

SUPERIOR COURT OF THE STATE OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

H. G., a minor, through her guardian TANISHA GARNER; F. G., a minor, through her guardian TANISHA GARNER; E.P., a minor, through his guardian NOEMÍ VAZQUEZ; M.P., a minor, through her guardian NOEMÍ VAZQUEZ; F.D., a minor, through her guardian NOEMÍ VAZQUEZ; W.H., a minor, through his guardian FAREEAH HARRIS; N.H., a minor, through her guardian FAREEAH HARRIS; J.H., a minor, through his guardian SHONDA ALLEN; O.J., a minor, through his guardian IRIS SMITH; M.R., a minor, through his guardian IRIS SMITH; Z.S., a minor, through her guardian WENDY SOTO; D.S., a minor, through his guardian WENDY SOTO;

Plaintiffs,

v.

KIMBERLY HARRINGTON, in her official capacity as Acting Commissioner of the New Jersey Department of Education; NEW JERSEY STATE BOARD OF EDUCATION; nominal defendant NEWARK PUBLIC SCHOOL DISTRICT; and nominal defendant CHRISTOPHER CERF, in his official capacity as Superintendent of the Newark School District;

Defendants.

Case No.: _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs, by their undersigned counsel, bring this civil action for declaratory judgment and injunctive relief against Defendants Kimberly Harrington, in her official capacity as Acting Commissioner of the New Jersey Department of Education; New Jersey State Board of Education; Newark Public School District; and Christopher Cerf, in his official capacity as Superintendent of the Newark Public School District, (collectively “Defendants”) for injuries

caused by Defendants’ unconstitutional enforcement of the State statute prohibiting school districts from considering teacher quality when they have to resort to teacher layoffs due to a budgetary deficit. N.J.S.A. 18A:28-10 and 18A:28-12. Plaintiffs hereby allege as follows:

INTRODUCTION

1. The Education Clause of the New Jersey Constitution requires the Legislature to provide “for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State.” Art. VIII, Sect. IV, ¶ 1.

2. Teacher effectiveness is the most important in-school factor affecting the quality of students’ education. Students with high-quality, effective teachers do not just learn better than those without effective teachers in the short run—in the long run, they are more likely to graduate from high school, more likely to attend college, more likely to have good jobs and higher lifetime earnings, and less likely to become teenage parents.

3. Yet, the Legislature has passed a law that forces school districts faced with the possibility or reality of a reduction-in-force to follow quality-blind teacher layoff and reemployment statutes, N.J.S.A. 18A:28-10 and 18A:28-12 (the “quality-blind layoff statute” or “LIFO statute”), which mandate that school districts, when executing a reduction-in-force, lay off teachers based on seniority alone, ignoring any other factor, including the teacher’s effectiveness. If there is a later need to hire teachers, the district must prioritize the re-hiring of these laid off teachers in order of their seniority, not their assessed quality.

4. The children affected by the LIFO statute are primarily located in low-income districts such as the Newark Public School District (“Newark”). Parents in those districts continuously need to fight to ensure that their children receive the high-quality education and opportunities they deserve.

5. Given declining student enrollment in Newark and the corresponding decrease in state funding, the reality of LIFO in Newark forces Newark and similar districts to wrestle with two untenable options that damage every child in the district: either (i) lay off effective teachers pursuant to the mandates of the LIFO statute, while leaving ineffective teachers clustered in an already under-performing school district, or (ii) refuse to institute reductions-in-force (even when faced with decreased funding), retain ineffective teachers to save the effective and highly-effective teachers, decline to hire new teachers, and cut spending elsewhere in the district's budget.

6. Thus far, Newark has opted not to fire effective classroom teachers; instead, it has created a pool of ineffective teachers that it will not place in full-time teaching positions in order to avoid reducing the number of effective teachers instructing students within the district. This pool of ineffective teachers, which is known as the Educators Without Placement Sites ("EWPS") pool, is unsustainable. It drains millions of dollars per year from Newark's budget that could be used to hire new, effective teachers and provide other beneficial programs. This detrimental budgetary impact is especially harmful in light of the State's misguided efforts to cut education funding to the Schools Development Authority ("SDA") districts, including Newark, which would further inhibit the district's ability to provide a thorough and efficient education to these students.

7. Other school districts similarly situated to Newark are faced with this same dilemma and have implemented workarounds to avoid the harms associated with implementing reductions-in-force pursuant to LIFO.

8. Because of its harmful effects on the students in struggling school districts, the LIFO statute violates the rights of Plaintiffs guaranteed by the New Jersey Constitution,

including those guaranteed by the Education Clause, as applied to Newark and similarly situated districts because that statute operates, when a reduction-in-force is necessitated, to strip schools in these districts of effective teachers, and prevents these districts from instead laying off ineffective teachers that have greater seniority.

9. New Jersey courts have a long and admirable history of protecting the fundamental right to education in the state and ensuring that lower-income and struggling districts—known as *Abbott* or SDA districts—receive the additional funding needed to assist in meeting their constitutional mandate.

10. Ensuring adequate funding to these districts is essential, but funding alone is not sufficient to provide a thorough and efficient education to these students. They need effective teachers.

