretation and applicability of the New York State Constitution.



26. The New York State Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. CPLR Sec. 3001

27. Venue lies in this court as Defendants' acts, decisions, and other material events have arisen within this judicial district. CPLR Sec. 506(b).

28. Similarly, at least one of the parties resides within Richmond County where this court is situated. CPLR Sec. 503(a).

### **STATEMENT OF FACTS**

#### **A. Teacher Quality Is The Key Determinant Of Educational Effectiveness**

29. Extensive research over the past 35 years supports one indisputable fact: Teachers matter. Teachers are a key determinant of the quality of education students receive and have a profound impact on students' lifetime achievement. In fact, teacher quality affects student success more than any other in-school factor. According to one of the nation's foremost education economists, "teachers near the top of the quality distribution can get an entire year's worth of additional learning out of their students compared to those near the bottom." As a result, students taught by effective teachers are more likely to attend college, attend higher-ranked colleges, earn higher salaries, reside in higher quality neighborhoods, and save for retirement.

30. Conversely, students taught by ineffective teachers-those in approximately the bottom five percent of educators in New York-suffer lifelong problems and fail to recover from this marked disadvantage. One recent study found that a student in New York who is taught by a single ineffective teacher misses out on *six or more months* of learning in a single school year and remains "stuck below grade level" for years to come. Another recent study found that

replacing an ineffective teacher with even an *average* teacher-not an above-average or superior teacher-would increase students' cumulative lifetime income by a total of \$1.4 million per classroom taught by that teacher.

31. In light of the substantial and enduring impact that teachers have on their students' achievement, removal of the ineffective teachers currently employed by the New York public school system would have a pronounced, life-altering impact on the performance of those students who would otherwise be taught by those teachers. It would therefore be in the interest of all New York public school students to ensure that ineffective teachers are promptly dismissed upon discovery of their ineffective performance.

**B. The Challenged Statutes Prevent New York School Administrators From Making Employment And Dismissal Decisions That Benefit Students**

32. Despite the profound impact teachers have on student achievement, most ineffective teachers are not dismissed for their poor performance, instead remaining as teachers in New York classrooms.

33. The Challenged Statutes make it nearly impossible for school administrators to dismiss ineffective teachers. Unable to remove these ineffective teachers from the New York school system, the statutes at issue instead compel school administrators to either leave the ineffective teachers in place or transfer them from school to school within the public school system, a phenomenon sometimes referred to as the "dance of the lemons." On information and belief, New York principals and school district administrators believe that attempting to dismiss ineffective teachers is futile and prohibitively resource-intensive, and that the dismissal process established by the Challenged Statutes is unlikely to result in dismissal of those teachers.

34. The continued employment of ineffective teachers in New York's public schools is a result of the Challenged Statutes and causes grave harm to New York's students. Those

statutes comprise a statutory scheme that makes dismissal nearly impossible or highly impractical once poor performers are identified and, when layoffs are necessary, forces districts to terminate teachers based on seniority alone, irrespective of their teaching effectiveness. This statutory scheme, enacted by the State of New York through its Legislature and enforced by Defendants, inevitably presents a total and fatal conflict with the right to a sound basic education guaranteed by the New York Constitution because it forces certain New York students to be educated by ineffective teachers who fail to provide them with the basic tools necessary to compete in the economic marketplace and participate in a democratic society.

35. In the absence of this statutory scheme, school administrators would have the ability to make employment and dismissal decisions that serve the interests of New York's students. School administrators could dismiss those teachers who are ineffective, retain only those teachers who are at least minimally effective, and reward and incentivize teachers who exhibit superior performance. The Challenged Statutes prevent school administrators from meaningfully considering their students' need for effective teachers when making teacher employment and dismissal decisions. On information and belief, in the absence of the Challenged Statutes, school administrators would make teacher employment and dismissal decisions based, in larger part and/or entirely, on their students' need for effective teachers.

#### New York's Dismissal Statutes

36. Unlike employees of private companies, public employees in New York must be afforded certain due process rights before being subject to termination or other adverse employment decisions. These due process rights must include notice of the proposed action, the reasons for the action, and the right to respond before the proposed discipline or termination can be made effective. *See Beck-Nichols v. Bianco*, 20 N.Y.3d 540, 559 (2013).

37. New York's statutory scheme, however, affords teachers "super" due process rights-an astounding array of additional rights and privileges, which are significantly greater in scope and content than due process rights-before they may be terminated for unsatisfactory performance. These rights and privileges are codified primarily in New York Education Law Sections 1102(3), 2509, 2573, 25900), 3012, 3014, and 3020-a (the "Dismissal Statutes").

38. The Dismissal Statutes mandate that an inordinate number of hurdles be cleared before a district can dismiss an underperforming teacher. These hurdles result in a labyrinthine dismissal process requiring investigations, hearings, union grievances, administrative appeals, court challenges, and re-hearings-all of which can and often do take multiple years and cost hundreds of thousands of dollars.

39. Recent studies have found that the Dismissal Statutes effectively prevent New York school administrators from dismissing teachers for poor performance. One study concluded that the average cost of dismissing a teacher for ineffectiveness in New York is \$313,000, and takes an average of 830 days. *See* New York State School Boards Association, *Accountability for All* (March 2007), *available at* [http://www.nyssba.org/clientuploads/gr\\_3020a\\_reform.pdf](http://www.nyssba.org/clientuploads/gr_3020a_reform.pdf). The same study concluded that, between 1995 and 2006, just 547 teachers statewide--out of nearly 220,000 teachers total--were dismissed via the Dismissal Statutes, either because they were ineffective or for other reasons, such as misconduct. The dismissal process has not improved in the years since 2007. *See* Katharine B. Stevens, *Firing Teachers: Mission Impossible*, N.Y. Daily News, Feb. 17, 2014, *available at* <http://www.nydailynews.com/opinion/firing-teachers-mission-impossible-article-1.1615003>.

40. In light of the difficulty, complexity, cost, and length of time associated with the removal process under the Dismissal Statutes, dismissal proceedings are rarely initiated for unsatisfactory performance alone. Further, when the dismissal process is initiated based on teacher performance, it rarely results in dismissal.

41. When a school administrator believes a teacher to be ineffective, the Dismissal Statutes often require the administrator to leave the teacher in the classroom for one or more years, in order to attempt to provide the documentation of ineffective performance necessary to initiate and prevail in dismissal proceedings. Even after the dismissal process has been initiated, school administrators are often forced to leave ineffective teachers in the classroom throughout the dismissal process.

42. In the absence of the Dismissal Statutes, teachers would retain the same due process rights afforded to other New York public employees.

43. On information and belief, in the absence of the Dismissal Statutes, school administrators could and would dismiss ineffective teachers that, under the current system, they are compelled to leave in place. The Dismissal Statutes, alone and in conjunction with the other statutes at issue, ensure that a certain number of ineffective teachers who are unable to prepare students to compete in the economic marketplace or to participate in a democracy retain their employment in the New York school system, and substantially reduces the overall quality of the teacher workforce in New York public schools.

#### New York's Last-In First-Out ("LIFO") Statute

44. New York Education Law § 3013, subdivision (2) (the "LIFO Statute") mandates the selection criteria by which teachers are to be included in any district-wide layoff. The LIFO

Statute creates a seniority-based layoff system, irrespective of a teacher's performance, effectiveness, or quality.

45. The LIFO Statute requires that layoff notices be issued, and layoffs be conducted, in accordance with seniority. It states: "Whenever a trustee, board of trustee, board of education or board of cooperative educational services abolishes a provision under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued." N.Y. Educ. Law § 3013, subd. (2).

46. Seniority, defined as the number of years of teaching experience, is not an accurate predictor of teacher effectiveness, as recent studies have demonstrated. Yet the LIFO Statute mandates that the selection of teachers to be included in any layoff be governed exclusively by seniority. For all practical purposes, the LIFO Statute prevents teacher effectiveness from being taken into account-to any extent or degree-in connection with layoff decisions.

47. Layoffs conducted in accordance with the LIFO Statute force school administrators to lay off top-performing teachers with low seniority, and prevent school administrators from laying off low-performing teachers with high seniority, all to the great detriment of New York students. One recent study demonstrated that making layoff decisions based on teachers' seniority instead of teachers' performance costs students \$2.1 million in lifetime earnings per teacher laid off.

48. Layoffs of teachers in New York have occurred recently and are likely to recur in the near future. In 2011, for example, nearly 3 percent of New York teachers were laid off under the LIFO statute statewide-more than 7,000 teachers, including top performers.

49. On information and belief, in the absence of the LIFO Statute, school administrators forced to implement district-wide layoffs would select the teachers to be included in such layoffs based, in larger part or entirely, on the performance and effectiveness of those teachers and the outcomes of their students.

50. The LIFO Statute also hinders recruitment of new teachers by creating an environment in which newly and recently hired teachers face a heightened risk of receiving layoff notices and being laid off regardless of their performance.

51. The LIFO Statute, alone and in conjunction with the other statutes at issue, ensures that a certain number of ineffective teachers who are unable to prepare students to compete in the economic marketplace or to participate in a democracy retain employment in the New York school system, and substantially reduces the overall quality of the teacher workforce in New York public schools.

**E. The Challenged Statutes, Individually And Collectively, Violate New York Students' Right to A Sound Basic Education**

52. As a result of the Challenged Statutes, both individually and collectively, a certain number of ineffective teachers retain employment in the New York public school system despite their ineffective performance. In the absence of the Challenged Statutes, most, if not all, of these ineffective teachers would be dismissed for their poor performance. In addition, in the absence of the Challenged Statutes, school administrators would have the flexibility to attract teachers of superior performance to New York's public schools, retain high-performing teachers even during economic layoffs, and provide incentives to encourage teachers to become or remain high performers. Instead, the Challenged Statutes prevent school administrators from making employment and dismissal decisions that serve the interest of New York's students in having

effective teachers. Such a system has a substantially negative impact on the education that certain New York public school students receive.

53. Students taught by ineffective teachers are not "afford[ed] . . . the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants" or "prepare[s] [them] to compete for jobs that enable them to support themselves." *CFE II*, 100 N.Y.2d at 906, 908. As the Court of Appeals has held, "a high school level education is now all but indispensable" for students, yet students taught by ineffective teachers are less likely to graduate from high school. And even if they graduate, such students are less likely to have gained the knowledge expected of a high school graduate. To the contrary, students taught by ineffective teachers lose six or more months of learning in a single school year and never catch up to their peers. Moreover, these negative effects persist beyond high school, reducing students' college attendance rates, college graduation rates, and lifetime earnings. All of these negative effects constitute the denial of a sound basic education, in violation of the New York Constitution.

54. As students in New York public schools, each and every one of the Plaintiffs has been harmed, or is at substantial risk of being harmed, as a result of the Challenged Statutes.

### **CLAIMS FOR RELIEF**

#### **CLAIM ONE: VIOLATION OF EDUCATION ARTICLE (DISMISSAL STATUTES)**

55. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

56. All students in New York have a fundamental right to a sound basic education. *Campaign for Fiscal Equity, Inc. v. State ("CFE I")*, 86 N.Y.2d 307, 315 (1995).



57. The Dismissal Statutes violate the Education Article of the New York Constitution, art. XI, § I.

58. The Dismissal Statutes violate the Education Article because they have a substantially negative impact on those New York public school students taught by ineffective teachers who, absent the Dismissal Statutes, would be dismissed for poor performance. The Dismissal Statutes deprive those students of a sound basic education.

**CLAIM TWO: VIOLATION OF EDUCATION ARTICLE  
(LIFO STATUTE)**

59. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

60. All students in New York have a fundamental right to a sound basic education. *Campaignfor Fiscal Equity, Inc. v. State ("CFE ¶")*, 86 N.Y.2d 307, 315 (1995).

61. The LIFO Statute violates the Education Article of the New York Constitution, art. XI, § I.

62. The LIFO Statute violates the Education Article because it has a substantially negative impact on those New York public school students taught by more senior, ineffective teachers who would otherwise be laid off for poor performance, absent the LIFO Statute. It also has a substantially negative impact on those New York public school students who would have been taught by less senior, effective teachers, had those teachers not lost who lose their jobs because of the LIFO Statute. The LIFO Statute deprives those students of a sound basic education.

**CLAIM THREE: DECLARATORY RELIEF**

63. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

64. An actual and justiciable controversy exists between the Plaintiffs and Defendants because Plaintiffs contend, and Defendants dispute, that Defendants' actions and inactions as described above have violated the constitutional provisions cited herein.

65. Plaintiffs seek a declaration that the Dismissal Statutes and the LIFO Statute separately and together violate the right to a sound basic education protected by the Education Article of the New York Constitution.

## **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray for judgment against Defendants as follows:

- I. Plaintiffs respectfully request that this Court enter a declaratory judgment stating that the Dismissal Statutes and the LIFO Statute, separately and together, violate the Education Article of the New York Constitution.
2. Plaintiffs respectfully request that this Court enter a permanent injunction enjoining the enforcement, application, or implementation of the Dismissal Statutes and the LIFO Statute.
3. Plaintiffs respectfully request that this Court enter a permanent injunction enjoining Defendants from implementing at any time in the future, by law or by contract, any system of teacher employment, retention and dismissal that is substantially similar to the framework implemented by the Challenged Statutes, in that it **(1)** vests in teachers greater protections against dismissal than the due process rights applicable to other New York state employees, or **(2)** prevents school administrators from meaningfully considering teacher effectiveness when making employment, retention and termination decisions about teachers.
4. Plaintiffs respectfully request that this Court retain continuing jurisdiction over this matter until such time as the Court has determined that Defendants have fully and properly complied with its Orders.
5. Award Plaintiffs reasonable costs, litigation expenses, and attorneys' fees.
6. Grant Plaintiffs such additional relief as may be just, proper and equitable.

Dated: July 24, 2014

Yours, etc.

Staten Island, New York

**JONATHAN W. TRIBIANO, PLLC**

  
**JONATHAN W. TRIBIANO, ESQ.**

1811 Victory Boulevard, Suite One  
Staten Island, New York 10314  
Tel.: (718) 530-1445

VERIFICATION

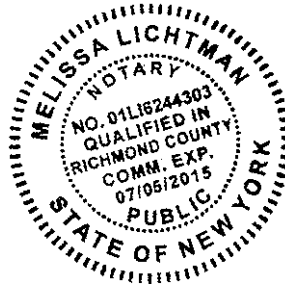
STATE OF NEW YORK     )  
COUNTY OF RICHMOND    ) ss.:

SAM PIROZZOLO, being duly sworn, deposes and says: I am the parent and natural guardian of SAMANTHA PIROZZOLO and FRANKLIN PIROZZOLO, Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

By:   
SAM PIROZZOLO

Sworn to before me this  
C{!i'h day of July 2014

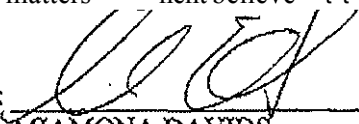
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Notary Public



**VERIFICATION**

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

MIAMONA DAVIDS, being duly sworn, deposes and says: I am the parent and natural guardian of MYMOENA DAVIDS and ERIC DAVIDS, Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be alleged on information and belief, and as to those matters I do believe them to be true.

By:   
MIAMONA DAVIDS

Sworn to before me this  
20<sup>th</sup> day of July 2014

C. 4) t- f ucto.  
Notary Public

SYAHAN PEGUERO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01PE6246440  
Qualified in Bronx County  
My Commission Expires July 25, 2016

## VERIFICATION

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

CHRISTINE HENSON, being duly sworn, deposes and says: I am the parent and natural guardian of ANDREW HENSON, Plaintiff in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

By: \_\_\_\_\_



CHRISTINE HENSON

Sworn to before me this  
11<sup>th</sup> day of July 2014

*Notary Public*

Notary Public

SYAHAN PEGUERO  
NOTARY PUBLIC-STATE OF NEW YORK

No: 01PE6;45440

Qualified in Bronx county

MY Commission Expires: July 2nd, 2015

VERIFICATION

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

KENDRA OKE, being duly sworn, deposes and says: I am the parent and natural guardian of IZAIYAH EWERS, Plaintiff in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief,

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RA OKE

Sworn to before me this  
day of July 2014

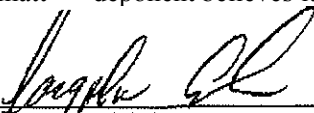
Syahan Peguero  
Notary Public

SYAHAN PEGUERO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01PE6245440  
Qualified in Bronx County  
My Commission Expires July 25, 2015

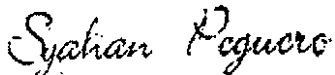
## VERIFICATION

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

JACQUELINE COLSON, being duly sworn, deposes and says: I am the parent and natural guardian of ADRIAN COLSON and DARIUS COLSON, Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters the deponent believes it to be true.

By:   
JACQUELINE COLSON

Sworn to before me this  
7<sup>th</sup> day of July 2014

  
Notary Public

SYAHAN PEGUERO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01P6245440  
Qualified in Bronx County  
My Commission Expires July 25, 2015



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SUPREMECOURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

Index No.: 101 105/Z014

MYMOENA DAVIDS, et al.,

**Plaintiffs,**

**..against**

THE STATE OF NEW YORK, et al

**Defendants.**

### SUMMONS AND VERIFIED AMENDED COMPLAINT

**JONATHAN W. TRIBIANO, PLLC**

1811 VICTORY BOULEVARD, SUITE ONE  
STATEN ISLAND, NEW YORK 10314  
Telephone: (718) 530-1445  
Facsimile: (718) 865-5191

To: Service of a copy of the within  
is hereby admitted.

Dated: \_\_\_\_\_ 20 \_\_\_\_\_

Attorney(s) for:

#### PLEASE TAKE NOTICE:

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions herein contained in the annexed documents are not frivolous.

#### NOTICE OF ENTRY

That the within is a (certified) true copy of a

Duly entered in the office of the clerk of the within named court on 20

#### NOTICE OF SETTLEMENT

That an order of which the within is a true copy will be presented for settlement to the HON.

one of the judges of the within named Court, at

on 20 at M.

#### AFFIRMATION OF SERVICE

The Undersigned attorney duly admitted to practice law in the Courts of the State of New York a non-party to this action over 18 years of age and residing in Staten Island, New York, did serve the papers herein contained by:

☐ Personal Service on \_\_\_\_\_  
at \_\_\_\_\_

☐ Overnight Mail Service by mailing a true copy of the attached papers, enclosed and properly sealed in a postpaid envelope, which I deposited, on \_\_\_\_\_ in an official depository under the exclusive care and custody of the Overnight Carrier and mailed to \_\_\_\_\_

☐ Regular Mail Service by mailing a true copy of the attached papers, enclosed and properly sealed in a postpaid envelope, which I deposited, on \_\_\_\_\_ in an official depository under the exclusive care and custody of the United States Postal Services within the State of New York addressed to \_\_\_\_\_

Dated: July 24, 2014

Yours, etc.

'- \L--W , \

JONATHAN W. TRIBIANO, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

Index No.: 101105/14

MYMOENA DAVIDS, et al.,

**Plaintiffs,**

**-against-**

THE STATE OF NEW YORK, et al.,

**Defendants.**

**-and-**

JOHN KEONI WRIGHT, et al.,

**Plaintiffs,**

**-against-**

THE STATE OF NEW YORK, et al.,

**Defendants.**

### AFFIRMATION IN OPPOSITION

**JONATHAN W. TRIBIANO, PLLC**

1811 VICTORY BOULEVARD, SUITE ONE

STATEN ISLAND, NEW YORK 10314

Telephone: (718) 530-1445

Facsimile: (718) 865-5191

To:

Service of a copy of the within  
is hereby admitted.

Dated: \_\_\_\_\_ 20\_\_\_\_

-

Attorney(s) for:

#### PLEASE TAKE NOTICE:

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions herein contained in the annexed documents are not frivolous.

#### [ ] NOTICE OF ENTRY

That the within is a (certified) true copy of a

Duly entered in the office of the clerk of the within named court on \_\_\_\_\_ 20\_\_\_\_

#### [ ] NOTICE OF SETTLEMENT

That an order of which the within is a true copy will be presented for settlement to the HON.

one of the judges of the within named Court, at

on \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ M.

#### AFFIRMATION OF SERVICE

The Undersigned attorney duly admitted to practice law in the Courts of the State of New York a non-party to this action over 18 years of age and residing in Staten Island, New York, did serve the papers herein contained by:

[ ] Personal Service on \_\_\_\_\_  
at \_\_\_\_\_

[ ] Overnight Mail Service by mailing a true copy of the attached papers, enclosed and properly sealed in a postpaid envelope, which I deposited, on \_\_\_\_\_, in an official depository under the exclusive care and custody of the Overnight Carrier and mailed to \_\_\_\_\_

[ X ] By electronic mail, as per stipulation, to all parties in the action on December 5, 2014.

Dated: Staten Island, New York  
December 5, 2014

Yours, etc.

\_\_\_\_\_  
JONATHAN W. TRIBIANO, ESQ.

JONATHAN W. TRIBIANO, ESQ.



# Exhibit j

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

-----X  
MYMOENA 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.,

Intervenors-Defendants

- and -

PHILIP A. CAMMARATA and MARK  
MAMBRETTI,

Intervenors-Defendants.  
-----X

Index No. 101105-2014

Justice: Hon. Philip G. Minardo

***WRIGHT* PLAINTIFFS'  
MEMORANDUM OF LAW IN  
OPPOSITION TO  
DEFENDANTS' AND  
INTERVENORS-DEFENDANTS'  
MOTIONS TO DISMISS THE  
ACTION**

-----X  
JOHN KEONI WRIGHT, et al.,

Plaintiffs,

- against -

THE STATE OF NEW YORK, et al.,

Defendants,

- and -

SETH COHEN, et al.,

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

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**PRELIMINARY STATEMENT**

New York's schoolchildren are suffering the consequences of an education system in crisis. While most students are failing to meet the State's proficiency standards, ineffective teachers are being promoted and kept in schools at alarming rates. The longer an ineffective teacher remains in the classroom, the more long-lasting the harm, and the higher the number of students who are permanently deprived of their opportunity to succeed. The situation cries out for change. But the hands of administrators and school districts are tied. The Legislature has passed, and the State now enforces, three sets of statutes (the "Challenged Statutes") that together result in the promotion and retention of ineffective teachers at the expense of children's constitutional right to a sound basic education. In effect, school districts are precluded from dismissing or disciplining teachers who are failing to provide children with the basic skills necessary to be responsible citizens able to function in democratic institutions, advance to higher education, and attain productive employment. This is a constitutional crisis of statewide magnitude and national importance.

Plaintiffs are the parents of nine students who attend schools throughout the State, including in Albany, the Bronx, Brooklyn, Manhattan, Queens, and Rochester. They allege that the State's enforcement of the Challenged Statutes violates their children's right under Article XI, § 1 of the New York Constitution to a sound basic education. As they are aware, education is the key to a bright future for their children. An effective teacher can mean the difference for their children between success or failure, advancement or stagnation, and ultimately, professional mobility or unemployment. In short, teacher effectiveness is the single most influential school-based variable in the adequacy of their children's education. Yet Plaintiffs' children have all been assigned to an ineffective teacher and risk being assigned to one each year. Plaintiffs are no longer willing to stake their children's future on a roll of the dice.

