

SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF RICHMOND

Index No.: 101105/14

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, 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,

SUMMONS

—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.

TO: Office of the Attorney General
120 Broadway, 24th Floor
New York, NY 10271

RICHMOND COUNTY CLERK
2014 JUL 25 P 2:45
UNOFFICIAL

The New York State Board of Regents
State Education Building
89 Washington Avenue, Room 110
Albany, New York 12234

The New York State Education Department
State Education Building
89 Washington Avenue, Room 110
Albany, New York 12234

Corporation Counsel of the City of New York
100 Church Street
New York, NY 10007

The New York City Department of Education
65 Court Street
Brooklyn, New York, 11201

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney within 20 days after service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

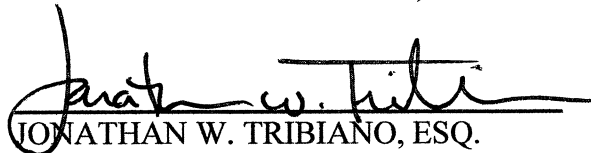
The basis of venue is plaintiff's residence.

Dated: July 24, 2014

Yours, etc.

Staten Island, New York

JONATHAN W. TRIBIANO, PLLC

A handwritten signature in black ink, appearing to read "Jonathan W. Tribiano", is written over a horizontal line.

JONATHAN W. TRIBIANO, ESQ.
1811 Victory Boulevard, Suite One
Staten Island, New York 10314
Tel.: (718) 530-1445

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, 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,

VERIFIED AMENDED COMPLAINT

—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.

PRELIMINARY STATEMENT

1. The New York Court of Appeals has recognized that a child’s right to a “sound basic education” is a fundamental interest guaranteed by the New York Constitution. *Campaign for Fiscal Equity, Inc. v. State* (“CFE I”), 86 N.Y.2d 307, 315 (1995). The Court has “unanimous[ly] recognize[ed] . . . the importance of education in our democracy.” *Campaign for Fiscal Equity, Inc. v. State* (“CFE II”), 100 N.Y.2d 893, 906 (2003). Education is necessary “to enable children to eventually function productively as civic participants capable of voting and serving on a jury.” *CFE I*, 86 N.Y.2d at 317; *see also CFE II*, N.Y.2d at 905. And it is an “indispensable” part of preparing students “to compete for jobs that enable them to support themselves.” *Id.* at 906. Indeed, the “problems confronting the rising generation will demand accurate knowledge and the highest development of reasoning power more than ever before.” *Id.* (internal citations and quotation marks omitted).

2. In addition, “the State has obligated itself constitutionally to ensure the availability of a ‘sound basic education’ to all its children.” *CFE II*, 100 N.Y.2d at 902. The State “has ultimate responsibility for the schools” that cannot be delegated. *Id.* at 924.

3. New York’s public school teachers play a vital role in providing New York students with the education to which they are entitled. “The first and surely most important input [in determining whether children are receiving a sound basic education] is teaching.” *CFE II*, 100 N.Y.2d at 909. Recent studies have confirmed that the key determinant of educational effectiveness is teacher quality. *See, e.g.,* Raj Chetty et al., *The Long-Term Impacts of Teachers II: Teacher Value-Added and Student Outcomes in Adulthood*, American Economic Review (forthcoming), available at <http://obs.rc.fas.harvard.edu/chetty/w19424.pdf>. Students taught by effective teachers are more likely to attend college, attend higher-quality colleges, earn more,

live in higher socioeconomic status neighborhoods, save more for retirement, and are less likely to have children during their teenage years. *Id.*

4. Although the majority of teachers in New York are providing students with a quality education, some New York K-12 public school students are being taught by teachers who fail to provide their students with the knowledge and skills necessary to be meaningful civic participants and competitive job applicants. *CFE II*, 100 N.Y. at 905. The impact of these ineffective teachers on students is enormous. Even when they are well-intentioned, as most teachers are, such ineffective teachers have an enduring and negative effect on the lives of their students.

5. A “substantial cause,” *CFE II*, 100 N.Y. at 903, of the continued employment of these ineffective teachers in the New York public school system is the continued enforcement of certain New York statutes (the “Challenged Statutes”) that effectively prevent the removal of ineffective teachers from the classroom, and, in economic downturns, require layoffs of more competent teachers.¹ The Challenged Statutes prevent school administrators from prioritizing—or even meaningfully considering—the interests of their students in having effective teachers when making employment and dismissal decisions. By forcing these critical decisions to be made primarily or exclusively on grounds *other* than students’ need for effective teachers, and therefore perpetuating the employment within the school system of a number of ineffective teachers who do not serve students’ needs and who, in fact, have a substantially negative impact on students’ education, these laws infringe upon New York students’ fundamental right to a sound basic education.