11. In these districts, of which Newark is one, this fundamental right to a thorough and efficient education requires the State to provide an education that “exceeds that needed by students in more affluent districts,” according to the New Jersey Supreme Court. Yet, the LIFO statute has the perverse effect of mandating that these less affluent school districts fire junior (but effective) teachers and instead retain senior (but ineffective) teachers during reductions-in-force, violating the rights guaranteed by the Education Clause.

12. Additionally, these children are inequitably harmed in comparison to children attending other districts, given the impact of the LIFO statute in less affluent districts like Newark where recent data shows that there are higher concentrations of ineffective teachers than other districts within the state. Children in Newark and other similarly situated districts suffer greater harms from the LIFO statute than students in other districts, given that a reduction-in-force pursuant to the LIFO statute would result in the dismissal of effective teachers and the

retention of ineffective teachers. On this basis, the LIFO statute, as applied to these children, also violates their rights pursuant to the New Jersey Constitution's Equal Protection Clause.

13. Moreover, these children are being deprived of their fundamental right to a thorough and efficient education by virtue of the operation of the LIFO statute, thereby violating their rights pursuant to the Due Process Clause of the New Jersey Constitution.

14. For these reasons, Newark and other similarly situated districts need to be rid of the LIFO statute's requirements and permitted to keep effective teachers in the classroom. Laying off teachers without any consideration of their quality prohibits children from being educated in the constitutionally mandated manner.

15. By enforcing the quality-blind layoff statute, Defendants violate the constitutional and statutory rights of Plaintiffs and other students in Newark and similarly situated districts throughout the State.

16. Therefore, Plaintiffs seek a judgment declaring that the State's quality-blind layoff statute, as applied to Newark and other similarly situated districts, is unconstitutional.

17. Plaintiffs further seek injunctive relief to prevent enforcement of the LIFO statute, or any law or policy substantially similar to the LIFO statute, which would prevent Newark and other similarly situated districts from considering teacher effectiveness—regardless of seniority—when making decisions in relation to reductions-in-force.

PARTIES

18. Plaintiff Tanisha Garner is the mother of two daughters, H.G. and F.G., who currently attend Hawkins Street Elementary School ("Hawkins") in Newark. Ms. Garner sues on behalf of each of her children.

19. Plaintiff Noemí Vazquez is the mother of E.P., M.P., and F.D. E.P. currently attends East Side High School; M.P. currently attends the Fourteenth Avenue School; and F.D. currently attends Hawkins. All three schools are located in Newark. Ms. Vazquez sues on behalf of each of her children.

20. Plaintiff Fareeah Harris is the mother of W.H. and N.H., both current students at Luis Muñoz Marín Elementary School (“Marín”) in Newark. Ms. Harris sues on behalf of each of her children.

21. Plaintiff Shonda Allen is the mother of J.H., a current student at the Eagle Academy for Young Men of Newark (“Eagle Academy”). Ms. Allen sues on behalf of her child.

22. Plaintiff Iris Smith is the mother of O.J. and M.R., both current students at Speedway Academies (“Speedway”) in Newark. Ms. Smith sues on behalf of each of her children.

23. Plaintiff Wendy Soto is the mother of Z.S. and D.S., both current students at the First Avenue School in Newark. Ms. Soto sues on behalf of each of her children.

24. Defendant Kimberly Harrington is the Acting Commissioner of the New Jersey Department of Education (“Commissioner”) and charged with enforcing the quality-blind layoff statute by creating the standards by which teachers may be laid off and ensuring that all children in New Jersey receive a constitutionally effective education.

25. Defendant New Jersey State Board of Education is charged with enforcing the quality-blind layoff statute by approving the standards set by the Commissioner, which dictate how teachers may be laid off.

26. Defendant Newark Public School District is charged with enforcing the quality-blind layoff statute when executing a reduction-in-force within the district.

27. Defendant Christopher Cerf is the Superintendent of Newark and charged with enforcing the quality-blind layoff statute when executing a reduction-in-force within the district and ensuring that all children within Newark receive a constitutionally effective education.

VENUE

28. Venue is proper in Mercer County because the cause of action arises here, where Defendants enforce the quality-blind layoff statute. R. 4:3-2(a)(2).

FACTS

THE NEWARK SCHOOL DISTRICT

29. Newark is a struggling school district, with almost one-third of Newark students failing to graduate from high school. Of those who do graduate, only approximately 10% will be ready for college and careers. The long-term harm suffered by these students as a result of their deficient in-school educational experiences is devastating.

30. Approximately 50% of Newark's eighth-graders have received an education that allows them to meet the state's minimum proficiency for literacy. Only 40% of these same eighth graders have received an education that allows them to meet the minimum proficiency standards for mathematics.

31. Newark's students are in the state's bottom 25% for literacy and bottom 10% for math.

32. For example, Plaintiffs H.G., F.G., and F.D. currently attend Hawkins.

33. In the 2014-2015 school year, 94.3% of the children attending Hawkins were considered economically disadvantaged students.¹ Only 18% of the children at Hawkins received an education that allowed them to meet or exceed the State's minimum proficiency

¹ See New Jersey Department of Education, *New Jersey School Performance Report: Hawkins Street School: 2014-2015 School Year*, 29, available at <http://www.nj.gov/education/pr/1415/13/133570460.pdf>.

benchmarks in language arts, and only 10% received such an education in math.² These results place Hawkins in the bottom 11% of elementary schools in the State.