Defendants have moved to dismiss Plaintiffs' lawsuit, offering a series of arguments designed to prevent this Court from addressing the constitutional validity of the Challenged Statutes. None of these arguments has merit, and the Court should deny Defendants' motions to dismiss for three primary reasons.

**First**, Plaintiffs have adequately stated a claim for relief. Plaintiffs allege that Defendants' implementation of the Challenged Statutes has resulted in the retention of ineffective teachers who otherwise would not remain in the classroom, and that this ongoing status quo amounts to a constitutional violation. Because of the Challenged Statutes, school districts grant teachers tenure before they can be sufficiently evaluated, are required to use a flawed evaluation system in making those tenure decisions, and are precluded from dismissing or disciplining teachers who are Ineffective. By requiring school districts to apply the Challenged Statutes, the State is protecting ineffective teachers at the expense of their students' futures, and depriving those students of quality teachers—the most important “input” of a sound basic education. Defendants fault Plaintiffs for not providing more detailed evidence in their Complaint. But the Court should not be fooled—more comprehensive data is solely within the State's control, and this argument is simply an effort to protect the State's actions from discovery and judicial scrutiny. The Complaint contains sufficient factual allegations, including numerous studies and statistics, to support a reasonable inference that ineffective teachers have caused glaring deficiencies in New York schools. No more is required from Plaintiffs at this procedural juncture before Plaintiffs have the benefit of discovery.

**Second**, the claim is justiciable. Defendants essentially urge that the Legislature should be free to determine education policy without constitutional review or judicial oversight of any kind. But the courts have long recognized that Article XI guarantees the right to a sound basic

education and that it is the court's role to monitor compliance with that right. Defendants' mischaracterizations aside, this case is not a policy crusade against tenure or due process protections for teachers. Plaintiffs have filed suit because protections that go beyond the requirements of due process must not be implemented at the expense of the constitutional right guaranteed under Article XI. The merits of *that* constitutional claim are for the court, not the Legislature, to evaluate.

***Third***, Plaintiffs have standing and the issues in this suit are ripe for review. This case is brought on behalf of the very schoolchildren expressly protected by Article XI and guaranteed the right to a sound basic education. Plaintiffs have alleged systemic failure that has infected the schools which they attend. Plaintiffs and other New York State school children are the primary victims of this failing system. Because the Challenged Statutes guarantee that Plaintiffs are either presently being taught by ineffective teachers or suffer imminent risk of being assigned to an ineffective teacher, they have standing to assert their claims here.

Ultimately, Defendants do not seriously contest the allegation that ineffective teachers deprive students of their right to a sound basic education. Instead, they press what is best characterized as a policy defense of the statutes that is not germane to the constitutional claim, and certainly has no proper place in a motion to dismiss. At this stage, Plaintiffs are entitled to all reasonable inferences in their favor, and the Complaint's allegations amply support the conclusion that the Challenged Statutes are causing the alleged constitutional harm. Beyond that, to the extent Defendants rise to defend the wisdom of the Challenged Statutes, or to make the case that the benefits to teachers should outweigh the constitutional harms to children, those arguments are relevant, if at all, at the merits phase of this case. This Court should reject

Defendants’ plea to insulate unconstitutional legislative action from judicial review, and deny Defendants’ motions to dismiss the Complaint.

### **THE CHALLENGED STATUTES**

The Complaint challenges the constitutionality, in whole or in part, of the Challenged Statutes: Education Law §§ 2509, 2510, 2573, 2585, 2588, 2590, 3012, 3012-c, 3020, and 3020(a).

#### **A. The Permanent Employment Statutes**

The Education Law includes several statutory provisions that authorize awarding tenure to teachers within school districts of different sizes: §2509 (for city school districts in cities with less than 125,000 inhabitants), §2573 (for city school districts in cities with more than 125,000 inhabitants), and §3012 (for school districts other than city districts, i.e., common, union free, and central high school districts) (collectively, the “Permanent Employment Statutes”).

The Permanent Employment Statutes provide that “[at] the expiration of the probationary term of a person appointed for such term, subject to the conditions of this section, the superintendent of schools shall make a written report to the board of education or the trustees of a common school district recommending for appointment on tenure those persons who have been found competent, efficient and satisfactory, consistent with any applicable rules of the board of regents adopted pursuant to section 3012(b) or this article.” N.Y. Educ. Law § 3012(2); *see also* N.Y. Educ. Law § 2509(2); N.Y. Educ. Law § 2573(5).

New York school districts typically grant tenure to new teachers after a probationary period of three years, and after only two years of performance review. *See Wright* Plaintiffs’ Amended Complaint for Declaratory and Injunctive Relief (hereinafter “*Compl.*”) ¶ 38. Pursuant to New York Education Law § 3012-c(1), New York State implemented the Annual Professional Performance Review (the “APPR”) to evaluate teachers and principals. A teacher’s review is



meant to be a significant factor in employment decisions, including tenure, retention, and termination. N.Y. Educ. Law. § 3012-c(1).

Under the APPR, teachers receive a numerical score every year and one of four ratings: “Highly Effective,” “Effective,” “Developing,” or “Ineffective.” Compl. ¶ 40. Each school district negotiates the specific terms of its APPR plans, which must comply with § 3012-c. *Id.* State-developed measures of student growth, such as test results, must form twenty percent of a teacher’s rating. *Id.* Another twenty percent must be based on locally-selected measures of student achievement. *Id.* Locally-determined evaluation methods, such as classroom observations by administrative staff, form the remaining sixty percent. *Id.*

In practice, only two years of APPR reviews are considered in a teacher’s tenure determination because of the statute’s notification requirement. Compl. ¶ 47. Section 3012 requires the superintendent of a school to notify in writing “[e]ach person who is not to be recommended” for tenure of that decision no later than sixty days before the expiration of his or her probationary period. N.Y. Educ. Law § 3012(2). Typically, however, a teacher’s probationary term ends before the third-year APPR is reported, at the end of the school year. Compl. ¶ 47. The final APPR rating may not be provided until September 1 of the following school year. N.Y. Educ. Law § 3012-c(2)(c)(2). A tenure determination, therefore, may be made on the basis of only two years of APPR reviews, and without regard to an Ineffectiveness determination in the third year.

In addition, inaction by the superintendent or an administrator results in *de facto* tenure for a teacher whose probationary period is expiring. *See Ricca v. Bd. of Educ. of City Sch. Dist. of City of N.Y.*, 47 N.Y.2d 385, 391 (1979). Specifically, if the superintendent does not notify the teacher of a recommendation against tenure, or an administrator does not dismiss the teacher,

or extend his or her probationary period, tenure protections will kick in at the end of the probationary period.

Once a teacher receives tenure, he or she is guaranteed continued employment except in limited enumerated circumstances and only after a disciplinary hearing pursuant to section 3020(a). Compl. ¶ 48.

## **B. The Disciplinary Statutes**

Once a teacher receives tenure, he or she cannot be removed except for just cause and in accordance with the disciplinary process prescribed by § 3020-a. *See* N.Y. Educ. Law § 3020(1), § 2590 (same for New York City) (collectively with § 3020-a, the “Disciplinary Statutes”). The following causes may constitute reason to remove or discipline a teacher: insubordination, immoral character or conduct unbecoming of a teacher, inefficiency, incompetency, physical or mental disability, neglect of duty, or a failure to maintain required certification. N.Y. Educ. Law § 3012(2).

As applied, the Disciplinary Statutes result in the retention of ineffective teachers. The Disciplinary Statutes impose dozens of hurdles to dismiss or discipline an ineffective teacher, including investigations, hearings, improvement plans, arbitration processes, and administrative appeals. Compl. ¶ 50. In contrast to the more streamlined process for removing other public employees, such as civil servants, the Disciplinary Statutes impose a far more cumbersome removal process. *Compare* N.Y. Educ. Law § 3020-a *with* N.Y. Civ. Serv. Law §§ 75-76 (permitting a hearing before an officer with authority to remove the employee, such as a supervisor). On top of the Disciplinary Statutes’ procedural obstacles, the standard for proving just cause to terminate a teacher is almost impossible to satisfy. Compl. ¶ 50.

A number of factors deter administrators from even bringing charges under the Disciplinary Statutes. As an initial matter, administrators are deterred from giving an Ineffective

rating that would constitute grounds for initiating disciplinary proceedings, and are inclined to rate teachers artificially high, because of the lengthy appeals process for an ineffectiveness rating and because they must partake in the development and execution of a teacher improvement plan (“TIP”) for Developing and Ineffective teachers. N.Y. Educ. Law § 3012-c(4); Compl. ¶ 53. The TIP must be mutually agreed upon by the teacher and principal and must include “needed areas of improvement, a timeline for achieving improvement, the manner in which improvement will be assessed, and, where appropriate, differentiated activities to support a teacher’s or principal’s improvement in those areas.” N.Y. Educ. Law § 3012-c(4).

Administrators also have difficulty complying with the truncated timeline for bringing disciplinary charges, given the significant evidentiary hurdles to initiating disciplinary proceedings. Section 3020-a imposes a three-year limit for bringing charges against a teacher, which constrains administrators’ ability to remove ineffective teachers. Before administrators may initiate proceedings to discipline or terminate an ineffective or incompetent teacher, they must meticulously build a trove of evidence that includes extensive observation, detailed documentation, and consultation with the teacher. Compl. ¶ 54. It is difficult for school districts to collect enough evidence for a 3020-a hearing within the three-year period. *Id.* This laborious and complicated process deters administrators from trying to remove ineffective teachers from the classroom. *Id.*

The disciplinary process is also impractically long and costly. Once an administrator clears the hurdles to file charges, termination can result only after a 3020-a hearing. N.Y. Educ. Law § 3012(2). Despite statutory time limits, from 2004 to 2008, 3020-a disciplinary proceedings took an average of 502 days, from the time charges were brought until a final decision. *Id.* ¶ 56. Incompetency proceedings, which may include charges such as inability to

control a class and failure to prepare required lesson plans, take even longer. From 1995 to 2006, incompetency proceedings in New York took an average of 830 days, costing \$313,000 per teacher. *Id.* ¶ 57. Two consecutive Ineffective ratings constitute a pattern of ineffective teaching or performance, subjecting a teacher to an expedited § 3020-a hearing. N.Y. Educ. Law § 3020-a(3)(c)(i-a)(A). But because ineffective teachers are rarely rated as such, two consecutive Ineffective ratings are very uncommon and the expedited process is thus rarely triggered. ¶ 58. While charges are pending, ineffective teachers must continue to be paid even if they are suspended, except if the teacher is convicted of certain felony crimes. Compl. ¶ 59 (citing N.Y. Educ. Law § 3020-a(2)(b)).

Section 3020(1) incorporates the “alternate disciplinary procedures contained in a collective bargaining agreement.” N.Y. Educ. Law § 3020(1). The statute thus authorizes modifying the procedural requirements by contract. And in practice, the collective bargaining agreements add conditions that delay the disciplinary process even further and make it even more difficult to remove ineffective teachers. For example, in New York City the arbitrator must be jointly selected with the union, which effectively grants the union the power to veto arbitrators on the list. Compl. ¶ 61. The refusal to appoint hearing officers contributes to the massive backlog of disciplinary cases in New York City. *Id.*

If administrators are ever able to comply with the myriad procedural requirements that precede disciplinary action, they then confront a burden of proof that is nearly insurmountable. In order to terminate a teacher, administrators must not only validate the charges, but also prove that the school has undertaken sufficient remediation efforts, that all remediation efforts have failed, and that they will continue to fail indefinitely. Compl. ¶ 64; *see, e.g., deSouza v. Dep’t of Educ. of City Sch. Dist. of N.Y.*, 28 Misc. 3d 1201(A) (N.Y. Sup. Ct. 2010) (Table) (despite

arbitrator finding that nine of ten charges against a teacher were valid, because the arbitrator “felt that petitioner could be rehabilitated,” she was “merely docked one month’s salary and ordered...to enroll in classes.”).

### **C. The LIFO Statutes**

The Education Law includes a number of statutory provisions mandating the termination of teachers with the least seniority in a position’s particular area of instruction for teachers teaching within school districts of various sizes. These statutes are §2510 (for city school districts in cities with less than 125,000 inhabitants), §2585 (for city school districts in cities with more than 125,000 inhabitants), and §2588 (for city school districts in cities with more than 1,000,000 inhabitants) (collectively, the “LIFO Statutes”).

When school districts conduct layoffs that reduce the teacher workforce, New York Education Law § 2585, which is mirrored in §§ 2510 and 2588, mandates that the last teachers hired be the first teachers fired. Under the LIFO Statutes, “[w]henever a board of education abolishes a position under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued.” N.Y. Educ. Law § 2585(3).

Under the LIFO Statutes, school districts conducting layoffs must fire junior high-performing teachers. While these teachers are lost to the classroom, senior, low-performing, and more highly-paid teachers continue to provide poor instruction to their students. Compl. ¶ 68.

In recent years, various school districts in New York, including the Rochester City School District, have implemented district-wide layoffs due to budgetary constraints. In Rochester, the district laid off 116 teachers in 2010, 400 teachers in 2011, and 56 teachers in 2012. Compl. ¶ 70. Pursuant to the LIFO Statutes, school administrators discontinued the

employment of top-performing teachers with lower seniority, and retained low-performing teachers with greater seniority. *Id.*

### **STANDARD OF REVIEW**

On a motion to dismiss, “the pleading is to be afforded a liberal construction.” *ABN AMRO Bank, N.V. v. MBIA Inc.*, 17 N.Y.3d 208, 227 (2011).<sup>1</sup> The court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory.” *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994); *see also Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 318 (1995) (“*CFE I*”) (“our well-settled task is to determine whether ... plaintiff can succeed upon any reasonable view of the facts stated”).

### **ARGUMENT**

#### **I. THE COMPLAINT STATES A CLAIM THAT DEFENDANTS ARE VIOLATING ARTICLE XI OF THE NEW YORK STATE CONSTITUTION.**

The Court should deny Defendants’ motions to dismiss<sup>2</sup> because the *Wright* Plaintiffs have stated a claim for relief under Article XI of the New York State Constitution. Plaintiffs have alleged that the State has caused a deprivation of their right to a sound basic education, which is all that is necessary to state a claim for relief under the Education Article.

As the court explained in *New York Civil Liberties Union v. State*, “[A]n Education Article claim requires two elements: the deprivation of a sound basic education, and causes

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<sup>1</sup> Unless otherwise noted, all internal citations are omitted and all emphasis has been added.

<sup>2</sup> Five motions to dismiss and accompanying memoranda of law were filed in response to Plaintiffs’ Complaint: Memorandum of Law in Support of the State of New York, et al., Defendants’ Motion to Dismiss the Action (“State MTD”); Memorandum of Law in Support of Seth Cohen, et al., Intervenor-Defendants’ Motion to Dismiss the Action (“NYSUT MTD”); Memorandum of Law in Support of Philip A. Cammarata and Mark Mambretti, Intervenor-Defendants’ Motion to Dismiss the Action (“SAANYS MTD”); Memorandum of Law in Support of the New York City Department of Education, Intervenor-Defendant’s Motion to Dismiss the Action (“DOE MTD”); and Memorandum of Law in Support of Michael Mulgrew, as President of the United Federation of Teachers, Intervenor-Defendant’s Motion to Dismiss the Action (“UFT MTD”).

attributable to the State.” 4 N.Y.3d 175, 178-79 (2005). As to the first element, courts have recognized that a systemic failure to provide a sound basic education is a legally cognizable claim under Article XI. Here, Plaintiffs have pleaded a systemic statewide failure by alleging that ineffective teachers employed by New York schools are impairing the constitutional rights of schoolchildren across New York State. As to the second element, Plaintiffs have alleged that the State’s enforcement of the Challenged Statutes causes the promotion and retention of ineffective teachers, who therefore remain in the classroom at the expense of their students’ educational rights.

**A. The Complaint Adequately Alleges A Deprivation Of Plaintiffs’ Right To A Sound Basic Education.**

Plaintiffs have satisfied the first element of an Article XI claim by alleging a “systemic failure” in the state’s educational system such that a significant number of students are being denied their right to a sound basic education. Article XI requires the 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.” And courts have recognized a legally cognizable claim where plaintiffs allege systemic failure in the quality of education. *See, e.g., Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 914 (2003) (“*CFE II*”), *aff’d*, 8 N.Y.3d 14 (2006) (“*CFE III*”) (holding that “tens of thousands of students [] placed in overcrowded classrooms, taught by unqualified teachers, and provided with inadequate facilities and equipment ... is large enough to represent a systemic failure”).

A complaint adequately states an Article XI claim where, for example, it provides data that “illustrate[s] glaring deficiencies in the current quality of the schools in plaintiffs’ districts.” *Hussein v. State*, 81 A.D.3d 132, 136 (3d Dep’t 2011), *aff’d*, 19 N.Y.3d 899 (2012). And plaintiffs may allege a systemic failure by showing deficiencies in “inputs” such as “teaching,

facilities and instrumentalities of learning” and “outputs” such as “test results and graduation rates.” *Paynter v. State*, 100 N.Y.2d 434, 440 (2003); *see also CFE I*, 86 N.Y.2d at 319 (complaint adequately alleged Article XI claims on the basis of “fact-based claims” of deficient inputs and outputs and “inferences to be drawn therefrom”).

As the Complaint alleges, there is a systemic crisis of educational performance that is the result of promoting and retaining ineffective teachers under the Challenged Statutes. *See Compl.* ¶¶ 25-26. While the State may disclaim responsibility to provide students “with an optimal education,” State MTD at 16, it can hardly deny its obligation at the very least to “provide a minimal constitutionally sufficient education,” State MTD at 15. The State, however, is falling short even of that bare constitutional minimum. As Plaintiffs allege, and as Defendants cannot seriously contest, public school students on the whole are not receiving an adequate public school education. That much is clear from extremely poor student outputs. For example, the Complaint cites data that in 2013, 69% of students taking English Language Arts and Math standardized tests failed to meet the State’s own standard for proficiency. *See Compl.* ¶ 41.

As the Complaint also alleges, deficient student outputs are the result of gross deficiencies in the most critical educational input: teacher effectiveness. *See Compl.* ¶¶ 41-44. The Court of Appeals has already recognized this matter of common sense—children can only learn basic skills if they are taught by effective teachers. Not only does the “quality of teaching correlate[] with student performance,” but the negative effects of an ineffective teacher compound over time—“the longer students are exposed to ... bad teachers, the ...worse they perform.” *CFE II*, 100 N.Y. 2d at 910-11. *See also Hoke Cnty. Bd. of Educ. v. State*, 599 S.E.2d 365, 390 (N.C. 2004) (affirming that the state must “ensure there are competent teachers in classrooms” to satisfy its obligation to provide students with a “sound basic education”); *State v.*



*Campbell Cnty. Sch. Dist.*, 19 P.3d 518, 550 (Wyo. 2001) (holding that “teacher quality is critical to providing a constitutional education”). Several studies, cited in the Complaint, lend further support to the straightforward allegation that effective teachers are a necessary component of a sound basic education. *See, e.g.*, Compl. ¶ 29 (“In the short-term, effective teachers provide tangible educational results in the form of higher test scores and higher graduation rates.”); ¶ 30 (“In the long-term, students taught by effective teachers ... are more likely to progress in their education ... earn more money through their lives, live in neighborhoods of higher socioeconomic status, and save more money for retirement.”); ¶ 31 (“High-quality instruction from effective teachers help students overcome traditional barriers demographics impose”).

Most recently, the California Superior Court found that “grossly ineffective teachers substantially undermine the ability of that child to succeed in school” and, for that reason, held that statutes similar to those at issue here violated California’s Constitution. *See Vergara v. State*, 2014 WL 2598719, at \*4 (Cal. Super. Ct. June 10, 2014). The *Vergara* decision held that California’s teacher tenure and last-in-first-out statutes violated California students’ constitutional right to a “meaningful, basically equal educational opportunity.” 2014 WL 2598719, at \*3.<sup>3</sup> While the *Vergara* plaintiffs asserted some constitutional claims that Plaintiffs do not allege here, the substance of their claim was that the statutes negatively affected “the quality of [their] education.” 2014 WL 2598719, at \*2. Before the *Vergara* court reached the merits of the constitutional claims, it denied the State Defendants’ motion to dismiss because the complaint alleged that throughout California “‘grossly ineffective’ teachers are retained at ‘alarming rates.’” *Vergara v. State*, Case No. BC484642 (Cal. Super Ct. Nov. 9, 2012),

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<sup>3</sup> It is of little consequence that the California statute at issue there required tenure decisions to be made after two years instead of three, *id.*, because here Plaintiffs allege that the New York Permanent Employment Statute effectively requires tenure decisions to be made based on only two years of teaching. *See* Compl. ¶ 38.

available at [http://studentsmatter.org/wp-content/uploads/2012/11/SM\\_Demurrers-Tent.-Ruling\\_11.09.12.pdf](http://studentsmatter.org/wp-content/uploads/2012/11/SM_Demurrers-Tent.-Ruling_11.09.12.pdf). Under a comparable standard of review to the governing standard here, the court held that those allegations were sufficient to state a claim for relief. *See id.* Here, the Complaint alleges unconstitutional educational deficiencies with even greater specificity than the *Vergara* complaint.

**B. The Complaint Adequately Pleads Causation By The State.**

Defendants hardly contest that ineffective teachers cause poor educational outputs and neither do they seriously disagree that ineffective teachers are employed throughout New York State. Instead, they argue that the court should turn a blind eye to the crisis facing New York schools because the State is not primarily responsible for the employment of ineffective teachers. But Plaintiffs have adequately pleaded causation by alleging that the State's enforcement of the Challenged Statutes impedes school districts from hiring effective teachers and removing ineffective ones and is therefore a significant cause of the alleged educational inadequacies. Plaintiffs are not required to allege that the State action complained of is the exclusive cause of those deficiencies. On the contrary, the case law does not require "a search for a *single cause* of the failure of New York ... schools." *CFE II*, 100 N.Y.2d at 920. And at the pleading stage, a plaintiff's burden to plead causation is minimal. *See CFE I*, 86 N.Y.2d at 318 (stating that an "extended causation discussion ... is premature given the procedural context of th[e] case").

Plaintiffs have easily satisfied this minimal burden by alleging that the employment and retention of huge numbers of inadequate teachers is attributable to three sets of statutes enacted and enforced by the State: the Permanent Employment Statutes, the Disciplinary Statutes, and the LIFO Statutes. *See* N.Y. Educ. Law §§ 2509, 2510, 2573, 2585, 2588, 2590, 3012, 3012-c, 3020, and 3020-a. In combination, the Challenged Statutes force school districts to offer permanent employment, through tenure, to nearly all junior teachers without giving school

districts sufficient time to determine which teachers will be minimally effective, and then impede school districts from dismissing the worst performing teachers after they are prematurely awarded tenure. *See, e.g.*, Compl. ¶ 41 (in 2013, only 1% of teachers were rated “Ineffective” under the APPR, even though only 31.5% of students met the State proficiency standards);<sup>4</sup> ¶¶ 37, 42 (97% of tenure-eligible New York City teachers receive tenure even though fewer than 97% of teachers are effective); ¶ 60 (school must pass through a tedious nine step process involving several hearings and adjudicatory entities to bring disciplinary charges against a teacher); ¶ 70 (school district are forced to lay off top-performing teachers with lower seniority, while retaining low-performing teaching teachers with greater seniority).

