

To be Submitted by:
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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**

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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
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JOHN KEONI WRIGHT, GINET BORRERO, TAUANA GOINS, NINA
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Plaintiffs-Respondents,

– against –

THE BOARD OF REGENTS OF THE STATE OF NEW YORK, MERRYL H.
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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
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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.

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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.’

Davids, 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." Davids, 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

Education Article”).

The Court of Appeals has further held that the deprivation of a sound basic education must be systemic and district-wide. New York Civ. Liberties Union v. State, 4 N.Y.3d at 181 (plaintiffs alleging deficiencies in twenty-seven schools across the state failed to allege district-wide failure, and complaint therefore properly dismissed); Campaign for Fiscal Equity v. State, 100 N.Y. 2d 893, 914 2003 (“CFE II”) (finding proof that “tens of thousands of students” were in overcrowded classrooms “taught by unqualified teachers, without adequate facilities or equipment in New York City district established “a systemic failure”); Hussein v. State, 81 A.D. 3d 132, 136 (2011) (complaint withstood motion to dismiss because it was “replete with detailed data allegedly demonstrating, among other things, inadequate teacher qualifications, building standards and equipment” in all of plaintiffs’ districts).

In the landmark Campaign for Fiscal Equity v. State (“CFE”) rulings, the Court of Appeals delineated with specificity the three elements of a prima facie case under the Education Article. A plaintiff must allege facts that, if proven, would establish: (i) a systemic lack of the resources or “inputs” that are essential to provide the opportunity for a meaningful high school education in one or more designated school districts; (ii) unacceptable student outcomes in

those districts, as reflected in state assessment scores, high school graduation rates, drop-out rates, and other measures of a meaningful high school education; and, (iii) a causal link between the deprivation of essential inputs and sub-standard outputs and the challenged state action or inaction. CFE II, 100 N. Y.2d at 908. The facts alleged must point to specific deprivations actually occurring that, if proven, establish a systemic failure in particular school districts. CFE II, 100 N.Y.2d at 928 (courts address “actual cases and controversies, not abstract global issues”).

It is also clear that aggregate statistics will not suffice to establish a claim under the Education Article. Rather, what is required are factual allegations relating to educational harm to students in specific districts. In 2007, this Court dismissed a complaint alleging deprivation of a sound basic education because it failed “to include any factual allegations which are specific to the four school districts represented by the remaining plaintiffs,” concluding that:

Without factual data or statistical support specifically pertaining to the four remaining districts, or other information regarding whether these districts are actually experiencing the problems reflected by the aggregate statistics, it is impossible to determine whether the remaining plaintiffs are actually aggrieved.

New York Association of Small City School Districts v. State, 4 A.D.2d 648, 652 (3rd Dep’t. 2007). Thus, it is well established that, to survive a motion to dismiss, a complaint must allege specific facts to causally link the challenged

state action or inaction with the the systemic deprivation of essential resources and low student outcomes in particular school districts, and not mere anecdotes, aggregate statewide statistics, or general research studies.

A. The Complaints Fail to Allege Deficiencies in Essential Resources

As stated above, a core element of an Education Article claim is allegations of a systemic deprivation in specific school districts of the essential resources, or inputs, identified in the CFE rulings.

In CFE, the Court of Appeals delineated a template of resources essential for a sound basic education, to be fleshed out by fact-finding by the trial court. Campaign for Fiscal Equity v. State, (“CFE I”) 86 N.Y.2d 307, 317 (1995). These essential resources are: (i) "minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn;" (ii) "minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks;" and (iii) "minimally adequate teaching of reasonably up to date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas." CFE I, 86 N.Y.2d at 317.

Following this template, the CFE trial court enumerated specific categories of resources essential to a sound basic education, including: (i)

sufficient numbers of qualified teachers, principals and other personnel; (ii) appropriate class sizes; (iii) adequate and accessible school buildings; (iv) sufficient books and other school resources; (v) suitable curricula; (vi) an expanded platform of programs to help at-risk students; (vii) adequate resources for students with extraordinary needs; and (viii) a safe, orderly environment. *Campaign for Fiscal Equity v. State*, 187 Misc.2d 1, 39-45 (Supreme Court, N.Y. Co, 2001) (“CFE Trial Ct.”),

In CFE II, the Court of Appeals ruled that the trial court properly "fleshed out" the template from CFE I, and reinstated the trial court's finding of facts, which had been reversed by the Appellate Division. CFE II, 100 N.Y.2d at 902, 913.

