

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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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, :
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, on behalf of themselves and others :
similarly situated, :

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, :

Proposed Intervenor-Defendant :

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----- X
JOHN KEONI WRIGHT; GINET BORRERO; TAUANA:
GOINS; NINA DOSTER; CARLA WILLIAMS; MONA:

Index No. 101105/14

VERIFIED ANSWER

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.:

----- X

Intervenor-Defendant United Federation of Teachers ("UFT"), Local 2, American

Federation of Teachers, AFL-CIO, by its President Michael Mulgrew, through its attorneys

Stroock & Stroock & Lavan LLP and Adam S. Ross, Esq., answer the Verified Amended Complaint (the “Complaint”), dated July 24, 2014 of the Plaintiffs Mymoena Davids, *et al.* (the “Plaintiffs”) as follows:

PRELIMINARY STATEMENT

1. The UFT admits that New York’s Constitution guarantees all children in the State a sound basic education. The remainder of the allegations set forth in Paragraph 1 of the Complaint call for a legal conclusion to which no response is required. To the extent Plaintiffs purport to characterize the decision of the Court of Appeals in *Campaign for Fiscal Equity, Inc. v. State* (“*CFE I*”), 86 N.Y.2d 307 (1995) or *Campaign for Fiscal Equity, Inc. v. State* (“*CFE II*”), 100 N.Y.2d 893 (2003), this Court is respectfully referred to the decision itself as the best evidence of its contents.

2. The allegations set forth in Paragraph 2 of the Complaint call for a legal conclusion to which no response is required. To the extent Plaintiffs purport to characterize the decision of the Court of Appeals in *CFE II*, this Court is respectfully referred to the decision itself as the best evidence of its contents.

3. The UFT admits that teachers play a vital role in providing New York students with the education to which they are entitled. To the extent Plaintiffs purport to characterize the decision of the Court of Appeals in *CFE II* or the contents of the Raj Chetty study, this Court is respectfully referred to the decision and the study themselves as the best evidence of their contents.

4. The UFT denies the allegations set forth in Paragraph 4 of the Complaint but affirmatively states that, pursuant to N.Y. Education Law §§3012-c and 3012-d, there are

teachers in New York who receive a rating of “ineffective” on their Annual Professional Performance Review.

5. The allegations set forth in Paragraph 5 of the Complaint call for a legal conclusion to which no response is required, but, to the extent it makes an assertion of fact, the UFT denies them. To the extent Plaintiffs purport to characterize the contents of the Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014, 3020-a, and 3013(2) of the Education Law (the “Challenged Statutes”), this Court is respectfully referred to those provisions as the best evidence of their content.

6. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 6 of the Complaint. To the extent Plaintiffs purport to characterize the contents of referenced publication the Court is respectfully referred to the publication itself as the best evidence of its contents. The UFT admits that New York City is the largest school district in the State.

7. The allegations set forth in Paragraph 7 of the Complaint call for a legal conclusion to which no response is required.

PARTIES

8. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 8 of the Complaint.

9. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 9 of the Complaint.

10. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 10 of the Complaint.

11. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 11 of the Complaint.

12. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 12 of the Complaint.

13. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 13 of the Complaint.

14. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 14 of the Complaint.

15. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 15 of the Complaint.

16. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 16 of the Complaint.

17. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 17 of the Complaint.

18. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 18 of the Complaint.

19. The UFT admits the allegations set forth in Paragraph 19 of the Complaint.

20. The UFT admits the allegations contained in Paragraph 20 of the Complaint.

21. The UFT admits the allegations contained in Paragraph 21 of the Complaint.

22. The UFT denies the allegations set forth in Paragraph 22 of the Complaint and affirmatively states that in conjunction with the amendments to the State Education Law enacted in 2002, many of the powers previously held by the Board of Education of the City School District of the City of New York ("BOE") devolved to the Chancellor, with administrative

operations assigned to a body denominated by the Mayor as the New York City Department of Education. The Chancellor is appointed by the Mayor.

23. The UFT denies the allegations set forth in Paragraph 23 of the Complaint and affirmatively states that in conjunction with amendments to the State Education Law enacted in 2002, many of the powers previously held by the BOE devolved to the Chancellor, with the administrative operations assigned to a body denominated by the Mayor as the New York City Department of Education. Nonetheless, the BOE retained the power to ratify collective bargaining agreements and remains the statutory employer of personnel for the City School District.