Thus, as a result of the Challenged Statutes, the State grants tenure to almost all teachers, regardless of their effectiveness. *See* Compl. ¶¶ 36-37. And, because of the State’s implementation of the Disciplinary Statutes, an ineffective teacher with tenure is rarely, if ever, removed. *See* Compl. ¶¶ 62-64. As applied, the procedural hurdles of the Disciplinary Statutes—which are prohibitively difficult, expensive, and time consuming—make it nearly impossible for administrators to remove an ineffective teacher with tenure. *See* Compl. ¶¶ 50-51.

The inexorable inference from these factual allegations is that too many ineffective teachers are working in New York public schools as a result of the Challenged Statutes. At a minimum, this inference is supported by a “reasonable view of the facts,” which is all that Plaintiffs must show to withstand a motion to dismiss. *CFE I*, 86 N.Y.2d at 318. Defendants argue that the Complaint contains only “vague and conclusory allegations,” based on “specious statistics.” UFT MTD at 10. But only “allegations consisting of bare legal conclusions, as well

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<sup>4</sup> Defendants are simply wrong that the APPR is suddenly effective now that it “has been fully implemented.” *See* SAANYS MTD at 7. To the contrary, only 1% of teachers were rated Ineffective for the 2012-13 school year. N.Y. State, *Education Evaluation Data*, available at <https://data.nysed.gov/evaluation.php?year=2013&state=yes&report=appr> (accessed Dec. 2, 2014).

as factual claims inherently incredible or flatly contradicted by documentary evidence are not entitled to [be accorded every favorable inference].” *EBC I, Inc. v. Goldman, Sachs & Co.*, 5 N.Y.3d 11, 27 (2005) (quoting *Caniglia v. Chi. Tribune–N.Y. News Syndicate*, 204 A.D.2d 233, 233-34 (1st Dep’t 1994)). Far from making bare legal assertions, Plaintiffs cite a number of reputable reports, many of them authored by highly-regarded academics in the fields of education, which hardly constitute “specious statistics” and which Defendants have not rebutted with documentary evidence. *See, e.g.*, Compl. ¶¶ 28-32, 37, 41-42, 55-57, 62, 69, 74.

As only one example, a 2009 survey found that 48% of districts surveyed considered bringing 3020-a charges to remove a teacher and declined to do so, often because the process was too cumbersome or expensive. *See* Compl. ¶ 55. Another telling example is that, to comply with the LIFO Statutes, between 2010 and 2012 the Rochester school district made over 500 teacher layoffs due to budgetary constraints and had to discontinue the employment of top performing, recently-hired, teachers, while retaining low-performing teachers, who happened to have been hired earlier. *See* Compl. ¶ 70. Defendants’ challenge to these studies as “specious statistics,” like so many of Defendants’ arguments, is a merits argument that is not appropriately considered on a motion to dismiss. Indeed, “[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss.” *EBC I*, 5 N.Y.3d at 19; *see also Hussein*, 81 A.D.3d at 136 (“In the procedural context of this case, it would be premature for [the Court] to determine the merits of plaintiffs’ allegations” and whether they “are inadequate to meet the constitutional standards established by the Court of Appeals in the *CFE* cases.”).

Defendants’ objection that the Complaint only alleges that there are “some ineffective teachers” is similarly beside the point. UFT MTD at 2. Plaintiffs need not allege that every New

York student is being taught by an ineffective teacher. *See CFE II*, 100 N.Y.2d at 914 (finding a deprivation of the sound basic right to education where “[t]here are certainly City schools where the inadequacy is not ‘gross and glaring’” and there are “[s]ome of these school may even be excellent.”). They have met their burden by alleging a systematic failure. *CFE II* made clear that this is enough. *Id.* at 919.

Defendants misstate Plaintiffs’ burden by arguing that the Challenged Statutes cannot cause employment of inadequate teachers because the statutes do not “compel” school boards to hire ineffective teachers and do not make it “impossible” to remove them. UFT MTD at 11, 41-43. This argument ignores the crux of the Complaint, which is that the Challenged Statutes are unconstitutional—not because they require schools to employ ineffective teachers—but because the *effect* of their application is to prevent school districts from effectively determining which teachers deserve tenure, and once tenure has been granted, from disciplining and removing ineffective teachers. *See, e.g.,* Compl. ¶¶ 46-47, ¶¶ 50-51, ¶ 75. It is well established that legislation may be unconstitutional due to its effect. *See, e.g., Tenn. Gas Pipeline Co. v. Urbach*, 96 N.Y.2d 124, 131 (2001) (declaring the Natural Gas Import Tax statute unconstitutional based on its “practical effect”); *Flushing Nat’l. Bank v. Mun. Assistance Corp. for City of N.Y.*, 40 N.Y.2d 731, 736 (1976) (declaring the New York State Emergency Moratorium Act unconstitutional because its “effect ... is [] to permit the city... to ignore its pledge of faith and credit”); *New Yorkers for Students’ Educ. Rights v. State*, 2014 N.Y. Misc. LEXIS 4957, at \*11 (Sup. Ct. Nov. 17, 2014) (complaint adequately alleged that statewide cap on local property taxes resulted in constitutionally insufficient funding of public schools); *Vergara*, 2013 WL 6912924, at \*4 (holding that “[p]laintiffs’ evidence raise[d] triable issues of fact as to the effect of the

Challenged Statutes,” specifically whether they “result[] in grossly ineffective teachers obtaining and retaining permanent employment”).<sup>5</sup>

Additionally, Defendants should not benefit at this stage of litigation from their own withholding of information from the public about teacher quality and the retention of ineffective teachers. It bears emphasis that because the State’s APPR system does not adequately identify teachers who are truly “Developing” or “Ineffective,” Compl. ¶ 41, accurate information about teacher effectiveness is largely within Defendants’ knowledge and control. *See CFE II*, 100 N.Y.2d at 909 (describing expert testimony that “principals’ reviews tend to conceal teacher inadequacy because principals find it difficult to fire bad teachers”). *Cf. Berkowitz v. Molod*, 261 A.D.2d 128, 129 (1st Dep’t 1999) (denying a motion to dismiss where the complaint plead facts upon information and belief that were “peculiarly within the knowledge of the party against whom the charges were being asserted”) (quoting *Jered Contracting Corp. v. N.Y.C. Transit Auth.*, 22 N.Y.2d 187, 194 (1968)). As the court explained in *CFE I*, at this procedural juncture before discovery, “an exhaustive discussion and consideration of a ‘sound basic education is premature. Only after discovery and development of a factual record can this issue be fully evaluated and resolved.” 86 N.Y.2d at 317. Plaintiffs have limited access and resources to the State’s comprehensive data about teacher retention and promotion at this stage, and it is precisely for that reason that this type of information is not required of a complaint. The Complaint

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<sup>5</sup> Because Plaintiffs are challenging the effect of the Challenged Statutes, and alleging constitutional violations resulting from their implementation, this is an as-applied challenge. *See, e.g., Boddie v. Conn.*, 401 U.S. 371, 379 (1971) (“Our cases further establish that a statute or a rule may be held constitutionally invalid as applied when it operates to deprive an individual of a protected right although its general validity as a measure enacted in the legitimate exercise of state power is beyond question.”). It is not (as Defendants contend) a facial one. *See* State MTD at 10. In any event, whether or not Plaintiffs are required to “prov[e] that the invalidity of the law is beyond a reasonable doubt,” *id.*, is not a question for this stage of the litigation, where Plaintiffs are entitled to all reasonable inferences in their favor. *See Leon*, 84 N.Y.2d at 87-88 (“We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within *any cognizable legal theory*.”).

provides adequate factual foundation for the claim that as a result of the Challenged Statutes, New York schools employ too many teachers ill-equipped to provide their students with a sound basic education.

Finally, Defendants try to shift causative responsibility from the State to school districts and local boards of education for failing to effectively hire and fire teachers. State MTD at 18-19; SAANYS MTD at 9-10; UFT MTD at 17-18. But the Complaint alleges that the Challenged Statutes are why school boards and districts are failing to properly evaluate teacher effectiveness before granting tenure, *see, e.g.*, Compl. ¶ 46, and failing to remove ineffective teachers, *see, e.g., id.* at ¶¶ 62, 74. Moreover, to establish causation of a systemic failure, a plaintiff need “not ... eliminate any possibility that other causes contribute to that failure.” *CFE II*, 100 N.Y.2d at 923. Instead, “the law recognizes that there may be many causal links to a single outcome” and does not “mandate[] a search for a single cause of the failure of ... schools.” *Id.* at 920. It is therefore irrelevant if other factors, such as the actions of local school boards and districts, are partially responsible for ineffective teachers. The primary causes of these bad results is a factual determination that cannot be decided on a motion to dismiss—it suffices that Plaintiffs have alleged facts that plausibly attribute the cause to enforcement of the Challenged Statutes.

*Paynter* and *New York Civil Liberties Union* do not compel a different conclusion because in neither case did the plaintiffs credibly allege that a State statute resulted in a student being denied a sound basic education. *N.Y. Civil Liberties Union*, 4 N.Y.3d at 180 (complaint did not contain a “clear articulation of the asserted failings of the State”); *Paynter*, 100 N.Y.2d at 443 (complaint failed to allege a sufficient nexus between “a 30-year-old amendment to a housing statute” and the alleged educational deficiencies). Thus, both cases merely held that a complaint does not state an Article XI claim by alleging that the State has failed to take

*affirmative measures* to remedy unidentified or local educational inadequacies. *See Paynter*, 100 N.Y.2d at 438-39 (complaint alleged that the state “fail[ed] to mitigate demographic factors that may affect student performance”); *N.Y. Civil Liberties Union*, 4 N.Y.3d at 180 (complaint sought “to charge the State with the responsibility to determine the causes of the schools’ inadequacies and devi[s]e a plan to remedy them”). Requiring such affirmative measures, the Court in *N.Y. Civil Liberties Union* explained, would “subvert local control” over schools by obligating the State “to intervene on a school-by-school basis to determine each of the ... school’s sources of failure and devise a remedial plan.” 4 N.Y.3d at 182.

The opposite is true here. Defendants suggest that Plaintiffs are asking the Court to order additional affirmative actions by the State to optimize educational opportunities. State MTD at 30. But in fact, the claim is that the ongoing affirmative actions of the State have harmed, are harming, and will inevitably continue to harm New York schoolchildren if not halted. Plaintiffs allege that the state is actively causing schools to employ ineffective teachers, not that the State has failed to take affirmative steps to remedy vague educational inadequacies. And Plaintiffs are seeking to permit local authorities to promote more effective teachers without the burdensome constraints of the Challenged Statutes, not to have the State take control of teacher retention decisions. Compl. Prayer for Relief.

### **C. The Education Article is Not Limited to Claims of Underfunding.**

Defendants contend that the only State action that can support an Article XI claim is the State’s failure to provide resources: “the State’s affirmative obligation to provide resources” is “the *sine qua non* of a cognizable Education Article suit.” UFT MTD at 20. What Defendants ignore in making this argument is that the resources the State is constitutionally obligated to provide its children are not limited to school funding. *See, e.g., id.* at 19–20. Nothing in Article XI, or the case law interpreting Article XI, restricts Plaintiffs from alleging that State actions



other than underfunding have caused a deprivation of rights. The court made this clear in *New York Civil Liberties Union v. State*, 4 N.Y.3d 175 (2005). There, the court faulted the plaintiffs for failing to allege a “failure of the State to provide ‘resources’—*financial or otherwise*” that would be necessary to guarantee a constitutionally adequate education. *Id.* at 180. To be sure, Plaintiffs have not brought an inadequate funding claim as in *CFE I*. But they have alleged that the State is causing ineffective teachers to remain in schools and is thus failing to provide the most fundamental educational resource: effective teachers. *See* Compl. ¶¶ 23-26.

As courts have explained, the right to a sound basic education encompasses a variety of entitlements, ranging from adequate facilities and physical learning materials, to effective teaching by adequately-trained personnel. The State “must assure that some essentials are provided.” *CFE I*, 86 N.Y.2d at 317. For example, children “are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn.” *Id.* As another example, children “should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks.” *Id.* In addition, children are “entitled to *minimally adequate teaching* of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, *by sufficient personnel* adequately trained to teach those subject areas.” *Id.*

Quality teaching is the foremost input that the State must provide its students as part of a sound basic education. *CFE II*, 100 N.Y.2d at 909 (“Teaching. The first and surely most important input is teaching.”). That is a matter of the simplest common sense—a state-of-the-art school facility and top-of-the-line textbooks are useless without effective teachers to put them to appropriate use. Notably, Defendants do not dispute that effective teaching is part and parcel of the right to a sound basic education. *See, e.g.*, NYSUT MTD at 33 (“Teacher defendants, of

course, agree that teachers are essential to providing students with a sound basic education.”). Instead, they try to limit the scope of Article XI’s protection by arguing that Plaintiffs can only state a claim that the State “caused” ineffective teaching if the alleged cause is a lack of adequate state funding. DOE MTD at 20-21. This argument mischaracterizes the established standard for alleging an Article XI claim. While underfunding may result in the failure to provide minimally adequate teaching, so may the application of statutes that make it impossible to remove ineffective teachers and make way for quality teaching.

Several prior Article XI cases have dealt with inadequate school funding. But in those cases, causation from inadequate funding was considered sufficient, not necessary, to allege an Article XI claim. In *CFE I* the plaintiffs were asserting funding-related claims, and the court explained: “In order to succeed in the *specific context of this case*, plaintiffs will have to establish a causal link between the present funding system and any proven failure to provide a sound basic education to New York City school children.” 86 N.Y.2d at 318. Neither did *Paynter* suggest that funding is the *sine qua non* of an Article XI claim; the court simply described that an “element[] of the *CFE plaintiffs’* viable Education Article claim” included evidence that the State’s failure to provide a sound basic education was “casually connected to the funding system.” 100 N.Y.2d at 441. But the court did not hold that *CFE* delimits the universe of viable Article XI claims. *CFE I*, the court observed, did not “delineate the contours of all possible Education Article claims.” *Id.* In *Paynter*, the plaintiffs failed to state a viable claim because they failed to attribute the asserted educational failures to State action at all, instead pointing to the unequal “demographic composition of the school district in which they reside.” *Id.* at 440. The court reasonably concluded that the State could not be held “responsible for the demographic composition of every school district” nor be made “responsible for where

people choose to live.” *Id.* at 442. Here, by contrast, Plaintiffs attribute causation to the State’s implementation of the Challenged Statutes, rather than to vague conditions that are beyond the State’s control or not traceable to State action.

Defendants’ attempt to shoehorn this case into the cramped requirements of Article XI funding cases should therefore fail. Plaintiffs are required to make allegations “sufficiently detailed and specific to the school district represented by the plaintiff” *only if* the underlying constitutional claim is about funding disparities in that district. State MTD at 13. In *New York State Association of Small City School Districts v. State*, 42 A.D.3d 648 (3d Dep’t 2007), the plaintiffs were required to make district-specific allegations solely because the underlying claim was that underfunding of small city schools led to educational inequalities in particular districts, a claim that required some basis from which to compare one district to another. State MTD at 13-14. Here, however, district-specific allegations are unnecessary—Plaintiffs allege that the challenged statutory scheme creates endemic failures across the entire state. *See, e.g.*, Compl. ¶¶ 24-26 (alleging that administrators are uniformly hamstrung from dismissing and disciplining teachers whose performance is subpar). This case is therefore also unlike *New York Civil Liberties Union*, where allegations about educational inadequacies in “individual schools” failed to show a “district-wide failure.” 4 N.Y.3d at 181. Plaintiffs here do *more* than plead actionable district-wide failures; they allege *systematic* failure within the State’s education system due to universal application of the Challenged Statutes. Compl. ¶¶ 23-26; *CFE II*, 100 N.Y.2d at 914.<sup>6</sup>

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<sup>6</sup> In any event, Plaintiffs *do* allege widespread failures in school districts in both New York City and Rochester. *See, e.g.*, Compl. ¶ 37 (stating that nearly all New York City teachers were granted tenure, irrespective of their effectiveness); ¶ 42 (stating that a disproportionately small number of teachers were rated ineffective despite metrics demonstrating more widespread Ineffectiveness in New York City); ¶ 62 (stating that only 12 teachers were dismissed for Ineffectiveness in New York City over a ten year period despite the existence of many more cases where an arbitrator found a teacher ineffective); ¶ 74 (noting that if LIFO layoffs had been conducted in New York City between 2006-2009, no teacher who had received an Unsatisfactory rating would have been laid off due to their relative seniority); ¶ 70 (stating that LIFO layoffs in Rochester removed effective teachers

**D. A Rational Government Objective Alone Does Not Defeat An Article XI Claim.**

Despite the well-established standard for pleading an Article XI claim, Defendants contend that such a claim should be dismissed when the Legislature had a rational policy reason for enacting the Challenged Statute. State MTD at 10-11, NYSUT MTD at 32, UFT MTD 38-39. Rational basis review is the appropriate standard for an equal protection claim, *not* an Article XI claim. This argument is yet another attempt by Defendants to distract the Court’s attention away from the legal issues at hand.

The little authority that Defendants cite to support applying rational basis review is not on point. In *Board of Education, Levittown Union Free School District v. Nyquist*, the court applied rational basis review to an equal protection claim: plaintiffs alleged unconstitutional disparities in school funding between rich and poor school districts. 57 N.Y.2d 27, 43 (1982). In that case, however, the provision of a sound basic education was not in question. As the *Levittown* court explained, “no claim is advanced in this case ... that the educational facilities or services provided in the school districts that they represent fall below the State-wide minimum standard of educational quality and quantity fixed by the Board of Regents.” *Id.* at 38. Instead, plaintiffs’ “attack [was] directed at the existing disparities in financial resources which lead to educational unevenness *above that minimum standard.*” *Id.*

For that reason, the court in *CFE I* rejected the State defendants’ efforts to analogize the plaintiffs’ Education Article claim to that in *Levittown*. 86 N.Y.2d at 314, 316, 320 (applying rational basis review to equal protection claim and not applying it to Education Article claim). The Court explained that “[p]laintiffs advance the very claim we specifically stated was not

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where more senior yet ineffective teachers maintained their positions); ¶ 84 (further claiming that the LIFO Statutes as applied in Rochester denied students a sound basic education).

before us in *Levittown*, i.e., that minimally acceptable educational services and facilities are not being provided in plaintiffs’ school districts.” *Id.* at 316. *Levittown*, the *CFE I* court explained, “manifestly left room for a conclusion that a system which failed to provide for a sound basic education would violate Article XI.” *Id.*; see also *N.Y.S. United Teachers ex rel. Iannuzzi v. State*, 993 N.Y.S.2d 475, 483 (Sup. Ct. 2014). *CFE I* not only distinguished the facts of *Levittown*, but also did not import *Levittown*’s rational basis analysis to the context of an alleged Education Article violation.

Here, the Complaint does not merely allege that the State has failed to “optimize student educational opportunities,” State MTD at 30, but that the State has enacted statutes that have caused school districts to fall below the constitutional floor and the minimum standard of educational adequacy. Compl. ¶¶ 23-26. Defendants’ fear that considering Plaintiffs’ claim will invite courts to rewrite New York’s Education law on any number of issues (e.g., class size, number of classroom assistants, or amount of special education services) is therefore misguided. See NYSUT MTD at 57-58. Only those claims, like the one here, that credibly allege a failure below the constitutional guarantee require scrutiny beyond rational basis review. It is therefore also inapposite whether the Challenged Statutes rationally afford teachers protections comparable to other civil service employees. See SAANYS MTD at 31-32. The protections afforded elsewhere do not, as the protections do here, affect the constitutional rights of students. And in fact, the protections for teachers are far more detailed, and make it far more cumbersome to dismiss an ineffective teacher, than the protections afforded under the general civil service law for most public employees. Compare N.Y. Educ. Law § 3020-a with N.Y. Civ. Serv. Law §§ 75-76.

It is likewise immaterial that courts have described in passing the policy reasons for the challenged statutes. Statutes can certainly enact policies that are in some ways beneficial or seemingly wise, but that in other respects violate constitutional rights. The State's heavy reliance on *Ricca v. Board of Education of City School District of City of New York* is thus misplaced. *See* State MTD at 1, 14, 22, 31 (quoting *Ricca*, 47 N.Y.2d 385). *Ricca* concerned a question of statutory interpretation, namely whether a former substitute teacher's probationary period started when he became licensed and began working as a regular teacher or when the school board formally appointed as such. 47 N.Y.2d at 388-90. The answer to this question would determine whether a teacher was denied tenure too late because his probationary period had already expired and resulted in *de facto* tenure. *Id.* at 392. The court concluded that a school district "may not avoid strict application of the statutory scheme for granting tenure to *qualified and experienced teachers*" by delaying formal appointment of a teacher to a position which he already fills (i.e., the position of a probationary teacher). 47 N.Y.2d 385, 391 (1979).

*Ricca* was *not* about the constitutionality of the tenure statute or whether its application, in conjunction with other laws, unconstitutionally prevents school districts from dismissing *unqualified* and ineffective teachers. It is of no moment then that the court had occasion to opine on the policy rationale for the statute. And it is incorrect, if not flatly misleading, that the State characterizes those reflections as a holding that the Permanent Employment Statutes are *per se* constitutional. *See* State MTD at 1. The question of the statute's constitutionality was simply not before the court. The other cases cited by Defendants to illustrate the wisdom of the legislature's policy decision are of a piece—each involved questions of statutory interpretation and none concerned an alleged deprivation of a student's sound basic education. *See Abramovich v. Bd. of Educ. of Cent. Sch. Dist. No. 1 of Towns of Brookhaven & Smithtown*, 46

N.Y.2d 450, 453 (1979) (in a settlement, teacher may waive his rights under section 3020-a); *Cole v. Bd. of Educ., S. Huntington USFD*, 90 A.D.2d 419, 420 (2d Dep’t 1982) (explaining how to calculate seniority under LIFO Statutes).

