

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

MYMEONA DAVIDS, by her parent and natural guardian
MIAMONA DAVIDS, ERIC DAVIDS, by his parent and
natural guardian MIAMONA DAVIDS, ALEXIS PERALTA,
by her parent and natural guardian 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
ENSON, 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, 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.

VERIFIED ANSWER
TO *DAVIDS* PLAINTIFFS'
AMENDED COMPLAINT

Consolidated Index No.:
101105/14

(Marin, J.S.C.)

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

Plaintiffs,

- against -

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

Defendants,

- and -

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

Intervenors-Defendants.

- and -

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenors-Defendants.

- and -

NEW YORK CITY DEPARTMENT OF EDUCATION,

Intervenor-Defendant,

- and -

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

Intervenor-Defendant,

Intervenor defendants Seth Cohen, Daniel Delehanty, Ashli Skura Dreher, Kathleen Ferguson, Israel Martinez, Richard Ognibene, Jr., Lonnette R. Tuck, and Karen E. Magee, individually and as President of the New York State United Teachers ("Defendants"), by their attorney Robert T. Reilly, Esq., for their answer to the *Davids* Plaintiffs amended complaint ("Complaint") dated July 24, 2014 state as follows:

PRELIMINARY STATEMENT

1. Admit that the New York Constitution guarantees all children in the State a sound basic education; allege that the remaining allegations in paragraph "1" of the Complaint call for a legal conclusion to which no response is required; to the extent the plaintiffs purport to characterize the content of a court opinion, deny the characterization and respectfully refer the court to the court opinion for its actual content.

2. Allege that the allegations in paragraph "2" of the Complaint call for a legal conclusion to which no response is required; to the extent the plaintiffs purport to characterize the content of a court opinion, deny the characterization and respectfully refer the court to the court opinion for its actual content.

3. Admit the allegation in paragraph "3" of the Complaint that teachers play a vital role in providing students with an education and that an important input in whether students receive a sound basic education is teaching; deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph "3"; affirmatively allege that other important factors in whether students receive a sound basic education are school facilities and

classrooms and instrumentalities of learning, and that such inputs – teaching, school facilities and classrooms, instrumentalities of learning – all work in connection with one another, such that improved school facilities and classrooms and improved instrumentalities of learning may lead to improved teaching; to the extent the plaintiffs purport to characterize the content of a court opinion and a publication, respectfully refer the court to that court opinion and publication for its actual content.

4. Deny the allegations in paragraph "4" of the Complaint; and, affirmatively allege that, pursuant to New York Education Law § 3012-d, certain teachers are given Annual Professional Performance Review ratings of Highly Effective, Effective, Developing and Ineffective ("HEDI"), but, while such rating may be used by school administrators for the purpose of evaluating that teacher's performance during the given time frame and determining whether an improvement plan or other corrective action should be implemented with respect to that teacher, any such rating of a particular teacher for a given period of time does not show a deprivation of any Constitutional rights held by that teacher's students, nor does a teacher given an "Ineffective" rating equate to an "ineffective teacher" used by the Plaintiffs themselves throughout their Complaint (Plaintiffs do not define that term or other like terms they use in their complaint); and, upon information and belief, the use of the HEDI ratings was a recognition by the Legislature that teachers may demonstrate a range of effectiveness throughout their teaching careers and that a teacher given an "Ineffective" rating for one rating period could certainly achieve a "Developing," "Effective" or even "Highly Effective" rating in subsequent periods, but if they did not improve and were given subsequent ratings of "ineffective," they would be subject to a streamlined process for removal under New York Education Law § 3030-b.

5. Allege that the allegations in paragraph "5" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "5"; to the extent the plaintiffs purport to characterize the content of statutes and a court opinion, deny the characterization and respectfully refer the court to the statutes and court opinion for their actual content.

6. Admit the allegation in paragraph "6" of the Complaint that New York City's school district is the largest school district in the State; deny knowledge or information sufficient to form a belief as to the remaining allegations in paragraph "6" of the Complaint; to the extent the plaintiffs purport to characterize the content of publication, deny the characterization and respectfully refer the court to the publication for its actual content.

7. Allege that the allegations in paragraph "7" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "7".

PARTIES

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "8" of the Complaint.

9 Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "9" of the Complaint.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "10" of the Complaint.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "11" of the Complaint.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "12" of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "13" of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "14" of the Complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "15" of the Complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "16" of the Complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "17" of the Complaint.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "18" of the Complaint.

19. Admit the allegations in paragraph "19" of the Complaint.

20. Admit the allegations in paragraph "20" of the Complaint.

21. Admit the allegations in paragraph "21" of the Complaint.

22. Deny the allegations in paragraph "22" of the Complaint.

23. Deny the allegations in paragraph "23" of the Complaint.

24. Allege that the allegations in paragraph "24" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "24" of the Complaint.

JURISDICTION AND VENUE

25. Allege that the allegations in paragraph "25" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "25" of the Complaint.

26. Allege that the allegations in paragraph "26" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "26" of the Complaint.

27. Allege that the allegations in paragraph "27" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "27" of the Complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "28" of the Complaint.