¹ The Challenged Statutes are New York Education Law Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014, 3020-a, and 3013(2).

6. For example, in New York City, the largest school district in the State with over 75,000 teachers, only 12 teachers were dismissed "for incompetent teaching" over the entire decade from 1997 to 2007—only 1.2 teachers per year. See Katharine B. Stevens, *Firing Teachers: Mission Impossible*, N.Y. Daily News, Feb. 17, 2014, available at <http://www.nydailynews.com/opinion/firing-teachers-mission-impossible-article-1.1615003>. On information and belief, there were far more than 12 ineffective teachers in the New York City school district over that ten year period.

7. The Challenged Statutes are therefore unconstitutional. New York students taught by ineffective teachers who continue teaching as a result of the Challenged Statutes are denied the fundamental right to a sound basic education required by Article XI, § 1 of the New York Constitution. For these reasons, Plaintiffs ask this Court to declare the Challenged Statutes unconstitutional and to permanently enjoin their enforcement.

PARTIES

8. Plaintiff Mymoena Davids is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Mymoena Davids is African-American and attends public school in New York City. Miamona Davids, is a single, unemployed mother, is the parent and natural guardian of Plaintiff Mymoena Davids and intends to file a petition with the court to act as guardian ad litem.

9. Plaintiff Eric Davids is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Eric Davids is African-American and attends public school in New York City. Miamona Davids, an unemployed single mother, is the parent and natural guardian of Plaintiff Eric Davids and intends to file a petition with the court to act as guardian ad litem.

10. Plaintiff Alexis Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Alexis Peralta attends public school in New York City. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Alexis Peralta and intends to file a petition with the court to act as guardian ad litem.

11. Plaintiff Stacy Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Stacy Peralta attends public school in New York City. Plaintiff Stacy Peralta has special needs. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Stacy Peralta and intends to file a petition with the court to act as guardian ad litem.

12. Plaintiff Lenora Peralta is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Lenora Peralta attends public school in New York City. Plaintiff Lenora Peralta attends public school in New York City. Angela Peralta, a Hispanic single mother, is the parent and natural guardian of Plaintiff Lenora Peralta and intends to file a petition with the court to act as guardian ad litem.

13. Plaintiff Andrew Henson is a child who resides in the State of New York and is guaranteed a sound basic education. Christine Henson is the parent and natural guardian of Plaintiff Andrew Henson and intends to file a petition with the court to act as guardian ad litem.

14. Plaintiff Adrian Colson is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Adrian Colson attends public school in New York City. Jacqueline Colson is the parent and natural guardian of Plaintiff Adrian Colson and intends to file a petition with the court to act as guardian ad litem.

15. Plaintiff Darius Colson is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Darius Colson attends public school in New York City. Jacqueline Colson is the parent and natural guardian of Plaintiff Darius Colson and intends to file a petition with the court to act as guardian ad litem.

16. Plaintiff Samantha Pirozzolo is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Samantha Pirozzolo attends public school in New York City. Sam Pirozzolo is the parent and natural guardian of Plaintiff Samantha Pirozzolo and intends to file a petition with the court to act as guardian ad litem.

17. Plaintiff Franklin Pirozzolo is a child who resides in the State of New York, County of Richmond, and is guaranteed a sound basic education. Plaintiff Franklin Pirozzolo attends public school in New York City. Sam Pirozzolo is the parent and natural guardian of Plaintiff Franklin Pirozzolo and intends to file a petition with the court to act as guardian ad litem.

18. Plaintiff Izaiyah Ewers is a child who resides in the State of New York and is guaranteed a sound basic education. Plaintiff Izaiyah Ewers attends public school in New York City. Kendra Oke is the parent and natural guardian of Plaintiff Izaiyah Ewers and intends to file a petition with the court to act as guardian ad litem.

19. Defendant the State of New York (the "State") is responsible for the operation, financing and administration of the New York State public school system.

20. Defendant Regents of the University of the State of New York ("Board of Regents") is an executive department of the State of New York. Its offices are located at State Education Building, 89 Washington Avenue, Room 110, Albany, New York 12234. Pursuant to

the power delegated to it by the New York Legislature, the Board of Regents determines educational policies, and promulgates rules to effectuate New York State education laws and policies. The Board of Regents presides over the New York Education Department and appoints a Commissioner of Education who is responsible for the direct management of the New York Education Department N.Y. Const. Art V, § 4; N.Y. Education Law § 207.