34. Plaintiffs W.H. and N.H. currently attend Marín.

35. Similar to Hawkins, students at Marín are struggling. For the 2014-2015 school year, 12% and 10% of children at Marín received an education in language arts and math, respectively, that met or exceeded the State's grade level expectations.³ These results place Marín in the bottom 5% of elementary schools in the State. Like Hawkins, Marín educates a large percentage of children considered to be economically disadvantaged.

36. Plaintiffs M.P., O.J., and M.R. also attend elementary schools in Newark.

37. For the 2014-2015 school year at the Fourteenth Avenue School, which M.P. attends, only 18% of students met or exceeded the grade level expectations in language arts and only 12% of students met or exceeded grade level expectations in math.⁴ At Speedway, which O.J. and M.R. attend, only 11% of students met or exceeded the State's grade-level expectations in language arts, and only 8% of those students met or exceeded the State's grade-level expectations in math.⁵ The majority of students at both schools are considered economically disadvantaged.

² *Id.* at 3.

³ See New Jersey Department of Education, *New Jersey School Performance Report: Luis Muñoz Marín Elementary School: 2014-2015 School Year*, 3, available at <http://www.nj.gov/education/pr/1415/13/133570301.pdf>.

⁴ See New Jersey Department of Education, *New Jersey School Performance Report: Fourteenth Avenue School: 2014-2015 School Year*, 3, available at <http://www.nj.gov/education/pr/1415/13/133570420.pdf>.

⁵ See New Jersey Department of Education, *New Jersey School Performance Report: Speedway Avenue School: 2014-2015 School Year*, 3, available at <http://www.nj.gov/education/pr/1415/13/133570690.pdf>.

38. Z.S. and D.S. both attend the First Avenue School in Newark, at which less than half of the students met or exceeded the State's grade-level expectations.⁶ However, Z.S. has been diagnosed with dyslexia, and her mother continues to struggle to have the school institute the appropriate educational plan to address this disability. At the First Avenue School, only 17.6% of children with a disability met the State standards.⁷

39. The issue is not limited to Newark's elementary schools, however. Plaintiff E.P. attends East Side High School. At this high school, only 13% of students met or exceeded the State's grade-level expectations in language arts during the last school year, and only 6% of them met or exceeded expectations in math.⁸ This puts East Side High School in the bottom 10% of schools in the State. About one in three students failed to graduate from East Side High School on time.⁹

40. Likewise, Plaintiff J.H. attends the Eagle Academy. Ten percent of the students at Eagle Academy met or exceeded the State's expectations in language arts, and only 8% of the students met or exceeded the State's expectations in math.¹⁰

41. Despite these performance issues within Newark's schools, in 2016, Newark was forced to engage in a reduction-in-force of guidance counselors and librarians. This saved the

⁶ See New Jersey Department of Education, *New Jersey Performance Report for First Avenue School: 2014-2015 School Year*, 3, available at <http://www.nj.gov/education/pr/1415/13/133570410.pdf> (indicating 41% of students met or exceeded grade-level expectations in language arts, and 44% met or exceeded grade-level expectations in math).

⁷ *Id.* at 4.

⁸ See New Jersey Department of Education, *New Jersey School Performance Report: East Side High School: 2014-2015 School Year*, 3, available at <http://www.nj.gov/education/pr/1415/13/133570040.pdf>.

⁹ *Id.* at 17 (70% of the students graduated in four years, which is below the State's target graduation rate of 78%).

¹⁰ See New Jersey Department of Education, *New Jersey School Performance Report: Eagle Academy for Young Men of Newark*, 3, available at <http://www.nj.gov/education/pr/1415/13/133570307.pdf>.

district \$1.5 million, but, as it was based solely on seniority, the district was forced to terminate staff it would have retained but for the mandates of the LIFO statute. Although not the primary classroom teachers, this reduction-in-force deprived Newark students of professionals who could have positively impacted their educational experience.

NEWARK’S 2014 UNANSWERED EFFORT TO WAIVE THE REQUIREMENT FOR QUALITY-BLIND LAYOFFS

42. In February 2014, Newark submitted a request to the Commissioner seeking a temporary reprieve from quality-blind layoffs in the form of an equivalency request under N.J.A.C. 6A:32-5.1 (the “Equivalency Request”).¹¹ The request was driven by the declining enrollment in Newark, which resulted in the loss of almost \$200 million in education funding.¹² This forced a difficult choice upon the district about what to do with its limited resources.

43. The request has gone unanswered by the State, and Newark is left to either engage in quality-blind layoffs or create alternatives to instituting reductions-in-force. Either option results in harm to students within the district. They will either suffer the lifelong harms that can result from instruction by ineffective teachers or, alternatively, suffer from budget cuts in other areas that result in losses in important educational programming and resources. All of this stems from the impact of the LIFO statute.

EFFECTIVE TEACHERS ARE ESSENTIAL FOR CHILDREN TO RECEIVE THE RIGHTS CONFERRED BY THE EDUCATION CLAUSE

44. The effectiveness or ineffectiveness of teachers has been found to be the single most influential school-based variable in determining the adequacy of a child’s education and a critical determinant of educational success.

¹¹ See Newark Public Schools, *Overview of Equivalency Request: Protecting Our Best Teachers During a Fiscal Crisis* (2014), available at http://content.nps.k12.nj.us/wp-content/uploads/2014/08/Overview_of_Equivalency_February_2014_FINAL.pdf.

