

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO

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CYNTHIA MASTERS, on her own behalf and as representative of a class of similarly situated persons;
MICHELE MONTOYA, on her own behalf and as representative of a class of similarly situated persons;
MILDRED ANNE KOLQUIST, on her own behalf and as representative of a class of similarly situated persons;
LAWRENCE GARCIA, on his own behalf and as representative of a class of similarly situated persons
PAULA SCENA, on her own behalf and as representative of a class of similarly situated persons; and
DENVER CLASSROOM TEACHERS ASSOCIATION

v.

SCHOOL DISTRICT NO. 1 IN THE CITY AND COUNTY OF DENVER;
JANE GOFF, in her official capacity as a member of the Colorado State Board of Education;
ELAINE GANTZ BERMAN, in her official capacity as a member of the Colorado State Board of Education;
DEBORA SCHEFFEL, in her official capacity as a member of the Colorado State Board of Education;
PAM MAZANEC, in her official capacity as a member of the Colorado State Board of Education;
MARCIA NEAL, in her official capacity as a member of the Colorado State Board of Education;
PAUL LUNDEEN, in his official capacity as a member of the Colorado State Board of Education; and
ANGELIKA SCHROEDER, in her official capacity as a member of the Colorado State Board of Education.

COURT USE ONLY

Case No.:

Division:

Courtroom:

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ATTORNEYS FOR PLAINTIFFS

**Pro hac vice* application pending

COMPLAINT

I. NATURE OF ACTION

1. This lawsuit challenges the constitutionality of certain provisions of Senate Bill 2010-191("S.B. 191"), which was enacted on May 20, 2010 under the title "Ensuring Quality Instruction Through Educator Effectiveness," and also challenges the constitutionality of actions taken by Defendant School District No. 1 in the City and County of Denver ("Denver Public Schools" or "DPS") pursuant to the those provisions.

2. The challenged provisions of S.B. 191 are codified at Colo. Rev. Stat. § 22-63-202(2)(c.5). Those provisions—to which we refer as “the discharge-without-cause provisions”—allow school officials to remove nonprobationary teachers from their teaching positions and subsequently discharge them from employment without cause—*i.e.*, without meeting the standards for dismissals or layoffs established by the Teacher Employment, Compensation, and Dismissal Act (“TECDA”), *see* Colo. Rev. St. §§ 22-63-301, 22-63-202(3)—and without providing notice and an opportunity for a hearing, as required under TECDA, *see* Colo. Rev. St. § 22-63-302, and Article II, Section 25 of the Colorado Constitution.

3. Since the enactment of S.B. 191, Denver Public Schools has invoked the discharge-without-cause provisions to remove hundreds of teachers from their teaching positions and subsequently to effectively discharge many of those teachers altogether without cause, notice, or hearing. Many of those discharged teachers are experienced educators with excellent professional records who had earned nonprobationary status under TECDA before they were discharged.

4. The discharge-without-cause provisions, and their implementation by Defendant Denver Public Schools, violate the Colorado Constitution in two distinct ways:

(a) First, the discharge-without-cause provisions violate the clause of Article II, Section 11 of the Colorado Constitution that prohibits the state from impairing contracts (the “Contracts Clause”). Teachers who earned nonprobationary status before the enactment of S.B. 191 have vested, contractual rights not to be discharged unless TECDA’s substantive standards for dismissals or layoffs are met and the teachers are provided with an opportunity for a hearing. The discharge-without-cause provisions contained in S.B. 191 violate the Contracts Clause because they substantially impair those vested contractual rights without adequate justification by allowing school officials to discharge nonprobationary teachers without meeting TECDA’s substantive standards for dismissals or layoffs, and without providing notice and the hearing rights required by TECDA. Defendant Denver Public Schools, through its implementation of S.B. 191, has violated the Contracts Clause by discharging nonprobationary teachers without cause, notice, or hearing pursuant to those provisions.

(b) Second, the discharge-without-cause provisions violate Article II, Section 25 of the Colorado Constitution, which requires the state to provide procedural due process before depriving an individual of his or her property (“the Due Process Clause”). TECDA’s substantive and procedural requirements for the discharge of nonprobationary teachers provide those teachers with a reasonable and objective expectation of continued employment, and thus a constitutionally protected property interest in continued employment. Before a nonprobationary teacher can be deprived of that interest, his or her employing school district must provide the teacher with notice of the grounds for the discharge, including an explanation of the evidence on which the discharge is based, and an opportunity for a hearing before an impartial decision-maker. The discharge-without-cause provisions contained in S.B. 191 violate that constitutional requirement because

they permit school districts to discharge non-probationary teachers without providing such constitutionally required notice and hearing rights. Defendant Denver Public Schools, through its implementation of the discharge-without-cause provisions, has violated that constitutional requirement because it has discharged nonprobationary teachers without providing such constitutionally required notice or hearing rights.