21. Defendant the New York State Education Department (the “NYSED”) is an executive agency of the State of New York. Its office is located at State Education Building, 89 Washington Avenue, Room 110, Albany, New York 12234. The Education Department implements the policies of the Board of Regents under the Commissioner's direction.

22. Defendant the City of New York (the “City”) is responsible for the operation, financing and administration of the New York City public school system.

23. Defendant the New York City Department of Education (“NYCDOE”) is an administrative agency of the City of New York. It has offices located at 65 Court Street, Brooklyn, New York, 11201.

24. Defendants, and those subject to their supervision, direction, and control, are responsible for the enforcement of the statutes challenged herein. Except where otherwise specified, the relief requested in this action is sought against each Defendant, as well as against each Defendant’s officer’s employees, and agents, and against all persons acting in cooperation with Defendant(s), under their supervision, at their direction, or under their control.

JURISDICTION AND VENUE

25. The New York State Supreme Court is the court of original jurisdiction in causes of action for declaratory judgment and injunctive relief for applications involving the interpretation and applicability of the New York State Constitution.

26. The New York State Supreme Court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed. CPLR Sec. 3001.

27. Venue lies in this court as Defendants' acts, decisions, and other material events have arisen within this judicial district. CPLR Sec. 506(b).

28. Similarly, at least one of the parties resides within Richmond County where this court is situated. CPLR Sec. 503(a).

STATEMENT OF FACTS

A. Teacher Quality Is The Key Determinant Of Educational Effectiveness

29. Extensive research over the past 35 years supports one indisputable fact: Teachers matter. Teachers are a key determinant of the quality of education students receive and have a profound impact on students' lifetime achievement. In fact, teacher quality affects student success more than any other in-school factor. According to one of the nation's foremost education economists, "teachers near the top of the quality distribution can get an entire year's worth of additional learning out of their students compared to those near the bottom." As a result, students taught by effective teachers are more likely to attend college, attend higher-ranked colleges, earn higher salaries, reside in higher quality neighborhoods, and save for retirement.

30. Conversely, students taught by ineffective teachers—those in approximately the bottom five percent of educators in New York—suffer lifelong problems and fail to recover from this marked disadvantage. One recent study found that a student in New York who is taught by a single ineffective teacher misses out on *six or more months* of learning in a single school year and remains "stuck below grade level" for years to come. Another recent study found that

replacing an ineffective teacher with even an *average* teacher—not an above-average or superior teacher—would increase students’ cumulative lifetime income by a total of \$1.4 million per classroom taught by that teacher.

31. In light of the substantial and enduring impact that teachers have on their students’ achievement, removal of the ineffective teachers currently employed by the New York public school system would have a pronounced, life-altering impact on the performance of those students who would otherwise be taught by those teachers. It would therefore be in the interest of all New York public school students to ensure that ineffective teachers are promptly dismissed upon discovery of their ineffective performance.

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

32. Despite the profound impact teachers have on student achievement, most ineffective teachers are not dismissed for their poor performance, instead remaining as teachers in New York classrooms.

33. The Challenged Statutes make it nearly impossible for school administrators to dismiss ineffective teachers. Unable to remove these ineffective teachers from the New York school system, the statutes at issue instead compel school administrators to either leave the ineffective teachers in place or transfer them from school to school within the public school system, a phenomenon sometimes referred to as the “dance of the lemons.” On information and belief, New York principals and school district administrators believe that attempting to dismiss ineffective teachers is futile and prohibitively resource-intensive, and that the dismissal process established by the Challenged Statutes is unlikely to result in dismissal of those teachers.

34. The continued employment of ineffective teachers in New York’s public schools is a result of the Challenged Statutes and causes grave harm to New York’s students. Those

statutes comprise a statutory scheme that makes dismissal nearly impossible or highly impractical once poor performers are identified and, when layoffs are necessary, forces districts to terminate teachers based on seniority alone, irrespective of their teaching effectiveness. This statutory scheme, enacted by the State of New York through its Legislature and enforced by Defendants, inevitably presents a total and fatal conflict with the right to a sound basic education guaranteed by the New York Constitution because it forces certain New York students to be educated by ineffective teachers who fail to provide them with the basic tools necessary to compete in the economic marketplace and participate in a democratic society.

