

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 NOEMI VAZQUEZ; M.P., a minor, through her guardian NOEMI VAZQUEZ; F.D., a minor, through her guardian NOEMI 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 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,

AMERICAN FEDERATION OF TEACHERS, AFL-CIO; AFT NEW JERSEY; NEWARK TEACHERS UNION, NEW JERSEY EDUCATION ASSOCIATION;

Defendant-Intervenors.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION, MERCER COUNTY

DOCKET NO. MER-L-2170-16

**BRIEF ON BEHALF OF AFT INTERVENORS IN SUPPORT OF
MOTION TO DISMISS**

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TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE 5

 A. The Challenged Statutes 5

 B. Plaintiffs' Complaint 5

 1. The Complaint's allegations as to LIFO Provisions 5

 2. The Complaint's allegations regarding the EWPS Pool 7

 3. The Complaint's allegations regarding Teachers rated Ineffective or Partially Effective who are Performing Instructional duties in Classrooms 8

 C. The 2012 TEACHNJ Reforms 9

 1. The Establishment of School Improvement Panels 12

 2. The Development of Evaluation Rubrics 12

 3. Support for Teachers Rated Ineffective or Partially Effective 13

 4. A Four-year Probationary Period and Researched-Based Mentoring Programs 14

 5. Mandated Filing of Charges of Inefficiency against Ineffective or Partially Effective Teachers 15

 6. A Streamlined and Less Burdensome Hearing Procedure 15

 D. The Legislative Decision Not to Modify the LIFO provisions of the Tenure Statute 17

ARGUMENT 20

 I. The Standard of Review for a Motion to Dismiss 20

| | | |
|-------|--|----|
| II. | Plaintiffs' do not have Standing to raise any Constitutional Claims | 22 |
| III. | The Complaint should be dismissed based on the Ripeness Doctrine | 26 |
| IV. | Tenure and other Job Security Statutes are Presumed to be Valid and Further the Constitutional Goal of a Thorough and Efficient Education | 29 |
| | A. LIFO Statutes are presumed to be Constitutional | 29 |
| | B. The TEACHNJ Job Security Provisions Serve an Important Public Purpose | 30 |
| V. | The Educational Policy Changes enacted by the Legislative and Executive Branches through the 2012 TEACHNJ Reforms are designed to Remove Ineffective Teachers and should be afforded the Opportunity to Work | 33 |
| | A. The Non-justiciability of Political Questions Doctrine Militates in Favor of Dismissal of the Complaint to Afford the 2012 Comprehensive Legislative Reform Effort in the Areas of Teacher Tenure, Evaluations and Removal Time to Work | 35 |
| | B. The Complaint should be Dismissed because it Prematurely asks the Court to Address the Constitutionality of a Recently Enacted Statutory Scheme | 42 |
| VI. | The Complaint fails to State a Claim Under the Education Clause of the New Jersey Constitution | 48 |
| VII. | The Complaint fails to State an Equal Protection Claim | 54 |
| VIII. | The Complaint fails to State a Due Process Claim | 57 |
| IX. | The Complaint fails to State a Claim under the Civil Rights Act | 59 |
| | CONCLUSION | 60 |

TABLE OF AUTHORITIES

Cases

Abbott v. Burke,
100 N.J. 296 (1985) (Abbott I) 55, 57

Abbott v. Burke,
119 N.J. 287 (1990) (Abbott II) 43, 44, 48, 49

Abbott v. Burke,
149 N.J. 147 (1997) (Abbott IV) 45

Abbott v. Burke,
153 N.J. 480 (1998) (Abbott V) 41

Abbott v. Burke,
196 N.J. 544 (2008) (Abbott XIX) 45

Abbott v. Burke,
199 N.J. 140 (2009) (Abbott X) 44, 46

Abbott v. Burke,
206 N.J. 332 (2011) (Abbott XXI) 38, 39

Abbott Laboratories v. Gardner,
387 U.S. 136 (1967) 27

Baker v. Carr,
369 U.S. 186 S. Ct. 691 (1962) 36, 37, 42

Behnke v. N.J. Highway Auth.,
13 N.J. 14 (1953) 29

Brown v. State,
442 N.J. Super. (App. Div. 2015) 60

Carpenito v. Bd. of Educ. of Borough of Rumson,
Monmouth County, 322 N.J. Super. 522 (App. Div. 1999) 32

Committee to Recall Robert Menendez from the Office of U.S.
Senator v. Wells, 204 N.J. 79 (2010) 27

