

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

JOHN BRENNAN, JAMES AHEARN, KURT BRUNKHORST, ERNIE TRICOMI, SCOTT SPRING, DENNIS MORTENSEN, JOHN MITCHELL, and ERIC SCHAUER,

Plaintiffs

-against-

JOHN ASHCROFT, RALPH BOYD, UNITED STATES DEPARTMENT OF JUSTICE, NEW YORK CITY BOARD OF EDUCATION, CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF CITYWIDE ADMINISTRATIVE SERVICES, and WILLIAM J. DIAMOND,

Defendants

and

JANET A. CALDERO, CELIA I. CALDERON, MARTHA CHELLEMI, ANDREW CLEMENT, KRISTEN D-ALESSIO, LAURA DANIELE, CHARMAINE DIDONATO, DAWN L. ELLIS, MARCIA P. JARRETT, MARY KACHADOURIAN, KATHLEEN LUEBKERT, ADELE A. MCGREAL, MARIANNE MANOUSAKIS, SANDRA D. MORTON, MAUREEN QUINN, HARRY SANTANA, CARL D. SMITH, KIM TATUM, FRANK VALDEZ, and IRENE WOLKIEWICZ,

Defendant-Intervenors

**PROPOSED ANSWER IN
INTERVENTION**

Civ. No. 02-0256
(FB) (RML)

Defendant-intervenors Janet A. Caldero, Celia I. Calderon, Martha Chellemi, Andrew Clement, Kristen D-Alessio, Laura Daniele, Charmaine DiDonato, Dawn L. Ellis, Marcia P. Jarrett, Mary Kachadourian, Kathleen Luebker, Adele A. McGreal, Marianne Manousakis,

Sandra D. Morton, Maureen Quinn, Harry Santana, Carl D. Smith, Kim Tatum, Frank Valdez, and Irene Wolkiewicz answer the paragraphs of plaintiffs' amended complaint as follows:

JURISDICTION AND VENUE

1. This paragraph states a legal conclusion as to which no response is required. To the extent that a response may be required, defendant-intervenors lack sufficient knowledge or information to admit or deny whether plaintiffs possess the standing necessary to support subject matter jurisdiction in this Court on all of their claims, and therefore defendant-intervenors deny the same.
2. If jurisdiction exists in this Court, then defendant-intervenors admit that venue is proper in this Court.

PARTIES

3. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
4. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
5. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted in part. Defendant-intervenors are without knowledge or information sufficient to either admit or deny that the New York Board of Education employs plaintiffs.

10. Admitted.

FACTS

11. Admitted in part. Defendant-intervenors admit that there are two levels for Custodian Engineers: Level One and Level Two, and that Custodian Engineers Level Two are eligible to work at larger schools with higher pay than are Custodian Engineers Level One. To the extent the remainder of this paragraph makes factual allegations, defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.

12. Admitted in part. Defendant-intervenors admit that the particular school to which a given Custodian Engineer is assigned may be determined in part by the individual preferences of that Custodian Engineer and that the more seniority a Custodian Engineer has, the more likely it is that he or she will be able to work at the school of his or her choice. Defendant-intervenors are without knowledge of information sufficient to either admit or deny whether school assignment is “often” determined in part by the individual preferences of the Custodian Engineer.

13. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.

14. Admitted in part. The first sentence of this paragraph constitutes plaintiffs’ description of the allegations of the United States’ complaint in *United States v. New York City Board of Education*, Civil Action No. 96-0374, which speaks for itself; thus, no answer is required. The second sentence of this paragraph is admitted.

15. Admitted.
16. Admitted.
17. Admitted.
18. Admitted that these benefits were among those received by offerees.
19. Admitted in part. Defendant-intervenors admit that permanent jobs provide better civil service benefits than provisional jobs. To the extent the remainder of this paragraph makes factual allegations, defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
20. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
21. Admitted in part. Only African-American, Hispanic, Asian, and female Custodians and Custodian Engineers were defined as “Offerees” in the February 1999 Settlement Agreement. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the assertion that only African-American, Hispanic, Asian, and female Custodians and Custodian Engineers were “eligible” to be Offerees.
22. This paragraph contains legal conclusions to which no answer is required. Defendant-intervenors disagree with plaintiffs’ legal conclusions. To the extent that the paragraph makes factual allegations, those allegations are denied.
23. This paragraph contains legal conclusions to which no answer is required. Defendant-intervenors disagree with plaintiffs’ legal conclusions. To the extent that the paragraph makes factual allegations, those allegations are denied.

24. This paragraph contains legal conclusions to which no answer is required. Defendant-intervenors disagree with plaintiffs' legal conclusions. To the extent that the paragraph makes factual allegations, those allegations are denied.
25. Admitted. The order approving the settlement agreement in the earlier lawsuit was vacated on appeal; defendant-intervenors further allege that thereafter, this Court entered a second order approving all but paragraphs 13-16 of the settlement agreement.

