

To be Submitted by:  
WENDY LECKER

---

**New York Supreme Court**  
**Appellate Division – Second Department**

**Docket Nos.:**  
**2015-03922**  
**2015-12041**

—◆◆◆—  
MYMOENA DAVIDS, her parent and natural guardian  
MIAMONA DAVIDS,

*Plaintiffs-Respondents,*

– against –

THE STATE OF NEW YORK,

*Defendant-Appellant,*

MICHAEL MULGREW, as President of the United Federation of Teachers,  
Local 2, American Federation of Teachers, AFL-CIO,

*Intervenor-Defendant-Appellant.*

\_\_\_\_\_  
*(For Continuation of Caption See Reverse Side of Cover)*

---

**BRIEF FOR *AMICUS CURIAE* ALLIANCE FOR  
QUALITY EDUCATION IN SUPPORT OF  
DEFENDANTS-APPELLANTS AND INTERVENORS-  
DEFENDANTS-APPELLANTS**

---

WENDY LECKER, ESQ.  
CAMPAIGN FOR FISCAL EQUITY PROJECT  
EDUCATION LAW CENTER  
60 Park Place, Suite 300  
Newark, New Jersey 07102  
(203) 536-7567

*Attorneys for Amicus Curiae  
Alliance for Quality Education*

---

Richmond County Clerk's Index No. 101105/14

---

---

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-Respondents,*

– against –

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-Appellants,*

– and –

MICHAEL MULGREW, as President of the United Federation of Teachers,  
Local 2, American Federation of Teachers, 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, PHILIP A. CAMMARATA and MARK MAMBRETTI,

*Intervenors-Defendants-Appellants.*

---

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

*Plaintiffs-Respondents,*

– against –

THE BOARD OF REGENTS 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-Appellants,*

– 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, PHILIP A. CAMMARATA, MARK  
MAMBRETTI, NEW YORK CITY DEPARTMENT OF EDUCATION, and  
MICHAEL MULGREW, as President of the United Federation of Teachers,  
Local 2, American Federation of Teachers, AFL-CIO,

*Intervenors-Defendants-Appellants.*

---

# TABLE OF CONTENTS

	Page
<b>TABLE OF AUTHORITIES .....</b>	<b>ii</b>
<b>INTEREST OF AMICUS CURIAE.....</b>	<b>1</b>
<b>QUESTION PRESENTED .....</b>	<b>1</b>
<b>PRELIMINARY STATEMENT .....</b>	<b>2</b>
<b>STATEMENT OF FACTS.....</b>	<b>3</b>
<b>PROCEEDINGS BELOW .....</b>	<b>5</b>
<b>ARGUMENT</b>	
<b>I. THE TRIAL COURT ERRED IN HOLDING THE COMPLAINTS STATE A CAUSE OF ACTION UNDER THE EDUCATION ARTICLE .....</b>	<b>5</b>
<b>A. The Complaints Fail to Allege Deficiencies in Essential Resources .....</b>	<b>9</b>
<b>B. The Complaints Fail to Allege Low Outcomes .....</b>	<b>13</b>
<b>C. The Complaints Fail to Allege Causation .....</b>	<b>15</b>
<b>II. THE COURT BELOW IGNORES THE CFE-ESTABLISHED LINK BETWEEN SUFFICIENT QUALIFIED TEACHERS AND ADEQUATE FUNDING .....</b>	<b>17</b>
<b>A. The Supreme Court Mischaracterized the CFE Finding on Sufficient Qualified Teachers.....</b>	<b>18</b>
<b>B. The Supreme Court Ignores the Link Between Qualified Teachers and Inadequate Funding .....</b>	<b>19</b>
<b>C. Adequate School Funding is a Key Ingredient for Providing Sufficient, Qualified Teachers .....</b>	<b>23</b>
<b>CONCLUSION.....</b>	<b>26</b>