In CFE, the complaint survived a motion to dismiss because the plaintiffs supported their allegations “with fact-based claims of inadequacies in physical facilities, curricula, numbers of qualified teachers, availability of textbooks, library books, etc.” CFE I 89 N.Y.2d at 319. Similarly, the complaint alleging a violation of the Education Clause in New York’s “small cities” school districts withstood a motion to dismiss because plaintiffs presented “detailed data” of deficiencies in teaching, facilities, equipment and other inputs in each of the named districts. Hussein v. State, 81 A.D. 3d at 136. In sharp contrast, the Court

of Appeals in Paynter upheld the dismissal of the plaintiffs' complaint under the Education Article because they did not allege deficiencies in any of the CFE-enumerated essential resources or inputs. Paynter v. State, 100 N.Y.2d at 441.

The Complaints on this appeal are replete with broad and sweeping assertions that one -- arguably one and only one -- of the essential CFE inputs -- qualified teachers -- may be deficient generally across New York due to the operation of the challenged state statutes. However, the Complaints fail to allege any facts regarding systemic deficiencies in the sufficiency or quality of teachers in any particular school district. In the Wright Complaint, Plaintiffs make conclusory allegations that the teacher tenure statute "confers permanent employment on ineffective teachers," Wright Complaint ¶34, and that "most ineffective teachers are not denied tenure." Wright Complaint ¶37. Yet the Complaint contains no factual allegations regarding any teachers -- let alone a single teacher -- that may be "ineffective" in any particular school district. The Complaint even fails to define "ineffective" or provide any measure used to determine whether a teacher is "effective" or not.

The Wright Complaint also makes conclusory allegations that the state disciplinary statute keeps "ineffective" teachers in schools, Wright Complaint, ¶65, but offers no specific facts about any such teachers in any district. The

Complaint does mention one district – Rochester – and asserts that when the district laid off teachers in 2010, 2011 and 2012, the state seniority statute resulted in the retention of “ineffective” teachers. Wright Complaint ¶ 70. Here again, the Complaint relies on a conclusory statement, not grounded in any facts, that “ineffective teachers” were retained while “effective” teachers were laid off. The entire Complaint is devoid of any facts connecting the operation of the state statute to any systemic deficiency in the sufficiency or quality of teachers in Rochester or any other district.

Similarly, the Davids Complaint, brought on behalf of New York City school children, does not allege any facts regarding a systemic, district-wide deficiency in qualified teachers. The Complaint alleges that the state teacher tenure law may hypothetically lead to retaining teachers who are “ineffective.” Davids Complaint, ¶52. The Complaint also contains no factual allegations of a systemic deficiency in teacher quality in New York City or any other district.

The Wright Complaint contains only the vague allegation that one child had an effective teacher while her sibling had an ineffective teacher during one school year. However, this allegation is based on the the conclusory assumption that the teacher must have been ineffective solely because one of the children is several reading levels apart from her sibling. Wright Complaint, ¶5. Clearly, one

threadbare allegation pertaining to one child, in one school, for one year, is nowhere near what is required to sufficiently plead deficiencies in educational resources that are systemic and district-wide. New York Civ. Liberties Union v. State, 4 N.Y.3d at 181; Campaign for Fiscal Equity v. State, 100 N.Y. 2d at 914; New York Association of Small City School Districts v. State, 4 A.D.3d at 652. By failing to allege facts regarding the actual conditions in any district, both Complaints utterly fail to address the element of systemic input deficiencies, a pivotal prong of an Education Article claim.

B. The Complaints Fail to Allege Low Outcomes

The CFE rulings make clear that test scores alone will not suffice regarding the “outputs” prong of an Education Article claim. CFE I, 89 N.Y.2d 307, 317 (1995) (finding that test results “should also be used cautiously as there are a myriad of factors which have a causal bearing” on those results”). Accordingly, the CFE trial court considered both test results and also measures of school completion, *i.e.*, on-time graduation, diploma types and drop-out rates. CFE Trial Ct., 187 Misc.2d at 60-68. The Court of Appeals adopted these findings. CFE II, 100 N. Y.2d at 914-19.

The bare allegations pertain to student outcomes in the Complaints are, without question, deficient. The Davids Complaint cites no student outcome data

whatsoever. The Complaint concludes, absent any facts, that the plaintiff children have been “harmed” or are “at substantial risk of being harmed” simply because they attend New York public schools. Davids Complaint ¶54. The Wright Complaint merely alleges that one year of average test scores in the grades 3-8 State ELA and Math tests statewide are low. Wright Complaint ¶41. As has been held, aggregate statistics are wholly insufficient to state a claim under the Education Article, as it is impossible to determine from these statistics whether plaintiffs in any specific districts are aggrieved. New York Association of Small City School Districts v. State, 4 A.D.3d at 652.