5. Plaintiffs Cynthia Masters, Michele Montoya, Mildred Kolquist, Lawrence Garcia, and Paula Scena (“Individual Plaintiffs”) bring this action on their own behalf and as a class action on behalf of classes of similarly situated persons. Plaintiff Denver Classroom Teachers Association (“DCTA”) brings this action on a representative basis on behalf of its nonprobationary public school teacher members.

II. JURISDICTION AND VENUE

6. The District Court of Denver County, State of Colorado, has jurisdiction over this action pursuant to Article VI, Section 9 of the Colorado Constitution. This action is brought pursuant to the Colorado Constitution, Article II, Sections 11 and 25, and pursuant to Colo. R. Civ. P. 23, 57, and 65.

7. Venue is proper in this District pursuant to Colo. R. Civ. P. 98.

III. PARTIES

8. Plaintiff Cynthia Masters, who holds a teaching credential in special education, worked as a full-time teacher for Denver Public Schools for seven years before Denver Public Schools removed her from her position and subsequently placed her on unpaid leave in 2011 pursuant to the discharge-without-cause provisions. Masters achieved nonprobationary status in 2006. Over the course of her seven years of full-time employment, she consistently received favorable evaluations from her DPS supervisors. Masters brings this action on her own behalf and as a class action on behalf of classes of similarly situated persons seeking a declaration that the discharge-without-cause provisions violate the Contracts Clause and the Due Process Clause of the Colorado Constitution and also seeking the equitable remedies of reinstatement and backpay for DPS’s unconstitutional actions under the discharge-without-cause provisions.

9. Plaintiff Michele Montoya worked as a full-time teacher for DPS for eleven years before DPS placed her on unpaid leave in 2011 pursuant to the discharge-without-cause provisions. Montoya achieved nonprobationary status in 2003. Over the course of her eleven years of full-time employment, she consistently received favorable evaluations from her DPS supervisors. Montoya brings this action on her own behalf and as a class action on behalf of classes of similarly situated persons seeking a declaration that the discharge-without-cause provisions violate the Contracts Clause and the Due Process Clause of the Colorado Constitution and also seeking the equitable remedies of reinstatement and backpay for DPS’s unconstitutional actions under the discharge-without-cause provisions.

10. Plaintiff Midred Anne Kolquist worked as a full-time teacher for DPS for more than three years before DPS placed her on unpaid leave in 2012 pursuant to the discharge-without-cause provisions. Kolquist achieved nonprobationary status in 2012. She has received favorable performance evaluations from her DPS supervisors. Kolquist brings this action on her own behalf and as a class action on behalf of classes of similarly situated persons seeking a declaration that the discharge-without-cause provisions violate the Due Process Clause of the Colorado Constitution and also seeking the equitable remedies of reinstatement and backpay for DPS's unconstitutional actions under the discharge-without-cause provisions.

11. Plaintiff Lawrence Garcia, who holds a Master of Science in Applied Mathematics, has worked as a full-time teacher for Denver Public Schools nine years. Garcia achieved nonprobationary status in 2007. Garcia brings this action on his own behalf and as a class action on behalf of classes of similarly situated persons seeking a declaration that the discharge-without-cause provisions violate the Contracts Clause and the Due Process guarantee of the Colorado Constitution and an injunction against any further implementation or enforcement of those provisions.

12. Plaintiff Paula Scena has worked as a full-time teacher for Denver Public Schools for more than twenty-three years. Scena achieved nonprobationary status in 1993. Over the course of her twenty-three years of full-time employment consistently received favorable performance evaluations from her DPS supervisors. Scena brings this action on her own behalf and as a class action on behalf of classes of similarly situated persons seeking a declaration that the discharge-without-cause provisions violate the Contracts Clause and the Due Process guarantee of the Colorado Constitution and an injunction against any further implementation or enforcement of those provisions.

13. Plaintiff Denver Classroom Teachers Association ("DCTA") is a public employee labor organization representing nearly 3,000 elementary and secondary school teachers employed by Denver Public Schools.

14. Defendant Denver Public Schools is a political subdivision of the State of Colorado that operates more than one hundred public elementary, middle, and high schools throughout the City and County of Denver.

