

SUPREME COURT OF THE STATE OF NEW YORK
RICHMOND COUNTY

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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, STACY PERALTA, by her parent and natural guardian, ANGELA PERALTA, LENORA PERALTA, by per 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 nature guardian KENDRA OKE,

VERIFIED ANSWER

Index No: 101105/14

Marin, J.S.C.
DCM Part 6

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.

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The defendants, CITY OF NEW YORK ("City") and NEW YORK CITY DEPARTMENT OF EDUCATION ("DOE"; collectively "Municipal Defendants"), by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York (Janice Birnbaum and Maxwell Leighton, appearing) for their Verified Answer to the Verified Amended Complaint ("complaint") respectfully allege as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint and refer the Court to the cited decisions for full and accurate statements of their content and holdings.

2. Deny the allegations set forth in paragraph "2" of the complaint and refer the Court to the cited decision for a full and accurate statement of its content and holdings.

3. Deny the allegations set forth in sentence 2 of paragraph "3" of the complaint and refer the Court to the cited decision for a full and accurate statement of its content and deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the balance of paragraph "3" of the complaint, except admit that in New York City, public school teachers in the city school district of the City of New York ("City District") play a vital role in providing education to the City's public school students.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "4" of the complaint and refer the Court to the cited decision for a full and accurate statement of its content and holdings.

5. Deny the allegations set forth in paragraph "5" of the complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the complaint, except admit that the City District is the largest school district in New York State.

7. Deny the allegations set forth in the first two sentences of paragraph "7" of the complaint and deny knowledge or information sufficient to form a belief as to plaintiffs' reasons for bringing this lawsuit.

8. Deny the allegations set forth in paragraph "8" of the complaint, except deny knowledge or information sufficient to form a belief as to the race of Mymoena Davids, the employment status and the marital status of Miamona Davids, but admit upon

information and belief that Miamona Davids is the mother of Mymoena Davids, and affirmatively state that Mymoena Davids graduated from a DOE high school with an Advanced Regents diploma.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the complaint, except admit that Eric Davids is currently enrolled in a DOE public school and is entitled to receive a sound basic education, and upon information and belief, admit that he resides in New York state and his mother is Miamona Davids.

10. Deny the allegations set forth in paragraph "10" of the complaint, except deny knowledge or information sufficient to form a belief as to the current residence of Alexis Peralta, and the ethnicity or marital status of Angela Peralta, and affirmatively state that Alexis Peralta graduated from a DOE high school in 2016 with a Regents high school diploma.

11. Deny the allegations set forth in paragraph "11" of the complaint, except deny knowledge or information sufficient to form a belief as to the ethnicity or marital status of Angela Peralta, mother to Stacy Peralta, and upon information and belief admit that Stacy Peralta resides in Richmond County, where she attends a DOE public school and is entitled to receive a sound basic education, and that she has special needs.

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, except admit that Lenora Peralta is currently enrolled in a DOE public school and is entitled to receive a sound basic education, and upon information and belief admit that she resides in Richmond County and her mother is Angela Peralta.

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, except admit upon information and belief that Andrew Henson resides in New York State and one of his parents is Christine Henson.

14. Deny the allegations set forth in paragraph "14" of the complaint, except admit that upon information and belief, Adrian Colson resides in New York State and that one of his parents is Jacqueline Colson, and affirmatively state that Adrian Colson graduated in 2016 from a DOE high school with a local high school diploma.

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, except admit that Darius Colson is enrolled in a DOE public school and is entitled to receive a sound basic education, and upon information and belief admit that he resides in New York state and that one of his parents is Jacqueline Colson.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the complaint, except admit that Samantha Pirozzolo is enrolled in a DOE public school program and is entitled to receive a sound basic education, and upon information and belief admit that she resides in Richmond County, New York, and that one of her parents is Sam Pirozzolo.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the complaint, except admit that Franklin Pirozzolo is a child enrolled in a DOE public school and is entitled to receive a sound basic education, and upon information and belief admit that he resides in Richmond County, New York, and that one of his parents is Sam Pirozzolo.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "18" of the complaint, except admit that Izaiyah Ewers is a child enrolled in a DOE public school and is entitled to receive a sound basic education, and upon information and belief admit that he resides in New York state and that Kendra Oke is one of his parents.

