

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND: DCM PART 6

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MYMOENA 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, 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, :

**STATE DEFENDANTS'
VERIFIED ANSWER
TO THE VERIFIED
AMENDED COMPLAINT
OF THE DAVIDS
PLAINTIFFS**

Index No. 101105/14

(Alan C. Marin, J.S.C.)

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. :

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 JOHN KEONI WRIGHT; GINET BORRERO; TAUANA :
 GOINS; NINA DOSTER; CARLA WILLIAMS; MONA :
 PRADIA; ANGELES BARRAGAN; LAURIE :
 TOWNSEND; DELAINE WILSON; :

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. :

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Defendants STATE OF NEW YORK (“State”), BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (“Board of Regents”) (s/h/a/ “The New York State Board of Regents”), and NEW YORK STATE EDUCATION DEPARTMENT (“SED”) (hereinafter referred to collectively as the “State Defendants”), by their attorney, BARBARA D. UNDERWOOD, Attorney General of the State of New York, allege for their answer to the Verified Amended Complaint of the Davids Plaintiffs (hereinafter referred to as the “Complaint”) as follows:

State Defendants deny the allegations contained in each unnumbered paragraph and heading in the Complaint, except admit that the Complaint purports to set forth claims against the State Defendants.

State Defendants deny any allegations in the Complaint that are not specifically addressed herein. This answer is based upon information currently available to State Defendants and they reserve the right to supplement the answer as more information becomes available.

Preliminary Statement

1. Paragraph “1” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “1” of the Complaint and refer to the cases cited therein for a more complete and accurate statement of their content.

2. Paragraph “2” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “2” of the Complaint and refer to the case cited therein for a more complete and accurate statement of its contents.

3. Paragraph “3” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “3” of the Complaint, except deny knowledge or information sufficient to identify the names, methodology, or findings of the “[r]ecent studies” cited therein, admit that teacher quality is one of several inputs that may affect a student’s educational performance, and refer to the case cited therein for a more complete and accurate statement of its contents.

4. Paragraph “4” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “4” of the Complaint, refer to the case cited therein for a more complete and accurate statement of its content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

5. Deny the allegations contained in paragraph “5” of the Complaint, refer to the statutes and case cited therein for a more complete and accurate statement of their content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective

teachers” to which it refers.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Complaint, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

7. Deny the allegations contained in paragraph “7” of the Complaint, except admit that the Davids Plaintiffs purport to proceed as set forth therein, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

Parties

8. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “8” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

9. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “9” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

10. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “10” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

11. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “11” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no

response is required.

12. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “12” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

13. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “13” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

14. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “14” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

15. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “15” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

16. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “16” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

17. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “17” of the Complaint, and affirmatively state that the

reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

18. Deny knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in paragraph “18” of the Complaint, and affirmatively state that the reference therein to a “guaranteed . . . sound basic education” is a legal contention to which no response is required.

19. Deny the allegations contained in paragraph “19” of the Complaint, and affirmatively state that the State’s funding and oversight of public school districts and other aspects of education in New York State are defined by the New York Constitution, statutory law and regulation, including, but not limited to, the Education Law.

20. Deny the allegations contained in paragraph “20” of the Complaint, except admit that SED’s executive offices are located at 89 Washington Avenue, Albany, New York, 12234, and refer to the Education Law and the New York Constitution for a more complete and accurate description of the organization of SED and the duties and responsibilities of SED, the Board of Regents, and the Commissioner of Education.

21. Deny the allegations contained in paragraph “21” of the Complaint, except admit that SED’s executive offices are located at 89 Washington Avenue, Albany, New York, 12234, and refer to the Education Law and the New York Constitution for a more complete and accurate description of the organization of SED and the duties and responsibilities of SED, the Board of Regents, and the Commissioner of Education.

22. Deny the allegations contained in paragraph “22” of the Complaint, and affirmatively state that the City of New York’s funding and oversight of public schools in New York City are defined by statutory law and regulation, including, but not limited to, the

Education Law.