15. Defendants Jane Goff, Elaine Gantz Berman, Debora Scheffel, Pam Mazanec, Marcia Neal, Paul Lundeen, and Angelika Schroeder are members of the Colorado State Board of Education. The State Board of Education has the constitutional and statutory duty to supervise the state's schools and educational programs, *see* Colo. Const. art. IX, sec. 1; Colo. Rev. Stat. § 22-2-106(1)(a), as well as the statutory authority to issue "policies, rules, and regulations" governing k-12 schools and educational programs," Colo. Rev. Stat. § 22-2-107(1)(c). Defendants Goff, Berman, Scheffel, Mazanec, Neal, Lundeen, and Schroeder (referred to collectively as the "State Official Defendants") are sued in their official capacity.

IV. FACTUAL ALLEGATIONS

A. The Teacher Employment, Compensation, and Dismissal Act

16. TECDA, both before and after its amendment by S.B. 191, maintains a distinction between “probationary” and “nonprobationary” public school teachers.

17. Probationary teachers work under annual employment contracts that may be “non-renewed” by their school district employers without cause, notice, or hearing. *See* Colo. Rev. Stat. § 22-63-203(4)(a) (2013).

18. Once a teacher has successfully fulfilled the applicable statutory requirements, the teacher earns nonprobationary status. Nonprobationary teachers may be dismissed only for the substantive causes enumerated in TECDA, including “incompetency,” “neglect of duty,” “unsatisfactory performance,” and “insubordination.” Colo. Rev. Stat. § 22-63-301 (2013). TECDA also provides nonprobationary teachers with certain procedural protections in dismissal cases—namely, written notice of the grounds for dismissal and, if the teacher contests those grounds, a hearing before an impartial hearing officer. Colo. Rev. St. § 22-63-302(1)-(10) (2013). (Those procedural protections do, not, however, apply if the teacher has been convicted of, or entered a plea of guilt or *nolo contendere* to, certain enumerated crimes. *Id.* § 22-63-302(11).)

19. In layoff situations, TECDA provides that teacher contracts may be cancelled when there is a “justifiable decrease in the number of teaching positions” in the district. *Id.* § 22-63-202(3). While TECDA is silent as to hearing rights in such situations, under binding and longstanding precedent, Article II, Section 25 of the Colorado Constitution requires school districts, before laying off any nonprobationary teacher, to grant the teacher a hearing “at which the teacher may show that the purported reasons for the layoff were not the actual ones or that the layoff was effectuated in an arbitrary and unreasonable manner.” *Howell v. Woodlin School Dist. R-104*, 596 P.2d 56, 60 (Colo. 1979).

20. Before the enactment of S.B. 191, TECDA had also established priority rules for teacher layoffs resulting from a justifiable reduction in the number of teaching positions. Specifically, TECDA permitted teachers to contract with their school board over the order in which layoffs were to be carried out. *See* Colo. Rev. Stat. § 22-63-202(3) (2009). In the absence of such a contract, the statute provided for the cancelling of “the employment contracts of first-year probationary teachers ... first.” *Id.*

21. From its enactment in 1990, TECDA has provided that a teacher is considered probationary during “the first three school years that [the] teacher is employed on a full-time continuous basis by a school district.” Colo. Rev. St. § 22-63-203(2)(a) (2009). S.B. 191 re-defined “probationary teacher” as a “a teacher who has not completed three consecutive years of demonstrated effectiveness or a nonprobationary teacher who has had two consecutive years of demonstrated ineffectiveness.” Colo. Rev. St. § 22-63-203(7). This change is made effective in two phases: First, beginning in the 2013-14 school year, teachers will be evaluated based on

new, statewide quality standards, and teachers' "[d]emonstrated effectiveness or ineffectiveness," as determined under that new evaluation system, "shall begin to be considered in the acquisition of probationary or nonprobationary status." Colo. Rev. St. § 22-9-105.5(10)(IV)(B) (2013). Hence, beginning in the 2013-14 school year, teachers begin earning nonprobationary status by completing "three consecutive years of demonstrated effectiveness, as determined through his or her performance evaluations and continuous employment." Colo. Rev. St. § 22-63-203(1)(b) (2013). And, beginning in the 2014-15 school year, "[d]emonstrated effectiveness or ineffectiveness shall be considered in the acquisition *or loss* of probationary or nonprobationary status." Colo. Rev. St. § 22-9-105.5(10)(V)(B) (2013) (emphasis added). Thus, beginning in the 2014-15 school year, a nonprobationary teacher will lose his or her nonprobationary status if he or she has two annual ratings of "ineffective." Plaintiffs do not challenge these provisions of S.B. 191 relating to the earning and loss of nonprobationary status.

22. The express legislative purpose underlying TECDA's provisions granting nonprobationary status to experienced and proven teachers is to ensure, in a balanced manner, that "the educational system of the state of Colorado is being served by the best teachers available while at the same time allowing such teachers the academic freedom necessary to provide the best education possible to the children of this state." Colo. Rev. Stat. §22-63-101 (2013).