STATEMENT OF FACT

29. Admit the allegation in paragraph "29" of the Complaint that "teachers matter"; deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph "29" of the Complaint.

30 Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint.

31. Allege that the allegations in paragraph "31" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "31" of the Complaint; affirmatively allege that, pursuant to New York Education Law § 3012-d, certain teachers are given Annual Professional Performance Review ratings of Highly Effective, Effective, Developing and Ineffective ("HEDI"), but, while such rating may be used by school administrators for the purpose of evaluating that teacher's performance during the given time frame and determining whether an improvement plan or other corrective action should be implemented with respect to that teacher, any such rating of a particular teacher for a given period of time does not show a deprivation of any Constitutional rights held by that teacher's students, nor does a teacher given an "Ineffective" rating equate to an "ineffective teacher" as that term is used by the Plaintiffs themselves throughout their Complaint (Plaintiffs do not define that term or other like terms they use in their complaint); and, upon information and belief, the use of the HEDI ratings was a recognition by the Legislature that teachers may demonstrate a range of effectiveness throughout their teaching careers and that a teacher given an "Ineffective" rating for one rating period could certainly achieve a "Developing," "Effective" or even "Highly Effective" rating in subsequent periods, but if they

did not improve and were given subsequent ratings of "ineffective," they would be subject to a streamlined process for removal under New York Education Law § 3030-b.

32. Admit the allegation in paragraph "32" of the Complaint that teachers have a profound impact on student achievement; deny the remaining allegations in paragraph "32."

33. Deny knowledge or information sufficient to form a belief as to the allegations about what New York principals and school district administrators believe; deny the remaining allegations in paragraph "33."

34. Allege that the allegations in paragraph "34" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "34" of the Complaint.

35. Allege that the allegations in paragraph "35" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "35" of the Complaint.

36. Allege that the allegations in paragraph "36" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "36" of the Complaint; to the extent the plaintiffs purport to characterize the content of a court opinion, deny the characterization and respectfully refer the court to the court opinion for its actual content.

37. Allege that the allegations in paragraph "37" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "37" of the Complaint; to the extent the plaintiffs purport to characterize

the content of statutes, deny the characterization and respectfully refer the court to the statutes for their actual content.

38. Deny the allegations in paragraph "38" of the Complaint; to the extent the plaintiffs purport to characterize the content of statutes, deny the characterization and respectfully refer the court to the statutes for their actual content.

39. Deny that the statutes that are the subject of the Complaint prevent the dismissal of teachers for poor performance; deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph "39" of the Complaint to the extent the plaintiffs purport to characterize the content of statutes and publications, deny the characterization and respectfully refer the court to the statutes and publications for their actual content.

40. Deny the allegations in paragraph "40" of the Complaint.

41. Deny the allegations in paragraph "41" of the Complaint.

42. Allege that the allegations in paragraph "42" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "42" of the Complaint.

43. Allege that the allegations in paragraph "43" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "43" of the Complaint.

44. Allege that the allegations in paragraph "44" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "44" of the Complaint; to the extent the plaintiffs purport to characterize the content of statutes, deny the characterization and respectfully refer the court to the statutes for their actual content.

45. Allege that the allegations in paragraph "45" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "45" of the Complaint; to the extent the plaintiffs purport to characterize the content of statutes, deny the characterization and respectfully refer the court to the statutes for their actual content.

46. Deny, upon information and belief, the allegations in the first sentence of paragraph "46" of the Complaint; allege that the remaining allegations in paragraph "46" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "46" of the Complaint; to the extent the plaintiffs purport to characterize the content of statutes, deny the characterization and respectfully refer the court to the statutes for their actual content.

47. Allege that the allegations in the first sentence of paragraph "47" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required; deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph "47" of the Complaint; to the extent the plaintiffs purport to characterize the content of statutes, deny the characterization and respectfully refer the court to the statutes for their actual content.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "48" of the Complaint.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "49" of the Complaint.

50. Deny, upon information and belief, the allegations in paragraph "50" of the Complaint.

51. Allege that the allegations in paragraph "51" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "51" of the Complaint.

52. Allege that the allegations in paragraph "52" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "52" of the Complaint; to the extent the plaintiffs purport to characterize the content of statutes, deny the characterization and respectfully refer the court to the statutes for their actual content.

53. Allege that the allegations in paragraph "53" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "53" of the Complaint; to the extent the plaintiffs purport to characterize the content of a court opinion, deny the characterization and respectfully refer the court to the court opinion for its actual content.

54. Deny the allegations in paragraph "54" of the Complaint.

CLAIMS FOR RELIEFCLAIM ONE

55. The allegations set forth in paragraph "55" of the Complaint merely repeat and re-allege the preceding paragraphs, and the Court is respectfully referred to the corresponding responses in this answer for the responses to those paragraphs, and otherwise deny the allegations in paragraph "55."

56. Allege that the allegations in paragraph "56" of the Complaint call for a legal conclusion to which no response is required; to the extent the plaintiffs purport to characterize the content of a court opinion, respectfully refer the court to the court opinion for its actual content.