¹² See *id.* at 1.

45. Recognizing this, New Jersey evaluates its teachers as “highly effective,” “effective,” “partially effective” or “ineffective.” The final rating of a teacher is based on multiple factors generally evaluated based on student learning and teacher practice.¹³ These considerations are designed to measure the quality of the teacher in the classroom, and are updated from time to time.

46. Ineffective or partially effective teachers are required to create a Corrective Action Plan with targeted professional development goals for the following year after the evaluation, and their progress is monitored.

47. In the last published Staff Evaluation report, the New Jersey Department of Education provided state- and district-level educator evaluation data.¹⁴ In Newark, out of the 2775 teachers evaluated, 94 were rated “ineffective” and 314 were rated “partially effective.” Statewide, there were only 205 teachers reported as being rated “ineffective,” meaning that almost *half* of the ineffective teachers reported in the State worked in Newark at the time the evaluations were completed. Moreover, approximately 10% of the State’s partially effective teachers were located in the district.

48. In comparison, of the 337 teachers evaluated in the Summit City School District (“Summit”), only a few miles from Newark, *not a single teacher* was reported as receiving a rating of ineffective or partially effective.

¹³ See <http://www.nj.gov/education/AchieveNJ/teacher/> (setting forth explanations as to how teachers are evaluated in New Jersey).

¹⁴ See N.J. Department of Education, *Staff Evaluation 2013-14*, available at www.state.nj.us/education/data/staff.

49. Therefore, even if Summit, a district with a median household income more than three times higher than Newark,¹⁵ were forced to engage in a reduction-in-force, the students within the district would likely not be harmed in the same way as there were no teachers reported with ineffective or partially effective ratings that could be retained in place of effective teachers.

50. In essence, the effect of the LIFO statute in districts like Summit would not result in students being assigned to teachers reported as ineffective, given the nature of the district and the quality of the teaching staff. On the other hand, Newark has a disproportionately high concentration of teachers rated as less than effective. Therefore, when layoffs under the LIFO statute are based on an arbitrary standard of teacher seniority, not teacher effectiveness, while both districts can be injured, the data shows that Newark would retain less than effective teachers in place of effective teachers, while Summit, which reportedly has no ineffective teachers, would not suffer the same type of harm.

51. The importance to students of having effective teachers cannot be overstated. Study after study demonstrates that teacher quality is the most important in-school factor affecting student achievement.

52. One recent study found that replacing an ineffective teacher with simply an average teacher would increase the present value of students' lifetime income by over \$250,000 per classroom—an amount reaching staggering proportions when aggregated over successive years of effective teaching.

53. Effective teachers can have an especially large effect on closing the achievement gap across class and racial lines.

¹⁵ Reported household median income for 2013 was \$115,239 in Summit and \$32,973 in Newark. See City-Data.com, *available at* www.city-data.com.

54. According to a recent national study, “[b]y every measure of qualifications . . . less-qualified teachers [are] to be found in schools serving greater numbers of low-income and minority students.”

55. Studies show that, consistently, students of color in low-income communities are between three and ten times more likely to have unqualified teachers than students in predominantly white communities.

56. The New Jersey Department of Education found that using a measure of effectiveness premised upon a teacher’s paper qualifications (i.e. degrees, certifications, demonstrated content knowledge in the subject taught), students in districts like Newark were five times more likely to be taught by teachers that did not possess even the minimum paper qualifications required by the federal No Child Left Behind Act.

57. Consequently, it is no surprise that one study found that the achievement gap narrows with each year a child of color is taught by an effective teacher.

58. Another study shows that, if this positive effect were to accumulate four consecutive years with a top-quartile teacher (a highly-effective teacher) rather than a bottom-quartile teacher (a highly-ineffective teacher), this would be sufficient alone to close the racial achievement gap between white students and their black counterparts.

59. Graduation rates in Newark are also low compared to other districts in New Jersey. According to 2015 graduation data published by the New Jersey Department of Education, the districtwide graduation rate from a four-year public high school in Newark was 69.59%. In comparison, the statewide graduation rate was 89.67%.¹⁶

¹⁶ See N.J. Department of Education, *2015 Adjusted Cohort 4 Year Graduation Rates*, available at www.state.nj.us/education/data/grate/2015/.

60. Moreover, within Newark, only 69.39% and 69.61% of Black and Hispanic students, respectively, graduate from a four-year high school. On a statewide basis, however, 81.51% of Black students and 82.81% of Hispanic students graduate high school, which indicates that students in other districts, who learn from effective teachers, achieve greater educational success.

61. The studies and metrics confirm what common sense and experience tell us—quality teaching is essential for quality education.

62. If, as the New Jersey Supreme Court has emphasized repeatedly, a thorough and efficient education is one that provides children the opportunity to achieve, enables them to perform their roles as citizens, and equips them with the skills needed to compete effectively in the contemporary labor market, then such an education is impossible without quality teachers.

