

STATE OF NEW YORK
SUPREME COURT

COUNTY OF RICHMOND

MYMEONA DAVIDS, by her parent and natural guardian,
MIAMONA DAVIDS, ERIC DAVIDS, by his parent and
natural guardian MIAMONA DAVIDS, ALEXIS PERALTA,
by her parent and natural guardian, 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,
SAMANTHA PIROZZOLO, by her parent and natural
guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO
by her parent and natural guardian SAM PIROZZOLO,
IZAIYAH EWERS, by his parent and natural guardian
KENDRA OKE,

Plaintiffs,

-against-

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

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,

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

(Index No. 101105/14)

Consolidated under
Index No. 101105/14
(DCM Part 6)
(Minardo, J.S.C.)

**VERIFIED
ANSWER OF
DEFENDANTS
CAMMARATA AND
MAMBRETTI TO
DAVIDS AMENDED
COMPLAINT**

STATE OF NEW YORK
SUPREME COURT COUNTY OF RICHMOND

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

Plaintiffs,

-against-

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

Defendants,

-and-

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

Intervenors-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants,

-and-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenors-Defendants,

-and-

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

Intervenor-Defendant.

(Index No. 1500641/14; Upstate Index No. A641-14)

Intervenors-Defendants Philip A. Cammarata and Mark Mambretti, individually, by and through their attorneys, School Administrators Association of New York State, Arthur P. Scheuermann, General Counsel, Jennifer L. Carlson, Counsel, as and for an Answer to the Davids Amended Complaint submits as follows:

PRELIMINARY STATEMENT

1. The cited case law speaks for itself, Deny the remainder of the allegations within paragraph 1.
2. The cited case law speaks for itself, Deny the remainder of the allegations within paragraph 2.
3. The cited case law speaks for itself, Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 3.
4. Deny the allegations within paragraph 4. Admit the identities of the Challenged Statutes, as set forth in Footnote No. 1.
5. Deny the allegations within paragraph 5.
6. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 6.
7. Deny the allegations within paragraph 7.

PARTIES

8. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 8.
9. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 9.
10. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 10.

11. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

11.

12. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

12.

13. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

13.

14. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

14.

15. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

15.

16. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

16.

17. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

17.

18. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

18.

19. Admits the allegations within paragraph 19.

20. Admits the allegations within paragraph 20.

21. Admits the allegations within paragraph 21.

22. Admits the allegations within paragraph 22.

23. Admits the allegations within paragraph 23.

24. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph

24.

JURISDICTION AND VENUE

- 25. Admits the allegations within paragraph 25.
- 26. Admits the allegations within paragraph 26.
- 27. Admits the allegations within paragraph 27
- 28. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 28.

STATEMENT OF FACTS**A. Teacher Quality is the Key Determinant of Educational Effectiveness.**

- 29. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 29.
- 30. Deny knowledge or information sufficient to confirm or deny the allegations within paragraph 30.
- 31. Deny the allegations within paragraph 31.

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

- 32. Deny the allegations within paragraph 32.
- 33. Deny the allegations within paragraph 33.
- 34. Deny the allegations within paragraph 34.
- 35. Deny the allegations within paragraph 35.

New York's Dismissal Statutes

- 36. Admits the allegations within paragraph 36.

37. Admits that the due process protections and procedures for terminating tenured teachers are primarily codified within Education Law Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014, and 3020-a; Deny the remainder of the allegations within paragraph 37.

38. Deny the allegations within paragraph 38.

39. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 39.

40. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 40.

41. Deny the allegations within paragraph 41.

42. Deny the allegations within paragraph 42.

43. Deny the allegations within paragraph 43

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

44. Admits the allegations within paragraph 44.

45. The cited statute speaks for itself; Admits the allegations within paragraph 45.

46. The cited statute speaks for itself; Denies the remainder of the allegations contained within paragraph 46.

47. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 47.