23. The provisions of TECDA summarized in ¶¶ 16-22 above created contracts between teachers who earned nonprobationary status prior to the enactment of S.B. 191 and their school district employers. *See Julesburg School Dist. No. RE-1 v. Ebke*, 562 P.2d 419, 421 (Colo. 1977) ("[T]he Teacher Tenure Act creates a contract by law between the school board and its teachers."); *Maxey v. Jefferson County School Dist. No. R-1*, 408 P.2d 970, 972 (Colo. 1965) ("[A] tenure act has the effect of a contract between teacher and district."); *Ebke v. Julesburg School District No. RE-1*, 622 P.2d 95 (Colo. App. 1980) ("The Teacher Employment, Dismissal, and Tenure Act ... creates, by law, a contract between the school board and its teachers."); *Lockhart v. Board of Educ. of Arapahoe Cnty. Sch. Dist. No. 6*, 735 P.2d 913, 918 (Colo. App. 1986) ("Tenure, and the right to compensation which accompanies it, rises to the level of a constitutionally protected interest."). Public school teachers who earned nonprobationary status before the effective date of S.B. 191 therefore have vested contractual rights to all the substantive and procedural protections afforded by TECDA as they existed prior to the enactment of S.B. 191.

24. The provisions of TECDA summarized in ¶¶ 16-22 above also create a reasonable expectation of continued employment for nonprobationary teachers, and thus create a constitutionally protected property interest in nonprobationary teachers' continued employment. Consequently, nonprobationary teachers' employment cannot lawfully be terminated without providing the procedural due process guaranteed by Article II, Section 25 of the Colorado Constitution, which includes the right to notice and to a hearing before an impartial decision-maker. *Frey v. Adams County School Dist. No. 14*, 804 P.2d 851, 854-56 (Colo. 1991); *Howell*, 596 P.2d at 60.

B. S.B. 191's Discharge-Without-Cause Provisions

25. S.B. 191 was enacted on May 20, 2010. The new law amended TECDA as well as other education statutes, including the Colorado Licensed Personnel Performance Evaluation Act, Colo. Rev. Stat. § 22-9-101, *et seq.*, and the Colorado Education Accountability Act of 2009, *id.* § 22-11-101, *et seq.*

26. While S.B. 191 made prospective changes to the criteria for achieving nonprobationary status and added criteria for losing nonprobationary status (see ¶ 21 above), it left the provisions summarized in ¶¶ 16-20 above intact and preserved TECDA's essential distinction between probationary and nonprobationary teachers in all relevant respects.

27. At the same time, however, S.B. 191 added the discharge-without-cause provisions, codified at Colo. Rev. Stat. § 22-63-202(2)(c.5) (2013). Those provisions purport to allow school districts to "remov[e]" nonprobationary teachers from their positions due to budgetary reasons or program changes and subsequently effectively discharge such teachers if they cannot secure within one year a principal's consent to alternative assignments in the school district—all without meeting any of TECDA's substantive criteria for dismissals or layoffs or providing any opportunity to be heard.

28. Specifically, the discharge-without-cause provisions apply to teachers who are "displaced" from their positions "[w]hen a determination is made that the teacher[s'] services are no longer required by reason of" any of the following circumstances: "a drop in enrollment; turnaround; phase-out; reduction in program; or reduction in building, including closure, consolidation, or reconstitution." Colo. Rev. Stat. §§ 22-63-202(2)(c.5)(III)(B), & (VII) (2013).

29. The discharge-without-cause provisions direct that, after a school district "remove[s]" a nonprobationary teacher, the school district's department of human resources "shall immediately provide the nonprobationary teacher with a list of all vacant positions for which he or she is qualified, as well as a list of vacancies in any area identified by the school district to be an area of critical need." Colo. Rev. Stat. §§ 22-63-202(2)(c.5)(III)(B) (2013). "An application for a vacancy shall be made to the principal of a listed school, with a copy of the application provided by the nonprobationary teacher to the school district," and a teacher who so applies will be transferred to the school if the school's principal recommends such a transfer. *Id.*

30. The discharge-without-cause provisions further direct that if a removed nonprobationary teacher is unable to secure a principal's consent to another assignment in the school district after twelve months or two hiring cycles (whichever is longer), "the school district shall place the teacher on unpaid leave until such time as the teacher is able to secure an assignment." Colo. Rev. Stat. § 22-63-202(2)(c.5)(IV). The discharge-without-cause provisions go on to authorize school districts to place such teachers in short-term assignments while they seek permanent positions, while specifying that such short-term assignments do not "interrupt the period in which the teacher is required to secure an assignment through discharge-without-cause before the district shall place the teacher on unpaid leave." *Id.* § 22-63-202(2)(c.5)(V).