## Table of Authorities

<u>Cases</u>	Page
<u>Campaign for Fiscal Equity v. State</u> , 86 N.Y.2d 307 (1995).....	9
<u>Campaign for Fiscal Equity v. State</u> , 100 N.Y. 2d 893 (2003) .....	6,7,8,10,11,13,15,18,19
<u>Campaign for Fiscal Equity v. State</u> 187 Misc.2d 1 (Sup. Ct, New York County, 2001) .....	10,13,17,18
<u>Clarson v. City of Long Beach</u> , 132 A.D.3d 799 (2d Dep’t 2015).....	5,6
<u>Dauids, et al. v. State</u> . Index No.10115/14, Supreme Court, Richmond County, March 12, 2015, (Minardo, J).....	2,5,19
<u>Elsky v. KM Ins. Brokers</u> , 139 A.D.2d 691 (2d Dep’t. 1988).....	6
<u>New York Association of Small City School Districts v. State</u> , 4 A.D.3d 648 (3d Dep’t 2007) .....	8,13,14
<u>New York Civ. Liberties Union v. State</u> , 4 N.Y.3d 175(2005) .....	6,7,13,15
<u>Panish v. Steinberg</u> , 32 A.D.3d 383 (2d Dep’t 2006).....	5
<u>Paynter v. New York</u> , 100 N.Y.2d 434 (2003).....	6,11,15
<u>Ruffino v. New York City Transit Authority</u> , 55 A.D.3d 817 (2d Dep’t 2008).....	6
 <b><u>Statutes</u></b>	
New York Education Law § 1102 .....	3
New York Education Law § 2509 .....	3
New York Education Law § 2510 .....	3
New York Education Law § 2573 .....	3
New York Education Law § 2585 .....	3
New York Education Law § 2588 .....	3

New York Education Law § 2590 .....3

New York Education Law § 2590(j).....3

New York Education Law § 3012 .....3

New York Education Law § 3012-c .....3

New York Education Law § 3013 .....3

New York Education Law § 3014 .....3

New York Education Law § 3020 .....3

New York Education Law § 3020-a .....3

**Other Authorities**

Guryan, (2001) *Does Money Matter? Regression-Discontinuity Estimates from Education Finance Reform in Massachusetts*. Nat. Bur. of Econ. Rsch. (NBER) Working Paper 8269 .....24

Jackson, et al. (2014) *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, And Adult Outcomes*, Nat. Bur. of Econ. Rsch. (NBER) Working Paper 20118 .....23,24

Lafortune, et al. (2016) *School Finance Reform and the Distribution of Student Achievement*, Nat. Bur. of Econ. Rsch. (NBER) Working Paper 22011 .....23

**Websites**

New York State Division of Budget, Description of 2007-08 New York State School Aid Programs [https://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708schoolaid/0708EnactedBudget\\_schoolaid.pdf](https://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708schoolaid/0708EnactedBudget_schoolaid.pdf) .....20

New York State Division of Budget, Description of 2009-10 New York State School Aid Programs <https://www.budget.ny.gov/pubs/archive/fy0910archive/enacted0910/schoolaid/2009-10NewYorkStateSchoolAidPrograms.pdf> .....21

New York State Division of Budget, Description of 2010-11 New York State School Aid Programs [https://www.budget.ny.gov/pubs/archive/fy1011archive/enacted1011/1011schoolAid/2010-11\\_DescriptionSchoolAidPrograms.pdf](https://www.budget.ny.gov/pubs/archive/fy1011archive/enacted1011/1011schoolAid/2010-11_DescriptionSchoolAidPrograms.pdf) .....21

Marcou O’Malley (2016), *No Appetite to Educate: Stacking the Deck Against Children in Poverty*, Alliance for Quality Education [http://www.aqeny.org/wp-content/uploads/2016/02/No-appetite-to-educate\\_-stacking-the-deck-against-children-in-poverty-final1.pdf](http://www.aqeny.org/wp-content/uploads/2016/02/No-appetite-to-educate_-stacking-the-deck-against-children-in-poverty-final1.pdf).....21,22

Joseph Spector *NY’s Teacher Ranks Continue to Plummet* JOURNAL NEWS, February 14, 2016 available at <http://www.lohud.com/story/news/education/2016/02/14/new-york-teacher-ranks/80392932/> .....21,22

Baker (2014) *School Funding Fairness in New York State: An Update* <http://www.aqeny.org/wp-content/uploads/2012/03/School-Funding-Fairness-in-New-York-State-An-Update-for-2013-14.pdf>.....22