Moreover, the statistical allegations of deficient outcomes in the Complaints are not only in the aggregate, they are statewide, not pertinent to any district. Neither Complaint alleges any other output measure aside from these aggregate, statewide test scores. There are no allegations regarding school completion, i.e. dropouts and graduation rates, for any specific district. Notably, although one of the causes of action in the Wright Complaint relates to Rochester, there are no allegations of deficient outputs from that district. The allegations regarding student outputs in both Complaints are clearly too thin – almost non-existent -- to support a claim of systemic failure in any district.

C. The Complaints Fail to Allege Causation

An Education Article claim also requires plaintiffs to allege, with respect to a particular district or districts, that the deficiencies in inputs and low outputs are causally linked to the challenged state action or inaction. CFE II, 100 N.Y. 2d at 919; Paynter v. New York, 100 N.Y.2d at 440 (failure of the system- deficient inputs leading to deficient outputs- must be causally connected to state action). Failure to plead causation is fatal to a sound basic education claim. New York Civ. Liberties Union v. State, 4 N.Y.3d at 179.

As discussed above, the Complaints fail to allege systemic deficiencies in inputs and low outputs in any specific district. Thus, Complaints do not – nor could they – allege that the challenged state statutes are the cause of an Education Article violation in any specific district. Moreover, as with the input and output elements, the references in the complaints to causation are merely conclusory. For example, the Davids Complaint repeats that the state tenure laws “have a substantial negative impact on the education that certain public school students receive.” Davids Complaint ¶ 52. Yet the complaint fails to identify any specific instance in a district where the state tenure law even contributed to, let alone was a cause of, systemic resource deficits that, in turn, resulted in low student outcomes.

The Wright Complaint is equally devoid of any factual allegations that might, when taken on their face, establish causation. In their first cause of action, the Complaint states generally that the tenure laws “fail to provide all children in New York with a sound basic education.” Wright Complaint ¶78. Once again, the Complaint fails to allege any facts that establish a causal connection between the state tenure law and deficiencies in inputs and low outcomes in any specific district. There is no allegation anywhere in the Complaint that the tenure laws are the cause of systemic deficits in the availability of qualified teachers in any district and that, as a consequence, student outcomes are unacceptably low.

The second cause of action in the Wright Complaint repeats the identical conclusion as the first, this time as to the state disciplinary law. The complaint baldly asserts that the disciplinary statutes “fail to provide all children in New York with a sound basic education by preventing dismissal of ineffective teachers.” Wright Complaint ¶81 . Yet again, the complaint contains not a scintilla of evidence of deficiencies in the sufficiency of qualified teachers in any district, nor any resultant low student outcomes. In the third cause of action, the Complaint does name one district, Rochester, with regard to the state seniority statute but, again, fails to allege a link between the seniority statute and a

systemic deficiency in teacher quality in the district. Wright Complaint ¶84.

It is clear that, on their face, the Complaints are wholly lacking in allegations of specific facts from a school district or districts regarding all three requisite elements of a sound basic education claim. Accordingly, the Complaints fail to state a cause of action under the Education Article.

II. THE COURT BELOW IGNORES THE CFE-ESTABLISHED LINK BETWEEN SUFFICIENT QUALIFIED TEACHERS AND ADEQUATE FUNDING

In refusing to dismiss the consolidated complaints, the Supreme Court below mischaracterizes the landmark CFE ruling regarding both the nature of the teacher shortage and the cause of that shortage at issue in that litigation. In CFE, the Court of Appeals upheld the trial court's finding that inadequate funding was the cause of low student outcomes and the systemic deficiencies in essential resources, including a shortage of qualified teachers, in New York City. The Court also ruled that additional funding would enable the New York City district to hire more teachers and improve student outcomes. Further, this ruling is supported by a growing body of research demonstrating that increased school funding allows districts to obtain essential resources, leading to improve student outcomes.