Crawford v. Davy,
2010 WL 162061 (App. Div. 2009) 43

Crescent Park Tenants Ass'n v. Realty Equities Corp.,
58 N.J. 98 (1971) 23

| | |
|--|--------|
| <u>Daniels v. Williams</u> , 474 U.S. 327 (1986) | 58 |
| <u>De Vesa v. Dorsey</u> , 134 N.J. 420 (1993) | 36 |
| <u>Energy Rec. v. Dept. of Env. Prot.</u> , 320 N.J. Super. 59 (App. Div. 1999) | 20, 53 |
| <u>Filgueiras v. Newark Public Schools</u> , 426 N.J. Super. 449 (App. Div.) | 58 |
| <u>Garden State Equality v. Dow</u> , 434 N.J. 163 (L. Div. 2013) (L. Div. 2013) | 27 |
| <u>Gilbert v. Gladden</u> , 87 N.J. 275 (1981) | 37, 38 |
| <u>Glass v. Suburban Restoration Co.</u> , 317 N.J. Super. 574 (App. Div. 1998) | 21 |
| <u>Greenberg v. Kimmelman</u> , 99 N.J. 552 (1985) | 54 |
| <u>Hamilton Amusement Cir. v. Verniero</u> , 156 N.J. 254 (1998) | 30 |
| <u>Holster v. Bd. of Trs. of Passaic Cnty. Coll.</u> , 59 N.J. 60 (1971) | 29 |
| <u>In re Adoption of Baby T.</u> , 160 N.J. 332 (1999) | 22 |
| <u>In re Charter School Application of Englewood</u> , 320 N.J. Super. 174 (App. Div. 1999) | 22 |
| <u>In re Gilmore</u> , 340 N.J. Super. 303 (2001) | 36, 37 |
| <u>Indep. Realty Co. v. Twp. of N. Bergen</u> , 376 N.J. 295 (App. Div. 2005) | 27 |
| <u>J.D. ex rel Scipio-Derrick</u> , 415 N.J. Super. | 57 |
| <u>Jardine Estates, Inc. v. Koppel</u> , 24 N.J. 536 (1957) | 21 |

| | |
|--|------------|
| <u>K. Hovnanian Co. of N. Central Jersey, Inc. v. N.J. Dep't of Envtl. Prot., 379 N.J. 1 (App. Div. 2005)</u> | 28 |
| <u>Lammers v. Bd. of Educ. of Borough of Point Pleasant, 134 N.J. 264 (1993)</u> | 32 |
| <u>Lance v. McGreevey, 180 N.J. 590 (2004)</u> | 29 |
| <u>Lewis v. Harris, 188 N.J. 415 (2006)</u> | 29, 54, 55 |
| <u>Loigman v. Trombadore, 228 N.J. Super. 437 (App. Div. 1988)</u> | 37 |
| <u>Matter of Closing of Jamesburg High School, School District of the Borough of Jamesburg, Middlesex County, 83 N.J. 540 (1980)</u> | 3, 31 |
| <u>Miltz v. Borroughs-Shelving, a Division of Lear Siegler, Inc., 203 N.J. Super. 451 (App. Div. 1985)</u> | 21 |
| <u>Muniz v. United Hsps. Med. Ctr., 153 N.J. Super. 79, (App. Div. 1977)</u> | 21 |
| <u>N.J. Ass'n on Corr. v. Lan, 80 N.J. 199 (1979)</u> | 30 |
| <u>N.J. Sports & Exposition Authority v. McCrane, 61 N.J. 1 (1972)</u> | 29 |
| <u>New Jersey Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402 (App. Div.)</u> | 22 |
| <u>New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Comm'n, 82 N.J. 57 (1980)</u> | 23 |
| <u>P. & J. Auto Body v. Miller, 72 N.J. Super. 207 (App. Div. 1962)</u> | 20 |
| <u>Platia v. Bd. of Educ. of Tp. of Hamilton, Mercer County, 434 N.J. Super. 382 (App. Div. 2014)</u> | 32 |
| <u>Rieder v. Dep't of Transp., 221 N.J. Super. 547 (App. Div. 1987)</u> | 20, 21, 53 |

| | |
|--|------------|
| <u>Rivkin v. Dover Twp. Rent Leveling Bd.,</u> 143 <u>N.J.</u> 352 (1996) | 58 |
| <u>Robinson v. Cahill,</u> 62 <u>N.J.</u> 473 (1973) (Robinson I) | 41, 48 |
| <u>Robinson v. Cahill,</u> 69 <u>N.J.</u> 133 (1975) (Robinson IV) | 47 |
| <u>Robinson v. Cahill,</u> 69 <u>N.J.</u> 449 (1976) (Robinson V) | 29, 47, 49 |
| <u>Smith v. City of Newark,</u> 136 <u>N.J. Super.</u> 107 (App. Div. 1975) | 20 |
| <u>Sojourner A. v. New Jersey Dep't of Human Servs.,</u> 177 <u>N.J.</u> 318 (2003) | 58 |
| <u>Spiewak v. Bd. of Educ. of Rutherford,</u> 90 <u>N.J.</u> 63 (1982) | 32 |
| <u>Spring Motors Distributors, Inc. v. Ford Motor Co.,</u> 191 <u>N.J. Super.</u> 22 (App. Div. 1983) | 21 |
| <u>State v. Trump Hotels & Casino Resorts, Inc.,</u> 160 <u>N.J.</u> 505 (1999) | 29 |
| <u>Stubaus v. Whitman,</u> 339 <u>N.J. Super.</u> 38 (App. Div. 2001) | 54 |
| <u>Texas v. United States,</u> 523 <u>U.S.</u> 296 (1996) | 27 |
| <u>Viemeister v. Bd. of Educ. of Prospect Park,</u> 5 <u>N.J. Super.</u> 215 (App. Div. 1949) | 31 |
| <u>Weimer v. Amen,</u> 870 <u>F.2d</u> 1400 (8th Cir. 1989) | 58 |