Keshia Clukey, *As Teacher Shortage Looms, State Rethinks How It Recruits and Treats Its Teachers*, POLITICO NEW YORK, March 7, 2016 available at <http://www.capitalnewyork.com/article/albany/2016/03/8592899/shortage-looms-state-rethinks-how-it-recruits-and-treats-its-teachers> .....22

Ronfeldt, et al (2013) *How Teacher Turnover Harms Student Achievement*, American Education Research Journal. [https://cepa.stanford.edu/sites/default/files/4.full\\_.pdf](https://cepa.stanford.edu/sites/default/files/4.full_.pdf).....23

Baker, *Does Money Matter in Education 2d Edition*, Albert Shanker Institute. [https://docs.google.com/viewerng/viewer?url=http://www.shankerinstitute.org/sites/shanker/files/moneymatters\\_2edition2.pdf](https://docs.google.com/viewerng/viewer?url=http://www.shankerinstitute.org/sites/shanker/files/moneymatters_2edition2.pdf) .....23,24

## **INTEREST OF AMICUS CURIAE**

Founded in 2000, the Alliance for Quality Education (AQE) is a leading state-wide advocacy organization that works to ensure New York public school children the opportunity for a quality, equitable education. AQE advocates for quality teaching for all students, sufficient and equitable resources for all schools, parent and family engagement, positive school climates and access to high quality early childhood education, rigorous and well-rounded curriculum, and community schools with wraparound services for children and families. AQE is active in communities across New York and consequently is familiar with conditions in schools statewide. As a result of its involvement in local communities, AQE understands that there are many interconnected factors within and outside the school walls that affect the quality of education and that it is essential for children, especially those in high-poverty areas, have robust support in and out of school in order to promote effective learning. Adequate funding is a key component to ensuring that students have all the support they need to learn successfully, and teachers have the tools they need to help their students succeed.

## **QUESTION PRESENTED**

Did the Supreme Court err in denying the Defendants' motions to dismiss the Complaints for failure to state a claim under Education Article (Article XI, §1) of the New York State Constitution?

Yes. The Complaints, on their face, fail to state a cause of action for a violation of the right to a sound basic education under the Education Article.

### **PRELIMINARY STATEMENT**

Plaintiffs in these Complaints allege that New York laws governing tenure, terms of employment, discipline, evaluation and layoff procedures for public school teachers deny school children the opportunity for a sound basic education as guaranteed under the Education Article of the New York State Constitution. Under well-established New York precedent, plaintiffs must allege three basic elements to state a viable claim for a violation of the right to a sound basic education: glaring deficiencies in inputs or education resources; low and unacceptable student outcomes; and specific state action or inaction that is causally linked to the deficient inputs and low student outcomes. Further, it is also well established that such deficiencies must be systemic in a particular district or districts. Generalized allegations about statewide conditions will not suffice.

The Supreme Court below refused to dismiss the Complaints, ruling that:

.....the facts alleged in the respective complaints are sufficient to state a cause of action for a judgment declaring that the challenged sections of the Education Law operate to deprive students of a ‘sound basic education.’

Dauids, et al. v. State, Index No.10115/14, Supreme Court, Richmond County, March 12, 2015 at 14 (Minardo, J). This decision is in plain error. The



Complaints clearly fail to allege sufficient facts – or indeed almost no facts – to support the three basic elements in any particular school district that are required to state a claim of a violation a sound basic education under the Education Article. Amicus, therefore, respectfully requests this Court reverse the decision below and dismiss the Complaints.

### **STATEMENT OF FACTS**

The Plaintiffs in the Davids Amended Complaint (“Davids Complaint”) are eleven children who attend public schools in New York City, along with their parents/guardians. The Plaintiffs in the Wright Amended Complaint (“Wright Complaint”) are seven children who attend New York City public schools, two who attend Rochester public schools, and one child who attends Albany public schools, along with their parents/guardians. The Plaintiffs challenge Education Law §§1102, 2509, 2510, 2573, 2585, 2588 2590, 2590(j), 3012, 3012-c, 3013, 3014, 3020, and 3020-a. These statutes govern tenure, terms of employment, discipline, evaluation and layoff procedures for public school teachers in New York. The Plaintiffs claim in both Complaints that, collectively, these statutes prevent school districts from dismissing “ineffective” teachers, thereby depriving children, ostensibly across the state, of their right to a “sound basic education” under the Education Article of the New York State Constitution.