A. The Supreme Court Mischaracterized the CFE Ruling on Sufficient Qualified Teachers

Without any foundation in fact, the Complaints equate seniority and experience with ineffective teachers. They claim that the challenged statutes protect experienced teachers, concluding that the statute requires districts to retain ineffective -- by which they mean experienced -- teachers, while dismissing effective -- by which they mean newly hired -- teachers. The ostensible goal of the Complaints is to encourage teacher turnover and the hiring of new, inexperienced teachers. However, as stated above, the complaints do not allege any facts indicating that experienced teachers in any district are ineffective and consequently a cause of low student outcomes.

The Supreme Court accepted Plaintiffs' conclusory assumption that experienced teachers are necessarily ineffective and, in doing so, mischaracterized the Court of Appeals holding in CFE II. The Supreme Court stated that:

.....these statutes are alleged to permit ineffective teachers with greater seniority to be retained without any consideration of the needs of the students.” The Court continued that the seniority laws “hinder the recruitment and retention of new teachers, a failure which was cited by the Court of Appeals (albeit on other grounds) as having a negative impact on the constitutional imperative (Campaign for Fiscal Equity, Inc. v. State of New York, 100 NY2d at 909 -911).

Davids, et al. v. State, Index No.10115/14, Supreme Court, Richmond County,

March 12, 2015 at 8 (Minardo, J). However, the precise deficit related to teacher quality in CFE was not the failure to retain new teachers. Rather, it was just the opposite. As the Court of Appeals found – based on the trial record -- schools with the most disadvantaged students “have the least experienced teachers, the most uncertified teachers, the lowest-salaried teachers, and the highest rates of teacher turnover.” CFE II, 100 N.Y.2d at 910. The robust facts in CFE established that New York City children were not afforded access to experienced, certified teachers, and that this deficiency contributed to the low student outcomes. CFE II, 100 N.Y.2d at 910. Thus, contrary to the Supreme Court below, the finding in CFE was that New York City schools with the most disadvantaged students had the least senior teachers, and that teachers with experience were an asset, not a deficit.

B. The Supreme Court Ignores the Link Between Qualified Teachers and Inadequate Funding

In CFE, the Court of Appeals found that the cause of the deficiencies in sufficient, qualified teachers – and other essential resources -- in New York City was the State’s failure to provide adequate funding. CFE II, 100 N.Y.2d at 919. The Court explicitly linked the lack of funding with the inability of New York City to provide this essential resource, ruling that “better funded schools would hire and retain more certified teachers,” and that this in turn would improve

student outcomes. CFE II, 100 N.Y. 2d at 919. Indeed, the seminal holding in CFE is that the lack of adequate funding through the State financing mechanism caused the deficits in essential resources -- including sufficient qualified teachers -- and low student outcomes in New York City. CFE II, 100 N.Y. 2d at 914 (holding that inadequate funding was a cause of the “systemic failure” in the New York City district of both outputs and inputs). Further, the establishment of this causal link led the Court to order the State to enact school funding reform. CFE II, 100 N.Y. 2d at 930.

In CFE, the Court of Appeals did not order statewide school funding reform because the proofs at trial pertained only to New York City; the Court, however, invited the State to enact statewide funding reform if it so chose. CFE II, 100 N.Y.2d at 928. In 2007, the State did just that by enacting the Foundation Aid Formula, Chapter 57 of N.Y. Laws of 2007. This formula required an additional \$5.5. billion to be provided in state education aid, to be phased in over four years. New York State Division of Budget, Description of 2007-08 New York State School Aid Programs, p. 6. https://www.budget.ny.gov/pubs/archive/fy0708archive/fy0708schoolaid/0708EnactedBudget_schoolaid.pdf