TO THE DETRIMENT OF STUDENTS, QUALITY-BLIND LAYOFFS REQUIRE NEWARK TO EITHER (I) CONSISTENTLY LAY OFF EFFECTIVE TEACHERS AND RETAIN INEFFECTIVE TEACHERS OR (II) TAKE OTHER HARMFUL MEASURES TO AVOID LAYING OFF EFFECTIVE TEACHERS

63. The LIFO statute has two detrimental mandates dictating how districts must make certain personnel decisions.

64. First, when there is a reduction-in-force within a district, the district must dismiss teachers on the basis of seniority. Quality may not be considered. N.J.S.A. 18A:28-10.

65. Second, if a teacher is laid off due to such a reduction-in-force, the teacher must remain on a preferred eligibility list, which again is established on the basis of seniority alone. Quality may not be considered. N.J.S.A. 18A:28-12.

66. Seniority under the statute is not actually based on the individual's years of experience teaching, but, for the vast majority of teachers, on years teaching within the district where the reduction-in-force occurred. It is not truly teaching experience or teacher quality, but

tenure in the district that determines who gets preferential treatment in the event a district has the opportunity to fill vacancies following a reduction-in-force. This means that the ability of students to learn in an economically challenged district is dependent not on quality, and not even on actual years of experience, but on the arbitrary happenstance of teachers' years of service in a specific district.

67. Therefore, given the constraints of the reemployment provision of the LIFO statute, a district is (a) forced to ignore the quality of a teacher when able to re-hire previously laid off teachers and (b) prevented from bringing in new, effective teachers when a vacancy opens if there are qualified teachers on the eligibility list.

68. The primary persons who benefit from this mandate to consider *only* intra-district seniority are ineffective teachers who have held their jobs for many years despite their ineffectiveness. There is no empirical support for preferring this group of teachers. To the contrary, empirical studies show that seniority is weakly correlated with effective teaching. As a result, the length of employment is simply not a proxy for teacher effectiveness.

69. While layoffs based on effectiveness would cut the lowest performing and least effective teachers, LIFO undoubtedly cuts a number of higher performing teachers.

70. One study showed that 80% of those laid off on the basis of seniority alone are more effective than the lowest performing teachers. Put differently, the vast majority of teachers laid off during quality-blind layoffs are *not* ineffective teachers.

71. In response to a 2012 New Jersey Department of Education survey inquiring about the effects of quality-blind layoffs on student performance, school superintendents and administrators reported that such layoffs are a "tremendous handicap" because "the teacher with the most seniority is not always the best teacher."

72. The tremendous handicap suffered by superintendents and administrators that is inherent pursuant to the LIFO statute is especially felt in Newark, the state's largest school district.

73. In the Equivalency Request, Newark presented data from a simulation that used actual data from its teaching staff, and it showed the devastating impact of quality-blind layoffs on student achievement and the prospective benefits of performance-based layoffs.

74. Newark's data showed that, under the current quality-blind layoff system, if layoffs were implemented, 75% of the teachers it would lay off were considered effective or highly effective, and *only 4% of the teachers laid off would be rated ineffective*. Pursuant to the LIFO statute, three hundred of Newark's effective or highly effective teachers would be laid off while *72% of Newark's lowest-rated teachers would remain*.

75. Given the number of students each of these effective or highly effective teachers would otherwise instruct, this means that as many as 8,000 children in Newark would miss out on a high-performing teacher each year.

76. As previously described above, being taught by an ineffective teacher impacts these children not simply during that school year, but for the rest of their lives.

77. Unfortunately, Newark's experience is not unique. The same is true in other urban districts throughout the State that face layoffs this year and in the years ahead.

78. For example, the superintendent of the Camden School District ("Camden") has reported that quality-blind layoffs force Camden to lose some of the district's most-effective teachers, at a time when the district already struggles to educate its students competitively, and thus has no effective teachers to spare.

79. In an effort to avoid the necessity of quality-blind layoffs, these less affluent, urban districts take steps to avoid instituting reductions-in-force.

80. Consequently, Newark has resorted to the harmful and unsustainable tactic of keeping ineffective teachers on the district payroll.

81. When certain teaching positions become superfluous because of declining enrollment, Newark has refrained from imposing layoffs. Instead, it has created what is known as the EWPS pool for those teachers whom principals did not want to hire because of performance concerns.

82. Teachers in the EWPS pool do not have full-time classroom placements, but instead perform various support and teacher's aide functions. By definition, the teachers in this pool have been rated as ineffective or have other performance-related issues that made principals throughout the district decline to employ them.

83. During the 2013-2014 school year, there were 271 teachers in the EWPS pool, meaning there were 271 teachers that Newark had found to be so ineffective that they were not placed in a classroom, but still compensated as if these teachers were contributing full-time to student achievement.

84. This pool is largely composed of senior teachers. Approximately 70% of the teachers in this pool have ten or more years of experience.

85. Newark spent approximately \$22.5 million dollars in the 2013-2014 school year keeping these ineffective teachers on its payroll and away from a permanent teaching placement within its district schools.

86. However, starting in 2015, Newark could not keep most of these EWPS teachers out of the districts' school.

87. Instead, the district had to force place these teachers as permanent teachers within district schools without the consent of the schools. For the 2016-2017 school year, this forced-teacher-placement represented more than \$25 million in teacher salaries. Yet, \$10 million in teachers' salaries remains in the EWPS pool.

88. In the event of any future quality-blind layoffs, teachers in this EWPS pool, rated partially effective or ineffective, and now serving as the principal teacher in classrooms in district schools, would largely avoid layoffs at the expense of less-senior, more-effective *and non-EWPS* teachers.