Statutes

| | |
|--|-------|
| Article I, ¶1 of the New Jersey Constitution | 4, 54 |
| Article V, §1, ¶14 of the State Constitution | 37 |

| | |
|--|-------|
| <u>N.J. Const.</u> , Art. VIII, §4, ¶1 | 4, 48 |
| <u>N.J.S.A.</u> 10:6-1 | 59 |
| <u>N.J.S.A.</u> 10:6-2(c) | 60 |
| <u>N.J.S.A.</u> 18:6-17.1 | 16 |
| <u>N.J.S.A.</u> 18:6-17.1(b)(1) | 16 |
| <u>N.J.S.A.</u> 18:6-17.1(d) | 16 |
| <u>N.J.S.A.</u> 18:6-17.1(f)-(g) | 16 |
| <u>N.J.S.A.</u> 18:6-17.2 | 17 |
| <u>N.J.S.A.</u> 18A:6-17.3(a) | 15 |
| <u>N.J.S.A.</u> 18A:6-17.3(b) | 19 |
| <u>N.J.S.A.</u> 18A:6-17.3(c) | 16 |
| <u>N.J.S.A.</u> 18A:6-117 | 2 |
| <u>N.J.S.A.</u> 18A:6-118 | 11 |
| <u>N.J.S.A.</u> 18A:6-120(b) | 12 |
| <u>N.J.S.A.</u> 18A:6-120(c) | 13 |
| <u>N.J.S.A.</u> 18A:6-122(a) | 12 |
| <u>N.J.S.A.</u> 18A:6-123(b) | 13 |
| <u>N.J.S.A.</u> 18A:6-123(e) | 13 |
| <u>N.J.S.A.</u> 18A:6-127(a) | 15 |
| <u>N.J.S.A.</u> 18A:6-128(a) | 12 |
| <u>N.J.S.A.</u> 18A:6-128(b) | 14 |
| <u>N.J.S.A.</u> 18A:7F-43 to 63 | 43 |
| <u>N.J.S.A.</u> 18A:28-6(b) | 14 |

| | |
|----------------------------------|------------------|
| <u>N.J.S.A.</u> 18A:26-6.1 | 4 |
| <u>N.J.S.A.</u> 18A:28-9 | 9, 26 |
| <u>N.J.S.A.</u> 18A:28-10 | 1, 5, 18, 19, 28 |
| <u>N.J.S.A.</u> 18A:28-12 | 1, 5, 18, 19, 28 |

Rules

| | |
|--------------------------|----|
| <u>R.</u> 1:36-3 | 43 |
| <u>R.</u> 4:5-2 | 21 |
| <u>R.</u> 4:6-2(e) | 20 |
| <u>R.</u> 4:26-1 | 22 |

Other Authorities

| | |
|--|----|
| Senate Bill No. 2925 | 18 |
| Senate Bill No. 1455 | 19 |
| <u>Total Recall: Rise and Fall of Teacher Tenure,</u> 30 Hofstra Lab. & Emp. L. J. 489 (2013) | 9 |

PRELIMINARY STATEMENT

This brief is submitted on behalf of the Defendant-Intervenors, the American Federation of Teachers, AFL-CIO, AFT New Jersey and the Newark Teachers Union ("AFT"), in support of a motion to dismiss the Complaint.

Plaintiffs are twelve minors who attend schools in the Newark Public School District (the "District" or the "School District") and their guardians. They seek an order enjoining the application of N.J.S.A. 18A:28-10 and 28-12 in "Newark and all similarly situated districts." (Complaint ¶¶118, 128). Plaintiffs claim that these two statutes, which they refer to as the LIFO statutes - last in, first out - prevent the School District and other similarly situated districts from laying off ineffective and partially effective teachers. Although there have been no layoffs in the Newark School District, Plaintiffs maintain that statutes requiring seniority-based layoffs deprive them of a thorough and efficient education.