24. The allegations set forth in Paragraph 24 of the Complaint call for a legal conclusion to which no response is required but, to the extent they makes an assertion of fact, the UFT denies them.

JURISDICTION AND VENUE

25. The allegations set forth in Paragraph 25 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT admits them.

26. The allegations set forth in Paragraph 26 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT admits them.

27. The allegations set forth in Paragraph 27 of the Complaint call for a legal conclusion to which no response is required.

28. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 28 of the Complaint.

STATEMENT OF FACTS**A. Teacher Quality Is The Key Determinant Of Educational Effectiveness**

29. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 29 of the Complaint as they pertain to unidentified research. The UFT admits that “teachers matter.”

30. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 30 of the Complaint as they pertain to unidentified research. To the extent the allegations set forth in Paragraph 30 of the Complaint make assertions of fact, the UFT denies them.

31. The allegations set forth in Paragraph 31 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them. The UFT affirmatively states that the process for evaluating teacher performance set forth in N.Y. Education Law §§ 3012-c and 3012-d provides a process for determining whether teachers are “ineffective” and the N.Y. Education Law, as modified by the collective bargaining agreement between the UFT and the New York City Board of Education, further provides for the removal of such teachers.

B. The Challenged Statutes Prevent New York School Administrators From Making Employment And Dismissal Decisions That Benefit Students

32. The UFT denies the allegations set forth in Paragraph 32 of the Complaint, except the UFT admits that teachers have a profound impact on student achievement.

33. The UFT denies knowledge or information sufficient to form belief as to the allegations set forth in Paragraph 33 of the Complaint that pertain to the beliefs of New York principals and school administrators. The UFT denies the remaining allegations set forth in the Paragraph 33 of the Complaint.

34. The allegations set forth in Paragraph 34 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them. To the extent Plaintiffs purport to characterize the contents of the Challenged Statutes, this Court is respectfully referred to those provisions as the best evidence of their content.

35. The allegations set forth in Paragraph 35 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them. To the extent Plaintiffs purport to characterize the contents of the Challenged Statutes, this Court is respectfully referred to those provisions as the best evidence of their content.

New York's Dismissal Statutes

36. The allegations set forth in Paragraph 36 of the Complaint call for a legal conclusion to which no responses is required but, to the extent they make an assertion of fact, the UFT admits them.

37. The allegations set forth in Paragraph 37 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them. To the extent Plaintiffs purport to characterize the contents of New York Education Law Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014 and 3020-a (the "Dismissal Statutes"), this Court is respectfully referred to those statutory provisions as the best evidence of their content.

38. The UFT denies the allegations set forth in Paragraph 38 of the Complaint. To the extent Plaintiffs purport to characterize the Dismissal Statutes, this Court is respectfully referred to those statutory provisions as the best evidence of their contents.

39. The UFT denies the allegations set forth in Paragraph 39 of the Complaint. To the extent Plaintiffs purport to characterize the publications referenced therein, the Court is respectfully referred to the publications themselves as the best evidence of their contents.

40. The UFT denies the allegations set forth in Paragraph 40 of the Complaint.

41. The UFT denies the allegations set forth in Paragraph 41 of the Complaint. To the extent Plaintiffs purport to characterize the Dismissal Statutes, this Court is respectfully referred to those statutory provisions as the best evidence of their contents.

42. The allegations set forth in Paragraph 42 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

43. The allegations set forth in Paragraph 43 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

New York's Last-In First-Out ("LIFO") Statute

44. The allegations set forth in Paragraph 44 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them. To the extent Plaintiffs purport to characterize N.Y. Education Law § 3013, subdivision 2, this Court is respectfully referred to that statutory provisions as the best evidence of its content.

45. The allegations set forth in Paragraph 45 of the Complaint call for a legal conclusion to which no response is required. To the extent Plaintiffs purport to characterize N.Y. Education Law § 3013, subdivision 2, this Court is respectfully referred to that statutory provisions as the best evidence of its content.

