

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 *WRIGHT* 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 *Wright* Plaintiffs amended complaint (“Complaint”) dated November 13, 2014 state as follows:

PRELIMINARY STATEMENT

1. Admit the allegation in the first sentence of paragraph 1 of the Complaint stating that New York’s Constitution guarantees all children in the State a sound basic education; deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 1; 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, but, while such ratings 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, such as “teacher quality” and “education success”) given their own pleadings at paragraphs 40-48 and elsewhere in the Complaint that show that Plaintiffs have a different meaning in mind and, upon information and belief, the term was not meant by the Legislature to suggest that students of a teacher given an “Ineffective” rating were somehow being placed “at risk,” to use the inflammatory words alleged

by the plaintiffs, rather it 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.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "2"; affirmatively allege that an important factor in whether students receive a sound basis education is teaching; 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.

3. With respect to the allegations in paragraph "3" of the Complaint, allege that the allegations call for a legal conclusion for which no responsive pleading is required; to the extent a response may be required, deny the allegations in paragraph "3" of the Complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "4" of the Complaint.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the Complaint.

6. Admit the allegations set forth in paragraph "6" of the Complaint stating that plaintiffs' suit "challenges the constitutionality, in whole or in part, of Education Law sections 2509, 2510, 2573, 2585, 2590, 3012, 3012-c, 3020, and 3020(a) [sic]" but deny that plaintiffs

have a cause or action, deny there is any merit to plaintiffs' claims, and deny that plaintiffs are entitled to any relief on their claims; allege that the allegations set forth in paragraph 6 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 set forth in paragraph "6"; to the extent plaintiffs purport to characterize the content of statutory or constitutional provisions, deny that characterization and respectfully refer the court to those statutory and constitutional provisions for their actual content

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

JURISDICTION AND VENUE

8. Allege that the allegations set forth in Paragraph "8" of the complaint call for a legal conclusion to which no response is required.

9. Allege that the allegations set forth in Paragraph "9" of the complaint call for a legal conclusion to which no response is required.

PARTIES

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

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

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

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

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

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

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "16(a)" and "16(b)" of the Complaint.

17. Admit the allegations in paragraph "17" of the Complaint.

18. Admit the allegations in paragraph "18" of the Complaint.

19. Deny the allegations in paragraph "19" of the Complaint; affirmatively allege that the current Chancellor of the Board of Regents is Betty A. Rosa and she has the powers and duties of Chancellor.

20. Deny the allegations in paragraph "20" of the Complaint; affirmatively allege that Mary Ellen Elia is the current Commissioner of Education and President of the University of the State of New York and she has the powers and duties of Commissioner and President respectively.

21. Allege that the allegations in paragraph "21" of the Complaint call for a legal conclusion to which no response is required; and to the extent a response may be required, deny the allegations in paragraph "21."

BACKGROUND

22. Admit that the allegations in paragraph "22" of the Complaint alleging that a sound basic education is the key to preparing children to be productive citizens and contribute to society; allege that the allegations set forth in paragraph "22" of the Complaint call for legal conclusions to which no response is required; to the extent plaintiffs purport to characterize the

content of Article XI of the New York Constitution and respectfully refer the court to Article XI for its actual content.

23. Allege that the allegations set forth in paragraph "23" of the Complaint call for a legal conclusion to which no response is required; allege that teaching is an important "input", as that term is used by the Court of Appeals, of a sound basis education as are school facilities and classrooms and instrumentalities of learning, as well as similar inputs.

24. Deny the allegations in paragraph "24" of the Complaint alleging that teachers have "essentially permanent employment" and that it is "nearly impossible to remove ineffective teachers"; admit the allegation in paragraph "24" of the Complaint that the Legislature enacted the statutes that are the subject of the Complaint; deny Plaintiffs' characterizations of the content of those statutes; respectfully refer the court to those statutes for their actual content; allege that the remaining allegations in paragraph "24" of the Complaint call for a legal conclusion to which no response is required; to the extent a response is required, deny the allegations.

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 is required, deny the allegation; deny Plaintiffs' characterizations of the content of the statutes reference in the allegation. and respectfully refer the court to those statutes for their actual content.

26. Deny the allegations in paragraph "26" of the Complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "27" of the Complaint; to the extent plaintiffs purport to characterize the content of a court opinion and studies, deny that characterization and respectfully refer the court to the cited case and studies for their actual contents.