31. Teachers who are placed on “unpaid leave” pursuant to the discharge-without-cause provisions are effectively discharged from employment. Teachers on unpaid leave perform no work for, and receive no pay or benefits from, the school districts for which they formerly worked.

32. The discharge-without-cause provisions do not require school districts to meet the statutory standards for dismissals or layoffs before placing nonprobationary teachers on unpaid leave and do not provide for a hearing. Indeed, the school-based hiring provisions do not even require school districts to justify their determinations that teachers’ services are no longer required by reason of a legitimate “drop in enrollment, turnaround, phase-out, reduction in program, or reduction in building.”

33. The discharge-without-cause provisions contain an express statement of the legislative purpose underlying those provisions, to wit, that “for the fair evaluation of a principal based on the demonstrated effectiveness of his or her teachers, the principal needs the ability to select teachers who have demonstrated effectiveness and have demonstrated qualifications and teaching experience that supports the instructional practices of his or her school.” Colo. Rev. Stat. § 22-63-202(2)(c.5)(I).

C. Implementation of the Discharge-Without-Cause Provisions by Denver Public Schools

34. Immediately after the passage of S.B.191, defendant DPS began aggressively implementing the discharge-without-cause provisions.

35. On May 20, 2010—the date that S.B. 191 was enacted and took effect—DPS announced that it would implement the discharge-without-cause provisions with respect to more than 400 positions that DPS had already slated for full or partial “reduction” some months earlier. DPS stated that any teachers whose positions were “reduced” would be placed on unpaid leave under the discharge-without-cause provisions if they did not obtain a “consent” assignment by the end of August 2011.

36. From September 2010 to September 2011, DPS announced further full and partial layoffs, affecting more than 400 teachers.

37. Denver Public Schools has placed more than one hundred nonprobationary teachers on unpaid leave since the enactment of S.B. 191 without meeting the statutory grounds for the dismissal or layoff of those teachers and without affording those teachers any opportunity for a hearing.

38. Despite characterizing these actions as “reductions,” the number of teaching positions throughout DPS actually increased between the enactment of S.B. 191 and the 2011-12 school year.

39. In September 2010, DPS told Plaintiff Cynthia Masters that for budget reasons it was “reduc[ing]” her position at Centennial Elementary School to half-time as part of a “reduction in

building” and assigned her to a temporary half-time position at another school while she continued working half-time in her position at Centennial. In February 2011, DPS informed Masters that it was further “reduc[ing]”—to zero—her remaining permanent half-time position at Centennial, and in September 2011, DPS assigned Masters to a temporary position, this one for the 2011-12 school year. In October 2011, DPS informed Masters that because she had not succeeded in obtaining a “consent assignment” to replace the first half-time reduction to her position, it was reducing her employment and hence her compensation) by one-half. In September 2012, DPS informed Masters that because she had not obtained a “consent assignment” to replace the remaining half-time portion of her original permanent position, it was placing her on full unpaid leave beginning with the 2012-13 school year. In the interim, Masters had applied for more than 140 alternative positions within DPS without success, despite her long career with DPS and her favorable performance evaluations. Because Masters was effectively terminated by DPS, and has been unable to secure an alternative assignment with DPS, she accepted a lower-paying teaching position in another school district, beginning with the 2013-14 school year.

40. In September 2012, DPS told Plaintiff Michele Montoya that it was eliminating her position at the Trevista Horace Mann School as part of a “reduction in building.” DPS then placed Montoya in various temporary positions and advised her that if she did not secure a replacement position within one year or two hiring cycles, she would be placed on unpaid leave. Montoya applied for more than one hundred alternative positions at DPS without success. In October 2011, DPS informed Montoya that unless she secured a “consent” position with another school by the end of the month, she would be placed on unpaid leave. On October 31, 2011, DPS placed Montoya on unpaid leave. After being placed on unpaid leave, Montoya was unemployed for nine months before she secured an alternative “consent” teaching position at DPS’s Career Education Center.

41. In February 2012, DPS told Plaintiff Mildred Kolquist that it was eliminating her position at Merrill Middle School as part of a “reduction in building.” DPS then placed her in various temporary positions and advised her that if she did not secure a replacement position under the school-based-hiring provisions within one year or two hiring cycles, she would be placed on unpaid leave. Montoya applied for more than 100 alternative positions at DPS without success. On August 31, 2013, DPS notified Kolquist that because she had not succeeded in securing an alternative teaching position with DPS, it was placing her on unpaid leave beginning with the 2013-2014 school year.

