

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, : **STATE DEFENDANTS'**  
 ADRIAN COLSON, by his parent and natural guardian : **ANSWER TO THE**  
 JACQUELINE COLSON, DARIUS COLSON, by his : **WRIGHT PLAINTIFFS'**  
 parent and natural guardian JACQUELINE COLSON, : **AMENDED COMPLAINT**  
 SAMANTHA PIROZZOLO, by her parent and natural :  
 guardian SAM PIROZZOLO, FRANKLIN PIROZZOLO, :  
 by her parent and natural guardian SAM PIROZZOLO, : Index No. 101105/14  
 IZAIYAH EWERS, by his parent and natural guardian :  
 KENDRA OKE, : (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”) and the BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK (“Board of Regents”) (hereinafter referred to collectively as “State Defendants”), by their attorney, BARBARA D. UNDERWOOD, Attorney General of the State of New York, allege for their answer to the Wright Plaintiffs’ Amended Complaint for Declaratory and Injunctive Relief (hereinafter referred to as the “Complaint”) as follows:<sup>1</sup>

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. The responses set forth herein are based upon information currently available to the State Defendants. State Defendants continue their investigation into the allegations and reserve their right to amend or supplement these answers.

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<sup>1</sup> Claims asserted by the Wright Plaintiffs against the Commissioner of Education and the Chancellor of the Board of Regents were dismissed by Decision and Order, entered March 20, 2015.

### 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, refer to the New York Constitution 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.

2. Deny the allegations contained in paragraph “2” of the Complaint, except admit that teacher quality is an important factor in determining the quality of education students receive, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

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, 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.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “4” of the Complaint, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “5” of the Complaint, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

6. Paragraph “6” 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 “6” of the Complaint, except admit that the Wright Plaintiffs purport to proceed as set forth therein, 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.

7. Deny the allegations contained in paragraph “7” of the Complaint, except admit that the Wright Plaintiffs purport to proceed as set forth therein, but deny that they are entitled to any relief.

### **Jurisdiction and Venue**

8. Paragraph “8” 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 “8” of the Complaint, except admit that the State’s capital is Albany, New York, where the executive offices of the New York State Education Department are located.

9. Paragraph “9” 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 “9” of the Complaint.

### **Parties - Plaintiffs**

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the Complaint, except admit that plaintiff John Keoni Wright purports to proceed as set forth therein.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “11” of the Complaint, except admit that plaintiff Ginet Borrero purports to proceed as set forth therein.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “12” of the Complaint, except admits that plaintiff Tauana Goins purports to proceed as set forth therein.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the Complaint, except admit that plaintiff Nina Doster purports to proceed as set forth therein.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the Complaint, except admit that plaintiff Carla Williams purports to proceed as set forth therein.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the Complaint, except admit that plaintiff Mona Pradia purports to proceed as set forth therein.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “16” of the Complaint, except admit that plaintiffs Angeles Barragan, Laurie Townsend, and DeLaine Wilson purport to proceed as set forth therein.

#### **Parties - Defendants**

17. Deny the allegations contained in paragraph “17” 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 statutory law and regulation, including, but not limited to, the Education Law.

18. Deny the allegations contained in paragraph “18” of the Complaint, and refer to the Education Law and the New York Constitution for a more complete and accurate description of the organization, authority, duties and responsibilities of the Board of Regents.

19. Deny the allegations contained in paragraph “19” of the Complaint, except admit that Merryl H. Tisch formerly served as the Chancellor of the Board of Regents, refer to the statute and regulation cited therein for a more complete and accurate statement of their content, and affirmatively state that claims asserted against the Chancellor of the Board of Regents were dismissed by Decision and Order, entered March 20, 2015.

20. Deny the allegations contained in paragraph “20” of the Complaint, except admit that John B. King, Jr., formerly served as the Commissioner of Education, refer to the statutes and regulations referred therein for a more complete and accurate statement of their content, and affirmatively state that claims asserted against the Commissioner of Education were dismissed by Decision and Order, entered March 20, 2015.