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

content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content; affirmatively allege that an important “input”, as the Court of Appeals uses that term, in students receiving a sound basic education is teaching, as are school facilities and classrooms and instrumentalities of learning, as well as similar inputs.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "29" of the Complaint; to the extent plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content; affirmatively allege that an important “input”, as the Court of Appeals uses that term, in students receiving a sound basic education is teaching, as are school facilities and classrooms and instrumentalities of learning, as well as similar inputs.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "30" of the Complaint; to the extent plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content; affirmatively allege that an important “input”, as the Court of Appeals uses that term, in students receiving a sound basic education is teaching, as are school facilities and classrooms and instrumentalities of learning, as well as similar inputs.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "31" of the Complaint; to the extent plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual contents; affirmatively allege that an important “input”, as the Court of Appeals uses that term, in students receiving a sound basic education is teaching, as are school facilities and classrooms and instrumentalities of learning, as well as similar inputs.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "32" of the Complaint; to the extent plaintiffs purport to characterize the

content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content; affirmatively allege that an important “input”, as the Court of Appeals uses that term, in students receiving a sound basic education is teaching, as are school facilities and classrooms and instrumentalities of learning, as well as similar inputs.

33. Allege that the allegations in paragraph "33" of the Complaint call for a legal conclusion to which no response is required; to the extent a response is required; deny the allegations in paragraph "33."

34. Deny the allegations in paragraph "34" of the Complaint alleging that teachers have “virtually permanent employment” and “near-total immunity from termination”; 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 is required; deny the allegations in paragraph 34; to the extent plaintiffs purport to characterize sections 2509, 2573, 3012 and 3012-c of the Education Law, deny that characterization and respectfully refer the court to those sections for their actual content.

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 is required; deny the allegations in paragraph 35; to the extent plaintiffs purport to characterize a statute; deny that characterization and respectfully refer the court to that statute for its actual content.

36. Deny the allegations in paragraph "36" of the Complaint; to the extent the plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to that publication for its actual content.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "37" of the Complaint; to the extent the plaintiffs purport to characterize

the content of a publication, deny that characterization and respectfully refer the court to that publication for its actual content.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "38" of the Complaint; allege that the allegations in paragraph "38" call for a legal conclusion to which no response is required; to the extent a response is required, deny the allegations; allege that the law in New York recently has been amended, changing the length of time for probation from three to four years and otherwise changing the requirements for tenure.

39. Deny the allegations in paragraph "39"; affirmatively allege that section 3012-d is now the applicable section of law.

40. Admit the allegation in paragraph "40" that the APPR ratings are Highly Effective, Effective, Developing, and Ineffective; deny the remaining allegations in paragraph 40; affirmatively allege that due to recent amendments to New York law, APPR is now governed by New York Education Law § 3012-d.

41. Deny the allegations in the first sentence of paragraph "41"; deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph "41"; to the extent plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to that publication for its actual content.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph "42"; to the extent plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to that publication for its actual contents; deny the remaining allegations in paragraph "42."

43. Deny the allegations in paragraph "43" of the Complaint alleging that APPR is "deficient and superficial"; deny knowledge or information sufficient to form a belief as to the

truth of the allegations in paragraph "43"; to the extent plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to that publication for its actual contents;

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences in paragraph "44"; deny the remaining allegations in paragraph "44."

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "45," except admit that a teacher may have a right to appeal an APPR rating; to the extent plaintiffs purport to characterize the content of a publication or court opinion, deny that characterization and respectfully refer the court to the publication or court opinion for its actual content.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "46"; to the extent plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content; deny that tenure "confers permanent employment."

47. Deny the allegations in paragraph "47" of the Complaint; to the extent plaintiffs purport to characterize the content of a publication and a statute, deny that characterization and respectfully refer the court to the publication and the statute for their actual content

48. Deny the allegations in paragraph "48" of the Complaint, except admit that tenured teachers may have their employment terminated only after a disciplinary hearing.

49. Allege that the allegations in paragraph "49" of the Complaint call for a legal conclusion to which no response is required; to the extent a response is required, deny the allegations in paragraph "49"; to the extent Plaintiffs purport to characterize the content of

statutes, deny that characterization and respectfully refer the court to those statutes for their actual contents.

50. Deny the allegations in paragraph "50" of the Complaint.

51. Deny the allegations in the first sentence of paragraph "51" of the Complaint; deny knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph "51" of the Complaint.

52. Deny the allegations in the first sentence of paragraph "52" of the Complaint; deny knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph "52" of the Complaint; to the extent plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph "53" of the Complaint; the remaining allegations of paragraph "53" call for a legal conclusion to which no response is required; to the extent a response is required, deny the allegations; to the extent plaintiffs purport to characterize the content of a statute, deny that characterization and respectfully refer the court to the statute for its actual content.

54. Admit the allegation in paragraph "54" of the Complaint that there is a three year limitations period in New York Education Law § 3020-a; deny the remaining allegations in paragraph "54" of the Complaint; to the extent the plaintiffs purport to characterize the content of a statute and a publication, deny that characterization and respectfully refer the court to the statute and the publication for their actual content.

55. Lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "55" of the Complaint; to the extent the plaintiffs purport to characterize

the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content.

56. Deny the allegations in the first sentence of paragraph "56" of the Complaint, except admit that tenured teachers may not be dismissed from service without being afforded the protections set forth in the New York Education Law §§ 3020-a, 3020-b; deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph "56" of the Complaint; to the extent the plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "57" of the Complaint; to the extent the plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content.

58. Deny the allegations in paragraph "58" of the Complaint; to the extent the plaintiffs purport to characterize the content of a statute, deny that characterization and respectfully refer the court to the statute for its actual content.

59. Deny the allegations in paragraph "59" of the Complaint; to the extent the plaintiffs purport to characterize the content of a statute, deny that characterization and respectfully refer the court to the statute for its actual content.

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

61. Allege that the first and second sentences of paragraph "61" of the Complaint call for a legal conclusion to which no responsive pleading is required; to the extent a responsive pleading may be required, deny the allegations; deny the remaining allegations in paragraph "61"; to the extent the plaintiffs purport to characterize the content of a statute, deny that characterization and respectfully refer the court to the statute for its actual content.

62. Deny the allegations in the first sentence of paragraph "62" of the Complaint; deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph "62"; to the extent the plaintiffs purport to characterize the content of a publication, respectfully refer the court to the publication for its actual content.

63. Deny the allegations in paragraph "63" of the Complaint.

64. Deny the allegations in the first sentence of paragraph "64" of the Complaint; allege that the remaining allegations of paragraph "64" of the Complaint call for a legal conclusion to which no responsive pleading is required; to the extent a responsive pleading may be required, deny the allegations; to the extent the plaintiffs purport to characterize the content of a court opinion, deny that characterization and respectfully refer the court to the court opinion for its actual content.

65. Deny the allegations in paragraph "65" of the Complaint.

66. The allegations set forth in paragraph "66" of the Complaint call for a legal conclusion to which no response is required, to any extent that a response may be required, deny the allegations in paragraph "66"; to the extent that plaintiffs purport to characterize a statute, deny that characterization and respectfully refer the court to that statute for its actual content.

67. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "67" of the Complaint; to the extent the plaintiffs purport to characterize

the content of a court opinion, deny that characterization and respectfully refer the court to the court opinion for its actual content.

68. Deny the allegations in paragraph "68" of the Complaint.

69. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "69" of the Complaint; to the extent the plaintiffs purport to characterize the content of a publication, deny that characterization and respectfully refer the court to the publication for its actual content.

70. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "70" of the Complaint.

71. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "71" of the Complaint.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "72" of the Complaint.

73. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "73" of the Complaint.

74. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "74" of the Complaint; to the extent the plaintiffs purport to characterize the content of a publication deny that characterization and, respectfully refer the court to the publication for its actual content.

75. Allege that the allegations in paragraph "75" 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 "75."

76. Allege that the allegations in paragraph "76" of the Complaint call for a legal conclusion to which not response is required; to the extent a response may be required, deny the allegations in paragraph "76."

FIRST CAUSE OF ACTION

77. The allegations set forth in paragraph "77" 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 "77."

78. Allege that the allegations in paragraph "78" 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 "78."

79. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "79" of the Complaint, except deny the allegations that tenure "guarantee[s] lifetime employment and compensation."

SECOND CAUSE OF ACTION

80. The allegations set forth in paragraph "80" 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 "80."

81. Allege that the allegations in paragraph "81" of the Complaint call for a legal conclusion to which not response is required; to the extent a response may be required, deny the allegations in paragraph "81."

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "82" of the Complaint, except deny that disciplinary proceedings are "unlikely to result in the removal of teachers."

THIRD CAUSE OF ACTION

83. The allegations set forth in paragraph "83" 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 "83."

84. Allege that the allegations in paragraph "84" 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 "84."

85. Allege that the allegations in paragraph "85" 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 "85."

PRAYER FOR RELIEF

86. Deny that the plaintiffs are entitled to any of the relief they seek in their prayer for relief, and deny any allegations in that prayer for relief.

FIRST AFFIRMATIVE DEFENSE

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

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

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

90. Plaintiffs failed to plead specific “district-wide” failures caused by inadequate state funding.

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

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

FOURTH AFFIRMATIVE DEFENSE

94. Plaintiffs lack standing.

FIFTH AFFIRMATIVE DEFENSE

95. Plaintiffs’ claims are not ripe.

SIXTH AFFIRMATIVE DEFENSE

96. Plaintiffs’ claims are moot.

97. 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

98. 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’ amended 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

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By:


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