19. Deny the allegations set forth in paragraph "19" of the complaint and refer the Court to the N.Y. Constitution and N.Y. Education Law for a complete and accurate statement concerning the responsibility of the State of New York in regard to the State's educational system

20. Deny the allegations set forth in paragraph "20" of the complaint and refer the Court to the cited legal authorities for complete and accurate statements of their contents, and admit that the Board of Regents of the University of the State of New York has offices located at State Education Building, 89 Washington Avenue, Room 110, Albany, NY 12234.

21. Deny the allegations set forth in paragraph "21" of the complaint, except admit upon information and belief that the New York State Education Department ("NYSED") has offices located at State Education Building, 89 Washington Avenue, Albany, NY 12234.

22. Deny the allegations set forth in paragraph "22" of the complaint.

23. Deny the allegations set forth in the first sentence of paragraph "23" of the complaint, and admit the allegations set forth in the second sentence.

24. Deny the allegations set forth in the first sentence of paragraph "24" of the complaint and deny knowledge and information sufficient to form a belief as to the second sentence.

25. Admit the allegations set forth in paragraph "25" of the complaint.

26. Admit the allegations set forth in paragraph "26" of the complaint.

27. Deny the allegations set forth in paragraph "27" of the complaint and refer the Court to the cited statute for a complete and accurate statement of its content.

28. Upon information and belief, admit that at least one of the plaintiffs resides within Richmond County, but otherwise deny knowledge or information sufficient to form a belief concerning the truth of the remaining allegations set forth in paragraph "28" of the complaint and refer the Court to the cited statute for a complete and accurate statement of its content.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "29" of the complaint, except admit that effective teaching is an important input to a public school student's education.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "30" of the complaint, except admit that effective teaching is an important input to a public school student's education.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "31" of the complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "32" of the complaint.

33. Deny the allegations set forth in the first sentence of paragraph "33" of the complaint, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

34. Deny the allegations set forth in paragraph "34" of the complaint.

35. Deny the allegations set forth in the first three sentences of paragraph "35" of the complaint and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

36. Deny the allegations set forth in the first sentence of paragraph "36" of the complaint and admit the allegations set forth in the second sentence.

37. Deny the allegations set forth in paragraph "37" of the complaint and refer the Court to the cited statutes for complete and accurate statements of their content.

38. Deny the allegations set forth in paragraph "38" of the complaint.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "39" of the complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "40" of the complaint.

41. Deny the allegations set forth in paragraph "41" of the complaint.

42. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "42" of the complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence of paragraph "43" of the complaint and deny the allegations set forth in the second sentence.

44. Deny the allegations set forth in paragraph "44" of the complaint and refer the Court to the cited statute for a complete and accurate statement of its content.

45. Deny the allegations set forth in paragraph "45" of the complaint and refer the Court to the cited statute for a complete and accurate statement of its content.

46. Deny the allegations set forth in paragraph "46" of the complaint and refer the Court to the cited statute for a complete and accurate statement of its content.

47. Deny the allegations set forth in the first sentence of paragraph "47" of the complaint and deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence.

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

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

50. Deny the allegations set forth in paragraph "50" of the complaint.

51. Deny the allegations set forth in paragraph "51" of the complaint.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "52" of the complaint.

53. Deny the allegations set forth in the last sentence of paragraph "53" of the petition and deny knowledge or information sufficient to form a belief as to the remaining allegations.

54. Deny the allegations set forth in paragraph "54" of the complaint.

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

55. In response to the allegations set forth in paragraph "55" of the complaint, the Municipal Defendants repeat and reallege their responses set forth in paragraphs "1" to "54" inclusive of their verified answer, as if fully set forth herein.

56. Deny the allegations set forth in paragraph "56" of the complaint and refer the Court to the cited jurisprudence for a complete and accurate statement of its content.