21. Paragraph “21” 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 “21” of the Complaint, and refer to relevant statutory law and regulation, including, but not limited to, the New York Constitution and the Education Law, for a more complete and accurate description of the State Defendants’ oversight of public school districts and other aspects of education in New York State.

#### **Alleged Background**

22. Paragraph “22” 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 “22” of the Complaint, and refer to the article of the New York Constitution cited therein for a more complete and accurate statement of its content.

23. Paragraph “23” 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 “23” of the Complaint, except admit that teacher quality is an important factor in determining the quality of education students receive.

24. Paragraph “24” 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 “24” 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.

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, 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.

26. Deny the allegations contained in paragraph “26” of the Complaint, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

27. Deny the allegations contained in paragraph “27” of the Complaint, deny knowledge or information sufficient to identify the name, methodology, or findings of the “recent studies” cited therein, admit that teacher quality is a an important factor in determining the quality of education students receive and has an impact on students’ educational performance, and refer to the case cited therein for a more complete and accurate statement of its content.

28. Deny the allegations contained in paragraph “28” of the Complaint, except admit that teacher quality is an important factor in determining the quality of education students receive

and has an impact on students' educational performance, and refer to the document cited therein for a more complete and accurate statement of its content.

29. Deny the allegations contained in paragraph "29" of the Complaint, and refer to the documents cited therein for a more complete and accurate statement of their content.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "30" of the Complaint, and refer to the document cited therein for a more complete and accurate statement of its content.

31. Deny the allegations contained in paragraph "31" of the Complaint, except admit that teacher quality is a factor in determining the quality of education students receive, and refer to the documents cited therein for a more complete and accurate statement of their content.

32. Deny the allegations contained in paragraph "32" of the Complaint, and refer to the document cited therein for a more complete and accurate statement of its content.

33. Deny the allegations contained in paragraph "33" of the Complaint, except admit that teacher quality is a factor in determining the quality of education students receive, 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.

34. Deny the allegations contained in paragraph "34" of the Complaint, refer to the statutes cited 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. Paragraph "35" 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 “35” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

36. Deny the allegations contained in paragraph “36” of the Complaint, and refer to the document cited therein for a more complete and accurate statement of its content.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “37” of the Complaint, refer to the document 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.

38. Deny the allegations contained in paragraph “38” of the Complaint.

39. Paragraph “39” 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 “39” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

40. Paragraph “40” 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 “40” of the Complaint, refer to the statute cited therein for a more complete and accurate statement of its content, and affirmatively state that Education Law § 3012-c has been abrogated by Education Law § 3012-d.

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

42. Deny the characterization of the APPR rating and otherwise deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph

“42”, and refer to the document cited therein for a more complete and accurate statement of its content.

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

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “44” of the Complaint, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

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 and other documents cited therein for a more complete and accurate statement of their content.

46. Deny the allegations contained in paragraph “46” of the Complaint, and refer to the document 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.

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, and refer to the statute and other documents cited therein for a more complete and accurate statement of their content.

48. Paragraph “48” 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 “48” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

49. Paragraph “49” 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 “49” of the Complaint, and refer to the statutes cited therein for a more complete and accurate statement of their content.

50. Paragraph “50” 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 “50” of the Complaint, and refer to the statutes and other documents cited therein for a more complete and accurate statement of their content.

51. Deny the allegations contained in paragraph “51” 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.

52. Deny the allegations contained in paragraph “52” of the Complaint, and refer to the document cited therein for a more complete and accurate statement of its content.

53. Paragraph “53” 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 “53” of the Complaint, refer to the statute and other documents cited therein for a more complete and accurate statement of their content, and affirmatively state that Education Law § 3012-c has been abrogated by Education Law § 3012-d.

54. Paragraph “54” 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 “54” of the Complaint, and refer to the statute and other documents cited therein for a more complete and accurate statement of their content.

55. Deny the allegations contained in paragraph “55” of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning hypothetical actions of principals and administrators, and refer to the documents cited therein for a more complete and accurate statement of their content.