The AFT agrees that students in all school districts, regardless of whether they reside in urban, suburban, or rural areas, and regardless of their socioeconomic status, should be taught by effective teachers. Plaintiffs maintain that achieving this broadly shared objective requires that the Newark Public School District have the right to lay off teachers without regard to seniority, or for that matter, without regard

to whether or not a teacher is tenured. This underlying assumption is simply incorrect.

Leaving aside whether the assignment of an ineffective teacher at some point in a child's K-12 education rises to the level of a constitutional violation - we argue in Points VI, VII and VIII, infra, that it does not - Plaintiffs' Complaint is fatally deficient because they do not allege that they have ever been assigned ineffective teachers. Nor do they allege facts that establish a causal link between the LIFO provisions and the presence of ineffective or partially effective teachers in any classroom in the Newark District. Nor do Plaintiffs allege any facts to show that the newly enacted provisions of TEACHNJ [The Teacher Effectiveness and Accountability Act for the Children of New Jersey, N.J.S.A. 18A:6-117 ("TEACHNJ" or the "Act")] that are expressly designed to expeditiously and efficiently remove ineffective or partially effective teachers are not working in Newark. Rather, Plaintiffs allege, in purely conclusory terms and with no factual support, that proceedings to terminate ineffective teachers are "time-consuming," "expensive" and "ineffective." (Complaint ¶93).

No doubt educational achievement in the Newark School District could and should be improved. The AFT fully supports the constitutional mandate that all children are entitled to a thorough and efficient education. How to improve educational

outcomes is a complex question, as evidenced by more than forty years of Robinson/Abbott litigation over school funding and related issues. There are no easy solutions, but as the Supreme Court has repeatedly emphasized, money matters - equalizing funding to ensure that students in Newark have access to pre-K services, computers, properly equipped science labs, sufficient resources for students with learning disabilities, and a litany of other crucial services, is vital.

Plaintiffs assert that in Abbott districts there is an irreconcilable conflict between statutory provisions, such as the LIFO statutes, that afford teachers job security, and a thorough and efficient education. However, the Supreme Court has never said, or even hinted, that educational outcomes and opportunities improve when job protections are stripped away from teachers. However, the Court has expressly recognized the important public policy advanced by insulating teachers from hiring and retention decisions driven by patronage, favoritism or discriminatory motives. Indeed, the "overriding purpose" of tenure and other job security provisions is to "benefit children by furthering the constitutional and legislative goal of a thorough and efficient education." Matter of Closing of Jamesburg High School, School District of the Borough of

Jamesburg, Middlesex County, 83 N.J. 540, 553 (1980) (CJ Wilentz dissenting).¹

Moreover, newly enacted expedient procedures are in place to remove ineffective teachers. They must, and should, be utilized by the School District. The job protections that have been an integral part of the statutory tenure scheme for over 100 years based on a legislative policy judgment that such protections facilitate the recruitment and retention of excellent teachers should not be disturbed.

The Complaint should be dismissed because Plaintiffs lack standing (Point II), the dispute is not ripe (Point III), job security statutes further the constitutional goal of a thorough and efficient education (Point IV), separation of powers principles militate in favor of affording the 2012 TEACHNJ reforms an opportunity to work as intended (Point V), and the Complaint fails to state a cause of action under the Education Clause or under the equal protection and due process provisions of the New Jersey Constitution. N.J. Const., Art. VIII, §4, ¶1, Art. I, ¶1. (Points VI, VII and VIII respectively). Plaintiffs fall woefully short of stating any actionable claims.

¹ The Chief Justice's disagreement with the majority was limited to the interpretation of N.J.S.A. 18A:26-6.1, which provides that when a school is closed and the students are transferred to another district the sending and receiving districts may enter into an agreement to transfer the tenured teachers from the school to be closed to the receiving district, with their tenure rights intact.

STATEMENT OF THE CASE

A. The Challenged Statutes

N.J.S.A. 18A:28-10 provides that "dismissals resulting from any such reduction [a reduction in the number of teaching staff members] shall not be made by reason of residence, age, sex, marriage, race, religion, or political affiliation, but shall be made on the basis of seniority according to standards to be established by the commissioner with the approval of the state board."

N.J.S.A. 18A:28-12 provides, in relevant part: "If any teaching staff member shall be dismissed as a result of such reduction, such person shall be and remain upon a preferred eligible list in the order of seniority for reemployment whenever a vacancy occurs in a position for which such person shall be qualified and he shall be reemployed by the body causing dismissal, if and when such vacancy occurs"

B. Plaintiffs' Complaint

1. The Complaint's allegations as to LIFO Provisions

The LIFO statutes are part of a recently overhauled, comprehensive statutory scheme - TEACHNJ - addressing tenure and teacher performance and ensuring that only effective teachers are retained in school districts. Plaintiffs ask this Court to separate the LIFO statutes from this integrated and holistic statutory approach and enjoin their operation so that the

District can remove its ineffective and partially ineffective teachers through layoffs.