## **II. AN ALLEGED DEPRIVATION OF THE RIGHT TO A SOUND BASIC EDUCATION IS A JUSTICIABLE QUESTION**

### **A. The Complaint Does Not Raise A “Political Question.”**

Defendants’ second argument, that the Complaint presents a non-justiciable question, is also without merit. Defendants assert that the Complaint presents only “nonjusticiable policy questions” that are “properly in the purview of the legislature and executive branches.” State MTD at 28. They urge that “the appropriate place to debate such education policy, if necessary, is in the voting booth or the Legislature, not the courts.” UFT MTD at 21. But while matters of policy may be the exclusive domain of the majoritarian branches, constitutional rights decidedly are not. Plaintiffs have asserted constitutional claims, not policy arguments, against application of the challenged statutes. And alleged deprivations of constitutional rights are not insulated from judicial review merely because the Legislature had a policy reason for enacting statutes that may run afoul of the Constitution. Defendants exhaust numerous pages defending the policy determinations of the Legislature, but even the most compelling policy rationale does not give carte blanche to violate the Constitution. A claim under Article XI that the State is depriving children of their right to a sound basic education is unquestionably a judicial and justiciable question.

It is the role of the judiciary to determine whether a statute, whatever the policy rationale for its enactment, offends the New York State Constitution. *See, e.g. CFE III*, 8 N.Y.3d at 28 (“We [the judiciary of New York] are the ultimate arbiters of our State Constitution.”); *Cohen v. State*, 94 N.Y.2d 1, 11 (1999) (“The courts are vested with a unique role and review power over

the constitutionality of legislation.”). And like other constitutional entitlements, the rights under Article XI are enforced through judicial review. *See CFE II*, 100 N.Y.2d at 920 (“[W]e have a duty to determine whether the State is providing students with the opportunity for a sound basic education.”). Defendants acknowledge that the “Education Article, by its very inclusion in the State Constitution, may implicate some judicial encroachment on the traditional educational purview of the Legislature and the Executive branches.” UFT MTD at 22. But what Defendants characterize as “encroachment” is the heart of the judicial function: “it is the province of the Judicial branch to define, and safeguard, rights provided by the New York State Constitution, and order redress for violation of them.” *CFE III*, 8 N.Y.3d at 28.

The amount of legislative deliberation and revision that preceded enactment of the Challenged Statutes is thus irrelevant to the question of justiciability. *See* UFT MTD at 27. What is good “policy” to some does not offer talismanic immunity to violate the constitutional rights of others. “While the Legislature may vote to [enact a law], it cannot create one that offends constitutional rights.” *People v. LaValle*, 3 N.Y.3d 88, 120, 128 (2004). Here in particular, the mandate of Article XI is directed at the Legislature: “The 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.” N.Y. Const. Art. XI, § 1. And even a statute that may be “valid when enacted may become invalid by change in the conditions to which it is applied.” *Realty Revenue Corp. v. Wilson*, 44 N.Y.S.2d 234, 235-36 (Sup. Ct. 1943). *See also Hous. & Dev. Admin. of City of N.Y. v. Cmty. Hous. Improvement Program, Inc.*, 90 Misc. 2d 813, 815 (N.Y. App. Term), *aff’d sub nom.*, 59 A.D.2d 773 (2d Dep’t 1977) (“Laws constitutional when enacted may become unconstitutional as administered or applied.”).



Defendants nonetheless maintain that “New York courts act with restraint and do not interfere with matters that fall within the province of the Legislature, so as to preserve the separation of powers.” UFT MTD at 22. It is beyond question, however, that “[i]t is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). And in the realm of constitutional rights, separation of powers is not defined by judicial inaction and legislative fiat. “The Court ... plays a crucial and necessary function in our system of checks and balances. It is the responsibility of the judiciary to safeguard the rights afforded under our State Constitution.” *LaValle*, 3 N.Y.3d at 128. For this reason, Defendants cannot identify a single case where a constitutionally-protected right was at issue, but the court nevertheless concluded that the matter was non-justiciable on political question grounds. Instead, the cases Defendants cite on this point involve one of two irrelevant scenarios: 1) dismissing claims about alleged violations of *statutory* rights, *see e.g. Matter of N.Y.S. Inspection, Sec. & Law Enforcement Emps., Dist. Council 82 v. Cuomo*, 64 N.Y.2d 233 (1984) (statutory right to safe workplace); *Retired Public Emps. Ass’n v. Cuomo*, N.Y.S.2d \_\_\_, 2014 WL 5285635 (3d Dep’t Oct. 16, 2014) (statutory right to monthly benefits); or 2) dismissing claims where the plaintiffs did not assert an established right at all, *see, e.g. Jones v. Beame*, 45 N.Y.2d 402, 406 (1978) (claim against the Mayor of New York City for failing to adequately provide for animals in city zoos); *Abrams v. N.Y.C. Transit Auth.*, 39 N.Y.2d 990, 992 (1976) (claim against the New York City Transit Authority for noisy subways). None of these cases involved claimed violations of constitutional rights, and therefore each is inapposite to the question of justiciability here. In any event, it is not uncommon for the Court of Appeals to determine that a legislative enactment runs afoul of the constitution, whether the law furthers a compelling policy or not.<sup>7</sup>

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<sup>7</sup> *See, e.g. City of N.Y. v. N.Y.S. Div. of Human Rights*, 93 N.Y.2d 768, 771 (1999) (statute unconstitutional under

The inclusion of Article XI in the New York State Constitution tells us that the Legislature and the Executive are not the sole guardians of children’s educational rights. As Judge Ciparick explained in *Hussein v. State*: “If we declare that a sound basic education consists only of what the Legislature and Executive dictate, the scope of the State’s constitutional duty under the Education Article and, conversely, the scope of the constitutional rights of our schoolchildren, is limited to what those branches say it is.” 19 N.Y.3d at 903 (Ciparick, J. concurring). But the Constitution neither “entrust[s] the Legislature and Executive with the decidedly judicial task of interpreting the meaning of the Education Article” nor “cast[s] them in the role of being their own constitutional watchdogs.” *Id.* Instead, the task of constitutional review is emphatically a judicial one: “Our system of separation of powers does not contemplate or permit such self-policing, nor does it allow [courts] to abdicate [their] function as ‘the ultimate arbiters of our State constitution.’” *Id.*<sup>8</sup>

### **B. The Alleged Deprivation Is Redressable By This Court.**

In the same vein, Defendants erroneously assert that the alleged constitutional violation cannot be redressed by this Court. UFT MTD at 30-32. But Defendants mischaracterize the relief that Plaintiffs seek. Plaintiffs are not asking the court to rewrite the tenure laws or

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N.Y. Const. art. V, § 6); *LaValle*, 3 N.Y.3d 88, 120 (2004) (statute unconstitutional under N.Y. Const. art. I, § 6); *People v. Golb*, 23 N.Y.3d 455, 468 (2014) (statute unconstitutional under N.Y. Const. art. I, § 8); *Aliessa ex rel. Fayad v. Novello*, 96 N.Y.2d 418, 429 (2001) (statute unconstitutional under N.Y. Const. art. XVII, § 1); *McDermott v. Regan*, 82 N.Y.2d 354, 358 (1993) (statute unconstitutional under N.Y. Const. art. V, § 7); *N.Y.S. Bankers Ass’n v. Wetzler*, 81 N.Y.2d 98, 101 (1993) (statute unconstitutional under N.Y. Const. art. VII, § 4); *Burrows v. Bd. of Assessors for Town of Chatham*, 64 N.Y.2d 33, 36 (1984) (statute unconstitutional under N.Y. Const. art. I, § 11); *Cnty. of Rensselaer v. Regan*, 80 N.Y.2d 988, 992 (1992) (statute unconstitutional under N.Y. Const. art. V, § 1). *Bellanca v. N.Y.S. Liquor Auth.*, 54 N.Y.2d 228, 236 (1981) (statute unconstitutional under N.Y. Const. art. I, § 8).

<sup>8</sup> The court’s holding in *Brady v. A Certain Teacher*, 166 Misc. 2d 566 (N.Y. Sup. Ct. 1995), is irrelevant to justiciability here. See State MTD at 11. The *Brady* court’s determination about the merits of a different Article XI claim does not speak to whether Plaintiffs have alleged facts which state a cause of action under Article XI’s guarantee of a sound basic education. 166 Misc. 2d 566 (finding that Education Laws requiring school boards to pay salary and benefits to suspended teachers did not violate State constitution).

“assum[e] administrative supervision of every local school district and administrator in the State.” UFT MTD at 31. Unlike in *New York Civil Liberties Union v. State*, Plaintiffs here are not requesting that the court order an investigation into the causes of each of the alleged-failing schools’ inadequacies. 4 N.Y.3d at 179. Instead, Plaintiffs are asking for a routine judicial remedy, namely for the court to enjoin the unconstitutional enforcement of the Challenged Statutes. Compl. Prayer for Relief. While such a remedy may have a significant effect, “big impact” is not a cognizable argument against judicial review. *See, e.g., CFE III*, 8 N.Y.3d at 19, 21 (directing the State to ensure “that every school in New York City would have the resources necessary for providing the opportunity for a sound basic education” and estimating that this would cost the State “\$1.93 billion ... in additional annual operating funds”); *Vergara*, 2014 WL 2598719 (holding unconstitutional California’s tenure and last-in-first-out statutes). Plaintiffs have stated a redressable claim by clearly articulating “the asserted failing of the State, sufficient for the State to know what it will be expected to do should the plaintiffs prevail.” *N.Y. Civil Liberties Union*, 4 N.Y.3d at 180.

Plaintiffs’ aim is not, as Defendants insist, to strip teachers of their “property interest in continued employment” or of “all procedural due process rights with respect to that employment.” NYSUT MTD at 45-46. If this Court grants Plaintiffs the relief that they seek, the Legislature will remain free to design new protections for teachers that also comply with the constitutional guarantee that students receive a sound basic education. That is precisely what happened in *CFE*. There, the Court of Appeals “specif[ied] the constitutional deficiencies” with existing legislation, offered “remedial directions,” and then monitored the Legislature’s compliance with the court’s directive. *CFE II*, 100 N.Y.2d at 931-32. In response to *CFE II*, the Legislature modified the State’s educational funding system, which the court later upheld as

constitutional. *CFE III*, 8 N.Y.3d at 20. This legislative course correction is all that Plaintiffs seek here.

### **III. PLAINTIFFS HAVE STANDING AND THE ISSUE IS RIPE**

Despite the well-pleaded allegations of systematic failure in the state education system, Defendants claim that Plaintiffs have failed to articulate a sufficient injury to survive a motion to dismiss. Defendants contend that Plaintiffs lack standing, and their claims are not ripe, because Plaintiffs do not allege that any of their children have had an ineffective teacher. UFT MTD at 33-35, NYSUT MTD at 8-9, State MTD at 23-27, SAANYS MTD at 15-16. This is yet another attempt to immunize State action in the education sphere from judicial review. But because Plaintiffs are part of the very class protected by Article XI and—as a result of the Challenged Statute’s enforcement—are being taught by or are at imminent risk of being taught by ineffective teachers, they have standing, as well as a ripe claim.<sup>9</sup>

Plaintiffs have established standing by alleging an injury that is within the zone of interests protected by Article XI. *See Ass’n for a Better Long Island, Inc. v. N.Y.S. Dep’t of Env’tl. Conservation*, 23 N.Y.3d 1, 6 (2014). As an initial matter, Defendants mischaracterize the “zone of interests” standing requirement by asserting that “Plaintiffs are not within the ‘zone of interest’ of the challenged statutes.” SAANYS MTD at 16. Plaintiffs need not allege that they are within the zone of interests of the Challenged Statutes, but of the constitutional provision under which they seek relief. As the court recently explained, “a plaintiff must allege an injury that is within the zone of interests sought to be protected by the [provision] *alleged to have been*

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<sup>9</sup> Defendants make the baffling claim that “the real parties in interest here would be the infants, who are not named as parties, and the Wright Complaint must be dismissed as a matter of law.” SAANYS MTD at 14. Of course, though it is the schoolchildren who have suffered injury, the parents are the named plaintiffs here pursuant to the requirements of CPLR 1201. *See Campaign for Fiscal Equity v. State*, 187 Misc. 2d 1, 18 (N.Y. Sup. Ct. 2001) (“[T]he children of these parents who attend public school in New York City have established an injury in fact which is redressable by this court. Pursuant to CPLR 1201 children must appear in court via their parent or guardian.”).

violated.” *Ass’n for a Better Long Island*, 23 N.Y.3d at 6. See also *New Yorkers for Students’ Educ. Rights*, 2014 N.Y. Mis. LEXIS 4957, at \*2 (“The determination for standing requires that the party seeking relief sufficiently establish a recognizable stake in the proceedings and their outcome so that the dispute is capable of judicial resolution.”)

Here, Plaintiffs allege a violation of Article XI, which requires the 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.” Art. XI, § 1. There is no doubt that however far the zone of Article XI radiates, its primary beneficiaries are the schoolchildren of New York State. This case is no different from *New Yorkers for Students’ Educ. Rights v. State*, where the court accepted plaintiffs’ argument that they had standing because “as parents of school children they fall within the zone of interest that is protected by the New York State Constitution.” 2014 N.Y. Misc. LEXIS 4957, at \*2. As the court explained, “[t]here is no reason to close the courthouse doors to parents and children with viable constitutional claims.” *Id.* (quoting *Hussein* 19 N.Y.3d at 904). As those expressly singled out for Article XI’s protection, and as current students in the State’s education system, Plaintiffs have a “genuine stake in the litigation” that is “different from that of the public at large,” and which is therefore sufficient to confer standing. *Ass’n for a Better Long Island*, 23 N.Y.3d at 6. Defendants also allege that Plaintiffs who are not presently enrolled in public schools lack standing. State MTD at 28. But the right to a sound basic education under Article XI is not limited to current public school students, it extends to “all children of the state.” Art. XI, § 1. And but for the constitutional deficiencies in the current system, these Plaintiffs would be able to receive a free, adequate education in the public school system, without resorting at considerable cost to private school.

In addition, Plaintiffs have alleged a systemic harm that falls squarely within the protections of Article XI. Plaintiffs are attending school in districts handicapped by the Challenged Statutes—statutes which result in the promotion and retention of ineffective teachers. Plaintiffs have clearly alleged how the Challenged Statutes deny their right to a sound basic education, *see* Compl. ¶¶ 27-33, by, for example, granting a teacher tenure before she has been proven effective, Compl. ¶¶ 34-48, keeping ineffective teachers in the classroom as a result of a faulty disciplinary hearing system, Compl. ¶¶ 49-65, and maintaining the employment of more senior, yet ineffective, teachers at the expense of less experienced, but more effective, teachers, Compl. ¶¶ 66-76. Because—as a result of implementation of the Challenged Statutes—ineffective teachers are not properly being evaluated as such, nor are they being dismissed, *see* Compl. ¶ 55, Plaintiffs have been taught, are being taught, or are at imminent risk of being taught, by an ineffective teacher. That inference is sufficient here, where to state a claim Plaintiffs are required to allege system-wide failure.

Indeed, as Defendants themselves concede, individualized accounts of injury are irrelevant when the standard of proof is systemic harm. Defendants argue that: “It has never been held, *and would be incongruous with the language of the Education Article*, that a student’s individual educational experience can give rise to a facial constitutional challenge under the Education Article.” State MTD at 27. The State cannot have it both ways: if, as the State argues, an individual education experience is not the standard for a constitutional claim under Article XI, then it cannot also claim Plaintiffs’ standing is deficient for failure to allege an injury that is individualized rather than systemic. Moreover, Defendants are masking a merits argument as a standing question. Whether—even assuming systemic harm—the individual Plaintiffs have been injured is a repackaged variation of Defendants’ causation argument, which

can only be answered on a fuller record and at the merits stage. Courts routinely decline to decide standing on a motion to dismiss where the defendants raise standing challenges that turn on a question of fact. *See, e.g., Deutsche Bank Nat'l Trust Co. v. Rivas*, 95 A.D.3d 1061, 1062 (2d Dep't 2012); *U.S. Bank Nat'l Ass'n v. Faruque*, 120 A.D.3d 575, 578 (2d Dep't 2014); *Brach v. Harmony Servs., Inc.*, 93 A.D.3d 748, 750 (2d Dep't 2012); *Genger v. Genger*, 87 A.D.3d 871 (1st Dep't 2011); *Celestin v. Am. Transit Ins. Co.*, 747 N.Y.S.2d 920, 923 (Civ. Ct. 2002). It thus would be premature to dismiss this case on the basis that Plaintiffs have not been injured by ineffective teachers, before Plaintiffs have an opportunity to factually develop their claims.

In any event, the imminent risk of injury alone establishes standing, and is not unduly speculative as Defendants contend. Future harm suffices to confer standing where, as here, “there is more than an amorphous allegation of potential future injury.” *Ass'n for a Better Long Island*, 23 N.Y.3d at 7. Unfortunately, it is an inevitability that some number of New York schoolchildren each year will land in a classroom controlled by an ineffective teacher whom administrators are unable to dismiss due to enforcement of the Challenged Statutes. That is not speculation, but a reality of the status quo. Each year, tens of thousands of New York students find themselves in the classrooms of those ineffective teachers who would be removed but for the challenged statutory scheme, and Plaintiffs—no less than other students—face an imminent threat each year that they move into a new teacher's classroom. “[P]roof of a likelihood of the occurrence of a threatened deprivation of constitutional rights is sufficient to justify prospective or preventative remedies...without awaiting actual injury.” *N.Y. Cnty. Lawyers' Ass'n v. State*, 294 A.D.2d 69, 74 (1st Dep't 2002) (citing *Swinton v. Safir*, 93 N.Y.2d 758, 765 (1999)); *see also Hussein*, 81 A.D.3d at 137 (“[T]he hardship that may be suffered if we do not permit

consideration of these claims to go forward cannot be said to be insignificant, remote or contingent.”). That makes sense: there is no reason to wait for inevitably greater harm to occur when relief can be provided now. Indeed, prospective review is particularly appropriate for a declaratory judgment, where the “primary purpose ... is to adjudicate the parties’ rights before a ‘wrong’ actually occurs in the hope that later litigation will be unnecessary.” *Klostermann v. Cuomo*, 61 N.Y.2d 525, 538 (1984).

For the same reason Plaintiffs have standing, this claim is ripe, and this case is unlike those dismissed for lack of ripeness. Defendants, for example, cite *New York State Inspection* for the proposition that “[w]here the harm sought to be enjoined is contingent upon events which may not come to pass, the claim to enjoin the purported hazard is nonjusticiable as wholly speculative and abstract.” NYSUT MTD at 13 (citing *N.Y.S. Inspection, Sec. & Law Enforcement Emps.*, 64 N.Y.2d at 240). In that case, however, the harm sought to be avoided was one which was not certain to occur to anyone, let alone the plaintiffs at issue, as an administrative decision had yet to be rendered at all. *Id.* Here, by contrast, the Complaint alleges that many New York students are harmed each year through placement in the classrooms of ineffective teachers who would otherwise be removed from their positions but for the Challenged Statutes. Compl. ¶ 25. The harm is existing and ongoing and the claim is therefore ripe.

Plaintiffs allege a very serious harm, the infringement of a constitutional right. Defendants argue that the harm at issue is not significant enough, or that there are other administrative steps that Plaintiffs could take to justify a finding that ripeness is lacking. NYSUT MTD at 27 (citing *Adirondack Council, Inc. v. Adirondack Park Agency*, 92 A.D.3d 188 (3d Dep’t 2012); *N.Y. Blue Line Council, Inc. v. Adirondack Park Agency*, 86 A.D.3d 756, 760



(3d Dep't 2011)); UFT MTD at 37 (citing *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 522-23 (1986)). This argument devalues the rights granted by New York's Constitution. And unlike the cases cited by Defendants, *see* NYSUT MTD at 27, there is no administrative remedy available to fix the harms that Plaintiffs face. In the case of 3020-a, even if a parent were to ask for a review of a decision not to commence charges, *id.* at 28, the unreasonably lengthy timeline of an administrative proceeding would unduly delay relief. And it would not forestall the danger of future assignment to an ineffective teacher. With respect to LIFO and the Permanent Employment Statutes, a parent or child has no potential administrative remedy at all.

Finally, the newly revised Disciplinary Statutes are also ripe for review. Defendants claim that it is premature to review the effect of the newly implemented and revised evaluation procedures of § 3012-c expediting disciplinary procedures under § 3020-a. *See id.*; UFT MTD at 37. However, Defendants overstate the significance of the renewed time-window limitations, which have never been complied with. As stated in the Complaint, the previous version of 3020-a also had statutory time limits which were routinely violated. *See* Compl. ¶¶ 56-58. Additionally, even if the review process now takes less time, students' rights are still infringed during the two years of Ineffective teaching necessary to collect the reviews to begin 3020-a proceedings. *See id.* Moreover, the standards by which teachers are adjudged have not changed, nor have the potential consequences if a teacher is found Ineffective, thus it remains extremely difficult to remove ineffective teachers. Defendants would hide behind the new law, but a new coat of paint cannot mask an already-crumbling structure. *See Conn. Coalition for Justice in Educ. Funding v. Rell*, 2013 WL 6920879, at \*6 (Conn. Sup. Ct. Dec. 4, 2013) (rejecting motion to dismiss complaint for lack of ripeness, holding that "[t]he plaintiffs should be given an

opportunity to prove ... that the education system remains unconstitutional in spite of [recent] reforms.”). For the same reasons, the revisions do not render Plaintiffs’ claims moot. Defendants would have the Court believe that the revisions render this suit both too early and too late. *Compare* NYSUT MTD at 28 *with* NYSUT MTD at 29-30. Both cannot be true, and in fact neither is. The statute still impermissibly restricts administrators’ ability to remove ineffective teachers and none of the revisions address the constitutional deficiencies Plaintiffs allege here. For example, the revised statute still allows an arbitrator to decide against dismissing a teacher who has been found guilty of incompetence on the basis that future remedial efforts may help. *See* Compl. ¶¶ 62-64.

Defendants’ standing and ripeness arguments are another variation of their plea to protect legislative action in the education sphere from judicial review. But courts have cautioned against using standing doctrine to that end. As the court explained in *Association for a Better Long Island*, “standing rules should not be heavy-handed” and courts should be “reluctant to apply [standing] principles in an overly restrictive manner where the result would be to completely shield a particular action from judicial review.” 23 N.Y.3d at 6. And most recently, the court rejected this very argument in the context of an Education Article claim, explaining that the “Court will not ‘close the courthouse doors’ on the individual plaintiffs’ potentially viable constitutional claims affecting schoolchildren in New York State.” *New Yorkers for Students’ Educ. Rights*, 2014 N.Y. Misc. LEXIS 4957, at \*2-3.

If the schoolchildren learning in the very system with alleged endemic failures have no ability to assert their constitutional rights, it is hard to imagine who would. *See N.Y.S. Ass’n of Small City Sch. Dists.*, 42 A.D.3d at 648 (concluding that individually named parent and student plaintiffs had standing to bring education funding claim). And it is well established that “where

a denial of standing would pose ‘in effect ... an impenetrable barrier to any judicial scrutiny of legislative action,’ [the court’s] duty is to open rather than close the door to the courthouse.” *Saratoga Cnty. Chamber of Commerce, Inc. v. Pataki*, 100 N.Y.2d 801, 814 (2003). *See also* *N.Y.S. United Teachers ex rel. Iannuzzi*, 993 N.Y.S.2d at 480-81 (accepting plaintiffs’ argument that “if standing is denied, an important constitutional issue would be effectively insulated from judicial review”); *Boryszewski v. Brydges*, 37 N.Y.2d 361, 364 (1975) (recognizing standing “where, as in the present case, the failure to accord such standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action.”). Indeed, the court has accepted jurisdiction even when an individual plaintiff may lack standing, but raises an issue of “sufficient public importance” that may affect countless other people. *See, e.g., People v. Parker*, 41 N.Y.2d 21, 25 (1976). If there were ever a claim of sufficient public import, it is the violation asserted here, which affects—and which will continue to affect—innumerable schoolchildren across the State.