56. Deny the allegations contained in paragraph “56” of the Complaint, and refer to the statute and other documents cited therein for a more complete and accurate statement of their content.

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

58. Paragraph “58” 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 “58” of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegation that “few teachers receive two consecutive Ineffective ratings,” and refer to the statute cited therein for a more complete and accurate statement of its content.

59. Paragraph “59” 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 “59” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

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 statutes cited therein for a more complete and accurate statement of their content.

61. Paragraph “61” 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 “61” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

62. Deny the allegations contained in paragraph “62” of the Complaint, and refer to the documents cited therein for a more complete and accurate statement of their content.

63. Deny the allegations contained in paragraph “63” of the Complaint, and refer to the statutes cited therein for a more complete and accurate statement of their content.

64. Deny the allegations contained in paragraph “64” of the Complaint, and refer to the case cited therein for a more complete and accurate statement of its content.

65. Paragraph “65” of the Complaint contains a legal contention to which no response is required. To the extent that a response is required, State Defendants deny the allegation contained in paragraph “65” of the Complaint, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

66. Paragraph “66” 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 “66” of the Complaint, and refer to the statute cited therein for a more complete and accurate statement of its content.

67. Deny the allegations contained in paragraph “67” of the Complaint, and refer to the case cited therein for a more complete and accurate statement of its content.

68. Paragraph “68” 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 “68” of the Complaint, except deny knowledge or information sufficient

to a belief as to the veracity of the hypothetical situations contained therein, and refer to the statute cited therein for a more complete and accurate statement of its content.

69. Paragraph “69” 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 “69” of the Complaint, and refer to the statute and other documents cited therein for a more complete and accurate statement of their content.

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

71. Deny the allegations contained in paragraph “71” of the Complaint.

72. Deny the allegations contained in paragraph “72” of the Complaint.

73. Deny the allegations contained in paragraph “73” of the Complaint.

74. Deny the allegations contained in paragraph “74” of the Complaint, except deny knowledge or information sufficient to a belief as to the veracity of the hypotheticals contained therein, and refer to the document cited therein for a more complete and accurate statement of its content.

75. Deny the allegations contained in paragraph “75” of the Complaint, and 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.

76. Deny the allegations contained in paragraph “76” of the Complaint, and affirmatively state that the allegations in the Complaint fail to identify the allegedly “ineffective teachers” to which it refers.

**First Cause of Action**

77. In response to the allegations contained in paragraph “77” of the Complaint, refer to the responses contained in paragraphs “1” through “76” of this Answer.

78. Deny the allegations contained in paragraph “78” of the Complaint.

79. Deny the allegations contained in paragraph “79” of the Complaint.

**Second Cause of Action**

80. In response to the allegations contained in paragraph “80” of the Complaint, refer to the responses contained in paragraphs “1” through “76” of this Answer.

81. Deny the allegations contained in paragraph “81” of the Complaint.

82. Deny the allegations contained in paragraph “82” of the Complaint, except deny knowledge or information sufficient to form a belief as to the intentions of the unidentified principals referenced therein.

**Third Cause of Action**

83. In response to the allegations contained in paragraph “83” of the Complaint, refer to the responses contained in paragraphs “1” through “76” of this Answer.

84. Deny the allegations contained in paragraph “84” of the Complaint.

85. Deny the allegations contained in paragraph “85” of the Complaint.

**AS AND FOR A FIRST DEFENSE**

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

**AS AND FOR A SECOND DEFENSE**

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

**AS AND FOR A THIRD DEFENSE**

88. The Wright Plaintiffs lack standing to assert some or all of their claims.

**AS AND FOR A FOURTH DEFENSE**

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

**AS AND FOR A FIFTH DEFENSE**

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

**AS AND FOR AN SIXTH DEFENSE**

91. Some or all of the Wright Plaintiffs' claims are non-justiciable.

**AS AND FOR AN SEVENTH DEFENSE**

92. Some or all of the Wright Plaintiffs' claims are moot.

**AS AND FOR EIGHTH DEFENSE**

93. The Wright 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:



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