As discussed more fully at Point II, infra, Plaintiffs do not allege that they have suffered or are suffering any harm attributable to the application of the LIFO statutes. Indeed, they acknowledge that there have not been any layoffs in the Newark Public School District. Rather, they speculate that they might suffer harm if the District were to conduct a teacher layoff. Moreover, Plaintiffs do not allege that they ever have been or are about to be assigned ineffective teachers. For that matter, they do not allege that ineffective teachers are assigned to any school that they attend, or to any school in the Newark District.

Nevertheless, Plaintiffs root their Complaint in the assertion that the obstacle to the removal of ineffective or partially effective teachers is seniority-based layoffs mandated by LIFO. Plaintiffs allege that during the 2013-14 school year, out of 2,775 teachers in the District, 94 were rated "ineffective" and 314 were rated "partially effective." (Complaint ¶47).² Plaintiffs further allege that but for the

² The Complaint cites <http://www.state.nj.us/education/data/staff/> as the source for its factual allegations regarding the number of teachers in the Newark District rated ineffective or partially effective. That same website indicates that during the 2014-2015 school year there were 221 rated partially effective - a 30% reduction in

LIFO requirement of seniority-based layoffs the District would use layoffs to target for removal teachers with less than effective ratings.

2. The Complaint's allegations regarding the EWPS Pool

Plaintiffs further allege that the District created "what is known as the EWPS [Educators without Placements] pool for those teachers whom principals did not want to hire because of performance concerns." (Complaint ¶81).³ It is alleged that during the 2013-2014 school year there were 271 teachers in the EWPS pool, costing the District \$22.5 million.⁴ (Complaint ¶83). Plaintiffs also allege that in the current 2016-2017 school year the District is spending \$10 million to retain teachers in the EWPS pool - \$12.5 million less than it spent in 2013-2014. (Complaint ¶87). That means that the number of teachers in the pool was reduced from 271 in 2013-2014 to approximately 120 in 2016-2017, based on an average salary and benefit package of \$83,000.

While not expressly alleged, it appears that Plaintiffs are claiming that if the District could lay off teachers without

the number of partially effective teachers. The number of ineffective teachers dropped to 90.

³ Plaintiffs acknowledge that not all the teachers in the EWPS pool are rated "ineffective." Teachers are placed in the pool if "principals in the district decline to employ them." (Complaint ¶82).

⁴ Assuming the accuracy of Plaintiffs' numbers, the average cost for the salary and benefits of a teacher is \$83,000. (\$25 million divided by 271 teachers).

regard to seniority it would remove the 120 teachers in the EWPS pool, freeing up \$10 million for other purposes.⁵ Notably, however, Plaintiffs do not allege that they have suffered a constitutional deprivation because the School District is using \$10 million to pay for the salaries and benefits of teachers in the EWPS pool.⁶

3. The Complaint's allegations regarding Teachers rated Ineffective or Partially Effective who are Performing Instructional duties in Classrooms

The Complaint further alleges that during the 2016-2017 school year, the District spent \$25 million on the salaries of teachers who were "force placed" in the District's schools. (Complaint ¶87). Assuming an average salary and benefit package of \$83,000, approximately 300 teachers were allegedly placed in classrooms without the consent of a school's principal. While Plaintiffs do not appear to allege that all 300 of those teachers were rated ineffective or partially effective, the Complaint alleges that teachers, who had been in the EWPS pool and who are now in classrooms, could be laid off if the LIFO provisions were struck down.⁷ (Complaint ¶88).

⁵ That assumes the functions performed by the 120 teachers still in the EWPS pool would not have to be performed by other personnel.

⁶ As we discuss *infra*, an allegation that the use of \$10 million to maintain the EWPS pool is unconstitutional would also fail to state a cause of action.

⁷ In 2014-2015 there were 311 ineffective and partially effective teachers (90 and 221 respectively). If that number remained

Plaintiffs' Complaint does not explain how the relief they seek would address the allegedly ineffective or partially effective teachers who are not in the EWPS pool. The layoff provisions of TEACHNJ can only be used to reduce staffing levels. N.J.S.A. 18A:28-9. Layoffs are not a substitute for filing charges of inefficiency under TEACHNJ's procedures and cannot be used to remove ineffective teachers the District would then have to replace. Removing teachers and then replacing them is not a reduction in force. It is simply the removal of tenured teachers, who are alleged to be ineffective, without due process. The teachers rated ineffective or partially effective, who are not in the EWPS pool because they are needed to perform instructional duties cannot be purged from the District through a layoff. Rather, the District must utilize the expedited removal procedures mandated by TEACHNJ.

