SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMEONA 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

SETH COHEN, et al,

Intervenor-Defendants

PHILIP A. CAMMARATA, et al,

Intervenor- Defendants

ORDER
Index No. 101105/2014
Motion Nos. 018, 019

JOHN KEONI WRIGHT, et al,

Plaintiffs,

-against-

THE STATE OF NEW YORK, et al,

Defendants,

SETH COHEN, et al,

Intervenor-Defendants,

Index No. 101105/2014, Motion Nos. 018, 019

PHILIP A. CAMMARATA, et al,

Intervenor-Defendants,

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.

The Court reviewed the following e-filed documents:

- Notice of Motion (# 019) and Memorandum of Law in Support [e-filed documents 4 & 5];
- Notice of Motion (# 018) and Affirmation in Support [e-filed documents 7 & 8];
- Memorandum of Law in Opposition (# 018, # 019) [e-filed documents 14 & 15]; and
- Affirmation in Reply (# 019) [e-filed document 18].

* * *

Plaintiffs have challenged as unconstitutional provisions of the Education Law covering teacher evaluation, tenure, discipline and seniority. On March 28 earlier this year, the Second Department affirmed the trial court's denial of defendants' motions to dismiss (159 AD3d 987 *aff'g* 2015 WL 7008097).

The ruling meant that the lower court's stay was lifted; the last sentence of Justice Minardo's Order in 2015 read, "[G]iven the extensive nature of discovery likely to be required in this case, it is only proper that all further proceedings in this matter should be stayed pending the determination of the Appellate Division."

The defendants' responsive pleadings were also stayed. Under the CPLR, the answers became due within ten days of entry of the Second Department's decision; the parties agreed to extend such time to April 23, when they were to appear in Supreme Court, Richmond County. At the conference, this Court, over the objection of plaintiffs' counsel, stated that the answers would be due June 20, which would also serve as a control date.

Given the number of lawyers and their location around the State, on June 5, this Court emailed counsel that no appearance was necessary on June 20, the control date would be moved to September 26, and added a reminder that the answers would remain due on June 20.

The defendants immediately moved for a stay of all proceedings pending a determination by the Court of Appeals on whether to grant leave to appeal, and if so, continuing the stay until a decision is issued.

The Wright plaintiffs, on June 12, opposed a stay of all proceedings, arguing, among other things, that: 1) the trial court and the Second Department have both found that plaintiffs have sufficiently alleged the two elements of an Article XI claim, namely, the "deprivation of a sound basic education [and] causes attributable to the State" (*Davids*, 159 AD3d at 989, quoting *Aristy-Farer v State*, 29 NY3d 501, 517); 2) any delay - - the case is already four years old - - continues the deprivation of educational opportunity; 3) answering the complaints requires minimal resources; and 4) document discovery is significantly less costly than deposition or expert discovery.

The City of New York/NYC Department of Education defendant(s) filed a reply affirmation on June 13, noting that two complaints would have to be answered, one of which (Wright) with its 19 attachments is over 350 pages. In addition, these defendants argue that the complaints refer to statutory provisions that have since been amended in material ways. As for discovery, the City defendants contend that even limiting it to document discovery would be a voluminous undertaking.

* * *

In view of the above, the Court concludes that defendants should plead their answers expeditiously. But given that the motion practice ran up to one week before the current due date, the Court will extend the time for answers until Wednesday, July 18.

As for the desire to get discovery going, the Court is mindful that four years have passed. It is not only that the discovery here would be extensive, but were this case to be heard by the Court of Appeals,[1] we do not know how they will shape the issues to be decided at the trial level - - if we reach that stage. Discovery could then take a less customary form. For example, the presumption tends to be that experts are brought in at the later stages, but at the April 23

[1] The Court of Appeals has not been reluctant to consider challenges to the education article of the State Constitution (*Campaign for Fiscal Equity v State* [CFE I, II and III], 86 NY2d 307; 100 NY2d 893 & 8 NY3d 14; and *Aristy-Farer*, *supra*).

conference, one counsel spoke of the possibility of dealing with over 700 school districts; it might therefore be appropriate for experts to submit their opinions as to what districts or schools could function as representative for our purposes.

In view of the foregoing, IT IS ORDERED that motions 018 and 019 for a stay of all proceedings are granted, except that defendants' answers shall be due on July 18, 2018.

ENTER June 18, 2018

Alan C. Marin J.S.C.