57. Allege that the allegations in paragraph "57" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "57" of the Complaint; to the extent the plaintiffs purport to characterize the content of statutes or constitutional provisions, deny the characterization and respectfully refer the court to the statutes and constitutional provisions for their actual content.

58. Allege that the allegations in paragraph "58" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "58" of the Complaint.

CLAIM TWO

59. The allegations set forth in paragraph "59" of the Complaint merely repeat and re-allege the preceding paragraphs, and the Court is respectfully referred to the corresponding

responses in this answer for the responses to those paragraphs, and otherwise deny the allegations in paragraph "59."

60. Allege that the allegations in paragraph "60" of the Complaint call for a legal conclusion to which no response is required; to the extent the plaintiffs purport to characterize the content of a court opinion, respectfully refer the court to the court opinion for its actual content.

61. Allege that the allegations in paragraph "61" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph 61 of the Complaint.

62. Allege that the allegations in paragraph "62" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "62" of the Complaint.

63. The allegations set forth in paragraph "63" of the Complaint merely repeat and re-allege the preceding paragraphs, and the Court is respectfully referred to the corresponding responses in this answer for the responses to those paragraphs, and otherwise deny the allegations in paragraph "63."

64. Allege that the allegations in paragraph "64" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "64" of the Complaint.

65. Allege that the allegations in paragraph "65" of the Complaint call for a legal conclusion to which no response is required; to the extent a response may be required, deny the allegations in paragraph "65" of the Complaint.

66. Deny that Plaintiffs are entitled to the relief they request in paragraphs (A), (B), and (C) of the "Wherefore" clause, and deny an allegations in the "Wherefore" clause.

FIRST AFFIRMATIVE DEFENSE

67. The Complaint fails to state a cause of action.

68. The type of claims brought here must be pleaded with district specificity to be viable.

69. A claim under the Education Article requires that a district-wide failure be pleaded.

70. Plaintiffs failed to plead specific "district-wide" failures caused by inadequate state funding.

SECOND AFFIRMATIVE DEFENSE

71. The court has no jurisdiction over the subject matter of the complaint.

THIRD AFFIRMATIVE DEFENSE

72. The Complaint fails to set forth a justiciable controversy.

73. The claims in the Complaint are barred by the political question doctrine.

FOURTH AFFIRMATIVE DEFENSE

74. Plaintiffs lack standing.

FIFTH AFFIRMATIVE DEFENSE

75. Plaintiffs' claims are not ripe.

SIXTH AFFIRMATIVE DEFENSE

76. Plaintiffs' claims are moot.

77. Significant changes to the laws occurred in 2015 rendering the allegations set forth in the complaint inaccurate and rendering the request for relief moot.

SEVENTH AFFIRMATIVE DEFENSE

78. The court should not proceed in the absence of persons who should be parties, given that Plaintiffs failed to join necessary parties.

WHEREFORE, Defendants respectfully request an order:

- (A) dismissing plaintiffs' Complaint with prejudice;
- (B) granting costs and disbursements; and
- (C) ordering such other, further and different relief as may be just and proper.

Respectfully submitted,

Dated: July 17, 2018
Latham, New York

ROBERT T. REILLY, ESQ.
Attorney for Intervenors-Defendants
SETH COHEN, et al.
800 Troy-Schenectady Road
Latham, NY 12110-2455
Tel. (518) 213-6000

By:


ROBERT T. REILLY
Of Counsel

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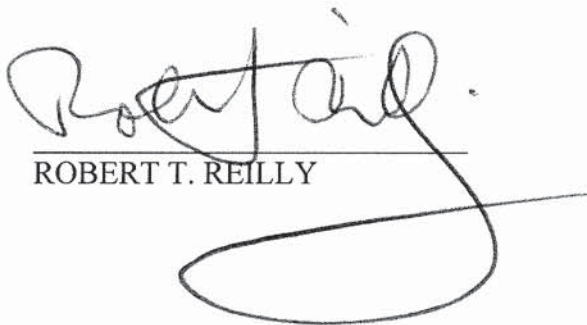
ATTORNEY'S VERIFICATION

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

ROBERT T. REILLY, being duly sworn, deposes and says:

I am the attorney of record for the intervenor-defendants Seth Cohen, Daniel Delehanty, Ashli Skura Dreher, Kathleen Ferguson, Israel Martinez, Richard Ognibene, Jr., Lonnelle R. Tuck and Karen E. Magee, individually and as President of the New York State United Teachers herein; I have read the contents of the foregoing Verified Answer to Davids Plaintiffs' Amended Complaint, and know the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters, deponent believes them to be true. The basis of deponent's knowledge as to matters alleged upon information and belief is conversations with intervenor-defendants and review of documents and correspondence supplied by the intervenor-defendants.

The reason this Verification is made by deponent and not by the intervenor-defendants is that the intervenor-defendants are not located within the County of Albany, the county in which deponent has his office.



ROBERT T. REILLY

Sworn to before me this
18 day of July, 2018



NOTARY PUBLIC

LEANNE GREERAN
 Notary Public, State of New York
 No. 01GR6057121
 Qualified in Saratoga County
 Commission Expires April 9, 2019