#### **IV. DEFENDANTS’ JOINDER ARGUMENTS ARE MERITLESS**

##### **A. Joinder Of All New York School Districts Is Unnecessary.<sup>10</sup>**

Defendants mistakenly claim that the Complaint must be dismissed for failing to join all New York school districts as parties to the action. DOE MTD at 21-22, NYSUT MTD at 56. But it is well established that in matters where governmental policies and programs are challenged, “only those governmental entities that are primarily responsible for the challenged policy are necessary parties.” *Joanne S. v. Carey*, 115 A.D.2d 4, 9 (1st Dep’t 1986); *see also* *Mid Island Therapy Assocs., LLC v. N.Y.S. Dep’t of Educ.*, 99 A.D.3d 1082, 1083 (3d Dep’t

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<sup>10</sup> Defendants argue both that Plaintiffs joined too few and too many defendants. *See* State MTD at 32-33. But each defendant named by the Plaintiffs was properly identified as a party because, as alleged, each is legally responsible for the operation of the New York State educational system and ensuring compliance with relevant state and federal constitutional requirements. Compl. ¶¶ 17-21.

2012). Because the State of New York and the Board of Regents are primarily responsible for enacting and enforcing the Challenged Statutes, the joinder of all school districts is unnecessary.

Defendants would extend the holding of *Paynter v. State* beyond its logical bounds. DOE MTD at 21-22. In that case, the plaintiffs, without naming the school districts as defendants, asked the court to redistribute poor and minority students across districts in Monroe County. The court held that “school districts [] have distinct interests that they are entitled to defend when, as here, suit has been brought calling into question their very existence.” *Paynter*, 270 A.D.2d at 820. It was only because the *Paynter* plaintiffs’ claim would affect the “very existence” of certain school districts that those districts were necessary parties. Here, by contrast, Plaintiffs’ do not seek to alter the makeup or existence of any school district. Plaintiffs’ claims only concern the constitutionality of certain statutes which have been promulgated and enforced by the State, for which the school districts of the state bear only a subordinate responsibility.

**B. Joinder Of Teachers’ Unions Is Unnecessary.**

Defendants claim that the local teachers’ unions are necessary parties is also without merit. While Defendants premise this joinder argument on the contention that collective bargaining agreements will be affected if the challenged statutory scheme is found unconstitutional, NYSUT MTD at 54-56, Plaintiffs’ claim concerns the constitutionality of the Challenged Statutes, and is not an action to set aside the contracts of teachers. Thus, teachers’ unions need not be joined.

C.P.L.R. § 1001(a) states that the parties necessary to an action include those “who might be inequitably affected by a judgment in the action.” While joinder is required where there is a real possibility that the judgment might diminish or derogate a nonparty’s right or constrain the nonparty from exercising or enjoying its rights, “[j]oinder is not required where, regardless of the court's determination, the judgment can have no influence upon the conduct of the non-party or

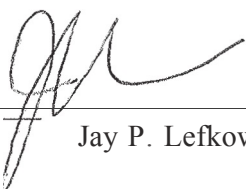
the integrity of its rights." *McCrory v. Vill. of Mamaroneck*, 34 Misc. 3d 603, 618 (N.Y. Sup. Ct. 2011). Defendants cite *Scarlino v. Fathi* for the proposition that where a labor union may be inequitably affected by a judgment, it must be joined as a necessary party. NYSUT MTD at 56. However, in *Scarlino*, the action brought involved the interpretation of the excluded labor union's contract and therefore the union's rights could have been adversely affected. See *Scarlino v. Fathi*, 107 A.D.3d 514, 515 (1st Dep't 2013). Here, Plaintiffs' claim does not implicate the interpretation of any labor union contract with the State. Plaintiffs instead assert their right to a sound basic education, and any ancillary effect that may have on the collective bargaining agreements of teachers' unions does not make those unions necessary parties.

### CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motions to dismiss.

Dated: New York, New York  
December 5, 2014

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND : DCM PART 6

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MYMOENA DAVIDS, by her parent and natural guardian  
MIAMONA DAVIDS, et al., :  
  
Plaintiffs, :  
  
- against - :  
  
THE STATE OF NEW YORK, et al., : **REPLY MEMORANDUM**  
Defendants, : **OF LAW IN FURTHER**  
- and - : **SUPPORT OF STATE**  
MICHAEL MULGREW, as President of the UNITED : **DEFENDANTS' MOTION**  
FEDERATION OF TEACHERS, Local 2, American : **TO DISMISS THE**  
Federation of Teachers, AFL-CIO, : **CONSOLIDATED**  
Intervenor-Defendant, : **COMPLAINTS**  
- and - : Index No. 101105/14  
SETH COHEN, et al., : (Minardo, J.S.C.)  
Intervenor-Defendants, :  
- and - :  
PHILIP A. CAMMARATA and MARK MAMBRETTI, :  
Intervenor-Defendants. :  
-----X

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JOHN KEONI WRIGHT; et al.; :  
  
Plaintiffs, :  
  
- against - :  
  
THE STATE OF NEW YORK; et al.; :  
  
Defendants, :  
  
- and - :  
  
SETH COHEN, et al., :  
  
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. :  
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| § 201.....                                                                                | 10            |
| Education Law                                                                             |               |
| § 3012-c .....                                                                            | 8             |
| § 3020-a .....                                                                            | 6-8           |

Defendants THE STATE OF NEW YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (“Board of Regents”); MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents; THE NEW YORK STATE EDUCATION DEPARTMENT (“SED”); and JOHN B. KING, JR., in his official capacity as the Commissioner of Education of the State of New York (collectively the “State Defendants”) respectfully submit this reply memorandum of law in further support of their motion to dismiss each respective complaint filed in this consolidated action, pursuant to CPLR Rules 3211(a)(2), (a)(3), and (a)(7) for lack of standing, lack of justiciability, and failure to state a cause of action. Also submitted in reply, for the limited purpose of providing the Court with a copy of a document attached as an exhibit to the complaint filed by the Wright plaintiffs and referenced herein, is the Supplemental Affirmation of Assistant Attorney General Steven L. Banks (“Banks Supp.”), dated December 15, 2014.

### **PRELIMINARY STATEMENT**

State Defendants advance three main arguments in support of their motion to dismiss this consolidated action: (1) Plaintiffs have not alleged a denial of a sound basic education caused by the statutes challenged in this action and, thus, have not stated a claim under the Education Article (N.Y. Const., Art. XI, § 1), see Memorandum of Law in Support of State Defendants’ Motion to Dismiss the Consolidated Complaints (“State Mem.”), dated October 28, 2014, Pt. I, at 9-22; (2) Plaintiffs lack the necessary standing to obtain judicial review of these statutes, id., Pt. II, at 22-28; and (3) Plaintiffs’ criticisms of the current statutes governing the employment of public school teachers constitute nonjusticiable policy questions, id., Pt. III, at 28-31. Additionally, State Defendants assert that, if this action were to continue, the inclusion as defendants of SED, the Board of Regents, Chancellor Tisch, and the State Education

Commissioner is unnecessary and these defendants should be dismissed, id., Pt. IV., at 32.

In their opposition briefs, Plaintiffs engage in a great deal of rhetoric and hyperbole, but as noted below fail to offer a meritorious legal argument or cite specific factual allegations in their complaints that would defeat State Defendants' dismissal motion. Moreover, the argument regarding dismissal of defendants SED, the Board of Regents, Chancellor Tisch, and the Commissioner of Education is not seriously controverted by Plaintiffs. See Wright Plaintiffs' Memorandum of Law in Opposition to Defendants' and Intervenor-Defendants' Motions to Dismiss the Action ("Wright Mem."), dated December 5, 2014, at 39 n. 10. Accordingly, this action must be dismissed.

## **ARGUMENT**

### **POINT I**

#### **CONCLUSORY STATEMENTS AND RHETORIC CANNOT BE USED BY PLAINTIFFS TO STATE A CAUSE OF ACTION UNDER THE EDUCATION ARTICLE OR TO OBTAIN A DECLARATORY JUDGMENT STRIKING DOWN PROVISIONS OF THE EDUCATION LAW.**

As State Defendants have already addressed in their moving brief, the requirements for a litigant to obtain relief in an action under the Education Article are high, as are the requirements for a litigant, under any constitutional provision, seeking judicial action striking down statutory law. See State Mem. at 10, 12-14. Thus, to succeed in this action and receive a judgment declaring as unconstitutional and enjoining the enforcement or implementation of any of the statutes challenged in this action, Plaintiffs will need to overcome a presumption of constitutionality and demonstrate that each statute violates the Education Article beyond a reasonable doubt. See Mtr. of N.Y. Charter Schs. Ass'n v. Dinapoli, 13 N.Y.3d 120, 130 (2009); Brady v. A Certain Teacher, 166 Misc. 2d 566, 574 (Sup. Ct. Suffolk Co. 1995). In other words,

Plaintiffs will have to show that they are being deprived of the opportunity to receive a sound basic education (as defined by the Court of Appeals), that the deprivation of the opportunity to receive a sound basic education is caused by the challenged statutes, and that there are no set of circumstances under which their school districts can provide students with the opportunity to receive a sound basic education and still comply with the challenged statutes. See Mtr. of Moran Towing Corp. v. Urbach, 99 N.Y.2d 443, 445 (2003) (rejecting facial<sup>1</sup> constitutional challenge to taxing statute because there were “circumstances under which the statutes at issue could be constitutionally applied”).

Plaintiffs’ opposition briefs do not effectively controvert the State Defendants’ demonstration that each of the complaints filed by Plaintiffs fail to allege facts which, if true, could state a cause of action under the Education Article or entitle Plaintiffs to the extraordinary relief of striking down statutory law. See State Mem., Pt. I, at 9-22. To the contrary, Plaintiffs’ opposition papers only serve to highlight the fact that the “complaints make only the barest, generalized assertions that New York’s system of tenure protections deprives students of the opportunity for a sound basic education,” see State Mem. at 16, far short of the quality of factual allegations necessary for this lawsuit to continue. Notably, the opposition brief filed by the Wright plaintiffs merely repeats the same circular and conclusory statements contained in their complaint, without factual allegations upon which the Court could conclude that students in the represented school districts are being denied the opportunity to receive a sound basic education. See, e.g., Wright Mem. at 12 (“As Plaintiffs allege, and as Defendants cannot seriously contest, public school students on the whole are not receiving an adequate public school education.”). Plaintiffs cannot avoid dismissal of their complaints by merely offering, as they do here, a legal

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<sup>1</sup> Plaintiffs’ assertion that this action is an “as-applied” challenge and not a facial constitutional challenge is addressed below. Infra, Pt. II.

conclusion. See Aqua NY of Sea Cliff v. Buckeye Pipeline Co., L.P., 119 A.D.3d 829 (2d Dep’t 2014).

The opposition brief filed by the Davids plaintiffs is similar, baldly stating that “Plaintiffs plead a systemic failure by the State to provide a sound basic education through the State’s application of the Challenged Statutes.” Davids Plaintiffs’ Memorandum of Law in Opposition to Defendants’ and Intervenor-Defendants’ Motions to Dismiss the Action (“Davids Mem.”), dated December 5, 2014, at 13. In lieu of identifying meaningful factual allegations from which the Court could evaluate whether the school districts in New York City, Rochester, and Albany are providing the opportunity for students to obtain a sound basic education, the Davids plaintiffs’ opposition brief includes outlandish statements unrelated to any factual allegation in their complaint. See, e.g., Davids Mem. at 6 n. 4 (“The electoral process is historically wrought with chicanery and subterfuge by political operators. How can any election results be certified if the same are shown to be substantially related to the action or inaction of illiterates?”).

In any event, Plaintiffs’ contention that some number of alleged “ineffective teachers” are employed in public schools in New York State cannot state a cause of action under the Education Article. The case law is clear that the Education Article obligates the State to act to ensure that school districts are able, on a district-wide basis, to teach “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.” Campaign for Fiscal Equity, Inc. v. State of New York, 86 N.Y.2d 307, 316 (1995) (“CFE I”). Plaintiffs do not and cannot show that a student’s assignment to an ineffective teacher deprives the student of the opportunity to obtain a sound basic education under this definition. As already noted, see State Mem. at 12-13, even if Plaintiffs can show that the effectiveness of an individual teacher affects student achievement,

the Education Article, as interpreted by the relevant case law, does not mandate that students be instructed by those they perceive to be the “best” teachers or under the educational policy they view as preferable, or obtain an education that they believe will maximize future achievement.

Plaintiffs’ fundamental misapprehension of the nature of the Education Article is demonstrated by their assertion that the State Defendants are “disclaim[ing] responsibility to provide students an optimal education.” Wright Mem. at 12. In fact, it is beyond cavil that SED and the State of New York aspire to provide the highest quality of educational services throughout the State, far above the constitutional mandate. However, the decisional law is clear that the Educational Article does not require that the State provide every student with that student’s view of an “optimal” education and any suggestion otherwise is legally unsound. Instead, the law is clear that constitutionally sufficient educational opportunities is a low threshold, and does not require the State to ensure that every student receives an education that he or she believes is optimal or give litigants a vehicle to seek judicial review of State statutes or educational policies with which they disagree. CFE I, 86 N.Y.2d at 316; Bd. of Educ., Levittown Union Free Sch. Dist. v. Nyquist, 57 N.Y.2d 27, 48 (1982).

The lack of the most basic factual allegations about the educational situation in the relevant school districts is compounded by Plaintiffs’ failure to define the term “ineffective teacher” as it relates to this lawsuit. The Dauids plaintiffs appear to define ineffective teachers as “those in approximately the bottom five percent of educators in New York” on some unidentified, hypothetical state-wide ranking of effectiveness. See Affirmation of Assistant Attorney General Steven L. Banks (“Banks Aff.”), dated October 28, 2014, Ex. A, ¶ 30. Thus, the definition proffered by the Dauids plaintiffs is a completely abstract notion.

Similarly, the Wright plaintiffs do not seriously attempt to define what they mean by the



term “ineffective teacher.” See Banks Aff., Ex. B, passim. At most, it could be inferred from their complaint that that the Wright plaintiffs would deem as ineffective any teacher that a school district has considered removing, but then chose not to remove purportedly because of the time and expense involved in bringing charges under Education Law § 3020-a. See Banks Aff., Ex. B, ¶ 55. However, not only is this definition vague and subjective, the information supplied by Plaintiffs strongly suggests the number of “ineffective teachers” that would exist under this definition is exceeding small. Notably, the Wright plaintiffs attach to their complaint as Exhibit 14 a description of 2009 survey in which forty-eight percent of the 400 responding school districts in New York reported that they had “considered bringing 3020-a charges at least once but did not.” See Banks Supp., Ex. A. The reported survey is not useful to the present claims as it is several years old and predates the recent changes to the Education Law to improve the efficiency of the removal process. See State Mem. at 20-21. Nonetheless, to the extent that it is considered at all, the report appears to counter Plaintiffs’ theory as it states that only fifteen percent of those same districts reported that they declined to press charges because the procedure set forth in § 3020-a was too cumbersome, and only seventeen percent claimed that the § 3020-a process was too expensive. In all other cases where a school district chose not to bring charges, either the school district determined that its case was not strong enough or the teacher voluntarily left the school without charges being filed. Therefore, based on the information contained in this survey, perhaps only as few as 33<sup>2</sup> allegedly “ineffective teachers” are employed throughout

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<sup>2</sup> This number assumes that each school district had only one occasion where it considered filing charges against a teacher, but then decided not to, and is derived by multiplying the number of school districts that responded to the survey (400) by the percentage of school districts that reported they considered bringing § 3020-a charges but then did not (.48) and by the percentage of those school districts that cited the costs associated with a § 3020-a hearing as a reason for not filing charges (.17). It is clear from the report of the survey that school districts were permitted to identify more than one reason for not bringing charges, and it is assumed that the same school districts that reported the § 3020-a hearing process before the recent changes to the Education Law was too cumbersome also reported that it was too expensive. However, even if there was no overlap between the school districts that identified the procedures as cumbersome and those that identified the procedures as costly, the number of teachers who had no

New York State because the employing school district was intimidated by the requirements of § 3020-a. Indeed, the number may be significantly lower as the report itself notes “the most common type of charges” against public school teachers involve allegations of “improper sexual remarks, improper physical contact or improper relationships with students,” and not allegations of incompetence or inefficiency. See Banks Supp., Ex. A. As there are approximately 700 school districts in the State, and more than 200,000 public school teachers, the results of this outdated survey strongly suggest that the tenure statutes are not an impediment to school districts removing teachers that engage in misconduct or who are believed to be incompetent, and completely refutes Plaintiffs’ bald assertion that there are “huge numbers of inadequate teachers” employed because of the challenged statutes. See Wright Mem. at 14.

Equally deficient are Plaintiffs’ arguments on the element of causation. Relying on circular reasoning, Plaintiffs simply contend that they “adequately pleaded causation by alleging that the State’s enforcement of the Challenged Statutes impedes school districts from hiring effective teachers and removing ineffective ones[.]” Wright Mem. at 14. However, as already noted, the assertion that the State in enacting the challenged statutes--which include a three-year probationary period for public school teachers and due process protections for public school teachers who earn tenure--has caused a deprivation of the opportunity for a sound basic education is belied by the language in these statutes which directs school districts to consider teacher effectiveness and competency when making employment decisions, including the determination whether a teacher should be employed after the conclusion of the probationary period.<sup>3</sup> See State Mem. at 18-19. Further evincing the reality that the tenure statutes do not

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charges filed against them because the employing school district believed the process too cumbersome or costly may be as few as 62.

<sup>3</sup> In this regard, the Wright plaintiffs argue that really only two years of evaluations are used in making tenure decisions. See Wright Mem. at 4-5. This is inaccurate. While formal evaluations of teachers’ third year of teaching

prevent school districts from removing teachers that they determine are ineffective are the results of the 2009 survey described above. See Banks Supp., Ex. A. The vast majority of the school districts in that survey either reported no problems in complying with the statutory procedures under § 3020-a, or reported that they were able to remove a teacher through voluntary resignation or retirement without having to bring charges. There is simply no support in the language of the statutes or in the allegations in the complaints for Plaintiffs' hyperbolic mischaracterizations of the statutory administrative hearing requirements as "labyrinthine," Dauids Mem. at 10, or that they "impose dozens of hurdles to dismiss or discipline an ineffective teacher," Wright Mem. at 6. And, again, that survey, upon which they rely, was issued before statutory changes which streamlined the teacher discipline and removal process. Plaintiffs simply fail to show that the statutes cause a denial of constitutionally sufficient educational opportunities.

Accordingly, Plaintiffs' failure to offer more than conclusory assertions in support of the elements of a claim under the Education Article is fatal to their complaints, and, for reasons set forth above and in State Defendants' moving brief, the complaints should be dismissed for failure to state a cause of action.

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may not be due before the teacher tenure decision is communicated to the teacher at the end of the third year (the deadline for written evaluations is September 1, see Educ. Law § 3012-c (2)(c)) there are still three years of teaching performance used in the evaluation.

## **POINT II**

### **THE COMPLAINTS RAISE A FACIAL CHALLENGE, NOT AN AS-APPLIED CHALLENGE, TO THE CONSTITUTIONALITY OF THE CHALLENGED STATUTES, AND PLAINTIFFS' ALLEGATIONS FAIL TO MEET THE RIGOROUS REQUIREMENTS TO MOUNT SUCH A CHALLENGE.**

As evident in the motion papers filed in this action, there is a disagreement among the parties as to whether Plaintiffs are mounting a facial challenge to the constitutionality of the challenged statutes or an “as-applied” challenge. See State Mem. at 10 (facial challenge); Wright Mem. at 18 n. 5 (as-applied challenge); Memorandum of Law in Support of United Federation of Teacher’s Motion to Dismiss (“UFT Mem.”), dated October 28, 2014, at 39 (as-applied challenge). The difference between the two approaches is “consequential.” United States v. Karper, 847 F. Supp. 2d 350, 356 (N.D.N.Y. 2011). “If a facial constitutional challenge is granted, the Government cannot enforce [the statute] under any circumstances, unless a court narrows the application; whereas, if it held that a statute is unconstitutional as applied to a particular set of facts, the Government can enforce it differently in dissimilar situations.” Id. (citing United States v. Arzberger, 592 F. Supp. 2d 590, 598 (S.D.N.Y. 2008)). In the present action, Plaintiffs’ challenge to those portions of the Education Law that pertain to teacher tenure, discipline, and seniority-based protections for public school teachers, can best (and only) be described as a facial constitutional challenge.

Notably, Plaintiffs are seeking to have the Court completely uproot the long-standing statutes that govern the employment relationship between public school teachers and all school districts across the State, including the boards of cooperative educational services and county vocational education and extension boards.<sup>4</sup> Plaintiffs do not argue that the challenged statutes

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<sup>4</sup> If the Court were to grant the relief requested by the Plaintiffs, the Court would also be abrogating an unknown

violate their constitutional rights as applied in regard to certain teachers, or certain schools or even certain school districts. Instead, they argue generally that the statutes must be struck because they allegedly violate the rights of all New York school children to have the opportunity for a sound basic education. See Banks Aff., Ex. A, ¶ 5; Ex. B, ¶ 7. This is incongruent with the elements of an as-applied challenge. See Peo. v. Stuart, 100 N.Y.2d 412, 421 (2003) (“an as-applied challenge calls on the court to consider whether a statute can be constitutionally applied to the defendant under the facts of the case”). Further, as already noted in the discussions regarding standing, see, e.g., State Mem. at 23-27, Plaintiffs have failed to allege any facts showing that they have been affected personally by the tenure statutes, or that their particular school districts are not providing an opportunity for students to receive a sound basic education because of the statutes. There is simply no particular “case” in this action from which the Court can engage in an as-applied constitutional analysis.