35. In the absence of this statutory scheme, school administrators would have the ability to make employment and dismissal decisions that serve the interests of New York's students. School administrators could dismiss those teachers who are ineffective, retain only those teachers who are at least minimally effective, and reward and incentivize teachers who exhibit superior performance. The Challenged Statutes prevent school administrators from meaningfully considering their students' need for effective teachers when making teacher employment and dismissal decisions. On information and belief, in the absence of the Challenged Statutes, school administrators would make teacher employment and dismissal decisions based, in larger part and/or entirely, on their students' need for effective teachers.

New York's Dismissal Statutes

36. Unlike employees of private companies, public employees in New York must be afforded certain due process rights before being subject to termination or other adverse employment decisions. These due process rights must include notice of the proposed action, the reasons for the action, and the right to respond before the proposed discipline or termination can be made effective. *See Beck-Nichols v. Bianco*, 20 N.Y.3d 540, 559 (2013).

37. New York’s statutory scheme, however, affords teachers “super” due process rights—an astounding array of additional rights and privileges, which are significantly greater in scope and content than due process rights—before they may be terminated for unsatisfactory performance. These rights and privileges are codified primarily in New York Education Law Sections 1102(3), 2509, 2573, 2590(j), 3012, 3014, and 3020-a (the “Dismissal Statutes”).

38. The Dismissal Statutes mandate that an inordinate number of hurdles be cleared before a district can dismiss an underperforming teacher. These hurdles result in a labyrinthine dismissal process requiring investigations, hearings, union grievances, administrative appeals, court challenges, and re-hearings—all of which can and often do take multiple years and cost hundreds of thousands of dollars.

39. Recent studies have found that the Dismissal Statutes effectively prevent New York school administrators from dismissing teachers for poor performance. One study concluded that the average cost of dismissing a teacher for ineffectiveness in New York is \$313,000, and takes an average of 830 days. *See* New York State School Boards Association, *Accountability for All* (March 2007), *available at* http://www.nyssba.org/clientuploads/gr_3020a_reform.pdf. The same study concluded that, between 1995 and 2006, just 547 teachers statewide—out of nearly 220,000 teachers total—were dismissed via the Dismissal Statutes, either because they were ineffective or for other reasons, such as misconduct. The dismissal process has not improved in the years since 2007. *See* Katharine B. Stevens, *Firing Teachers: Mission Impossible*, N.Y. Daily News, Feb. 17, 2014, *available at* <http://www.nydailynews.com/opinion/firing-teachers-mission-impossible-article-1.1615003>.

40. In light of the difficulty, complexity, cost, and length of time associated with the removal process under the Dismissal Statutes, dismissal proceedings are rarely initiated for unsatisfactory performance alone. Further, when the dismissal process is initiated based on teacher performance, it rarely results in dismissal.

41. When a school administrator believes a teacher to be ineffective, the Dismissal Statutes often require the administrator to leave the teacher in the classroom for one or more years, in order to attempt to provide the documentation of ineffective performance necessary to initiate and prevail in dismissal proceedings. Even after the dismissal process has been initiated, school administrators are often forced to leave ineffective teachers in the classroom throughout the dismissal process.

42. In the absence of the Dismissal Statutes, teachers would retain the same due process rights afforded to other New York public employees.

43. On information and belief, in the absence of the Dismissal Statutes, school administrators could and would dismiss ineffective teachers that, under the current system, they are compelled to leave in place. The Dismissal Statutes, alone and in conjunction with the other statutes at issue, ensure that a certain number of ineffective teachers who are unable to prepare students to compete in the economic marketplace or to participate in a democracy retain their employment in the New York school system, and substantially reduces the overall quality of the teacher workforce in New York public schools.

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

44. New York Education Law § 3013, subdivision (2) (the "LIFO Statute") mandates the selection criteria by which teachers are to be included in any district-wide layoff. The LIFO

Statute creates a seniority-based layoff system, irrespective of a teacher's performance, effectiveness, or quality.

45. The LIFO Statute requires that layoff notices be issued, and layoffs be conducted, in accordance with seniority. It states: "Whenever a trustee, board of trustee, board of education or board of cooperative educational services abolishes a provision under this chapter, the services of the teacher having the least seniority in the system within the tenure of the position abolished shall be discontinued." N.Y. Educ. Law § 3013, subd. (2).