C. The 2012 TEACHNJ Reforms

TEACHNJ, which was signed into law by Governor Christie on August 6, 2012, was passed with unanimous bipartisan support by a Democratic-controlled Legislature and with the endorsement of the teachers' unions. Laura McNeal, Total Recall: Rise and Fall of Teacher Tenure, 30 Hofstra Lab. & Emp. L. J. 489, 501 (2013).

constant in 2016-2017 and if there were 120 teachers in the EWPS pool that year - all of whom were either rated ineffective or partially effective - then there were 191 teachers placed in classrooms who were rated ineffective or partially effective.

This first successful overhaul of New Jersey's tenure system since 1909 was touted by the Governor as "transform[ing] the existing tenure system to now provide powerful tools to identify effective and ineffective teachers, strengthen supports available to help all teachers improve their craft, and, for the first time, tie the acquisition, maintenance, and loss of tenure to a teacher's effectiveness in the classroom." Governor Chris Christie Signs Revolutionary Bipartisan Tenure Reform Legislation Into Law, Aug. 6, 2012.⁸

Thus, the 2012 legislation tied tenure protections directly to teacher evaluations. Commenting on the passage of TEACHNJ, Senator M. Teresa Ruiz, a sponsor of the legislation, stated, "By strengthening our professionals, we will ensure that our students have the best teachers in the classroom so that all children - regardless of their background, their ZIP code, or their socio-economic status - will have the opportunities they deserve for educational excellence."⁹ In TEACHNJ, the Legislature declared that:

The goal of this legislation is to raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators, inform the provision of

⁸<http://www.state.nj.us/governor/news/news/552012/approved/20120806c.html> (last visited February 15, 2017).

⁹http://www.nj.com/news/index.ssf/2012/06/weeping_nj_teachers_tenure_bi.html

aligned professional development, and inform personnel decisions.

The New Jersey Supreme Court has found that a multitude of factors play a vital role in the quality of a child's education, including effectiveness of teaching methods and evaluations. Changing the current evaluation system to focus on improved student outcomes, including objective measures of student growth, is critical to improving teacher effectiveness, raising student achievement, and meeting the objectives of the federal "No Child Left Behind Act of 2001."

[N.J.S.A. 18A:6-118].

To ensure that students in all districts, including Abbott districts, benefit from being taught by effective teachers, TEACHNJ implemented a number of major reforms to the system of awarding tenure and evaluating teachers, including: (1) increasing from three to four years the probationary period preceding the granting of tenure; (2) requiring the development of evaluation rubrics by boards of education for approval by the Commissioner of Education; (3) requiring the on-going professional development of teaching staff; (4) developing corrective action plans for under-performing teaching staff who are rated ineffective or partially effective; and (5) establishing procedures for the expeditious removal of ineffective teachers.

1. The Establishment of School Improvement Panels

The 2012 legislation mandates that each school convene a school improvement panel, consisting of the principal or his/her designee, an assistant principal or vice-principal and a teacher. The panel is tasked with overseeing the mentoring of teachers, conducting evaluations of teachers, including an annual summative evaluation, and identifying professional development opportunities for all instructional staff, "tailored to meet the unique needs of the students and staff of the school." N.J.S.A. 18A:6-120(b). TEACHNJ mandates on-going professional development of teaching staff by developing individualized plans to support student achievement and to be "responsive to the unique needs of different instructional staff members in different instructional settings." N.J.S.A. 18A:6-128(a).

2. The Development of Evaluation Rubrics

Further, the Act requires that a school district submit to the Commissioner of Education, for review and approval, the evaluation rubrics that the district will use to assess the effectiveness of its teachers, principals, assistant principals and vice-principals. N.J.S.A. 18A:6-122(a). Minimum evaluation standards established by the State Board of Education through the promulgation of regulations must include:

1. four defined rating categories: ineffective, partially effective, effective and highly effective;
2. a rubric that is at least partially based on multiple objective measures of student learning that use student growth from one year's measure to the next year's measure;
3. standardized assessments to be used as a measure of student progress, but shall not be the predominant factor in the overall evaluation of a teacher;
4. performance measures that are linked to student achievement;
5. multiple employee observations during the school year; and
6. a process for ongoing monitoring and calibration of the observations to ensure that the observation protocols are being implemented correctly and consistently.

[N.J.S.A. 18A:6-123(b)].

Beginning with the 2013-2014 school year a board of education was required to implement the approved and adopted evaluation rubric for all educators in all schools in the district.

N.J.S.A. 18A:6-123(e).

3. Support for Teachers Rated Ineffective or Partially Effective.

School improvement panels are required to conduct a mid-year evaluation of any teacher who is evaluated as ineffective or partially effective in his/her most recent annual summative evaluation. N.J.S.A. 18A:6-120(c). Any teaching staff member who "fails or is struggling to meet the performance standards established by the board of education" is provided with

additional professional development designed to correct the needs identified in the annual summative evaluation. For each teacher rated ineffective or partially effective, a corrective action plan must be developed that includes "timelines for corrective action and responsibilities of the teaching staff member and the school district for implementation of the plan."

