

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

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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, 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 his parent and  
natural guardian SAM PIROZZOLO, IZAIYAH EWERS, by his  
parent and natural guardian KENDRA OKE,

Plaintiffs,

- against -

THE STATE OF NEW YORK, THE NEW YORK STATE  
BOARD OF REGENTS, THE NEW YORK STATE  
EDUCATION DEPARTMENT, THE CITY OF NEW YORK,  
THE NEW YORK CITY DEPARTMENT OF EDUCATION,  
JOHN AND JANE DOES 1-100, XYZ ENTITIES 1-100,

Defendants,

-and-

MICHAEL MULGREW, as President of the UNITED  
FEDERATION OF TEACHERS, Local 2, American Federation  
of Teachers, AFL-CIO,

Intervenor-Defendant,

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA  
DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ,  
RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and  
KAREN E. MAGEE, Individually and as President of the New  
York State United Teachers,

Intervenor-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenor-Defendants.

**Index No. 101105-2014**

Phillip G. Minardo, J.S.C.

**REPLY AFFIRMATION**

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JOHN KEONI WRIGHT; GINET BORRERO; TAUANA GOINS; NINA DOSTER; CARLA WILLIAMS; MONA PRADIA; ANGELES BARRAGAN;

Plaintiffs,

- against -

THE STATE OF NEW YORK; THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK; MERRYL H. TISCH, in her official capacity as Chancellor of the Board of Regents of the University of the State of New York; JOHN B. KING, in his official capacity as the Commissioner of Education of the State of New York and President of the University of the State of New York;

Defendants

-and-

SETH COHEN, DANIEL DELEHANTY, ASHLI SKURA DREHER, KATHLEEN FERGUSON, ISRAEL MARTINEZ, RICHARD OGNIBENE, JR., LONNETTE R. TUCK, and KAREN E. MAGEE, Individually and as President of the New York State United Teachers,

Intervenor-Defendants,

-and-

PHILIP A. CAMMARATA and MARK MAMBRETTI,

Intervenor-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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RICHARD E. CASAGRANDE, an attorney duly admitted to practice law in the Courts of the State of New York affirms as follows under penalty of perjury pursuant to CPLR § 2106:

1. I am the attorney of record for Intervenor-Defendants Seth Cohen, Daniel Delehanty, Ashli Skura Dreher, Kathleen Ferguson, Israel Martinez, Richard Ognibene, Jr., Lonnette R. Tuck, and Karen E. Magee, Individually and as President of the New York State United Teachers (“Intervenor-Defendants”). I am fully familiar with the pleadings, facts and circumstances in this matter.

2. I submit this reply affirmation in further support of the motion for leave to renew Intervenor-Defendants’ motion to dismiss plaintiffs’ amended complaints pursuant to CPLR § 2221(e).

3. In plaintiffs’ memorandum of law in opposition to the motion to renew (“*Wright Mem.*”), plaintiffs mischaracterize the April 1, 2015 amendments to multiple sections of the Education Law they challenge as “modest,” and overlook the drastic changes to the tenure and evaluation system for teachers in New York. *Wright Mem.* at 6.

4. Contrary to plaintiffs’ assertions, the April 1, 2015 amendments drastically change teacher tenure and the teacher evaluation process. The amendments also make further changes to the discipline process for tenured teachers pursuant to Education Law § 3020-a, following the significant changes made to the law in 2012, and add Education Law § 3020-b to streamline the removal process for teachers rated ineffective.

5. Plaintiffs continue to argue that not enough teachers in New York are rated ineffective. *Wright* Mem. at 7-11. However, the teacher evaluation system under Education Law § 3012-c has been revamped, and essentially replaced, by new Education Law § 3012-d. Plaintiffs' arguments that teachers will not be rated ineffective under the new evaluation system have no basis in fact and are purely speculative.

6. With the April 1, 2015 amendments to the Education Law, the Legislature continued its nearly annual review of teacher tenure, evaluation and discipline. The recent changes are drastic, and show that plaintiffs' claims are clearly non-justiciable. Plaintiffs cannot express their dissatisfaction with the Legislature by continuing to ask the courts to re-write the laws in their favor.

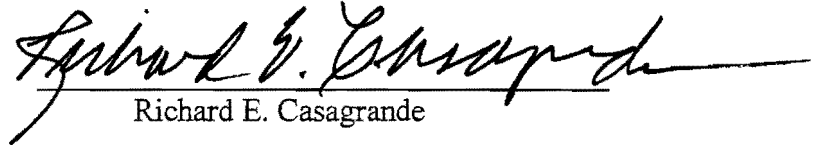
7. Further, plaintiffs argue that they are seeking a declaration of a "constitutional minimum" for the provision of education in New York. *Wright* Mem. at 21. However, the Court of Appeals has already interpreted the Education Article of the State Constitution to require the State to provide a "sound basic education." *CFE v. State*, 86 N.Y.2d 307, 315 (1995). The Court of Appeals then defined a sound basic education and elaborated on certain educational "inputs" that must be furnished. *Id.*; see also *CFE v. State*, 100 N.Y.2d 893, 914 (2003).

8. As can be seen, the legislative amendments have substantially altered the challenged statutes. Thus, Intervenor-Defendants' motion for leave to renew their motion to dismiss should be granted, and the amended complaints dismissed as moot and non-justiciable.

9. As noted previously, to the extent the State defendants, in conjunction with their motion for leave to renew, also move to dismiss pursuant to CPLR §

3211(a)(2) for lack of justiciability and mootness, Intervenor-Defendants join in that motion. Intervenor-Defendants also join in the State's motion for a stay pending the appeal.

Dated: July 7, 2015  
Latham, New York

  
Richard E. Casagrande

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