48. Admit that teacher layoffs have occurred in the past and are likely to occur again, deny knowledge or information sufficient to confirm or deny the remainder of the allegations within Paragraph 48.

49. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 49.

50. Deny the allegations within paragraph 50.

51. Deny the allegations within paragraph 51.

E. The Challenged Statutes, Individually and Collectively, Violate New York Students' Right to a Sound Basic Education.

52. Deny the allegations within paragraph 52.

53. The cited case law speaks for itself; Deny that students are being denied a sound basic education in violation of the New York Constitution; and Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 53.

54. Deny the allegations within paragraph 54.

CLAIMS FOR RELIEF

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

55. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 55.

56. Deny the allegations within paragraph 56.

57. Admit the allegations contained within paragraph 57.

58. Deny the allegations within paragraph 58.

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

59. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 59.

60. Admit the allegations contained within paragraph 60.

61. Deny the allegations within paragraph 61.

62. Deny the allegations within paragraph 62.

CLAIM THREE: DECLARATORY RELIEF

63. Deny knowledge or information sufficient to confirm or deny the allegations within Paragraph 63.

64. Deny the allegations within paragraph 64.

65. Deny the allegations within paragraph 65.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

66. The Plaintiffs have failed to state a cause of action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

67. The Plaintiffs lack standing to bring about the instant action, as they are not within the zone of interest contemplated by the challenged statutes.

68. Plaintiffs have failed to allege any facts that would give rise to an inference that they have standing to sue.

69. Plaintiff are residents of statutorily designated “large city school districts” and, therefore, have no potential claim of standing to challenge statutes specifically designated to govern other statutorily recognized forms of school districts within New York State.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

70. The Plaintiffs failed to name necessary parties to the litigation.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

71. The Plaintiffs failed to obtain jurisdiction over the answering defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

72. The Plaintiffs only challenged the constitutionality of the Challenged Statutes as they pertain to the City of New York.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

73. The New York State Board of Regents exercise legislative functions over the state educational system, determine its educational policies, and, except as related to the judicial functions of the commissioner of education, establish rules for carrying out the state's laws and policies relating to education and the functions, powers, duties, and trusts granted to or authorized by the University of the State of New York and the NYS Education Department (§ 207).

74. The standards, rules and regulations promulgated by the Board of Regents and State Education Department are codified by the State Legislature.

75. Therefore, the Complaint raises political questions that are non-justiciable because they are governed by other branches of the State government.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

76. The Complaint was moot at its inception due to legislative amendments to the Challenged Statutes made subsequent to the data utilized in the Complaint.

77. The Complaint will be further rendered moot by legislative amendments to the Challenged Statutes as part of the 2015 budget process. The notable changes include, but are not limited to:

a. Effective July 1, 2015, new hires will serve and increased probationary term of at least four years. The ability to obtain tenure at the conclusion of the four year period is subject to the new limitations that the teacher or principal receive ratings of "Effective" or "Highly Effective" on their APPR evaluation in at least three of the four years preceding the tenure recommendation. Additionally,

such a teacher or principal may not receive a rating of “Ineffective” in the year immediately preceding the tenure recommendation.

b. The disciplinary statutes have been significantly revised. For example, in disciplinary charges involving the sexual or physical abuse of a student brought on or after July 1, 2015, school districts may issue unpaid suspensions pending the disciplinary hearing. If an unpaid suspension is issued, a probable cause hearing must be held within ten days and the charges will be subject to an expedited hearing. Expedited hearings must be completed within 60 days of a pre-hearing conference and teachers or administrators cannot be on unpaid suspension for more than 120 days and must receive all other benefits of employment (e.g. health insurance) while suspended.

c. Teachers and administrators charged with pedagogical incompetence will no longer have the option to have a panel hear the charges against them, but are instead limited to a single hearing officer.

d. Teachers and administrators subject to disciplinary charges must now disclose their witnesses and evidence prior to the hearing, where they did not have to before.

e. A new statute, Education Law § 3020-b, has created streamlined removal procedures for teachers who have been rated Ineffective for two or more consecutive years. Specifically, § 3020-b permits school districts to file disciplinary charges based upon incompetence for classroom teachers who have been rated Ineffective for two consecutive years and requires the filing of charges for classroom teachers who have been rated Ineffective for three consecutive years. It further provides that either two consecutive Ineffective ratings or three consecutive Ineffective ratings constitute prima facie proof of incompetence that can only be overcome by clear and convincing evidence.