57. Deny the allegations set forth in paragraph “57” of the complaint.

58. Deny the allegations set forth in paragraph “58” of the complaint.

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

59. In response to the allegations set forth in paragraph “59” of the complaint, the Municipal Defendants repeat and reallege their responses set forth in paragraphs “1” to “58” inclusive of their verified answer, as if fully set forth herein.

60. Deny the allegations set forth in paragraph “60” of the complaint.

61. Deny the allegations set forth in paragraph “61” of the complaint.

62. Deny the allegations set forth in paragraph “62” of the complaint.

RESPONSE TO CLAIM THREE: DECLARATORY RELIEF

63. In response to the allegations set forth in paragraph “63” of the complaint, the Municipal Defendants repeat and reallege their responses set forth in paragraphs “1” to “62” inclusive of their verified answer, as if fully set forth herein.

64. Deny the allegations set forth in paragraph “64” of the complaint.

65. Deny that Plaintiffs assert a viable declaratory judgment cause of action, but acknowledge that Plaintiffs purport to seek such a remedy.

FOR A FIRST DEFENSE:

The complaint fails to state a cause of action upon which relief can be granted.

FOR A SECOND DEFENSE:

The Court lacks subject matter jurisdiction, because plaintiffs’ causes of action are nonjusticiable.

FOR A THIRD DEFENSE:

Plaintiffs’ complaint should be dismissed for mootness and/or lack of ripeness.

FOR A FOURTH DEFENSE:

Plaintiffs' complaint should be dismissed because the challenged statutes are constitutional.

FOR A FIFTH DEFENSE:

Plaintiffs' complaint should be dismissed because Plaintiffs have failed to join all necessary parties.

FOR A SIXTH DEFENSE:

Plaintiffs lack standing since none has alleged an injury arising from the facts underpinning an alleged cause of action. Moreover, some of the plaintiff students no longer attend public school in New York State.

WHEREFORE, the Municipal Defendants request judgment dismissing the Amended Verified Complaint and denying all relief requested therein, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 18, 2018

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for the Municipal Defendants
100 Church Street, Room 2-195
New York, New York 10007
(212) 356-2085

By:


Janice L. Birnbaum
Senior Counsel
jbirnbau@law.nyc.gov

VERIFICATION

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

ELLEN KANNER, being duly sworn, deposes and states that she is employed by the New York City Department of Education as an attorney in the Office of Legal Services, and as such that she is an employee of the New York City Department of Education of Education ("DOE"), a defendant in this proceeding. Deponent says that she has read the foregoing Verified Answer and knows the contents thereof to be true except as to matters alleged herein upon information and belief, and as to those matters she believes them to be true based upon her review of information obtained from DOE's books and records and from statements made to her by certain officers or agents of DOE.

Dated: New York, New York
July 18, 2018

Ellen Kanner

Sworn before me this
18th day of July 2018

Kimberly A. Hill
(jurat)

KIMBERLY A HILL
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01HI6374986
Qualified in Nassau County
Commission Expires May 7, 2022

VERIFICATION

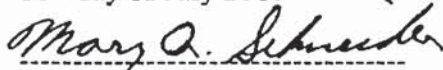
STATE OF NEW YORK)
) S.S.
 COUNTY OF NEW YORK)

JANICE BIRNBAUM, being duly sworn, deposes and states that she is employed by the City of New York ("City") and is appointed to the New York City Law Department as an Assistant Corporation Counsel, and as such that she is an employee of the City of New York, a defendant in this proceeding. Deponent says that she has read the foregoing Verified Answer and knows the contents thereof to be true, except as to matters alleged herein upon information and belief, and as to those matters, she believes them to be true based on her review of information obtained from the books and records of the City and the New York City Department of Education ("DOE"), and from statements made to her by certain officers and/or agents of the City and the DOE.

Dated: New York, NY
 July 18, 2018


 Janice Birnbaum

Sworn to before me this
 18th day of July 2018



 (Jurat)

MARY A. SCHNEIDER
 Notary Public, State of New York
 Registration No. 01SC6280761
 County of Queens
 My Commission Expires May 13, 2021