46. Seniority, defined as the number of years of teaching experience, is not an accurate predictor of teacher effectiveness, as recent studies have demonstrated. Yet the LIFO Statute mandates that the selection of teachers to be included in any layoff be governed exclusively by seniority. For all practical purposes, the LIFO Statute prevents teacher effectiveness from being taken into account—to any extent or degree—in connection with layoff decisions.

47. Layoffs conducted in accordance with the LIFO Statute force school administrators to lay off top-performing teachers with low seniority, and prevent school administrators from laying off low-performing teachers with high seniority, all to the great detriment of New York students. One recent study demonstrated that making layoff decisions based on teachers' seniority instead of teachers' performance costs students \$2.1 million in lifetime earnings per teacher laid off.

48. Layoffs of teachers in New York have occurred recently and are likely to recur in the near future. In 2011, for example, nearly 3 percent of New York teachers were laid off under the LIFO statute statewide—more than 7,000 teachers, including top performers.

49. On information and belief, in the absence of the LIFO Statute, school administrators forced to implement district-wide layoffs would select the teachers to be included in such layoffs based, in larger part or entirely, on the performance and effectiveness of those teachers and the outcomes of their students.

50. The LIFO Statute also hinders recruitment of new teachers by creating an environment in which newly and recently hired teachers face a heightened risk of receiving layoff notices and being laid off regardless of their performance.

51. The LIFO Statute, alone and in conjunction with the other statutes at issue, ensures that a certain number of ineffective teachers who are unable to prepare students to compete in the economic marketplace or to participate in a democracy retain employment in the New York school system, and substantially reduces the overall quality of the teacher workforce in New York public schools.

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

52. As a result of the Challenged Statutes, both individually and collectively, a certain number of ineffective teachers retain employment in the New York public school system despite their ineffective performance. In the absence of the Challenged Statutes, most, if not all, of these ineffective teachers would be dismissed for their poor performance. In addition, in the absence of the Challenged Statutes, school administrators would have the flexibility to attract teachers of superior performance to New York's public schools, retain high-performing teachers even during economic layoffs, and provide incentives to encourage teachers to become or remain high performers. Instead, the Challenged Statutes prevent school administrators from making employment and dismissal decisions that serve the interest of New York's students in having

effective teachers. Such a system has a substantially negative impact on the education that certain New York public school students receive.

53. Students taught by ineffective teachers are not “afford[ed] . . . the opportunity for a meaningful high school education, one which prepares them to function productively as civic participants” or “prepare[s] [them] to compete for jobs that enable them to support themselves.” *CFE II*, 100 N.Y.2d at 906, 908. As the Court of Appeals has held, “a high school level education is now all but indispensable” for students, yet students taught by ineffective teachers are less likely to graduate from high school. And even if they graduate, such students are less likely to have gained the knowledge expected of a high school graduate. To the contrary, students taught by ineffective teachers lose six or more months of learning in a single school year and never catch up to their peers. Moreover, these negative effects persist beyond high school, reducing students’ college attendance rates, college graduation rates, and lifetime earnings. All of these negative effects constitute the denial of a sound basic education, in violation of the New York Constitution.

54. As students in New York public schools, each and every one of the Plaintiffs has been harmed, or is at substantial risk of being harmed, as a result of the Challenged Statutes.

CLAIMS FOR RELIEF

CLAIM ONE: VIOLATION OF EDUCATION ARTICLE (DISMISSAL STATUTES)

55. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

56. All students in New York have a fundamental right to a sound basic education. *Campaign for Fiscal Equity, Inc. v. State* (“*CFE I*”), 86 N.Y.2d 307, 315 (1995).

57. The Dismissal Statutes violate the Education Article of the New York Constitution, art. XI, § 1.

58. The Dismissal Statutes violate the Education Article because they have a substantially negative impact on those New York public school students taught by ineffective teachers who, absent the Dismissal Statutes, would be dismissed for poor performance. The Dismissal Statutes deprive those students of a sound basic education.

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

59. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

60. All students in New York have a fundamental right to a sound basic education. *Campaign for Fiscal Equity, Inc. v. State* (“CFE I”), 86 N.Y.2d 307, 315 (1995).

61. The LIFO Statute violates the Education Article of the New York Constitution, art. XI, § 1.

62. The LIFO Statute violates the Education Article because it has a substantially negative impact on those New York public school students taught by more senior, ineffective teachers who would otherwise be laid off for poor performance, absent the LIFO Statute. It also has a substantially negative impact on those New York public school students who would have been taught by less senior, effective teachers, had those teachers not lost who lose their jobs because of the LIFO Statute. The LIFO Statute deprives those students of a sound basic education.