46. The UFT denies knowledge or information sufficient to form a belief as to the allegation set forth in the first sentence of Paragraph 46 of the Complaint as it pertains to unidentified studies. The allegations set forth in the remainder of Paragraph 46 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

47. The allegations set forth in the first sentence of Paragraph 47 of the Complaint call for a legal conclusion to which no response is required but, to the extent it makes an assertion of fact, the UFT denies it. To the extent Plaintiffs purport to characterize N.Y. Education Law § 3013, subdivision 2, this Court is respectfully referred to that statutory provisions as the best evidence of its content. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in the second sentence of Paragraph 47 of the Complaint as it pertains to unidentified studies.

48. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 48 of the Complaint.

49. The UFT denies knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 49 of the Complaint

50. The UFT denies the allegations set forth in Paragraph 50 of the Complaint.

51. The allegations set forth in Paragraph 51 of the Complaint set forth a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

E. The Challenged Statutes, Individually and Collectively, Violate New York Students' Right to A Sound Basic Education

52. The allegations set forth in Paragraph 52 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the

UFT denies them. To the extent Plaintiffs purport to characterize the Challenged Statutes, this Court is respectfully referred to the statutory provisions themselves as the best evidence of their contents.

53. The allegations set forth in Paragraph 53 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

54. The UFT denies the allegations set forth in Paragraph 54 of the Complaint.

CLAIMS FOR RELIEF

CLAIM ONE: VIOLATION OF EDUCATION ARTICLE (DISMISSAL STATUTES)

55. The UFT denies the allegations set forth in Paragraph 55 of the Complaint except as admitted in Paragraphs 1 through 54 above.

56. The allegations contained in Paragraph 56 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT admits them.

57. The allegations set forth in Paragraph 57 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

58. The allegations set forth in Paragraph 58 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact ,the UFT denies them.

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

59. The UFT denies the allegations set forth in Paragraph 59 of the Complaint except as admitted in Paragraphs 1 through 58 above.

60. The allegations set forth in Paragraph 60 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT admits them.

61. The allegations set forth in Paragraph 61 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

62. The allegations set forth in Paragraph 62 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

CLAIM THREE: DECLARATORY RELIEF

63. The UFT denies the allegations set forth in Paragraph 63 of the Complaint except as admitted in Paragraphs 1 through 62 above.

64. The allegations set forth in Paragraph 64 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

65. The allegations set forth in Paragraph 65 of the Complaint call for a legal conclusion to which no response is required but, to the extent they make an assertion of fact, the UFT denies them.

FIRST AFFIRMATIVE DEFENSE

66. Plaintiffs have failed to state a cognizable cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

67. The Complaint and the causes of action alleged therein are precluded by the political question doctrine.

THIRD AFFIRMATIVE DEFENSE

68. Plaintiffs' claims with regard to the provisions of the Education Law calling for seniority-based layoffs should be dismissed as they are not ripe for adjudication.

FOURTH AFFIRMATIVE DEFENSE

69. Plaintiffs' claims have been rendered moot by subsequent amendments to the Education Law.

FIFTH AFFIRMATIVE DEFENSE

70. Plaintiffs' claims are not yet ripe for adjudication due to subsequent amendments to the Education Law.

WHEREFORE, Intervenor-Defendant demands judgment (a) dismissing the Complaint and denying all relief requested therein; (b) costs and disbursements of this action; and (c) such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 18, 2018

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VERIFICATION

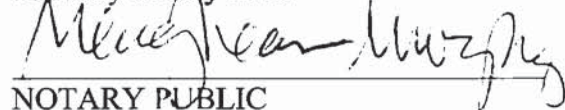
STATE OF NEW YORK)
 :SS.
COUNTY OF NEW YORK)

MICHAEL MULGREW, being duly sworn, deposes and says: that he is President of Intervenor-Defendant UNITED FEDERATION OF TEACHERS, LOCAL 2, AFT, AFL-CIO in the above captioned proceeding; he has read the foregoing Verified Answer, and knows the contents thereof; that the Verified Answer is true of his own knowledge, except as to matters herein stated to be alleged on information and belief, and that as to those matters he believes them to be true.


MICHAEL MULGREW

Dated: New York, New York
July 18, 2018

Sworn to before me on the
18th day of July 2018


NOTARY PUBLIC

MURPHY MEAGHEAN
Notary Public, State of New York
Registration No: 02MU6182961
Commission Expires March 10, 2012