The Complaints set forth no allegations regarding any systemic deficiency in

the quality of teachers in any particular school district. The Wright Complaint contains one anecdote of twins in the New York City schools, concluding, with no factual support, that one these children had an “ineffective” teacher for a year. Wright Complaint, ¶5. This Complaint also alleges that in 2010 through 2012, the Rochester school district laid off teachers and, in doing so, was required under New York law to retain teachers with more experience. The Complaint concludes, again with no factual support, that an unspecified number of the Rochester teachers who were laid off were “effective,” while an unspecified number of those retained were “ineffective.” Wright Complaint ¶70.

Both Complaints make no allegations regarding student outcomes -- test scores, graduation rates or dropout rates -- in any particular school district. Rather, one complaint provides aggregate statewide average scores on the State English Language Arts (ELA) and Math tests for grades 3 through 8 for 2013-14. The Wright Complaint also alleges that one of the aforementioned twins reads at a level below that of her sibling. Wright Complaint, ¶5. The Complaints set forth no allegations linking the challenged statutes to any systemic deprivation of education inputs or outcomes in any particular New York school district.

The Complaints reference and attach selective studies pertaining to teacher evaluations. None of these studies pertain to current conditions in any particular New York school district.

## THE PROCEEDINGS BELOW

In October 2014, the Defendants State of New York, et al. (“Defendants”) moved to dismiss both Complaints, which were consolidated by the lower court, contending, inter alia, that the Complaints failed to state a cause of action. In March 2015, the Supreme Court denied the motions to dismiss. The court below held that the Complaints were "sufficiently pleaded to avoid dismissal." Dauids, et al. v. State, Index No.10115/14, Supreme Court, Richmond County, March 12, 2015, at 13 (Minardo, J).

In August 2015, the Defendants moved for leave to renew their motions to dismiss, on different grounds. In October 2015, the Supreme Court denied the motions for leave to renew. Defendants appealed to seek review of the Supreme Court’s order denying their motions to dismiss.

## ARGUMENT

### **I. THE TRIAL COURT ERRED IN HOLDING THE COMPLAINTS STATE A CAUSE OF ACTION UNDER THE EDUCATION ARTICLE**

It is well-established law that, to state a viable cause of action, a complaint must allege specific facts to establish each element of plaintiffs claim. Clarson v. City of Long Beach, 132 A.D.3d 799, 800 (2d Dep’t. 2015)(plaintiff required to allege every element of claim or complaint will be dismissed); Panish v.

Steinberg, 32 A.D.3d 383 (2d Dep't. 2006) (complaint dismissed when all elements not properly alleged). In deciding a motion to dismiss, a court must accept all facts alleged as true. However, "bare legal conclusions are not entitled to the benefit of the presumption of truth and are not accorded every favorable inference." Ruffino. v. New York City Transit Authority, 55 A.D.3d 817, 818 (2d Dep't. 2008); see also, Clarson v. City of Long Beach, 132 A.D.3d at 801 (conclusory allegations fail to state a claim); Elsky v. KM Ins. Brokers, 139 A.D.2d 691 (2d Dep't. 1988) (complaint fails where conclusory allegations lack factual support).

The Court of Appeals has ruled that a claim under the Education Article of the New York Constitution requires specific allegations of a deprivation of a sound basic education and causes of that deprivation attributable to State action or inaction. New York Civ. Liberties Union v. State, 4 N.Y.3d 175, 178 (2005). The deprivation of a sound basic education must be supported by allegations of both academic failure and the State's failure to provide minimally acceptable educational services or resources. Paynter v. New York, 100 N.Y.2d 434, 441 (2003) (holding that "allegations of academic failure alone, without allegations that the State somehow fails in its obligation to provide minimally acceptable educational services, are insufficient to state a cause of action under the