CLAIM THREE: DECLARATORY RELIEF

63. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

64. An actual and justiciable controversy exists between the Plaintiffs and Defendants because Plaintiffs contend, and Defendants dispute, that Defendants' actions and inactions as described above have violated the constitutional provisions cited herein.

65. Plaintiffs seek a declaration that the Dismissal Statutes and the LIFO Statute separately and together violate the right to a sound basic education protected by the Education Article of the New York Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants as follows:

1. Plaintiffs respectfully request that this Court enter a declaratory judgment stating that the Dismissal Statutes and the LIFO Statute, separately and together, violate the Education Article of the New York Constitution.
2. Plaintiffs respectfully request that this Court enter a permanent injunction enjoining the enforcement, application, or implementation of the Dismissal Statutes and the LIFO Statute.
3. Plaintiffs respectfully request that this Court enter a permanent injunction enjoining Defendants from implementing at any time in the future, by law or by contract, any system of teacher employment, retention and dismissal that is substantially similar to the framework implemented by the Challenged Statutes, in that it (1) vests in teachers greater protections against dismissal than the due process rights applicable to other New York state employees, or (2) prevents school administrators from meaningfully considering teacher effectiveness when making employment, retention and termination decisions about teachers.
4. Plaintiffs respectfully request that this Court retain continuing jurisdiction over this matter until such time as the Court has determined that Defendants have fully and properly complied with its Orders.
5. Award Plaintiffs reasonable costs, litigation expenses, and attorneys' fees.
6. Grant Plaintiffs such additional relief as may be just, proper and equitable.

Dated: July 24, 2014

Yours, etc.

Staten Island, New York

JONATHAN W. TRIBIANO, PLLC



JONATHAN W. TRIBIANO, ESQ.
1811 Victory Boulevard, Suite One
Staten Island, New York 10314
Tel.: (718) 530-1445

VERIFICATION

STATE OF NEW YORK)
COUNTY OF RICHMOND) ss.:

SAM PIROZZOLO, being duly sworn, deposes and says: I am the parent and natural guardian of SAMANTHA PIROZZOLO and FRANKLIN PIROZZOLO, Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

By: *Sam Pirozzolo*
SAM PIROZZOLO

Sworn to before me this
24th day of July 2014

Melissa Lichtman
Notary Public



VERIFICATION

STATE OF NEW YORK)
COUNTY OF RICHMOND) ss.:

MIAMONA DAVIDS, being duly sworn, deposes and says: I am the parent and natural guardian of MYMOENA DAVIDS and ERIC DAVIDS, Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

By: _____

MIAMONA DAVIDS

Sworn to before me this
25th day of July 2014

Syahan Peguero

Notary Public

SYAHAN PEGUERO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PE6246440
Qualified in Bronx County
My Commission Expires July 25, 2015

VERIFICATION

STATE OF NEW YORK)
COUNTY OF RICHMOND) ss.:

CHRISTINE HENSON, being duly sworn, deposes and says: I am the parent and natural guardian of ANDREW HENSON, Plaintiff in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

By: Christine Henson
CHRISTINE HENSON

Sworn to before me this
26th day of July 2014

Syahan Peguero

Notary Public

SYAHAN PEGUERO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PE6245440
Qualified In Bronx County
My Commission Expires July 25, 2015

VERIFICATION

STATE OF NEW YORK)
COUNTY OF RICHMOND) ss.:

KENDRA OKE, being duly sworn, deposes and says: I am the parent and natural guardian of IZAIYAH EWERS, Plaintiff in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

By: _____

KENDRA OKE

Sworn to before me this
23th day of July 2014

Syahan Peguero
Notary Public

SYAHAN PEGUERO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PE6245440
Qualified in Bronx County
My Commission Expires July 25, 2015

VERIFICATION

STATE OF NEW YORK)
COUNTY OF RICHMOND) ss.:

JACQUELINE COLSON, being duly sworn, deposes and says: I am the parent and natural guardian of ADRIAN COLSON and DARIUS COLSON, Plaintiffs in this action. I have read the foregoing Verified Amended Complaint to be submitted to the Court and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true.

By: _____

JACQUELINE COLSON

Sworn to before me this
25th day of July 2014

Syahan Peguero

Notary Public

SYAHAN PEGUERO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PE6245440
Qualified in Bronx County
My Commission Expires July 25, 2015