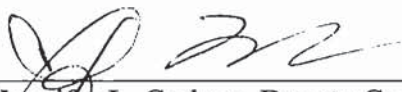
f. The evaluation statute, Education Law §3012-c, has been radically revised and is subject to regulations that must be issued by June 30, 2015. Some of the changes under the revisions

include, but are not limited to, providing for two, rather than three, components and gives Districts less discretion in the formulation of plans. The Commissioner of Education must develop regulations that set the weights and scoring ranges of each APPR component and subcomponent; establish goal setting procedures; set parameters for appropriate SLO targets; and establish the parameters for teacher and principal observations. Under the revisions, at least one observation is to be performed by an outside evaluator. Further, if the teacher/principal receives a rating of "Ineffective" on either the student performance (testing) or the observation component, he/she will be ineligible to receive an overall rating of "Effective" or "Highly Effective." These changes, and others, currently must be implemented by November 15, 2015 or else the district will be ineligible to receive State funding.

g. "Persistently failing" schools will be placed in the control of an outside receiver if improvement is not demonstrated. Under certain circumstances, the receiver may fire teachers without regard to pre-existing tenure and seniority rights.

Dated: Latham, New York
July 16, 2018

SCHOOL ADMINISTRATORS ASSOCIATION
OF NEW YORK STATE,
OFFICE OF GENERAL COUNSEL
ARTHUR P. SCHEUERMANN

By: 
Jennifer L. Carlson, Deputy General Counsel
8 Airport Park Boulevard
Latham, New York 12110
(518) 782-0600
(518) 785-0973 (FAX)

cc: Jonathan W. Tribiano, PLLC
404 Manor Road
Staten Island, New York 10314
Counsel for Davids Plaintiffs

Kirkland & Ellis, LLP
Jay Lefkowitz, Esq., of Counsel
601 Lexington Avenue
New York, New York 10022
Counsel for Wright Plaintiffs

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

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

Stoock, Stroock & Lavan, LLP
Charles G. Moerdler, Esq.
180 Maiden Lane
New York, New York 10038
*Counsel for Intervenor-Defendant Michael Mulgrew, as President
Of the United Federation of Teachers*

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

Robert Reilly, Esq.
General Counsel
New York State United Teachers
800 Troy Schenectady Road
Latham, New York 12110
Counsel for the NYSUT Intervenor-Defendants

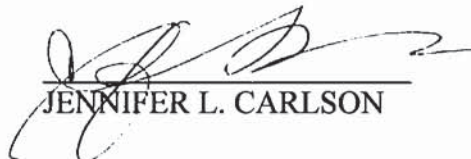
ATTORNEY VERIFICATION

JENNIFER L. CARLSON, an attorney duly admitted to practice law in the State of New York, under penalties of perjury, affirms the following:

That deponent is the attorney for Intervenor-Defendants Phillip A. Cammarata and Mark Mambretti in the action within; that deponent has read the foregoing Answer and knows the contents thereof; that the same is true to the deponent's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes it to be true and the reason this verification is not made by the Intervenor-Defendants and is made by deponent is that they are not presently located in the county where the deponent-attorney maintains her office.

July 16, 2018

Sworn to before me on this
16th Day of July 2018


JENNIFER L. CARLSON
Notary Public

J Kimberly Hoggan
Notary Public State of New York
NO. 01HO6265652
Qualified in Rensselaer County
Commission Expires 7/16/2020