89. The largest component of any school district's budget is its personnel—almost 90% of any individual school's budget in Newark is tied to salaries. Spending the valuable resources of a district on ineffective teachers is not only nonsensical, but also inefficient and in direct contradiction with the mandate of the New Jersey Constitution. The EWPS pool would be wholly unnecessary were it not for the quality-blind layoff statute.

90. The EWPS pool is unsustainable, especially given the funding issues currently faced by Newark in light of continued declining enrollment and ongoing efforts by the State to cut the district's funding.

91. On September 15, 2016, the New Jersey Attorney General filed a Memorandum of Law in the State Supreme Court seeking to modify the Court's prior *Abbott* decisions and permit the State to institute a new funding scheme. Reports have stated that, if this funding scheme were to be enacted, Newark would lose almost 69% of its state aid, which is equivalent to a loss of \$14,502.99 per pupil in the district.¹⁷

¹⁷ See Stephen Stirling, *How Christie's Controversial School Aid Plan Could Impact You*, NJ.COM (Jun. 22, 2016), available at http://www.nj.com/education/2016/06/how_christies_school_aid_proposal_could_impact_your_district.html.

92. However, the issues of funding and the LIFO statute should not be conflated. Newark, and other *Abbott* districts, need the money provided by the *Abbott* line of cases. Even with the court-mandated *Abbott* funding, Newark faces a crippling budget deficit, prompting the need to either conduct damaging reductions-in-force or place teachers from the EWPS pool within classrooms while the LIFO statute is in effect.

93. Put simply, between the quality-blind layoff statute and the EWPS program, Newark faces an impossible dilemma: the district must either lay off effective teachers and retain ineffective teachers, or it must bear the heavy burden of keeping ineffective teachers on staff (or engage in the time-consuming and expensive proceedings to terminate ineffective, tenured teachers on a case by case basis) rather than lose the effective teachers they have.

94. The loss of effective teachers from the classroom due to a reduction-in-force, or the insertion of ineffective teachers from the EWPS pool in order to avoid a reduction-in-force, impacts the education offered to the Plaintiff children, who already attend schools that are unable to educate the majority of their students in order to meet the State's base-level expectations for each grade-level.

95. As a result of the impossible dilemma, in connection with other factors facing the district, Newark continues to struggle with poor student performance, growing achievement gaps, and ever-more difficult challenges in recruiting and retaining high-quality teachers. And the Plaintiff children suffer as a result.

QUALITY-BLIND LAYOFFS ALSO UNDERMINE THE ABILITY OF SCHOOL DISTRICTS, LIKE NEWARK, TO ATTRACT AND RETAIN EFFECTIVE TEACHERS

96. High-poverty districts, like Newark, also face extraordinary difficulties in recruiting, hiring, and retaining highly-qualified teachers.

97. Elementary schools in Newark have difficulty hiring new, highly-qualified teachers from outside the district. Instead, they are forced to first hire qualified teachers from the EWPS pool to fill any staffing needs, even if the pool is made up of teachers rated as less than effective. The devastating result for children within the district is that the district is limited in its ability to find and place qualified and effective teachers in open positions. Even if a school were successful in removing an ineffective teacher from the classroom during layoffs, if a vacancy for which the teacher is deemed to fall within the job parameters exists elsewhere in the district, the principal is forbidden from hiring the most qualified and effective applicant, and instead must settle for that teacher who was previously deemed to be so ineffective that they had been removed from full-time teaching positions. For example, Newark recently needed to hire Spanish teachers, but was forced to require its schools to take Spanish teachers from the EWPS pool instead.

98. Therefore, schools in Newark, already stripped of effective teachers due to the prior periods of engaging in quality-blind layoffs, must add to their concentration of ineffective classroom teachers every time they look to fill a vacancy, as high-quality teachers who may otherwise have been available to fill the position will find alternative employment opportunities.

99. Although other districts have been less transparent than Newark about their dealings with the quality-blind layoff statute, it is clear that, if the statute must be enforced, it will continue to rob districts of effective teachers that they cannot afford to lose.

100. Moreover, outside of the impact of the EWPS pool and the LIFO statute, published studies and reports indicate that qualified teachers are reluctant to work in poorer, urban districts like Newark, which further reduces Newark's pool of potential candidates when it can hire new teachers.

101. Nevertheless, the specter of quality-blind layoffs at the end of every school year serves to exacerbate qualified teachers' reluctance to apply to work in districts like Newark, where the likelihood of layoffs is higher for teachers new to the district—even teachers with many years of experience. Consequently, qualified candidates seek employment opportunities in other districts where funding and declining enrollment are not concerns and greater employment stability exists.

102. Likewise, effective teachers voluntarily may decide to take their talents elsewhere.

103. Because of the quality-blind layoff statutes and the other factors that make teachers reluctant to come to less affluent districts, Newark is prevented from replenishing its supply of effective teachers with new hires from outside the district.

QUALITY-BLIND LAYOFFS UNDERMINE NEWARK'S ABILITY TO EFFECTIVELY EDUCATE ITS STUDENTS AND VIOLATE THE CONSTITUTIONAL RIGHTS OF PLAINTIFFS

104. Defendants' enforcement of the quality-blind layoff statute in Newark will remove quality teachers, which leads to lower test scores, lower high school graduation rates, lower college attendance rates, and sharply reduced lifetime earnings for students in Newark like the Plaintiff children.