Although the State began to phase in the additional formula funding in the

first two years, in 2009-10, the State froze Foundation Aid. New York State Division of Budget, Description of 2009-10 New York State School Aid Programs, p. 2. <https://www.budget.ny.gov/pubs/archive/fy0910archive/enacted0910/schoolaid/2009-10NewYorkStateSchoolAidPrograms.pdf>. In 2010-11, the State began cutting Foundation Aid. New York State Division of Budget, Description of 2010-11 New York State School Aid Programs, p. 2. https://www.budget.ny.gov/pubs/archive/fy1011archive/enacted1011/1011schoolAid/2010-11_DescriptionSchoolAidPrograms.pdf. To date, the State is behind by \$4.8 billion in Foundation Aid statewide. See Marcou O'Malley (2016), *No Appetite to Educate: Stacking the Deck Against Children in Poverty*, Alliance for Quality Education, p. 8. http://www.aqeny.org/wp-content/uploads/2016/02/No-appetite-to-educate_-stacking-the-deck-against-children-in-poverty-final-1.pdf. Further, there is compelling evidence, consistent with the CFE ruling, that inadequate funding continues to cause teacher shortages in districts across the state. In February, it was reported that, as a result of school funding cuts, New York has nearly 13,000 fewer educators than it did five years ago and that districts are having difficulty filling vacant positions. See 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/> A key cause of the inability to fill vacancies is district inability to offer competitive wages. See 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>. Inadequate school funding remains a particularly daunting obstacle to teacher quality in low-wealth, high-poverty districts. In New York, the spending gap between wealthy and poor districts is almost \$10,000. Marcou O'Malley (2016), *No Appetite to Educate: Stacking the Deck Against Children in Poverty*, Alliance for Quality Education, p. 5. http://www.aqeny.org/wp-content/uploads/2016/02/No-appetite-to-educate_-stacking-the-deck-against-children-in-poverty-final-1.pdf. This spending disparity affects the ability of poorer districts to pay competitive wages to teachers and thereby attract and retain qualified teachers. Baker (2014) *School Funding Fairness in New York State: An Update*, p. 5. <http://www.aqeny.org/wp-content/uploads/2012/03/School-Funding-Fairness-in-New-York-State-An-Update-for-2013-14.pdf>). Moreover, the research has shown that teacher turnover harms student achievement, and that the turnover rate in high-poverty schools is 50% higher

than in low-poverty schools. Ronfeldt, et al (2013) *How Teacher Turnover Harms Student Achievement*, American Education Research Journal.
https://cepa.stanford.edu/sites/default/files/4.full_.pdf

C. Adequate School Funding is a Key Ingredient for Providing Sufficient, Qualified Teachers

In CFE, the Court of Appeals found that increased funding would enable New York City to recruit and retain more qualified teachers which, in turn would yield better student outcomes. CFE II, 100 N.Y. 2d at 919. A growing body of research supports these contentions. Recent large-scale, longitudinal studies have found that school finance reform enables districts to increase spending on essential education resources. 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. This increased spending in turn results in improved student outcomes. Lafortune, et al. (2016) *School Finance Reform and the Distribution of Student Achievement*, Nat. Bur. of Econ. Rsch. (NBER) Working Paper 22011; 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; see also, 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_edition2.pdf; Guryan, (2001) *Does Money Matter? Regression-Discontinuity Estimates from Education Finance Reform in Massachusetts*. Nat. Bur. of Econ. Rsch. (NBER) Working Paper 8269.

Jackson, et al, found that increased instructional spending, including increasing teacher salaries and hiring more teachers, lead to large positive effects, especially for poor students. Such effects include: a 23% increase in high school graduation, an additional year in overall educational attainment, a 25% increase in adult earnings and a 20% reduction in the incidence of adult poverty. Jackson, et al. at pp.42,44. Increasing teacher salaries improves recruitment and retention of teachers. Baker, *Does Money Matter in Education 2d Edition*, Albert Shanker Institute, p. 6 https://docs.google.com/viewerng/viewer?url=http://www.shankerinstitute.org/sites/shanker/files/moneymatters_edition2.pdf. Moreover, increased spending improves the conditions in which teachers work, such as reducing class size. Jackson, et al. at p. 42. These improvements thereby improving teacher recruitment and retention. Baker, *Does Money Matter in Education 2d Edition*, Albert Shanker Institute, p. 11. https://docs.google.com/viewerng/viewer?url=http://www.shankerinstitute.org/sites/shanker/files/moneymatters_edition2.pdf. The preferred policy change that lie

at the core of the consolidated complaints in this appeal -- altering or modifying state teacher tenure, seniority and layoff rules -- could well lead to eroding teacher quality by increasing teacher turnover in poor districts already suffering from instability in the teacher workforce. It also may well exacerbate the lack of experienced teachers in these districts, an essential resource deficit identified in CFE as a contributing factor to low student outcomes. CFE II, 100 N.Y. at 909. By contrast, the CFE rulings, and the overwhelming weight of research, demonstrates that school finance reforms that ensure adequate and equitable funding is a proven method for building a stable, quality teaching force in New York's school districts, which in turn yields higher student outcomes.

Conclusion

For the reasons stated above, Amicus Curiae respectfully requests that the Court reverse the Supreme Court ruling and dismiss the consolidated complaints for failure to state a cause of action.

Dated: April 6, 2016

Respectfully Submitted,

A handwritten signature in cursive script that reads "Wendy Lecker". The signature is written in black ink and is positioned above a horizontal line.

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Certificate of Compliance
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