Rather, because Plaintiffs seek to enjoin statutory tenure protections and seniority-based layoff preferences throughout the State and in their entirety, this action constitutes a facial challenge to the constitutionality of the statutes. See Stuart, 100 N.Y.2d at 421 (“facial challenge means that the law is ‘invalid in toto--and therefore incapable of any valid application’”) (citation omitted); Vt. Right to Life Committee, Inc. v. Sorrell, 758 F.3d 118, 126-127 (2d Cir. 2014) (in determining whether a facial challenge standard applies, the “inquiry is whether plaintiffs’ claim and the relief that would follow reach beyond the particular circumstances of these plaintiffs.”) (quotation and citation omitted). The Court of Appeals precedent cited by Plaintiffs in support of their argument that this action should be deemed an as-applied constitutional challenge, see Wright Mem. at 17, are inapposite, as in those cases the Court

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number of collective bargaining agreements that contain provisions relating to tenure and probation. See Civil Serv. Law § 201(4) (defining “terms and conditions of employment” as “salaries, wages, hours and other terms and conditions of employment provided”).

scrutinized the constitutionality of the particular statute under attack by examining the language of the statute itself and not its application. See Tenn. Gas Pipeline Co. v. Urbach, 96 N.Y.2d 124, 129-130 (2001) (finding that a tax was “facially discriminatory” and examining whether the State could show that the tax “advances a legitimate local purpose that cannot adequately be served by reasonable nondiscriminatory alternatives” such that it could survive “Commerce Clause scrutiny”) (citations omitted); Flushing Nat’l Bank v. Municipal Assistance Corp., 40 N.Y.2d 731, 734 (1976) (determining the constitutionality of the 1975 Emergency Moratorium Act for the City of New York by examining the language of the statute against the faith and credit provision of the state constitution (N.Y. Const., Art VIII, § 2)).

Thus, under the well-established principles of constitutional interpretation, the Court in the present action should examine each one of the challenged statutes to determine whether there are “no set of circumstances exists under which the [statute] would be valid.” United States v. Salerno, 481 U.S. 739, 745 (1987). “The fact that the [statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid.” Id.

Plaintiffs have not, and cannot, meet this standard. As a fundamental matter, Plaintiffs have not and cannot allege that having one, or even more than one, allegedly ineffective teachers systemically deprives students of the opportunity to obtain “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.” CFE I, 86 N.Y.2d at 316. Further, there is no dispute whatsoever that these statutes do not, on their face, require school districts to hire or retain ineffective teachers, and have, in the vast majority of cases, operated to extend due process protections to effective and competent teachers. See Banks Aff., Ex. A, ¶ 4. Indeed, there is significant and long-standing case law upholding the tenure protections for public school

teachers as an expression of rational public policy. See Ricca v. Bd. of Educ. of the City Sch. Dist. of the City of New York, 47 N.Y.2d 385, 391 (1979); Brady, 166 Misc. 2d at 566.<sup>5</sup>

Accordingly, the Court should evaluate Plaintiffs' claims as a facial constitutional challenge, and, for the reasons stated, grant State Defendants' motion to dismiss.

### **POINT III**

#### **PLAINTIFFS' VAGUE AND CONCLUSORY ALLEGATIONS ARE INSUFFICIENT TO CONFER STANDING TO BRING A CLAIM UNDER THE EDUCATION ARTICLE OF THE NEW YORK CONSTITUTION.**

As was explained in State Defendants' moving brief, see State Mem., Pt. II, New York law requires that plaintiffs satisfy the elements for standing to ensure they have a "concrete interest in prosecuting" an action. See Soc'y of Plastics Indus., Inc. v. County of Suffolk, 77 N.Y.2d 761, 772 (1991). Thus, for a constitutional challenge to a State statute, outside of certain taxpayer standing actions, the injury-in-fact element of standing requires that the plaintiff be "personally aggrieved" by the statute under consideration. St. Clair v. Yonkers Raceway, Inc., 13 N.Y.2d 72, 76 (1963). For claims under the Education Article, the Court of Appeals has made clear that public school students may only assert claims for alleged inadequacies in their own schools. See Paynter v. State of New York, 100 N.Y.2d 434, 439 (2003). Indeed, given the range of inputs and outputs that may be considered when assessing whether a sound basic education is being provided, see Campaign for Fiscal Equity, Inc. v. State of New York, 100 N.Y.2d 893, 909-919 (2003) ("CFE II"), and the differences in pupils, funding, and instructional programs among New York's approximately 700 school districts, see Levittown, 57 N.Y.2d at 44-45, it would violate the prudential purposes of standing if students in one school district could bring suit under the Education Article about the quality of educational services in another

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<sup>5</sup> Nor can Plaintiffs meet the requirements for an as-applied challenge. See UFT Mem. at 39-40.

district.

Plaintiffs' opposition briefs on the issue of standing lay bare an uncomfortable truth, namely that neither the individually named plaintiffs in Dauids nor the children of the named plaintiffs in Wright have been aggrieved by the statutes that they seek to strike down. As was already noted in the moving brief, see State Mem. at 24, neither complaint in this action alleges that a plaintiff or a plaintiff's child has been instructed by an allegedly ineffective teacher who retained a teaching position because of the statutory protections challenged in this lawsuit. See Banks Aff., Ex. A, ¶¶ 8-18; Ex. B, passim. The opposition papers simply ignore the lack of any factual allegations to connect the individual Plaintiffs to the challenged tenure statutes, choosing instead to make the bare assertions that "Plaintiffs' children have all been assigned to an ineffective teacher and risk being assigned to one each year," and that "every one of the Plaintiffs has been harmed, or is at substantial risk of being harmed, as a result of the Challenged Statutes." See Wright Mem. at 1; Dauids Mem. at 8. Without any specific factual allegations in the complaints to support these assertions, there is utterly no basis for the Court to find that Plaintiffs have standing.<sup>6</sup>

With no allegations that Plaintiffs are presently being harmed by the challenged statutes, each set of plaintiffs vainly attempts to avoid dismissal of its respective complaint by baldly asserting that they are at "imminent risk of being assigned to an ineffective teacher." See Dauids Mem. at 18; Wright Mem. at 3, 35. However, there are no factual allegations in the complaints to support the contention that any of the Plaintiffs face an "imminent risk" of being assigned to an ineffective teacher. Indeed, as it is still the first half of the school year, the term "imminent"

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<sup>6</sup> Indeed, as was previously noted, the bare allegation that Kyler Wright was "assigned to an ineffective teacher" is insufficient to establish standing. See State Mem. at 24. Not only is there no information connecting Kyler's assignment to this teacher to the challenged statutes, but there is no allegation that the assignment to this teacher has denied her basic literacy, calculating and verbal skills necessary by case law to state a claim under the Education Article.



seems misplaced as presumably Plaintiffs will not be assigned a new teacher until next September. In any event, there are no allegations in the complaints whatsoever about the educational opportunities in their school districts or the quality of teachers to which Plaintiffs may be assigned next year, see Banks Aff., Ex. A, ¶¶ 8-18; Ex. B, passim, and thus no basis to find that Plaintiffs have stated more than a speculative risk of future harm that cannot satisfy the injury-in-fact element of standing. “The plaintiff must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical.” L.A. v. Lyons, 461 U.S. 95, 101-102 (1983) (quotations and citations omitted). See also N.Y. State Ass’n of Nurse Anesthetists v. Novello, 2 N.Y.3d 207, 214 (2004) (finding that plaintiff lacked standing where “there is no certainty whatsoever that any [of the members of the plaintiff not-for-profit corporation] would in fact be injured.”).

Plaintiffs’ other arguments on standing are easily dismissed. First, Plaintiffs contend the two named plaintiffs that do not attend public school (Henson and Pradia) nonetheless have standing to challenge the tenure statutes for public school teachers because the Education Article makes reference to “all the children of this state.” See Wright Mem. at 33. However, this argument ignores the inclusion of the word “may” in the Education Article, which permits students to opt out of the public school system. Because plaintiffs Henson and Pradia have opted out of the public school system, they are not being taught by public school teachers and, thus, cannot be personally aggrieved by any of the challenged statutes. See State Mem. at 23, 28. In other words, they lack standing.

Second, Plaintiffs contend that the State Defendants’ position that a plaintiff be personally aggrieved by the challenged tenure statutes in order to have standing to bring a

constitutional challenge under the Education Article is inconsistent with State Defendants' position that a plaintiff needs to show "there exist significant and district-wide deficiencies in the educational opportunities present in the plaintiff's school district" to state a claim under the Education Article (State Mem. at 27). See Wright Mem. at 34. However, these pleading requirements are not inconsistent and, indeed, are compelled by the relevant case law. See State Mem. at 12-14, 23. Thus, it follows that to have standing to maintain this action under the Education Article and obtain the requested relief striking down New York's tenure protections, Plaintiffs must demonstrate both that the statutory tenure protections have caused a district-wide deprivation of the opportunity to receive a sound basic education and that they themselves have been denied the opportunity to receive a sound basic education by assignment to an ineffective teacher. If both these elements were not required then public school students could bring Education Article claims against the State challenging individual educational experiences (contrary to the nature of the rights enshrined in the Education Article), or bring suit to challenge the constitutionality of a statute that has not injured them (contrary to the well-established principles of standing). In any event, Plaintiffs' argument is academic as they have alleged neither personal injury traceable to the statutes they now challenge nor the existence of systemic deprivations of the opportunity to receive a sound basic education in the districts that they represent.

Accordingly, for the preceding reasons and the reasons set forth in State Defendants' moving brief, the complaints in this consolidated action should be dismissed for lack of standing.

#### **POINT IV**

##### **PLAINTIFFS' COMPLAINTS RAISE NONJUSTICIABLE EDUCATIONAL POLICY QUESTIONS THAT ARE UNRELATED TO A COURT'S ROLE UNDER THE EDUCATION ARTICLE TO DETERMINE WHETHER A SCHOOL DISTRICT IS PROVIDING THE OPPORTUNITY TO RECEIVE A SOUND BASIC EDUCATION.**

As was previously explained in State Defendants' moving brief, it is well-established that, when addressing claims asserted under the Education Article, the role of the courts is limited to determining whether the plaintiffs can show that students in the relevant school district are being denied the opportunity to receive a sound basic education. See State Mem., Pt. III, at 28-31.

What appears to have been contemplated when the education article was adopted at the 1894 Constitutional Convention was a State-wide system assuring minimal acceptable facilities and services in contrast to the unsystematized delivery of instruction then in existence within the State. [ ] The enactment mandated only that the Legislature provide for maintenance and support of a system of free schools in order that an education might be available to all the State's children. There is, of course, a system of free schools in the State of New York. The Legislature has made prescriptions (or in some instances provided means by which prescriptions may be made) with reference to the minimum number of days of school attendance, required courses, textbooks, qualifications of teachers and of certain non-teaching personnel, pupil transportation, and other matters. If what is made available by this system (which is what is to be maintained and supported) may properly be said to constitute an education, the constitutional mandate is satisfied.

Levittown, 57 N.Y.2d at 47-48. The Court of Appeals has expressly stated that the judicial function of the courts under the Education Article is quite limited and does not extend to an examination of the quality of educational services beyond the constitutional minimum, id., or even "to determine the best way to calculate the cost of a sound basic education in New York City schools[.]" Campaign for Fiscal Equity, Inc. v. State of New York, 8 N.Y.3d 14, 27 (2006) ("CFE III").

In the present action, while Plaintiffs cast their claims as being a constitutional challenge under the Education Article, see Wright Mem. at 27, the allegations in their complaints, and the relief that Plaintiffs seek, reveal these actions for what they truly are, an attempt to have the Court engage in educational policymaking that is reserved to the executive and legislative branches. See State Mem. at 30-31. Quite simply, Plaintiffs have not alleged facts which would show that the representative school districts, or any other school district for that matter, are not meeting the constitutional floor established by Education Article. See Levittown, 57 N.Y.2d at 48. Instead, Plaintiffs allege in the abstract that, if the Court were to strike down the statutory tenure protections, there would be fewer allegedly ineffective teachers and more students would, e.g., “attend college, attend higher-quality colleges, earn more, live in higher socioeconomic status neighborhoods, save more for retirement, and are less likely to have children during their teenage years.” See Banks Aff., Ex. A, ¶ 3. Even if these allegations were true, these types of improvements in education quality and future outcomes are clearly beyond what is constitutionally mandated, and cannot therefore be the subject of an action under the Education Article. While espousing the goal of seeking to make their preferred policy changes to the State’s education policy, Plaintiffs ignores the legal truth that State educational policy cannot be established in this way without violating the separation of powers and the concept of justiciability. Accordingly, for these reasons, Plaintiffs’ claims challenging the constitutionality of statutory provisions in the Education Law that pertain to teacher tenure, teacher discipline, and teacher dismissal should be dismissed as nonjusticiable.

## CONCLUSION

For the foregoing reasons and for the reasons previously set forth in the moving brief, State Defendants respectfully request that the Court grant their motion and dismiss the complaints, with prejudice, in their entirety, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York  
December 15, 2014

ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for State Defendants  
By:



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# Exhibit 1

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

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 -

SEIB COHEN, et

Intervenors-Defendants,

- and -

PHILIP A. CAMMARATA and MARK MAIBRETTI,

Intervenors-Defendants.

-----) (

-----) (

JOHN KEONI WRIGHT; et al.;

Plaintiffs,

- against -

THE STATE OF NEW YORK; et al.;

Defendants,

SUPPLEMENTAL  
AFFIRMATION OF  
ASSISTANT ATTORNEY  
GENERAL STEVEN L.  
BANKS IN SUPPORT OF  
STATE DEFENDANTS'  
MOTION TO DISMISS

Index No. 101105/14

(Minardo, J.S.C.)

- and -

SETH COHEN, et al,

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

STEVEN L. BANKS, an attorney duly admitted to practice in the Courts of the State of  
New York, hereby affirms under penalty of perjury:

1. I am an Assistant Attorney General in the office of ERIC T. SCHNEIDERMAN,  
the Attorney General of the State of New York, attorney for defendants THE STATE OF NEW  
YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW  
YORK (also sued here as "The New York State Board of Regents"); MERRYL H. TISCH, in her  
official capacity as Chancellor of the Board of Regents; THE NEW YORK STATE  
EDUCATION DEPARTMENT; and JOHN B. KING, JR., in his official capacity as the  
Commissioner of Education of the State of New York (collectively the "State Defendants"). I



submit this supplemental affirmation in further support of State Defendants' motion to dismiss the complaints filed in this consolidated action, for the limited purpose of providing the Court with a true and accurate copy of a document previously filed in this action that is cited in the accompanying reply memorandum of law.

2. Attached hereto as Exhibit A is a copy of Exhibit 14 to the Complaint for Declaratory and Injunctive Relief filed by the Wright plaintiffs, dated July 28, 2014, and consolidated into this action by Order dated September 18, 2014.

For the reasons set forth in the accompanying reply memorandum of law, State Defendants' motion to dismiss the respective complaints in this consolidated action should be granted.

Dated: New York, New York  
December 15, 2014

STEVEN L. BANKS  
Assistant Attorney General  
120 Broadway - 24th Floor  
New York, New York 10271  
(212)416-8621

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# EXHIBIT

## L-1

**EXHIBIT 14  
TO  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

## process remains slow, costly

On Board Online • NYSSBA News • May 11, 2009

### *NYSSBA survey*

**By Patricia Gould**

*Assistant Counsel*

School districts in New York State spend an average of \$216,588 to pursue disciplinary charges against tenured teachers or administrators, according to a NYSSBA survey covering 2004 through 2008.

That's up from \$128,941 in 2004 – an increase of 70 percent.

Even after adjusting for inflation, that's an increase of more than 49 percent.

The single most common type of charges involved improper sexual remarks, improper physical contact or improper relationships with students. Allegations involving insubordination and pedagogical incompetence were also common charges brought under the disciplinary statute, Section 3020-a of the state Education Law.

The survey was sent to all NYSSBA member districts and BOCES. Responses were received from 400 districts, a 59 percent response rate. The results do not include New York City, where disciplinary cases are handled through a negotiated process that is an alternative to 3020-a.

Other findings:

- Middle school and high school teachers were the personnel most frequently accused of misconduct under 3020-a (52 percent of reported cases). Elementary teachers were accused in 18 percent of cases while cases against administrators represented 6 percent.
- The largest expense of responding districts was the salary and fringe benefits paid to the suspended employee (52 percent of costs). The 400 responding districts spent a totaled of \$7.4 million on salary and fringe benefits for individuals suspended while their 3020-a case was pending – a combined average cost of \$136,676 per case.
- Paying salary and benefits to substitutes represented 30 percent of 3020-a costs, while legal expenses represented 12 percent of costs associated with 3020-a proceedings.
- Other expenses include other staff costs (5 percent) and miscellaneous costs, such as paying for outside investigators, expert witnesses, transcription, photocopying and travel (1 percent).

### **Lengthy process**

It took an average of 502 days to conclude a full 3020-a hearing, from the date charges were levied to the date a decision was issued by a hearing officer or panel. Although this represents a drop of 18 days from the average of 520 days between 1997 and 2004, it still constitutes an alarming increase from the low of 319 days between 1994 and 1997.

The most time consuming part of the process occurred from the first to last day of hearing – an average of 176 days. In addition, there was an average of 136 days between the last hearing day and the date of a decision.

Forty-eight percent (48 percent) of districts responding to NYSSBA's survey considered bringing 3020-a charges at least once but did not. Their stated reasons for not filing charges were as follows:

- Employee resigned **49 percent**
- Employee retired **12 percent**
- 3020-a process too cumbersome **15 percent**
- 3020-a too expensive **17 percent**
- District case not strong enough **21 percent**
- Not enough documentation **15 percent**

When charges were filed, 46 percent were either settled or discontinued prior to a final decision. Hearing officers (or panels) issued a decision in only 18 percent of the cases reported in this survey. Thirty cases (36 percent) were pending at the time the survey was concluded in March 2009.

### **Penalties and appeals**

In 37 cases reported, districts filed charges but reached a settlement with the employee without a hearing. In those cases, 20 teachers resigned or retired, six agreed to suspensions, five were fined, and three were terminated without a hearing because they did not demand one. Three other cases were resolved in other ways not further specified by the responding district.

In cases where a decision was rendered by a hearing officer, only three teachers were fully acquitted by the hearing officer. Among those found guilty of at least one charge, seven teachers were terminated, five were suspended without pay, two were reprimanded, and one fined.

Appeals were uncommon; only three reported cases were appealed to a court. Under the limited grounds for appeal prescribed by statute, a 3020-a hearing officer's decision can only be reversed on very narrow grounds and it is unusual for a court to reverse a decision under these standards. Thus, the decision of the hearing officer is likely to be final in most cases.

The state Legislature last revised the 3020-a law in 1994. When asked

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# Exhibit m

SUPREME COURT OF THE STATE OF NEW YORK  
COLI@'Of RJCHMQND -----

DCM PART 6

MYMOENA 01\VIDS. h> her pan:nt and naturul guardian  
MIAMONA DA\IDS. *er al.* and JOI IN KEONI WRIGHT.  
*tl of.*,

!!ION. PtnLIP G. MnARDO

Plaintiffs.

DECISION & ORDER

-against-

THE STATE OF NEW YORK. *e1al*,

DccnJunts.

tndex No. 101 105/14

-and-

MICHAEL MULGREW, as President of the UNITED  
FEDERATION OF TEACHERS, Local 2. Am...rkan  
F<-<lcration of Thers. AFL-CIO. SETH COHEN.  
DANIEL DELEHANTY. ASILI SKURA DREI IER.  
KAIHLEEN FERGUSON. ISRAEL MARTINEZ.  
R&CHARD OGNIBENE. JR. • LONNETI'Et ruck.  
und KAREN E. MAGEE. Individual!}'und as President  
of the New York State United Teachers PHILIP A  
CAMMARATA. MARK ...tAMTJREll. and THE  
NEW YORK CITY DEPARTMENT OF EDUCATION.

Motion Nos.' 3580 - 008  
3581 - 009  
3593 - 01<)  
3595 .011  
359S: - 012

Intervenor-Defendants.

FILED  
MAR 25 2015  
RICHMOND COUNTY CLERK  
P 2:58

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The motions have been consolidated for purposes of disposition.

MYMOENA DAVIDS. c:\ol.\, ILE STAIE OE NEYORK. ttat

The following papers numbered 1 to 12 were fully submiued on the 14\> day or

J;muury.2015.

Papers  
Num bere-0

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.  
tdated October 28. 2014) ———— -- **1**

Notice of Motion to Dismiss by Intervenor-Defendant MICHAEL MULGREW, as President  
of the UN'rnDFEDERATION OF TEACHERS. Loc 12. American Federation of  
Teachers. AFL-CTO,  
with Exhibiis and Memorandum of Law.  
(c.lated October 28. 2014) ————— -5

Notice of Moti on to Dismiss by Intervenor-Dcfondams PHILIP CMfMARATA and MARK  
MAMBREn1.  
with Exhibi and Memorand\Jm of Law.  
(date<l October 23. 2014) ————— -

Notice of Motion to Dismiss by IntervcnorDefendants SETH COHEN. e1uL,  
with Exhibi1s and Memorandum of Law,  
(dated October 27. 2014 } - ————— — .4:.

Notice of Motion w Dismiss by Defendants STATE OF NEW YORK, u 111..  
with Aftirmation and Supplemental Affimunion of Assistant Attorney General Steven L.  
Banks. Exhibits and Memomndum of Law.  
(dated Ociober 28. 2014) ————— --- ''

Affirmation in Opposition of Plnintiffs MYOMENA DAVIDS. et al to Defcndrults and Intervenor-  
Oefndants' Motions to Dismiss.  
with Exhibits and MemMandum of Law,  
ldated December 5, 2014), ————— ...

Affinnation in OPf.!Osition by Plaintiffs JOHN KEONI WRIGHT. et al. to Defondants  
and Intervenor-Defendants' Motions to Dismiss.  
with Exhibit.s nnd Memorandum of Law.  
(dated December 5. 2014) ————— -.....S..



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MYMQRNTs DAYJQS. 1al.v. THE STATE OF NEW 'ORK.etal.

Reply Memonmdum of Law by Dcfondunl THE CITY OF NEW YORK and THE NEW  
YOR K CITY DEPARTMENT OF EOUCAT!ON.  
(dated December 16, 2014) \_\_\_\_\_

Reply Memorandum of Law by Intervenor-Defondant MJCHAE L MULGREW, as President  
Of the UNITED FEDERAFION OF TEACHERS. LncaJ 2. American Federation of  
Teachers. AFL--CIO,  
(dated December 15, 2014)

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Rtply Memorandum of Law by htirvcnors-Dcfondants PHfUP CAMMARATA and MARK  
MAMBR ETII.  
(dated December 15, 2014) \_\_\_\_\_

Reply Memorandum of Law by Intervenor-Defondant SETH COHEN.etal  
(dated December 15, 2014) \_\_\_\_\_

Reply Memorandum of Law by Defendants STATE OF NEW YORK, •er al..  
(dated December 15, 2014) \_\_\_\_\_

Upon the foregoing papers, the above-tnumerated 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 hereinatler provided.

hnl> 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 layoff, 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 "the legislature shall provide for the  
maintenance and support of a system of the 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, calculation, and verbal skills necessary to enable (them) to eventually function productively as civic participants capable of voting and serving on a jury. (*CUDWJiilll fQr fiscW Equity, Inc. v. State of New York* (86 NY2d 307, 316), *i. c.* • "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, 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 constitutional requirement: minimum to require the teaching of skills that enable students to understand 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 claim to provide children "with a sound basic education" (*see Campaign for Fiscal Equity, Inc. v. State of New York*, 100 NY2d 893, 900). 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 "all 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 Q'm.J.illl 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 §§ 102(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 teaching positions. 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* N.Y. 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 "pennsylvania 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(h) of this article. However, since these teachers are typically granted tenure after only three years of 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 cannot the right to avail him or herself of the lifelong benefits of tenure. Also

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2 The present statutes require that probationary teachers be furloughed first, and the remaining positions be filled on a seniority basis, i.e., the teachers with the greatest tenure being the last to be terminated. For ease of reference, this method of proceeding is known as "last-in, first-out" or "LIFO".