105. Almost half of the students in Newark failed the State's high school proficiency assessment in math, and over 20% failed the assessment for language arts. This means those students did not possess the basic skills needed for obtaining a high school diploma.

106. Only 19% of Newark's students are on track to be ready for college and post-secondary careers. Of those who do graduate and go on to post-secondary education, virtually all require remedial work before they can obtain credits that count toward a college degree.

107. Plaintiffs' struggles in obtaining an effective education at their schools in Newark mirror the struggles facing other students in districts like Newark throughout the State.

108. In particular, information about Camden is worrisome. Less than 1% of Camden graduates are ready for college and careers. This means more than 99% of the students who graduate from Camden high schools, which has a 63.57% graduation rate, are not ready for college or careers.

109. This reality cannot be reconciled with the mandate under the State Constitution that children in New Jersey, and especially Plaintiff children who attend schools in an *Abbott* district, receive a thorough and efficient education giving them the opportunity to achieve, fulfill their role as citizens, and compete effectively in the contemporary labor market.

110. Draining districts like Newark of quality teachers, an inevitable result of the LIFO statute's quality-blindness, removes those within the schools who are in the best position to help these students achieve their constitutionally mandated thorough and efficient education and thereby violates the New Jersey Constitution on numerous fronts.

111. In sum, the quality-blind layoff statute violates the rights of Plaintiffs and similarly situated children in Newark and similar districts throughout the State.

112. The LIFO statute necessarily leads to the devastating result of laying off effective teachers in school districts that cannot afford to lose any effective teachers, and the retention of ineffective teachers to the detriment of the students in those districts. Moreover, the statute undermines the ability of districts like Newark to attract and retain desperately needed qualified and effective teachers.

113. The LIFO statute's overall effect is to prevent school districts from effectively educating their students by removing the necessary in-school ingredient for a constitutional education -- quality teachers.

FIRST CAUSE OF ACTION
Education Clause Violation

114. Plaintiffs incorporate the factual allegations set forth in the foregoing paragraphs as if fully set forth herein and further allege as follows:

115. The Education Clause requires that the State provide a "thorough and efficient" system of education to New Jersey's primary and secondary school students. In doing so, the Education Clause confers an individual right in those students to an effective education.

116. The quality-blind layoff statute, however, requires school districts conducting reductions-in-force to disregard teacher quality when deciding which teachers to lay off and, instead, requires districts to lay off teachers based upon seniority alone. Additionally, it mandates that subsequent vacancies in the district be filled in accordance with quality-blind, seniority-based eligibility. This policy has required, and will continue to require, Newark and other similarly situated districts to retain ineffective teachers while laying off effective teachers, with the effect of depriving students in those districts of a constitutionally guaranteed effective education.

117. Therefore, Defendants, by enforcing the quality-blind layoff statute in Newark and similarly situated districts, have violated the Education Clause and are not providing the mandated thorough and efficient public education to Plaintiffs and children similarly situated to them.

118. Enforcement of this statute must be enjoined in Newark and all similarly situated districts.

SECOND CAUSE OF ACTION
Equal Protection Violation

119. Plaintiffs incorporate the factual allegations set forth in the foregoing paragraphs as if fully set forth herein and further allege as follows:

120. Article I, Paragraph 1 of the New Jersey Constitution grants individuals the right to the equal protection of the law.

121. The quality-blind layoff statute disproportionately affects students attending school districts like Newark, which primarily serves children of color who live in areas of concentrated poverty, like Plaintiffs, who have a fundamental right guaranteeing them to a thorough and efficient education set forth by the Constitution and the rulings of the New Jersey Supreme Court.

122. The LIFO statute impinges on the children's constitutional right to a thorough and efficient education as this constitutional right is inextricably linked to the retention of effective teachers.

123. It is arbitrary to deny these children their fundamental right to a thorough and efficient education by requiring districts to retain, terminate, and hire teachers based solely on intra-district seniority, and not their effectiveness or quality or even their actual years of teaching experience.

124. These layoffs will occur and continue to occur in poor, urban areas with high populations of children of color, such as Newark, and will be comparatively rare in wealthier, whiter, suburban districts, such as Summit.

125. Accordingly, Plaintiffs and similarly situated children attending districts such as Newark are disproportionately and adversely harmed by the quality-blind layoff mandate of N.J.S.A. 18A:28-10 and 18A:28-12.

126. The harm to Plaintiffs and children attending schools in districts like Newark results from the denial of an equal opportunity to receive a thorough and efficient education, which is a fundamental right, is profound, and outweighs any governmental interest that may support the quality-blind layoff statute.

127. Because the quality-blind layoff statute as applied disproportionately impacts Plaintiffs and similarly situated students, the statute violates the equal protection principles embodied in Article I, Paragraph 1 of the New Jersey Constitution.

128. The statute must therefore be declared unconstitutional and its enforcement enjoined as applied to Newark and all similarly situated school districts.

THIRD CAUSE OF ACTION
Due Process Violation

129. Plaintiffs incorporate the factual allegations set forth in the foregoing paragraphs as if fully set forth herein and further allege as follows:

130. Article I, Paragraph 1 of the New Jersey Constitution grants individuals protection against government deprivation of their interests in life, liberty, or property.