42. In September of 2011, DPS told Plaintiff Paula Scena that it was eliminating her position as part of a “reduction in building.” DPS then placed Scena in a temporary position for the 2011-2012 school year and advised Scena that if she did not secure a replacement position with DPS, she would be placed on unpaid leave as of August 31, 2013. Scena applied for more than 75 alternative teaching positions with DPS without success before securing a replacement position days before she was scheduled to be placed on unpaid leave.

V. CLASS ALLEGATIONS

43. With respect to the First Claim for Relief set forth below—pursuant to the Contracts Clause of the Colorado Constitution—Plaintiffs Masters, Montoya, Garcia and Scena bring this action on their own behalf and as a class action under Rule 23(a) and (b)(2) of the Colorado Rules of Civil Procedure, seeking declaratory and injunctive relief against all Defendants on behalf of the following class:

All public school teachers in Colorado who achieved nonprobationary status before May 20, 2010.

This class will be referred to as the “Contracts Clause Injunction Class.”

44. Also with respect to the First Claim for Relief set forth below—pursuant to the Contracts Clause of the Colorado Constitution—Plaintiffs Masters and Montoya bring this action on their own behalf and as a class action under Rule 23(a), (b)(2), and (b)(3) of the Colorado Rules of Civil Procedure, seeking declaratory relief against all Defendants, and also seeking the equitable remedies of reinstatement and backpay against Defendant Denver Public Schools, on behalf of the following sub-class:

All public school teachers employed by Denver Public Schools who achieved nonprobationary status before May 20, 2010 and who have been placed on unpaid leave pursuant to the discharge-without-cause provisions of S.B. 191.

This class will be referred to as the “Contracts Clause Reinstatement and Backpay Subclass.”

45. With respect to the Second Claim for Relief set forth below—pursuant to the due process guarantee of the Colorado Constitution—Plaintiffs Masters, Montoya, Kolquist, Garcia, and Scena bring this action on their own behalf and as a class action under Rule 23(a) and (b)(2) of the Colorado Rules of Civil Procedure, seeking declaratory and injunctive relief against all Defendants on behalf of the following class:

All Colorado public school teachers who have achieved nonprobationary status.

This class will be referred to as the “Due Process Injunction Class.”

46. Also with respect to the Second Claim for Relief set forth below—pursuant to the due process guarantee of the Colorado Constitution—Plaintiffs Masters, Montoya, and Kolquist bring this action on their own behalf and as a class action under Rule 23(a) and (b)(3) of the Colorado Rules of Civil Procedure, seeking the equitable remedies of reinstatement and backpay against Defendant DPS on behalf of the following subclass:

All nonprobationary teachers who have been placed on unpaid leave pursuant to the discharge-without-cause provisions of S.B. 191.

This class will be referred to as the “Due Process Reinstatement and Backpay Subclass.”

47. The classes and subclasses described in ¶¶ 43-46 will be referred to collectively as the “Classes.”

48. While Plaintiffs do not know the exact number of the members of each of the Classes, Plaintiffs believe there are at least: thousands of members in the Contract Clause Injunction Class; more than one hundred members of the Contract Clause Reinstatement and Backpay Class; thousands of members of the Due Process Injunction Class; and more than one hundred members of the Due Process Reinstatement and Backpay Class.

49. Common questions of law and fact exist as to all members of each of the Classes. This is particularly true as to the principal liability issues, which turn on questions of constitutional law that will determine whether any relief is appropriate with respect to each of the Classes. Such questions of law and fact common to the Classes include, but are not limited to, the following:

(a) As to the Contracts Clause Injunction Class and the Contracts Clause Reinstatement and Backpay Class, whether

(1) TECDA, as it existed prior to S.B. 191, created contractual rights;

(2) such contractual rights vested for teachers who achieved nonprobationary status prior to S.B. 191’s May 20, 2010 effective date;

(3) the discharge-without-cause provisions of S.B. 191 substantially impair those vested contractual rights; and

(4) that substantial impairment is a reasonable and necessary means of furthering the asserted state interest in ensuring the fair evaluation of principals.

(b) As to the Contract Clause Injunction Class, the propriety of an injunction prohibiting any further implementation of the discharge-without-cause provisions.

(c) As to the Contract Clause Reinstatement and Backpay Subclass, the propriety of reinstatement and backpay as remedies for a school district’s violation of the Contracts Clause.

(d) As to the Due Process Injunction Class and the Due Process Reinstatement and Backpay Subclass, whether TECDA, as amended by S.B. 191, creates a reasonable expectation of continued employment for nonprobationary teachers, and therefore a constitutionally protected property interest in continued employment requiring procedural due process protections prior to their discharge from employment;

(e) As to the Due Process Reinstatement and Backpay Subclass, the propriety of reinstatement and backpay as remedies for a school district's violation of the Due Process Clause.