MYMOENA DAVIDS, et al. v. Uie STATE Of NEW.-YQRK. ct al.

dravm into question arc the m1:thods employed for evaluating teacher.; during their probationary

In support of lthe\$t' allegations. plaintiffs rely on studies which have shoWTi that it is unusual for a teucher to be denied tenure at the end of the probationary period, and thnt the granting of tenure in most sch(lol districts is more of a formality rather than the result of any meaningful appraisal of their performance or ability. Fl'r stati.stil:nl suppon. pluintiffs argue, e.g., that in 2007, 97% of tenure-eligible teachers in the New York City school districts wt-re awntded tenure, and that recent legislation in l ended to implement rof<lrms in the cvalliltion process have had a minimal impact on this sum:of affairs. In addition. they note that in 2011 und 2012. only 3% of tnure..eligible teachers were denied tenure.

With regard to the methods for evaluating teacher dliveness prior to on nwtlrd of tenure. plaintiffs maintain that the recemly-implemented Annual Professional Performallge Review ("APPR"). now U\$Cd to t:valuale teachers and principals is an unreliable and indirect measure of teacher effectiveness, since it is based on students' perfonnnnc.c on standardized ttls. other locally selected (i.e.: non-standardized) measures of student achievement. and classroom observations by administrative staff, which are clearly subjective in narnrc. On lhis issue, plaintiffs not that 6QPA. of t™: scored review on an APPR is baxd on thi final criterion. making for a non•uniform, sl.lperfkal and deficient revh:w of effect.ivc le.aching that generally fails to id:n!ify ineffective teachers. As support of lhis poslula1e. plaintiffs refer to studii.ls lhnt have shown that in 2012. only 1% of teuchers were rated "ineffectivc" in New York {as compared to the 91.5% who were rated as "highly effective" or "ctleth"t"). while only 31 % oisttdents taking the standardized tests in English Language Aris and Math met the minimum landnrd for proficiency As a further example.

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### MYMOENA UVIDS, et al. v. THE STATE OF NEW YORK, et al.

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 included in support of plaintiffs' challenge to the Education Laws, and are intended simply to illustrate the statutes' reliance on some of the most 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.;

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 unquated grievance procedures and appeals, all of which are claimed to be costly and time-consuming, with no guaranty that an underperforming teacher will actually be dismissed. As a result, dismissal proceedings are alleged to be rare when based on unsatisfactory performance alone, with scant chance of success. According to plaintiffs, the cumbersome nature of dismissal proceedings operates as a strong disincentive for

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; 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 attempt to obtain the dismissal of ineffective teachers, the result of which is that their retention is virtually assured.

Peculiar 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 teacher 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 of the right to a sound basic education. *Ely v. State of New York*, 100 NY2d at 909-911).

MY MQENA DAVIDS, et al., Life Support of MEW YORK, et al.

In moving to dismiss the complaints, defendants and intervenor-defendants (hereinafter collectively referred to as the "movants") seek dismissal of the Complaint on the grounds (1) that the courts are not the proper forum in which to bring these claims; *re.*, 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 *g. hl. lllli, rnf Rctjred Pub Empl MfOC, Inc, v. Cuomp, - MiscJd -, 2012 NY Slip Op 32979 [UJI 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 interests 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 superiors" (*Ilifji 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 violate the Education Article of the Constitution, that the Legislature would have redressed this 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, *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 litigation" for changes in educational policy represents an incursion into 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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 educational policy is said to rest with the Legislature.

Plaintiffs also argue that the complaints fail to state a cause of action. In this regard, it is claimed that the order would state a valid cause of action under Article XL in plaintiff's alleged two elements: (1) the deprivation of a fundamental education, and (2) causes attributable to the State (see New York Cjv Liberties Union v. State of New York, 4 NY 2d 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 (see Teaynltr v. State of New York, 100 NY 2d 434, 439 [internal quotation marks omitted]; New York State Assn of Small City School Dist. Inc. v. State of New York, 42 AD3d 648, 652). Hence, it is claimed that the respective complaints are devoid of any facts tending to show that the failure to offer a "fundamental education" is caused by 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" consisting 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" (see Pavlen v. State of New York, 100 NY 2d at 439-440). On this analysis, it is alleged to be the ultimate responsibility of the local school districts to regulate their curricula in order to effect compliance with the Education Article while respecting "the constitutional principle that districts make the basic decision on ... operating their own schools." (New York Cjv Liberties Union v. State of New York, 4 NY 2d 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. 80% of the evaluation criteria for negotiation between the local school district and its relevant administrative unions. Movants argue that these determinations do not constitute state action.

In addition, movants argue that the 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 "CSI" of terminating teachers for ineffectiveness, (3) inconclusive survey 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 related to the problem are plaintiffs' conclusory statements that students in New York are "denied" an adequate 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 educators; and the failure to provide school children with a minimally adequate education. Accordingly, movants claim that merely because of the 250,000 teachers licensed to teach in New York may be ineffective, is not a viable basis for claiming 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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severed and dismissed. The balance of the motions are denied.'

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. A court must give 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. See *Sokloff v. Harriman Establs. Dev. Corp.*, 96 NY2d 409, 414; *See Sanden v. Wofshjip*, 57 NY2d 391, 394). Accordingly, the sole question is whether the pleading states a cause of action, and if not, its four corners factually (as they can be discerned which taken together manifest any cause of action cognizable at law the motion will fail" (*Juggenwimer v. Ginzburg*, 43 NY2d 268, 275). However, if, where evidentiary material is considered on the motion, the criterion [becomes] whether the plaintiff's complaint of the pleading has a cause of action, not whether it for itself has stated one, and, unless it has been shown that a material fact is claimed by the plaintiff 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. *Cid* - Therefore, it is the opinion of this Court that the complaints are sufficiently pleaded to avoid dismissal.

The Court of Appeals' 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 9§257J, 301(1), 303(3), 3014, 3012, 3020, 2510, 2585, 2588.

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\* 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. *Frank v. City of New York*, 64 NY2d 126, 130 (1984); *See also* *Frank v. City of New York*, 64 NY2d 126, 130 (1984); *See also* *Frank v. City of New York*, 64 NY2d 126, 130 (1984).

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101 J). While the papers submitted on the motions to dismiss undoubtedly explain that the primary purpose of the statutes is to provide employment security, protect teachers from arbitrary dismissal, and maintain 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 interfere with 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 artificially-established "LIFO" system dismissing teachers in response to mandated layoff and budgetary shortfalls. In opposition to 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 "that the 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. Qter v. State of N.Y., 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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MYMOEN\ DAVIDS. et al. v. THE STATE OF NEW YORK. et al

sub\_je<.t areas" ((ampu\_j n for Fiscal Equity'. Im: . y, Smis' of New York. 86 NY2d at 317). Furl.h<. It has t.x n held that the state may be calkJ to account when it fails in its obligation to meet minimum coruaitutionnl standards of educational quality /see New York Civ Lirties Union v. Stal& of New J'..Qrk. 4 NY3d ut 178J, which is capable of measun.:ment, us alleged. by. *inter a)ia*, sul'Hnandard test resuhs and falling graduation rnles {itl.) that plaintiffs have anributeJ 10 the impac of ceruiin legislation.

More 10 the point, accepting us true plai nti ff\$' allegations of serious deficiencies in reacher quality: its negative impact un the performance uf students; the role played by subject statutes in enabling ineffective leachers 10 be gmnted tcm:and in allowing them to continue leaching despite ineffective ratings and p<=or job perfonnar...e; a k-g}slatively prihed rating s.ystem that is i nadequate ca identify the truly ineffective teachers: the direct effect that these clefl <:iencies have on a slmfent's right to recei ve a "sound basic education": plus the statisticul studies and surveys cited in support thereof are sunicient 10 make Ml a prima fucie case of c<mstitutional dimension c.onncting the retention of incfif'Clivc teachers \) the lmv performHmcc levels exhibited by New Yurk students, //g., a lack of proficiency in math and english {set: Crunruign for Fiscal Equity. Jrn: . v. Stme of New York, JOO NY2d at 910). Once it is determined Omt plaintiffs mny be cmitled to relief under any rensonable vk w of the facts stated. the court's inquiry is cmnpkte and the complaint must be dedured legally sufficient (see Campaign for Fiscal Equity, Inc. v. State of New York. 86 NY2d at 318).

The Court alsn rinds the matter before it 10 be justiciable since a dlaratoty judgmenl action is well suited n. e.g.. interpret and safeguard constitutional rights and review the acts of the other branches of government. not fl.lr lbe purposi: of making policy decisions. but to preserve the constitutional rights nf its citizenry CH:tr Campaign for Fiscal Eqviiv' Im: v' State of New Yilk, mo

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

NY2dm931).

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 Camruti On for fil. 11 & 1 EOK v. State of New York, 86 NY2d at 318). This Court is in complete agreement with this conclusion and will not close the courthouse door to parents and children with viable constitutional claims (see Li Yin v. State of New York, 19 NY3d 899). Manifestly, movants' attack on 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

MYMOEN\Q\YIDS.ctal.v. nm STATE OF NEW YORK.

York. and JOHN A. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State (If New York is granted; and it is hereby

ORDERED that the causes of litigation 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. FALA

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for State Defendants  
120 Broadway – 24<sup>th</sup> Floor  
New York, New York 10271  
STEVEN L. BANKS  
Assistant Attorney General, of Counsel

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, 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., :

Intervenors-Defendants, :

- and - :

PHILIP A. CAMMARATA and MARK MAMBRETTI, :

Intervenors-Defendants. :

-----X

**MEMORANDUM OF  
LAW IN SUPPORT OF  
STATE DEFENDANTS'  
MOTION TO DISMISS  
AND/OR FOR LEAVE TO  
RENEW, OR,  
ALTERNATIVELY, FOR  
A STAY OF THE  
PROCEEDINGS**

Index No. 101105/14

(Minardo, J.S.C.)

(Caption continued on next page)



|                                                                                                                              |   |
|------------------------------------------------------------------------------------------------------------------------------|---|
| -----X                                                                                                                       |   |
| JOHN KEONI WRIGHT; <u>et al.</u> ;                                                                                           | : |
| Plaintiffs,                                                                                                                  | : |
| - against -                                                                                                                  | : |
| THE STATE OF NEW YORK; <u>et al.</u> ;                                                                                       | : |
| Defendants,                                                                                                                  | : |
| - and -                                                                                                                      | : |
| SETH COHEN, <u>et al.</u> ,                                                                                                  | : |
| 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<br>FEDERATION OF TEACHERS, Local 2, American<br>Federation of Teachers, AFL-CIO, | : |
| Intervenor-Defendant.                                                                                                        | : |
| -----X                                                                                                                       |   |

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Defendants THE STATE OF NEW YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK; and THE NEW YORK STATE EDUCATION DEPARTMENT (“SED”) (collectively the “State Defendants”) respectfully submit this memorandum of law in support of their motion (1) to dismiss each respective complaint filed in this consolidated action, pursuant to CPLR Rule 3211(a)(2), for lack of justiciability and mootness; (2) for leave to renew State Defendants’ prior motion to dismiss, pursuant to CPLR Rule 2221(e), on the ground that there have been changes in the law upon which the State Defendants’ motion to dismiss should be granted; and (3) if this action is not dismissed in its entirety, for a stay of proceedings in this action, pursuant to CPLR § 2201, pending the outcome of the pending appeals of the Decision and Order, entered March 20, 2015. Also submitted in support of the present motion is the Affirmation of Assistant Attorney General Steven L. Banks (“Banks Aff.”), dated May 27, 2015.

### **PRELIMINARY STATEMENT**

Under CPLR § 3001, the Supreme Court’s jurisdiction to decide declaratory judgment actions only extends to “justiciable controvers[ies].” In the present declaratory judgment action, Plaintiffs’ amended complaints collectively request that the Court declare as unconstitutional entire sections of the Education Law that pertain to teacher tenure, discipline, and seniority protection, including Education Law §§ 1102(3), 2509, 2510, 2573, 2588, 2590, 2590-j, 3012, 3012-c, 3013(2), 3014, 3020, and 3020-a. See Banks Aff., Exs. A (Davids Amended Complaint), p. 3 n. 1; B (Wright Amended Complaint), ¶ 6. However, significant changes to the Education Law were recently enacted as part of the State’s 2015 budget legislation, including amendments to the majority of the statutes that Plaintiffs seek to have declared unconstitutional. See Banks Aff., Ex. C (L. 2015, Ch. 56). This legislative action changed the Education Law in

ways advocated by Plaintiffs, by, for example, enlarging the probationary period for teachers, strengthening the annual professional performance review (“APPR”) process to make it more rigorous, and streamlining the disciplinary process for all teachers and particularly for tenured teachers who are rated Ineffective on their APPR evaluations, and has consequently rendered this action moot. *Infra*, Pt. I. Additionally, in light of these recent changes to the Education Law, Plaintiffs’ challenge to the scope of tenure protections available to public school teachers in New York State presents nonjusticiable policy questions that should be left to the political branches to resolve. *Infra*, Pt. II.

Because the present dismissal motion concerns the existence of the Court’s jurisdiction in light of recent changes to the statutory law being challenged here--changes that were enacted after the State Defendants’ prior motion to dismiss was decided--CPLR Rule 3211(e)’s stricture on successive motions to dismiss does not apply. Parties are expressly permitted to bring successive motions regarding a court’s subject matter jurisdiction. See CPLR Rule 3211(e) (“motion based upon a ground specified in paragraph two, seven or ten of subdivision (a) may be made at any subsequent time”); Mtr. of Newton v. Town of Middletown, 31 A.D.3d 1004, 1005-1006 (3d Dep’t 2006) (“[A] party never forfeits its right to challenge the court’s subject matter jurisdiction and may, following a CPLR 3211(a) motion, nevertheless move for dismissal on that basis.”) (citations omitted). Further, a party may file a second Rule 3211 motion where the grounds raised in the later dismissal motion, as here, could not have been included in the party’s initial motion. See Lemburg v. John Blair Commc’n, Inc., 258 A.D.2d 291 (1st Dep’t 1999). In any event, even if the Court were to find that the State Defendants were not permitted to file a second Rule 3211(a) motion, the State Defendants may nonetheless seek leave to renew their motion to dismiss under Rule 2221(e) as a result of the recent changes to the tenure statutes that

are challenged by Plaintiffs in this action, and upon renewal the motion should be granted and the action should be dismissed for the reasons set forth below.

Finally, given the novel questions of law raised in this lawsuit, as well as the time and expense to be incurred in engaging in discovery in a case of this nature, in the event this action is not dismissed, the Court should stay all proceedings under CPLR § 2201 pending the resolution of the defendants' respective pending appeals. *Infra*, Pt. III.

### **CHAPTER 56 OF THE LAWS OF 2015**

Enacted as part of the 2015 State budget process, Chapter 56 of the Laws of 2015 ("Chapter 56") modified several provisions of the Education Law at issue in this lawsuit and added new provisions that pertain to the employment of public school teachers. In particular, Chapter 56 includes the following relevant changes to the Education Law:

**Granting of Tenure--Education Law §§ 2509, 2573, 3012, 3014.** As was previously explained in the State Defendants' motion to dismiss, the Education Law contains separate, but parallel, provisions that govern the conferral of tenure on public school teachers: § 2509 (pertaining to city school districts in cities with less than 125,000 inhabitants); § 2573 (pertaining to city school districts in cities with more than 125,000 inhabitants); § 3012 (pertaining to school districts other than city school districts); § 3014 (pertaining to boards of cooperative educational services). Each of these sections was modified by Chapter 56 to extend the probationary period of teachers, administrators, directors, supervisors, principals, and all other members of the supervisory staff from three to four years. *See Banks Aff.*, Ex. C, pp. 114-118, 120-121, 123-124. Further, the amended statutes now require that, to be eligible for tenure at the end of the four-year probationary period, a classroom teacher or building principal must receive an APPR rating of either Effective or Highly Effective in at least three of the four years of probation, and



must not have received an Ineffective rating in the final year of the probationary period. *Id.*, pp. 115-116, 119-121, 123-125.

**APPR Process--Education Law §§ 3012-c, 3012-d.** Section 3012-c was first enacted in 2010 and establishes the requirement for APPR evaluations of classroom teachers and building principals, which are required to be “a significant factor for employment decisions including but not limited to, promotion, retention, tenure determination, termination and supplemental compensation[.]” § 3012-c(1). Chapter 56 clarified that local school districts retain “unfettered” rights “to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reasons, including but not limited to misconduct and[,] until a tenure decision is made, the performance of the teacher or principal in the classroom.” *See Banks Aff.*, Ex. C, p. 126.

More significantly, Chapter 56 added a new section to the Education Law, § 3012-d, that establishes a new system for the annual evaluations of classroom teachers and building principals which will in time supplant the evaluation process set forth in § 3012-c. The evaluation process under § 3012-d consists of “multiple measures in two categories: student performance and teacher observations.” *See Banks Aff.*, Ex. C, p. 127. The student performance category is to be based on two subcomponents, one mandatory and the other optional. The mandatory student performance subcomponent is to be based on either a “growth score” based on “state-created or administered tests” or, where there is no applicable state administered test, the teacher’s success in meeting student learning objectives “consistent with a goal-setting process determined or developed by the” Commissioner of Education. *Id.* The optional subcomponent is to be either “a second state-provided growth score on a state-created or administered test” or “a growth score based on a state-designed supplemental assessment, calculated using a state-provided or

approved growth model.” Id., p. 128. The Commissioner of Education “shall determine the weights and scoring ranges for the subcomponent or subcomponents of the student performance category” and “shall also set parameters for appropriate targets for student growth for both subcomponents.” Id.

The teacher observations category is to be based on two mandatory subcomponents and one optional subcomponent, and be based on a state-approved rubric. The mandatory subcomponents are classroom observations conducted by (1) “a principal or other trained administrator” and (2) “by an impartial independent trained evaluator or evaluators selected by the district.” Id. The optional subcomponent is to “based on classroom observations conducted by a trained peer teacher rated effective or highly effective from the same school or from another school in the district.” Id. The Commissioner of Education is charged with determining “the weights, and/or weighting options and scoring ranges for the subcomponents of the observations category that result in a combined category rating” and “shall also determine the minimum number of observations to be conducted annually, including the frequency and duration, and any parameters therefor.” Id.

As is true of evaluations under § 3012-c, evaluations conducted in accordance with § 3012-d must “be a significant factor for employment decisions, including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation.” Id., p. 127. Unlike § 3012-c, § 3012-d specifies how the Highly Effective, Effective, Developing and Ineffective ratings in each of the student performance and teacher observation categories translate into an overall composite APPR rating. Id., p. 129. In effect, the statute creates a matrix, with a teacher receiving, for example, an Ineffective rating in the student performance category, receiving an overall rating of Developing or Ineffective depending on their rating in the

teacher observations category. This is further modified by special rules, notably that “a teacher or principal who is rated using two subcomponents in the student performance category and receives a rating of ineffective in such category shall be rated ineffective overall[.]” *Id.*, p. 128.

To encourage adoption of § 3012-d’s evaluation requirements, a school district will presently not be eligible for increases in certain state aid unless it demonstrates to the Commissioner of Education, by November 15, 2015, “that it has fully implemented the standards and procedures for conducting annual teacher and principal evaluations of teachers and principals in accordance with” § 3012-d and the regulations of the Commissioner of Education. *Id.*, p. 131. All collective bargaining agreements entered into after April 1, 2015 shall conform to § 3012-d. *Id.*

**Discipline and Removal--Education Law §§ 3020, 3020-a, 3020-b.** These sections pertain to the procedures to be followed when a public school teacher, principal, or administrator “enjoying the benefits of tenure” is disciplined or removed. Section 3020 was amended by Chapter 56 to require that any alternate disciplinary procedure in a collective bargaining agreement that becomes effective on or after July 1, 2015, provide that (1) disciplinary or removal hearings be conducted before a single hearing officer and (2) two consecutive Ineffective ratings “shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the employee is not incompetent[.]” *See Banks Aff.*, Ex. C, pp. 134-135. In relevant part, § 3020-a was amended to provide that “all hearings commenced by the filing of charges on or after [July 1, 2015] shall be heard by a single hearing officer” and “that the hearing officer, at the pre-hearing conference, shall set a schedule and manner for full and fair disclosure of the witnesses and evidence to be offered by the employee,” in addition to the “full and fair disclosure” of the evidence to be offered by the school district.

Id., pp. 138, 140. Furthermore, § 3020-a now requires the hearing officer to give “serious consideration to the penalty recommended by the employing board, and if the hearing officer rejects the recommended penalty such rejection must be based on reasons based upon the record as expressed in a written determination.” Id., p. 143.

Chapter 56 also added § 3020-b to the Education Law, setting forth “streamlined removal procedure for teachers rated ineffective” under the APPR. Id., p. 144. Specifically, school districts may bring charges of incompetence under § 3020-b against teachers and principals who receive two consecutive Ineffective ratings. Id. For classroom teachers and building principals who receives three consecutive Ineffective ratings, school districts are compelled to bring charges of incompetence under § 3020-b. Id. An employee is provided ten days after receiving notice of the charges to request a hearing. Id., p. 145. The hearing is to be conducted before a single hearing officer, and to conclude within 90 days from the date of the request for a hearing in the case of an employee who has received two consecutive Ineffective ratings, or 30 days from the date of the request for a hearing in the case of an employee who has received three Ineffective ratings. Id., pp. 145-146. A limited adjournment that would extend the hearing beyond this timeframe is permitted “if the hearing officer determines that the delay is attributable to a circumstance or occurrence substantially beyond the control of the requesting party and an injustice would result if the adjournment were not granted.” Id., p. 146. Two consecutive Ineffective ratings “shall constitute prima facie evidence of incompetence that can be overcome only by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal.” Id., p. 147. Three consecutive Ineffective ratings “shall constitute prima facie evidence of incompetence that can be overcome only be

clear and convincing evidence that the calculation of one or more of the teacher's or principal's underlying components on the [APPR] reviews . . . was fraudulent, and, if not successfully overcome, the finding, absent extraordinarily circumstances, shall be just cause for removal." Id.

**Seniority Protection--Education Law §§ 211-f, 2510, 2585, 2588, 3013.** Chapter 56 also added a comprehensive new provision, Education Law § 211-f, to address the "[t]akeover and restructuring of failing schools." See Banks Aff., Ex. C, p. 148. Therein, the Commissioner of Education is empowered to "designate as failing each of the schools that has been identified under the state's accountability system to be among the lowest achieving five percent of public schools in the state (priority schools) for at least three consecutive school years," and to "designate as persistently failing each of the schools that have been identified under the state's accountability system to be among the lowest achieving public schools in the state for ten consecutive school years." Id. Following a school's designation as a "failing school" or a "persistently failing school," § 211-f sets forth a number of remedial steps that are to be followed to improve school performance, including operation under an SED-approved education plan "that includes rigorous performance metrics and goals, including but not limited to measures of student academic achievement and outcomes," and the investment of the local superintendent or an outside receiver with extensive intervention powers. Id., p. 149-150.