131. The Education Clause grants every New Jersey child a right to and an interest in a thorough and efficient education. Art. VIII, Sect. IV. Moreover, New Jersey statutory law grants to all children the right to attend primary and secondary school. *See* N.J.S.A. 18A:38-25.

132. Accordingly, under the State Constitution, State statutes, and case law interpreting the New Jersey Constitution and State statutes, a thorough and efficient education is guaranteed to be provided by public school districts to such primary and secondary school students as Plaintiffs, and it is deemed to be a fundamental right.

133. By requiring school districts to reduce their teacher workforces on the basis of intra-district seniority alone, and without any regard to teacher performance, the quality-blind

layoff statute deprives Plaintiffs and similarly situated schoolchildren of their fundamental right to a thorough and efficient education.

134. No rational governmental interest justifies this deprivation.

135. Therefore, Defendants' enforcement of the quality-blind layoff statute is unconstitutional, as it violates the due process principles of Article I, Paragraph 1 of the New Jersey Constitution and must be enjoined in Newark and all similarly situated school districts throughout the State.

FOURTH CAUSE OF ACTION

Civil Rights Act Violation

136. Plaintiffs incorporate the factual allegations set forth in the foregoing paragraphs as if fully set forth herein and further allege as follows:

137. The New Jersey Civil Rights Act grants individuals the right to be free of deprivations by public officials of substantive rights secured by the laws or Constitution of New Jersey. *See* N.J.S.A. 10:6-2, *et seq.*

138. The New Jersey Constitution grants Plaintiffs and similarly situated students the substantive rights to a thorough and efficient education, equal protection under the law, and substantive due process.

139. By enforcing the quality-blind layoff statute, Defendants, acting under color of law, have violated the New Jersey Civil Rights Act. Therefore, Defendants' enforcement of the quality-blind layoff statute in Newark and similarly situated districts must be enjoined.

FIFTH CAUSE OF ACTION

Declaratory Judgment

140. Plaintiffs re-allege and incorporate by reference the preceding allegations in the foregoing paragraphs as if fully set forth here.

141. Plaintiffs seek relief under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 *et seq.* This act allows parties to sue for a judicial declaration in order to declare and settle the rights and obligations of the parties.

142. As alleged in the preceding counts and the general allegations above, the Education Clause of the New Jersey Constitution requires that the State provide a “thorough and efficient” education; Article I, Paragraph 1 of the New Jersey Constitution grants individuals the right to the equal protection of the law; and Article I, Paragraph 1 of the New Jersey Constitution protects individuals from the unwarranted deprivation of certain fundamental rights, including the right to an effective education.

143. Each of these constitutional rights is being and will in the future again be violated by the application of the LIFO statute in Newark and other similarly situated districts. The quality-blind layoff statute requires school districts conducting reductions-in-force to disregard quality in laying off teachers, instead mandating that these districts implement reductions-in-force based upon seniority alone. This policy has required and will require Newark and other similarly situated districts to retain ineffective and less-effective teachers, to the profound detriment of the Plaintiffs and other schoolchildren in those districts.

144. The quality-blind layoff statute deprives Plaintiffs and other similarly situated children in Newark and other similarly situated districts of their fundamental right to a thorough and efficient education, equal protection of the law, and the fundamental right to an education. Plaintiffs therefore seek a declaratory judgment that the application of the LIFO statute is unconstitutional.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants, as follows:

145. Declaring that the quality-blind layoff statute, N.J.S.A. 18A:28-10 and 18A:28-12, violates the Education Clause of the New Jersey Constitution as applied to Newark and similarly situated school districts throughout the State;

146. Declaring that the quality-blind layoff statute, N.J.S.A. 18A:28-10 and 18A:28-12, violates the Equal Protection principles of Article I, Paragraph 1 of the New Jersey Constitution as applied to Newark and similarly situated school districts throughout the State;

147. Declaring that the quality-blind layoff statute, N.J.S.A. 18A:28-10 and 18A:28-12, violates fundamental rights protected by the New Jersey Constitution as applied to Newark and similarly situated school districts throughout the State, and deprives children within those districts of their due process rights;

148. Declaring that the quality-blind layoff statute, N.J.S.A. 18A:28-10 and 18A:28-12, as applied to Newark and similarly situated school districts throughout the State, violates the New Jersey Civil Rights Act;

149. Permanently enjoining Defendants from enforcing the quality-blind layoff statute, N.J.S.A. 18A:28-10 and 18A:28-12, or any law or policy substantially similar to this statute in Newark and any similarly situated school district throughout the State;

150. Awarding Plaintiffs legal fees and costs of suit, under the New Jersey Civil Rights Act and otherwise; and

151. Awarding any and all such other relief as deemed just and warranted.

Dated: November 1, 2016

By: _____

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*Of Counsel; Moving for Pro Hac Vice
Admission*

RULE 4:5-1 CERTIFICATION

I, William H. Trousdale, Esq., certify pursuant to Rule 4:5-1 that, to the best of my knowledge, information, and belief, the matter in controversy is not the subject of any other action or arbitration proceeding, now or contemplated, other than the Abbott v. Burke litigation (078257), and that no other parties should be joined in this action pursuant to Rule 4:28.

Dated: November 1, 2016

By: _____

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Admission*