N.J.S.A. 18A:6-128(b).

4. A Four-year Probationary Period and Researched-Based Mentoring Programs

TEACHNJ expanded the probationary period for attaining tenure from three to four years for all teaching staff members employed on or after the effective date of the Act. N.J.S.A. 18A:28-6(b). To achieve tenure a teacher must complete a direct mentorship program during the initial year of employment and receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment after the initial year of employment in which the teacher completes the direct mentorship program. Id. To further enhance the effectiveness of teachers, boards of education are required to implement a "research-based mentoring program that pairs effective, experienced teachers with first-year teachers to provide observation and feedback, opportunities for modeling, and confidential support and guidance in accordance with the

Professional Standards for Teachers and the evaluation rubric."

N.J.S.A. 18A:6-127(a).

**5. Mandated Filing of Charges of Inefficiency
against Ineffective or Partially Effective
Teachers**

Although TEACHNJ affords teachers who do not satisfy evaluation standards the opportunity to improve performance, a superintendent is required to file with the secretary of the board of education a charge of inefficiency whenever an employee is rated ineffective or partially effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation. N.J.S.A. 18A:6-17.3(a). If an employee is rated partially effective in two consecutive annual summative evaluations or is rated ineffective in an annual summative evaluation and the following year is rated partially effective, the superintendent must also file with the secretary of the board a charge of inefficiency, except that the superintendent, upon a written finding of exceptional circumstances, may defer the filing of tenure charges until after the next annual summative evaluation. N.J.S.A. 18A:6-17.3(a).

**6. A Streamlined and Less Burdensome Hearing
Procedure**

In addition to mandating the filing of charges of inefficiency against ineffective teachers, the Act accelerates

and streamlines the tenure removal process. The removal process - from the filing of a charge of inefficiency with a school board to the issuance of a final arbitrator's decision - is designed to be completed within 135 days.

Within 30 days following the filing of charges of inefficiency, a school board must forward the written charge to the Commissioner of Education, unless the board determines that the evaluation process has not been followed. N.J.S.A. 18A:6-17.3(b). The teacher against whom the charges are filed has 10 days to submit a written response to the charges to the Commissioner. N.J.S.A. 18A:6-17.3(c). The Commissioner has five days immediately following the 10-day period provided for a response to refer the case to an arbitrator. N.J.S.A. 18A:6-17.3(c).

Arbitration hearings must commence within 45 days of the assignment of the case to an arbitrator. N.J.S.A. 18:6-17.1(b)(1). A decision must be rendered within 45 days from the start of the hearing. N.J.S.A. 18:6-17.1(d). Timelines must be strictly adhered to and may not be extended without the approval of the Commissioner. N.J.S.A. 18:6-17.1(f)-(g). Arbitrators are randomly assigned by the Commissioner from a panel of 25 arbitrators. N.J.S.A. 18:6-17.1.

In addition to this expedited procedure, the authority of the arbitrator is limited to deciding whether: (1) the

employee's evaluation failed to substantially adhere to the evaluation process; (2) there was a mistake of fact in the evaluation; (3) the charges would not have been brought but for an unlawful or discriminatory reason; and (4) the district's actions were arbitrary and capricious. N.J.S.A. 18:6-17.2.

D. The Legislative Decision Not to Modify the LIFO provisions of the Tenure Statute

During the legislative process that resulted in the enactment of TEACHNJ, various iterations of the legislation contained amendments to the LIFO provisions that are the subject of the instant litigation. The Legislature's rejection of proposed amendments to the LIFO provisions limiting the use of seniority as a factor in layoff decisions was coupled with major reforms to other aspects of the statutory tenure scheme, including the process for awarding tenure, the evaluation of teachers and the removal of teachers with ineffective or partially effective ratings. Thus, the Legislature determined that the wholesale reconfiguration of the process for evaluating and removing teachers would accomplish the objective of ensuring that students throughout the State, including in Abbott districts, will be taught by effective or highly effective teachers. The Legislature recognized the value of a layoff procedure that uses an objective criterion - seniority - when selecting between tenured teachers to be laid off, rather than a

more subjective system prone to manipulation based on favoritism, patronage or other reasons unrelated to merit.

When sweeping reforms to the tenure and evaluation provisions of Title 18A were being debated in 2012, the Legislature also considered whether the system for implementing layoffs in times of budgetary crisis or programmatic need should be seniority-based. The alternative to utilizing seniority as the objective criteria for layoffs would likely be a subjective system involving discrete retention decisions based on individualized assessments of teacher effectiveness, and requiring dubious distinctions to be drawn between teachers with effective ratings.¹⁰ When it rejected revisions to the proposed LIFO provisions, the Legislature made a policy choice - it decided that seniority provides an objective and transparent standard for making difficult layoff decisions.