23. Admit the allegations contained in paragraph “23” of the Complaint.

24. Deny the allegations contained in paragraph “24” of the Complaint, except admit that the second sentence of paragraph “24” purports to set forth relief the Davids Plaintiffs seek but deny that Davids Plaintiffs are entitled to such relief and affirmatively state that the State Defendants’ oversight of public school districts and other aspects of education in New York State are defined by statutory law and regulation, including, but not limited to, the Education Law.

Jurisdiction and Venue

25. Paragraph “25” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “25” of the Complaint.

26. Paragraph “26” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “26” of the Complaint and refer to the statute cited therein for a more complete and accurate statement of its content.

27. Paragraph “27” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “27” of the Complaint and refer to the statute cited therein for a more complete and accurate statement of its content.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “28” of the Complaint, except admit that this Court is situated in Richmond County, and refer to the statute cited therein for a more complete and accurate

statement of its content.

Alleged Statement of Facts

29. Deny the allegations contained in paragraph “29” of the Complaint, except deny knowledge or information sufficient to identify the nature, methodology, or findings of the “extensive research” alleged therein, and admit that teacher quality is an important factor in ensuring the quality of education students receive and has an impact on students’ educational performance.

30. Deny the allegations contained in paragraph “30” of the Complaint, except deny knowledge or information sufficient to identify the names, methodology, or findings of the studies cited therein, and admit that teacher quality is one of several inputs that may affect a student’s educational performance.

31. Deny the allegations contained in paragraph “31” of the Complaint, except admit that teacher quality is one of several inputs that may affect a student’s educational performance, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “32” of the Complaint, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

33. Deny the allegations contained in paragraph “33” of the Complaint, except deny knowledge or information sufficient to identify the alleged beliefs of “New York principals and school district administrators,” refer to the statutory provisions referred to therein for a more complete and accurate description of their content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

34. Deny the allegations contained in paragraph “34” of the Complaint, refer to the statutory provisions referred to therein for a more complete and accurate description of their content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

35. Deny the allegations contained in paragraph “35” of the Complaint, refer to the statutory provisions referred to therein for a more complete and accurate description of their content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

36. Paragraph “36” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “36” of the Complaint, and refer to the case cited therein for a more complete and accurate statement of its content.

37. Paragraph “37” of the Complaint contains legal contentions and characterizations to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “37” of the Complaint, and refer to the statutes cited therein for a more complete and accurate statement of their content.

38. Paragraph “38” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “38” of the Complaint, and refer to the statutes cited therein for a more complete and accurate statement of their content.

39. Deny the allegations contained in paragraph “39” of the Complaint, except deny knowledge or information sufficient to identify the methodologies or findings of the studies cited therein.

40. Deny the allegations contained in paragraph “40” of the Complaint, and refer to the statutes referred to therein for a more complete and accurate statement of their content.

41. Deny the allegations contained in paragraph “41” of the Complaint, and refer to the statutes cited therein for a more complete and accurate statement of their content.

42. Paragraph “42” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “42” of the Complaint, and refer to the statutes cited therein for a more complete and accurate statement of their content.

43. Deny the allegations contained in paragraph “43” of the Complaint, and refer to the statutes cited therein for a more complete and accurate statement of their content.

44. Paragraph “44” of the Complaint contains legal contentions and characterizations to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “44” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

45. Paragraph “45” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “45” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

46. Paragraph “46” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “46” of the Complaint, except deny knowledge or information sufficient to identify the names, methodology, or findings of the “recent studies” cited therein, and refer to the statute cited therein for a more complete and accurate statement of its content.

47. Paragraph “47” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “47” of the Complaint, except deny knowledge or information sufficient to identify the name, methodology, or findings of the “recent study” cited therein, and refer to the statute cited therein for a more complete and accurate statement of its content.

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

49. Deny knowledge or information sufficient to form as to the truth of the allegations contained in paragraph “49” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

50. Deny the allegations contained in paragraph “50” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

51. Deny the allegations contained in paragraph “51” of the Complaint, refer to the statute cited therein for a more complete and accurate statement of its content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

52. Deny the allegations contained in paragraph “52” of the Complaint, refer to the statutes cited therein for a more complete and accurate statement of their content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

53. Deny the allegations contained in paragraph “53” of the Complaint, refer to the case cited therein for a more complete and accurate statement of its content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to

which it refers.