50. The Individual Plaintiffs' claims are typical of the claims of the members of the Classes, and Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs and all members of the respective Classes are similarly affected by discharge-without-cause provisions and/or their implementation.

51. Plaintiffs' claims arise out of the same common course of conduct giving rise to the claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not antagonistic to, those of the other members of the Classes. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of constitutional and class action litigation.

52. The questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members, including legal and factual issues relating to appropriate individual relief.

53. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that it might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

54. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

FIRST CLAIM FOR RELIEF: IMPAIRMENT OF CONTRACTS

**(As to declaratory relief: DCTA, Masters, Montoya, Garcia, Scena,
and the Contracts Clause Injunction Class v. All Defendants)**

(As to injunctive relief: DCTA, Masters, Montoya, Garcia, and Scena v. All Defendants)

**(As to reinstatement and backpay: DCTA, Masters, Montoya, and the Contracts Clause
Reinstatement and Backpay Subclass v. Denver Public Schools.)**

55. The allegations set forth in paragraphs 1 through 54 of this Complaint are incorporated herein by reference.

56. Article II, Section 11, of the Colorado Constitution provides, in pertinent part, that no law "impairing the obligation of contracts ... shall be passed by the general assembly."

57. Under settled decisional law, TECDA's substantive and procedural requirements relating to nonprobationary teachers—those establishing substantive grounds for dismissing or laying off such teachers, those providing retention priority rights for nonprobationary teachers in layoff situations, and those providing for hearings within which teachers can contest the grounds for their discharge or their retention priority—establish contracts between nonprobationary teachers and their employing school districts.

58. Teachers who achieved nonprobationary status prior to S.B. 191's May 20, 2010 effective date have vested contractual rights not to be discharged from employment unless the substantive and procedural requirements of TECDA summarized in ¶ 16-20 above are met.

59. The discharge-without-cause provisions substantially impair the vested contractual rights of teachers who achieved nonprobationary status prior to May 20, 2010 by allowing school officials to effectively discharge such nonprobationary teachers in the absence of any showing that the statutory grounds for dismissals or layoffs are satisfied, without affording any retention priority to nonprobationary teachers, and without providing any hearing within which nonprobationary teachers can challenge the grounds for their discharge and/or their retention priority.

60. Those substantial impairments are neither reasonable nor necessary means of furthering the asserted state objective of ensuring that principals be fairly evaluated.

61. The discharge-without-cause provisions therefore violate the prohibition against laws impairing the obligation of contracts established by Article II, Section 11 of the Colorado Constitution.

62. The invalidity of the discharge-without-cause provisions under Article II, Section 11 of the Colorado Constitution warrants declaratory relief as well as an injunction (a) barring all Defendants from implementing or enforcing the challenged provisions with respect to teachers who achieved tenure before May 20, 2010, and (b) ordering the State Official Defendants to direct all Colorado school districts to refrain from implementing or enforcing the challenged provisions with respect to teachers who achieved tenure before May 20, 2010.

63. Acting pursuant to the discharge-without-cause provisions, Defendant Denver Public Schools has effectively discharged, and will continue to effectively discharge, teachers who achieved nonprobationary status before May 20, 2010 without making any showing that the statutory grounds for dismissals or layoffs are satisfied, without affording any retention priority to nonprobationary teachers, and without providing notice or the opportunity for any hearing within which teachers can challenge the grounds for their discharge and/or assert their retention priority.

64. Denver Public Schools has thus applied, and will continue to apply, the discharge-without-cause provisions in a manner that has substantially impaired, and will continue to substantially impair, the vested contractual rights of teachers who achieved non-probationary status prior to May 20, 2010. Those impairments are neither reasonable nor necessary means of

furthering the asserted state objective of ensuring that principals be fairly evaluated. Denver Public Schools' prior and ongoing application of the discharge-without-cause provision therefore violates the prohibition against laws impairing the obligation of contracts established by Article II, Section 11 of the Colorado Constitution.

65. Denver Public Schools' application of the discharge-without-cause provisions in violation of the Contracts Clause warrants declaratory relief as well as an award of reinstatement and backpay in favor of Plaintiff Masters, and Montoya individually, and in favor of the Contracts Clause Reinstatement and Backpay Subclass, against Defendant Denver Public Schools.

SECOND CLAIM FOR RELIEF: VIOLATION OF DUE PROCESS
(As to declaratory relief: DCTA, Masters, Montoya, Kolquist, Garcia, Scena,
and the Due Process Injunction Class v. All Defendants)
(As to injunctive relief: DCTA, Garcia, Scena, and the
Due Process Injunction Class v. All Defendants)
(As to reinstatement and backpay: DCTA, Masters, Montoya, Kolquist, and the
Due Process Reinstatement and Backpay Subclass v. Denver Public Schools.)