First Claim (for Injunctive/Declaratory Relief)

26. Defendant-intervenors repeat and affirm their responses to the allegations in the preceding paragraphs.
27. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
28. Admitted in part. Defendant-intervenors admit that the settlement agreement identified 59 offerees. The remainder of this paragraph contains legal conclusions to which no answer is required. To the extent the paragraph makes factual allegations, defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
29. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
30. This paragraph contains legal conclusions to which no answer is required. To the extent the paragraph makes factual allegations, defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.

31. This paragraph contains legal conclusions to which no answer is required. To the extent the paragraph makes factual allegations, defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph
32. This paragraph contains legal conclusions to which no answer is required. To the extent the paragraph makes factual allegations, defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
33. This paragraph contains legal argument and conclusions to which no answer is required. To the extent the paragraph makes factual allegations, defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
34. Admitted in part. Defendant-intervenors admit Municipal Defendants act under color of state authority. Defendant-intervenors deny plaintiffs' characterization of the settlement agreement.
35. Defendant-intervenors deny plaintiffs' characterization of the settlement agreement. To the extent the paragraph makes factual allegations, defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
36. Admitted.
37. Defendant-intervenors admit that under the terms of the settlement agreement, the Municipal Defendants are obligated to continue to give the offerees the benefit of the permanent status and retroactive seniority that were called for by their

agreement with the United States. Defendant-intervenors are without knowledge or information sufficient to either admit or deny that Municipal Defendants will actually so continue.

38. Defendant-intervenors admit that under the terms of the settlement agreement, the Federal Defendants are obligated to require that the Municipal Defendants provide the offerees with the benefit of the permanent status and retroactive seniority called for by the agreement between the Municipal Defendants and the United States. Defendant-intervenors are without knowledge or information sufficient to either admit or deny that Federal Defendants will actually so require.
39. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
40. This paragraph consists of legal arguments and conclusions to which no response is required. Defendant-intervenors disagree with plaintiffs' legal arguments and conclusions. To the extent that the paragraph makes factual allegations, those allegations are denied.
41. This paragraph consists of legal arguments and conclusions to which no response is required. Defendant-intervenors disagree with plaintiffs' legal arguments and conclusions. To the extent that the paragraph makes factual allegations, those allegations are denied.
42. This paragraph consists of legal arguments and conclusions to which no response is required. Defendant-intervenors disagree with plaintiffs' legal arguments and conclusions. To the extent that the paragraph makes factual allegations, those allegations are denied.

Second Claim (for John Mitchell's Damages)

43. Defendant-intervenors repeat and affirm their responses to the allegations in the preceding paragraphs.
44. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
45. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
46. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
47. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
48. This paragraph consists of legal arguments and conclusions to which no response is required. Defendant-intervenors disagree with plaintiffs' legal arguments and conclusions. To the extent that the paragraph makes factual allegations, those allegations are denied.

Third Claim (for Eric Schauer's Damages)

49. Defendant-intervenors repeat and affirm their responses to the allegations in the preceding paragraphs.
50. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
51. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.

52. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
53. Defendant-intervenors are without knowledge or information sufficient to either admit or deny the allegations in this paragraph.
54. This paragraph consists of legal arguments and conclusions to which no response is required. Defendant-intervenors disagree with plaintiffs' legal arguments and conclusions. To the extent that the paragraph makes factual allegations, those allegations are denied.

PLAINTIFFS' DEMAND FOR JUDGMENT

No response is required to plaintiffs' demand for judgment. Defendant-intervenors deny that plaintiffs are entitled to judgment.

FIRST DEFENSE

The complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

The Court lacks subject-matter jurisdiction because the plaintiffs lack standing to assert some or all of their claims.

THIRD DEFENSE

These claims are inappropriately raised in the present case, as they are repetitive and duplicative of claims currently being litigated in *United States v. New York City Board of Education*, Civil Action No. 96-0374.

FOURTH DEFENSE

To the extent that these claims are not repetitive and duplicative of claims currently being litigated in *United States v. New York City Board of Education*, Civil Action No. 96-0374, they are barred by laches.

FIFTH DEFENSE

The challenged settlement agreement is lawful.

WHEREFORE, defendant-intervenors respectfully request that the Court:

- a) enter a judgment in their favor, dismissing with prejudice all claims set forth in the plaintiffs' complaint; and
- b) award such other and further relief as this Court deems just and appropriate.

Dated:

Respectfully submitted,

Lenora M. Lapidus (LL-6592)
Emily J. Martin (EM-2924)
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