Most relevant to the present lawsuit, § 211-f modifies the seniority protections set forth in Education Law §§ 2510, 2585, 2588, 3013. For schools designated as either "failing" or "persistently failing," the superintendent or an appointed receiver is given the authority to abolish the positions of some or all teaching, administrative, and supervisory staff. Id., p. 153. When the positions of classroom teachers or building principals are abolished, the APPR ratings of the affected classroom teachers or building principals are considered, not just seniority.

A classroom teacher or building principal who has received two or more composite ratings of ineffective on an [APPR] shall be deemed not to have rendered faithful and competent service within the meaning of [§§ 2510, 2585, 2588, 3013]. When a position of a classroom teacher or building principal is abolished, the services of the teacher or administrator or supervisor within the tenure area of the position with the lowest rating on the most recent annual professional performance review shall be discontinued, provided that seniority within the tenure area of the position shall be used solely to determine which positions should be discontinued in the event of a tie.

Id.

## **ARGUMENT**

### **POINT I**

#### **THE RECENT AMENDMENTS TO THE EDUCATION LAW HAVE RENDERED THIS DECLARATORY JUDGMENT ACTION MOOT.**

One of the statutory elements for a litigant to bring and maintain a declaratory judgment action is a “justiciable controversy.” CPLR § 3001. Courts are prohibited from rendering advisory opinions on academic or hypothetical questions. See Employers’ Fire Ins. Co. v. Klemons, 229 A.D.2d 513, 514 (2d Dep’t 1996); Furlong v. N.Y. State Workers’ Compensation Bd., 97 A.D.2d 357, 358 (1st Dep’t 1983) (“Inasmuch as the dispute between the parties is dependent upon the possible happening of a future event, which may not occur, the request for declaratory judgment relief is at best premature and would embroil the court in a determination which would amount to no more than an advisory opinion.”). Even where a justiciable controversy exists at the outset of a case, a change in circumstances, including enactment of superseding law, may render the controversy moot and deprive the Supreme Court of subject matter jurisdiction. See Amherst & Clarence Ins. Co. v. Cazenovia Tavern, Inc., 59 N.Y.2d 983, 984 (1983) (dismissing declaratory judgment action concerning insurer’s obligation to defend tavern in negligence action as moot after a settlement in the underlying negligence action); Mtr. of Hearst Corp. v. Clyne, 50 N.Y.2d 707, 714 (1980) (courts ordinarily precluded “from

considering questions which, although once live, have become moot by passage of time or change in circumstances”); Flanders Associates v. Town of Southampton, 198 A.D.2d 328 (2d Dep’t 1993) (affirming dismissal of challenge to moratorium on development as moot following enactment of local law exempting the plaintiff’s property); Mtr. of Stato v. Squicciarini, 59 A.D.2d 718, 719 (2d Dep’t 1977) (challenge to constitutionality of provision of town’s zoning law regarding issuance of special use permits dismissed as moot after the State legislature amended state statutory law to authorize the town’s procedures for issuing special use permits). The present action is moot as the recent amendments to the Education Law afford Plaintiffs the relief they could have achieved by this lawsuit.

There are few, if any, reported New York cases where, as here, a plaintiff has sought judgment declaring multiple statutory provisions to be wholly unconstitutional and enjoining their enforcement, and this is apparently only the second case where the constitutionality of a tenure statute has been challenged under the Education Article. See Brady v. A Certain Teacher, 166 Misc. 2d 566, 574 (Sup. Ct. Suffolk Co. 1995) (finding plaintiff’s Education Article challenge to Education Law §§ 3012, 3020-a to be without merit). Nonetheless, the case law is quite clear that, were Plaintiffs to prevail in this action, the relief the Court could provide is limited. While the courts “are the ultimate arbiters of our State Constitution,” the Court of Appeals has held that “in fashioning specific remedies for constitutional violations,” the courts “must avoid intrusion on the primary domain of another branch of government.” Campaign for Fiscal Equity, Inc. v. State of New York, 8 N.Y.3d 14, 28 (2006). Thus, when addressing a claim that the State’s funding of the New York City school district violated the Education Article, the Court explained that “the role of the courts is not . . . to determine the best way to

calculate the cost of a sound basic education in New York City schools, but to determine whether the State’s proposed calculation of that cost is rational.” Id. at 27.

Crucially, courts cannot direct the legislative process. “[I]t has long been the rule that, absent extraordinary circumstances, the courts will not enjoin the legislative process on the ground that the proposed legislation may be invalid. Rather, the aggrieved party must await adoption of the proposed legislation, and thereafter, if it be so advised, challenge the validity of the legislation in a declaratory judgment action.” Pospisil v. Anderson, 140 A.D.2d 317 (2d Dep’t 1988) (citations omitted). Therefore, it follows that, if there had been no changes to the Education Law and this case had proceeded to judgment in Plaintiffs’ favor, the most Plaintiffs could have obtained would be a judgment declaring one or more of the challenged statutes to be unconstitutional and a limited injunction against the enforcement of those same statutes, leaving it to the Legislature to craft successor statutes to address whatever constitutional infirmity was found by the Court. In Chapter 56, the Legislature and Governor have shortcut this entire process and enacted significant and far-reaching changes to the Education Law that systemically address the concerns raised by Plaintiffs and others about the need to identify and remove ineffective tenured teachers from the public schools.

Plaintiffs appear to argue that New York’s entire statutory scheme governing the employment of classroom teachers and building superintendents, as it existed at the time this action was commenced, which the Wright plaintiffs have described as “outdated laws,” has abridged students’ right under the Education Article to receive the opportunity to a sound basic education, by permitting some unidentified number of ineffective teachers to gain and hold positions in the public schools. See Banks Aff., Exs. A, ¶¶ 4-5, 34; B, ¶¶ 3, 7, 25. At its core, Plaintiffs’ challenge is to the quality of the state-wide pool of public school classroom teachers



under the tenure statutes as they existed before the enactment of Chapter 56. However, in Chapter 56, the Legislature has undeniably replaced the supposedly “outdated laws” with new procedures and new standards for classroom teachers, which are intended to improve the quality of public school instructors throughout the state. Plaintiffs’ “broad brush” challenge to tenure protections has been countered by a “broad brush” revision by the Legislature.

Indeed, each of the concerns raised by Plaintiffs about the prior set of statutes is addressed by the amendments set forth in Chapter 56. Plaintiffs’ alleged concern that school districts believe “that attempting to dismiss ineffective teachers is futile and prohibitively resource-intensive,” and “is unlikely to result in dismissal of those teachers,” Banks Aff., Ex. A, ¶ 33, and their hypothesis that “principals and administrators would be more likely to use the 3020-a process to discipline or dismiss a teacher if it was less time-consuming and more effective,” Banks Aff., Ex. B, ¶ 55, is addressed by the changes to § 3020-a, the new APPR evaluation process of § 3012-d, and the streamlined removal procedure set forth in § 3020-b. Importantly, all disciplinary hearings, whether under § 3020-a or § 3020-b, are to be conducted before a single hearing officer rather than before a hearing panel. See Banks Aff., Ex. C, pp. 138, 145. For charges unrelated to an employee’s receipt of Ineffective ratings, if the hearing officer sustains the charges, the hearing officer must impose the penalty recommended by the school district or explain in writing the reasons “based on the record” for rejecting the recommendation. Id., p. 143. For charges filed under § 3020-b, a statutory presumption exists that two Ineffective ratings are prima facie evidence of incompetence and “absent extraordinary circumstances” just cause for removal. Id., p. 147. For classroom teachers who are rated three consecutive times as Ineffective, Chapter 56 even deprives school districts of their discretion not to bring charges of incompetence. If a classroom teacher or building principal receives three

ineffective ratings, the school district must (“shall”) bring charges of incompetence under § 3020-b. Id., p. 144.

Plaintiffs’ challenge to a seniority-based system to determine which teachers are removed when teaching positions are eliminated, see Banks Aff., Exs. A, ¶ 46; B, ¶¶ 66-76, is mooted by § 211-f and the use of teacher performance ratings to determine which classroom teachers should be removed at schools identified by the Commissioner of Education as “failing” or “persistently failing.” See Banks Aff., Ex. C., p. 153. Even in other schools that are not designated as failing, because of the mandatory evaluation procedures in § 3012-d and the streamlined procedure to remove teachers rated as Ineffective in § 3020-b, school districts have every incentive to remove ineffective teachers before they have the seniority necessary to retain their positions when teaching positions are eliminated under §§ 2510, 2585, 2588, or 3013. Moreover, Chapter 56 added a new § 3006-a to the Education Law which imposes a five-year registration period for classroom teachers and mandates continuing teacher education requirements, which, in conjunction with the other changes made by Chapter 56, is intended to eliminate the possibility of long term ineffective teachers. See Banks Aff., Ex. C, p. 112.

Nowhere is the mootness of Plaintiffs’ arguments more evident than with the amendments to §§ 2509, 2573, 3012, 3014. The Wright plaintiffs have criticized the pre-Chapter 56 versions of these sections and contended that a three-year probationary period is “inadequate” for a school district to assess a classroom teacher’s fitness for tenure. See Banks Aff., Ex. B, ¶ 38. Further, the Wright plaintiffs contend that the use of the APPR evaluations under § 3012-c to assess a probationary teacher’s eligibility for tenure was flawed because with a three-year probationary period, only two annual evaluations were allegedly considered before a decision on

tenure was made, and the criteria for APPR evaluations under § 3012-c is not uniform and does not in their estimation adequately consider student performance. Id., ¶¶ 39-41.

The changes to the Education Law set forth in Chapter 56 address these stated concerns. Significantly, the probationary period for most newly hired public school teachers has been enlarged to four years, see Banks Aff., Ex. C, pp. 114, 117, 121, 124, a length of time the Wright plaintiffs themselves have acknowledged is sufficient to determine teacher effectiveness. See Banks Aff., Ex. B, ¶ 46 (“Most studies indicate that teacher effectiveness is typically established by the fourth year of teaching.”). Further, a teacher’s performance evaluations in each year of the four-year probation period are now necessary elements of the decision on tenure. To be eligible for tenure, teachers and principals must receive ratings of Effective or Highly Effective in “at least three of the preceding four years” and must not receive an Ineffective rating in their final year of probation. See Banks Aff., Ex. C, pp. 116, 119, 120, 123, 125. If the classroom teacher receives an Ineffective rating in the final probationary year, the school district may choose to extend the probationary period for another year. Id.

As to the Wright plaintiffs’ criticism of the APPR procedures set forth in § 3012-c, the Legislature has enacted § 3012-d to place more emphasis on student growth measures and classroom observations by trained and impartial evaluators. Supra, pp. 4-6. Section 3012-d includes objective evaluation criteria based on student performance on either state-administered tests, where applicable, or a teacher’s performance on student learning objectives consistent with a process developed by the Commissioner of Education. Id., p. 127. The evaluation process also includes observations by an “impartial independent trained evaluator” conducted pursuant to a state-approved rubric. The Commissioner of Education “shall also determine the minimum number of observations to be conducted annually, including the frequency and duration, and any

parameters therefor.” Id., p. 128. Student performance is central to the evaluation process under § 3012-d, and a teacher who receives an Ineffective rating on the student performance category, or on the teacher observations category, cannot receive an overall rating of Effective. Id.

The one challenged section of the Education Law that was not altered in any way by Chapter 56, § 1102(3), is inconsequential to this action or the grounds for dismissal. Section 1102(3) concerns the rights of teachers at the county vocational education and extension boards (“CVEEBs”). There are only two operating CVEEBs in the State of New York, namely the Suffolk County Fire Academy and the Nassau County CVEEB. Because the statutory purpose of the CVEEBs is to promote vocational and career education, see Education Law § 1102(1), the due process protections afforded CVEEB instructors have no apparent relationship to Plaintiffs’ claims or the Education Article’s requirement that the State offer “children the opportunity of a sound basic education.” Campaign for Fiscal Equity, Inc. v. State of New York, 86 N.Y.2d 307, 316 (1995).

The absence of supporting factual allegations in the amended complaints is even more significant in light of Chapter 56’s changes to the Education Law. The amended complaints obviously include no allegations about the statutory changes wrought by Chapter 56 or the effect those changes will have on the quality of classroom teachers in New York State. Further, in light of the changes to the tenure approval process, the APPR evaluation process, and the removal process discussed above, what allegations do exist in the amended complaints about the tenure protections for public school teachers are patently stale and clearly irrelevant. See, e.g., Banks Aff., Ex. A, ¶¶ 6 (number of teachers dismissed from 1997 to 2007), 39 (2007 study on cost and length of time to dismiss teacher); Ex. B, ¶¶ 37 (alleging number of teachers who received tenure in 2007), 55 (citing 2009 survey), 56 (length of time for disciplinary hearing from 2004-2008).

Even if the Court believed that the amended complaints contained enough factual allegations to state a cause of action before the enactment of Chapter 56, the same allegations are insufficient now in light of the modifications to the Education Law made by Chapter 56.

In short, the statutory scheme at issue in this lawsuit has ceased to operate, if it ever did, in the fashion presented by Plaintiffs. Given the depth and breadth of the changes made to the Education Law by Chapter 56, which have transformed the standards and procedures for evaluating public school teachers and removing ineffective teachers, the claims for declaratory and injunctive relief asserted by Plaintiffs have been rendered moot, and, accordingly, this action should be dismissed. See Londonderry Sch. Dist. SAU # 12 v. State of New Hampshire, 958 A.2d 930, 931-932 (N.H. 2008) (dismissing declaratory judgment action challenging constitutionality of education funding statute as moot and nonjusticiable after the state legislature enacted a new education funding law notwithstanding “the petitioners’ claims that the new legislation presents new problems”); Mtr. of NRG Energy, Inc. v. Crotty, 18 A.D.3d 916, 918-919 (3d Dep’t 2005) (finding that challenge to environmental regulations was rendered moot when the Department of Environmental Conservation implemented superseding regulations).

## **POINT II**

### **JUDICIAL REVIEW OF THE PROVISIONS OF THE EDUCATION LAW AMENDED BY CHAPTER 56 IS PREMATURE AND IS OTHERWISE NONJUSTICIABLE.**

One aspect of justiciability is the “paramount concern . . . that the judiciary not undertake tasks that the other branches are better suited to perform.” Klostermann v. Cuomo, 61 N.Y.2d 525, 535 (1984). “Justiciability, which ensures that the judiciary does not intrude upon or usurp the powers constitutionally allocated the executive or the Legislature, holds that Judges should decide only judicially manageable questions.” Mtr. of Montano v. County Legislature of

County of Suffolk, 70 A.D.3d 203, 211 (2d Dep’t 2009) (quoting Mtr. of Boung Jae Jang v. Brown, 161 A.D.2d 49, 54-55 (2d Dep’t 1990)).

Justiciability also requires that the issue presented to the court involve a presently existing controversy not contingent on some future event. A justiciable controversy “‘must be present, real, definite, and substantial, and must be sufficiently matured so as to be ripe for judicial decision and final determination.’” Park Ave. Clinical Hosp. v. Kramer, 26 A.D.2d 613 (4th Dep’t 1966) (quoting 1 Anderson, Declaratory Judgments [2d ed.], p. 51), aff’d, 19 N.Y.2d 958 (1967). See American Ins. Ass’n v. Chu, 64 N.Y.2d 379, 385 (1985) (striking declaration and dismissing complaint on the ground that “[t]he action is premature and as a matter of law may not be maintained if the issue presented for adjudication involves a future event beyond control of the parties which may never occur.”) (citations omitted); Schultz v. City of Port Jervis, 242 A.D.2d 699, 700 (2d Dep’t 1997) (dismissing as premature complaint which challenged the constitutionality of a municipal ordinance because “the fears the plaintiffs have of running afoul of the ordinance in question are wholly speculative[.]”).

Consideration of these aspects of justiciability warrant dismissal of Plaintiffs’ respective amended complaints at this time. As noted in the section on justiciability in the State Defendants’ earlier moving brief, formulating educational policy to meet the State’s obligation under the Education Article is a function solely entrusted to the Legislature. “[T]he Education Article imposes a duty on the Legislature to ensure the availability of a sound basic education to all the children of the state.” See Campaign for Fiscal Equity, Inc., 86 N.Y.2d at 315 (emphasis added). The enactment of Chapter 56, which followed significant changes to Education Law §§ 3012-c, 3020-a in 2010 and 2012, see L. 2010, Ch. 103; L. 2012, Ch. 21; L. 2012, Ch. 57, shows how active the Legislature has been in this area of the law, and strongly suggests that this branch

of the Education Law may be amended yet again in the time it would take for this action to reach a trial stage. Reviewing such an unsettled area of the law, particularly where the relief sought by Plaintiffs includes the invalidation of multiple provisions of the Education Law, is simply not judicially manageable and improperly intrudes on the policymaking function of the Legislature. See Roberts v. New York City Health & Hosps. Corp., 87 A.D.3d 311, 324 (1st Dep’t 2011) (“It is axiomatic that each branch of government should be free from interference, in the lawful discharge of duties expressly conferred, by either of the other branches.”) (quotation and citations omitted).

Second, notwithstanding any other future changes to the Education Law, the enactment of Chapter 56 and its changes to the Education Law occurred only recently, and a constitutional challenge under the Education Article to the modified sections of the Education Law at this moment would be premature. Dates set forth in Chapter 56 for relevant administrative actions have not yet passed. See, e.g., Banks Aff., Ex. C, pp. 126 (Commissioner of Education to adopt regulations governing a statewide annual teacher and principal evaluation system by June 30, 2015); 131 (school districts to submit documentation demonstrating compliance with Education Law § 3012-d by November 15, 2015). More significantly, the effect that the amendments to the Education Law, and in particular the new provisions concerning teacher evaluations and the removal procedure for teachers rated as Ineffective, will have on the quality of education in New York’s public schools will not be known for many years, and certainly cannot be known now. No teacher or principal has yet been evaluated under § 3012-d; no school district has yet made a decision on teacher tenure under the current versions of §§ 2509, 2573, 3012, or 3014; no hearing has yet been held to remove a teacher under § 3020-b; and no school has yet had to eliminate teaching positions in accordance with § 211-f. Chapter 56 has radically transformed

the system under which public school teachers are employed in New York State, and only after this new system is given time to function will its effect on teacher effectiveness and the other areas of concerns raised by Plaintiffs be able to be assessed. See Bd. of Educ. v. State, 111 A.D.2d 505, 508 (3d Dep’t 1985) (dismissing challenge to statute as premature and nonjusticiable because the plaintiffs would not be affected by the challenged statute unless a tax assessment was ultimately reduced); Park Ave. Clinical Hosp., 26 A.D.2d at 613 (dismissing constitutional challenge to recently enacted Labor Law provision as premature).

Even for the challenged sections concerning seniority-based layoff system (§§ 2510, 2585, 2588, 3013) which were not directly modified by the enactment of Chapter 56, the legislative history of § 211-f shows that the Legislature actively considered the application of these sections at schools designated as “failing.” Specifically, the Governor’s bill to the Legislature proposed to add a § 211-g to the Education Law which would have addressed the designation of whole school districts as “failing” and provided that at those districts a layoff system based on teacher evaluation ratings would have been used. See Banks Aff., Ex. D, p. 22. The conscious decision of the Legislature not to approve this section, but instead to enact § 211-f, was in itself a legislative activity that should be entitled to deference by the judicial branch.

In any event, as was previously explained in State Defendants’ earlier moving brief, judicial review of the seniority-based layoff system is foreclosed by an earlier Court of Appeals decision finding seniority-based preferences to be rational, see Mtr. of Madison-Oneida Bd. of Cooperative Educ. Servs. v. Mills, 4 N.Y.3d 51, 60 n. 9 (2004), and the lack of any allegation that Plaintiffs’ school districts are facing potential layoffs. In fact, for the New York City school district where most of the Plaintiffs live, there have been no teacher layoffs, and thus no use of § 2588’s seniority-based preferences, for decades.



Accordingly, for the foregoing reasons, in light of the recently enacted amendments to the Education Law the present action is nonjusticiable and should be dismissed.

### **POINT III**

#### **IF THIS ACTION IS NOT DISMISSED, THE PROCEEDINGS SHOULD BE STAYED UNTIL A DECISION ON DEFENDANTS' PENDING APPEALS OF THE DECISION AND ORDER, ENTERED MARCH 20, 2015.**

CPLR § 2201 permits “the court in which an action is pending” to “grant a stay of proceedings in a proper case, upon such terms as may be just.” “[A] court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources.” Zonghetti v. Jeromack, 150 A.D.2d 561, 563 (2d Dep’t 1989). Given the unique nature of the present action, a stay of the proceedings pending a resolution of the pending appeals is warranted.

Significantly, this is a case of first impression in New York, and only one of a few cases in the United States where plaintiffs seek to strip statutory tenure protections from public school teachers. As such, there are threshold questions of law that should be resolved by the Appellate Division before this action proceeds into discovery, including Plaintiffs’ standing and the justiciability of claims asserted under the Education Article outside the context of educational funding, which has been the issue in other Education Article appellate decisions. A decision by the Appellate Division on the pending appeals could clarify the nature of the rights secured by the Education Article and the elements of Plaintiffs’ claims, and possibly dispose of this action in its entirety or limit its focus.

Further, given the nature of Plaintiffs’ allegations and the state-wide scope of their Education Article claims, discovery in this action will likely be both costly and time consuming. If the proceedings in Vergara v. State of California, No. BC484642 (Cal. Super. Ct. Aug. 27,

2014), are an indication of the evidence to be put forward in this case, the discovery process will involve multiple experts and examinations of school personnel from throughout the State.

Certainly, the taxpayers of this State should not be burdened with the cost of experts until and unless it becomes necessary after the Appellate Division decides the threshold legal questions raised in defendants' appeals. A stay of this proceeding would not prejudice Plaintiffs, none of whom allege assignment to an "ineffective teacher" or more than a speculative possibility of assignment to an ineffective teacher in the future. See Banks Aff., Exs. A, ¶¶ 8-18; B, passim.

Moreover, as noted above, Plaintiffs' stated concerns about the quality of public school teachers are already addressed by Chapter 56 which amended the Education Law in ways that they themselves propose in their amended complaints.

Accordingly, if this action is not dismissed for the reasons set forth in this motion, supra, Pts. I, II, the proceedings should nonetheless be stayed until a decision is issued on the pending appeals.

## CONCLUSION

For the foregoing reasons, the State Defendants respectfully request that the Court grant their motion and dismiss Plaintiffs' claims, with prejudice, in their entirety, or alternatively stay all proceedings pending a resolution of the pending appeals from the Decision and Order, entered March 20, 2015, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York  
May 27, 2015

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