66. The allegations set forth in ¶¶ 1 through 65 of this Complaint are incorporated herein by reference.

67. Article II, Section 25 of the Colorado Constitution provides, in pertinent part, that “no person shall be deprived of property without due process of law.”

68. TECDA's provisions establishing the grounds for dismissing nonprobationary teachers, and establishing notice-and-hearing procedures to be followed in dismissal cases, create a reasonable and objective expectation of continued employment, and thus a constitutionally protected property interest in continued employment. Consequently, before a nonprobationary teacher can be discharged, Article II, Section 25 of the Colorado Constitution requires that the teacher be afforded, at a minimum, notice of the grounds for the discharge, an explanation of the evidence on which the discharge is based, and an opportunity for a hearing before an unbiased decision-maker to challenge the propriety of the discharge.

69. Because the discharge-without-cause provisions purport to allow school officials to effectively discharge nonprobationary teachers by placing them on unpaid leave without affording such teachers an opportunity for a hearing before an unbiased decision-maker, those provisions violate the due process guarantee of Article II, Section 25 of the Colorado Constitution and therefore cannot constitutionally be applied to teachers who have achieved nonprobationary status.

70. The invalidity of the discharge-without-cause provisions under Article II, Section 25 of the Colorado Constitution warrants declaratory relief as well as an injunction (a) barring all Defendants from implementing or enforcing the discharge-without-cause provisions, and (b) ordering the State Official Defendants to direct all Colorado school districts to refrain from

implementing or enforcing the discharge-without-cause provisions against any nonprobationary teachers.

71. Acting pursuant to the discharge-without-cause provisions, Defendant Denver Public Schools has applied, and will continue to apply, the discharge-without-cause provisions in a manner that has resulted in, and will continue to result in, the effective discharge of non-probationary teachers without the due process protections required by Article II, Section 25 of the Colorado Constitution, including, notably, the requirement of an opportunity for a hearing before an unbiased decision-maker at which such teachers can contest the grounds asserted for their discharge.

72. DPS's application of the discharge-without-cause provisions to nonprobationary teachers therefore violates Article II, Section 25 of the Colorado Constitution.

73. DPS's application of the discharge-without-cause provisions in violation of Article II, Section 25 of the Colorado Constitution warrants declaratory relief as well as an award of reinstatement and backpay against DPS in favor of Plaintiffs Masters, Montoya and Kolquist, and in favor of all members of the Due Process Reinstatement and Backpay Subclass.

PRAYER FOR RELIEF

Plaintiffs therefore pray for the following relief:

1. A declaration that, with respect to Colorado public school teachers who achieved nonprobationary status before May 20, 2010, the discharge-without-cause provisions of SB-191 violate Article II, Section 11 of the Colorado Constitution, and that Denver Public Schools' application of those provisions likewise violates Article II, Section 11 of the Colorado Constitution.

2. Injunctive relief barring the Defendants their officers, successors in office, agents, servants, employees, and attorneys, and all those acting in concert and participation with them, from implementing or enforcing the discharge-without-cause provisions of S.B. 191 with respect to Colorado public school teachers who achieved nonprobationary status prior to May 20, 2010.

3. Injunctive relief ordering that the State Official Defendants direct all Colorado school districts to refrain from implementing or enforcing the challenged provisions with respect to teachers who achieved tenure before May 20, 2010.

4. A declaration that, with respect to all Colorado public school teachers who have achieved nonprobationary status, the discharge-without-cause provisions of SB-191 violate Article II, Section 25 of the Colorado Constitution, and that Denver Public Schools' application of those provisions likewise violates Article II, Section 25 of the Colorado Constitution.

5. Injunctive relief barring the Defendants, their officers, successors in office, agents, servants, employees, and attorneys, and all those acting in concert and participation with them,

from implementing or enforcing the discharge-without-cause provisions of S.B. 191 with respect to all Colorado public school teachers who have achieved nonprobationary status.

6. Injunctive relief ordering that the State Official Defendants direct all Colorado school districts to refrain from implementing or enforcing the challenged provisions with respect to all teachers who achieved nonprobationary status.

7. An award of reinstatement and backpay against Denver Public Schools and in favor of Plaintiffs Masters, Montoya, Kolquist, all members of the Contracts Clause Reinstatement and Backpay Subclass, and all members of the Due Process Reinstatement and Backpay Subclass.

8. An award of costs and reasonable attorney's fees; and

9. Such other and further relief as this Court deems just and appropriate.

DATED this 29th day of January, 2014.

Respectfully submitted,

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**Pro hac vice* application pending

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