54. Deny the allegations contained in paragraph “54” of the Complaint, except deny knowledge or information sufficient to form a belief as to whether “each and every one” of the Davids Plaintiffs is a public school student in New York State, and refer to the statutes cited therein for a more complete and accurate statement of their content.

Claims for Relief - Claim One

55. In response to the allegations contained in paragraph “55” of the Complaint, refer to the responses contained in paragraphs “1” through “54” of this Verified Answer.

56. Paragraph “56” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “56” of the Complaint, and refer to the case cited therein for a more complete and accurate statement of its content.

57. Deny the allegations contained in paragraph “57” of the Complaint, and refer to the statutes and constitutional provision cited therein for a more complete and accurate statement of their content.

58. Deny the allegations contained in paragraph “58” of the Complaint, refer to the statutes cited therein for a more complete and accurate statement of its content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

Claims for Relief - Claim Two

59. In response to the allegations contained in paragraph “59” of the Complaint, refer to the responses contained in paragraphs “1” through “58” of this Verified Answer.

60. Paragraph “60” of the Complaint contains legal contentions to which no response

is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “60” of the Complaint, and refer to the case cited therein for a more complete and accurate statement of its content.

61. Deny the allegations contained in paragraph “61” of the Complaint, and refer to the statute and constitutional provision cited therein for a more complete and accurate statement of their content.

62. Deny the allegations contained in paragraph “62” of the Complaint, refer to the statute cited and constitutional provision therein for a more complete and accurate statement of their content, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

Claims for Relief - Claim Three

63. In response to the allegations contained in paragraph “63” of the Complaint, refer to the responses contained in paragraphs “1” through “62” of this Verified Answer.

64. Paragraph “64” of the Complaint contains legal contentions to which no response is required. To the extent that a response is required, State Defendants deny the allegations contained in paragraph “64” of the Complaint.

65. Admit that the Davids Plaintiffs seek the relief described in paragraph “65” of the Complaint, but deny that the Davids Plaintiffs are entitled to any relief.

AS AND FOR A FIRST DEFENSE

66. The Complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND DEFENSE

67. This Court lacks subject matter jurisdiction over some or all of the Davids Plaintiffs’ claims.

AS AND FOR A THIRD DEFENSE

68. The Davids Plaintiffs lack standing to assert some or all of their claims.

AS AND FOR A FOURTH DEFENSE

69. Some or all of the relief requested by the Davids Plaintiffs is not available under applicable law and/or the United States Constitution.

AS AND FOR A FIFTH DEFENSE

70. The Board of Regents is not a necessary or proper party to this action.

AS AND FOR AN SIXTH DEFENSE

71. SED is not a necessary or proper party to this action.

AS AND FOR AN SEVENTH DEFENSE

72. Some or all of the Davids Plaintiffs' claims are non-justiciable.

AS AND FOR AN EIGHTH DEFENSE

73. Some or all of the Davids Plaintiffs' claims are moot.

AS AND FOR NINTH DEFENSE

74. The Davids Plaintiffs have failed to name and/or join all necessary parties.

WHEREFORE, the State Defendants request that the Court enter judgment in favor of the State Defendants dismissing the Complaint with prejudice, together with costs and disbursements and reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 18, 2018

BARBARA D. UNDERWOOD
Attorney General of the
State of New York
Attorney for State Defendants
By:



STEVEN L. BANKS
MONICA CONNELL
D. STAN O'LOUGHLIN
Assistant Attorneys General
28 Liberty Street, 17th Floor
New York, New York 10005
(212) 416-8621

VERIFICATION

STEVEN L. BANKS, an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms under penalty of perjury:

That he is employed as an Assistant Attorney General in the New York State Office of the Attorney General, and that he is duly authorized to make this verification on behalf of the defendants State of New York, New York State Education Department, and Board of Regents of the University of the State of New York (the "State Defendants").

That he has read the foregoing State Defendants' Verified Answer to the Verified Amended Complaint of the Davids Plaintiffs, and that, he knows the contents thereof, and that the same are true to the best of his information, knowledge and belief.

That this verification is made pursuant to CPLR § 3020(d)(2), and deponent is acquainted with the facts herein.

Dated: New York, New York
July 18, 2018



STEVEN L. BANKS
Assistant Attorney General