As initially proposed, TEACHNJ included provisions that would have eliminated seniority protections for teachers acquiring tenure after the effective date of the bill. Senate Bill 2925, sponsored by Senator Ruiz, and introduced on June 6, 2011, amended N.J.S.A. 18A:28-10 and 28-12 to exclude from the seniority provisions of the layoff and recall statutes teaching

¹⁰ Notably, Plaintiffs do not limit their request for relief to ineffective or partially effective tenured teachers, but seek to broadly deny seniority rights to all tenured teachers, including those rated effective and highly effective.

staff members employed in the position of teacher, principal, assistant principal or vice-principal, who acquire tenure after the effective date of the bill. (AFTa14).¹¹ On February 6, 2012, Senator Ruiz sponsored another version of TEACHNJ, introduced on February 6, 2012 as Senate Bill No. 1455. (AFTa26). Section 23 of that bill linked seniority to evaluation ratings for teachers who acquired tenure before the bill's effective date. Teachers acquiring tenure after the bill's effective date would be designated as a "member of a priority hiring pool," affording a teacher the opportunity to interview for vacant in-district positions "before a principal may consider outside applicants." To qualify as a member of the priority hiring pool, a teacher would need to have an evaluation rating of effective or highly effective. There would be no obligation to consider seniority as a factor in layoffs for teachers obtaining tenure after the bill's effective date.

Not until the TEACHNJ bill was reported out of the Senate Committee on June 18, 2012, as a substitute bill for Senate Bill No. 1455, were the provisions amending N.J.S.A. 18A-28-10 and 12 dropped. (AFTa44). Accordingly, the Legislature rejected a system that would have given districts far greater discretion to lay off teachers in favor of an objective process based on

¹¹"AFTa _" denotes the appendix to this brief.

seniority, but enacted an expedited system for removing ineffective tenured teachers.

ARGUMENT

I. The Standard of Review for a Motion to Dismiss

Pursuant to R. 4:6-2(e), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." "The inquiry is confined to a consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim." Rieder v. Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (affirming dismissal of complaint that alleged unconstitutional taking by the State's implementation of an alignment preservation map) (quoting P. & J. Auto Body v. Miller, 72 N.J. Super. 207, 211 (App. Div. 1962)). A reviewing court may only consider "whether the complaint states a cognizable cause of action." Ibid. Thus, "all facts alleged in the complaint and legitimate inferences drawn therefrom are deemed admitted." Smith v. City of Newark, 136 N.J. Super. 107, 112 (App. Div. 1975).

Where "no matter how 'generously' or 'indulgently' pleadings are scrutinized," the complaint fails to articulate a legal basis for relief, the complaint must be dismissed. Energy Rec. v. Dept. of Env. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999) aff'd, 170 N.J. 246 (2001). "Dismissal is mandated where the factual allegations are palpably insufficient to support a

claim upon which relief can be granted." Rieder, 221 N.J. Super. at 552 (quoting Muniz v. United Hsps. Med. Ctr. Pres. Hsp., 153 N.J. Super. 79, 82-83, (App. Div. 1977)).

"Pleadings reciting mere conclusions without facts and reliance on subsequent discovery do not justify a lawsuit." Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div. 1998). Therefore, a pleading must set forth the facts on which a claim is based, "showing that the pleader is entitled to relief[.]" Spring Motors Distributors, Inc. v. Ford Motor Co., 191 N.J. Super. 22, 29 (App. Div. 1983) (citing R. 4:5-2), aff'd in part and rev'd in part on other grounds, 98 N.J. 55 (1985); see also Jardine Estates, Inc. v. Koppel, 24 N.J. 536, 542 (1957). When a complaint fails to set forth the necessary factual allegations in support of its claim for relief, the pleading must be deemed inadequate. See Miltz v. Borroughs-Shelving, a Division of Lear Siegler, Inc., 203 N.J. Super. 451, 458-59 (App. Div. 1985). In this instance, where Plaintiffs seek a declaration that the LIFO statutes, as applied, are unconstitutional, the Complaint must allege facts that overcome the presumption of constitutionality that attaches to legislative enactments.

II. Plaintiffs do not have Standing to raise any Constitutional Claims

Pursuant to R. 4:26-1, "[e]very action may be prosecuted in the name of the real party in interest. . . ." Standing is essential to the existence of a justiciable controversy and determines whether a plaintiff is entitled to initiate and maintain an action in court. In re Adoption of Baby T., 160 N.J. 332, 340 (1999). Standing requires that the party have a sufficient stake in a justiciable controversy to seek relief from the court.

"Standing refers to the plaintiff's ability or entitlement to maintain an action before the court. Courts will not entertain matters in which plaintiffs do not have sufficient legal standing." New Jersey Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 409 (App. Div.), appeal dismissed, 152 N.J. 361 (1998). To determine whether a party has standing a court must decide "whether the party has a sufficient stake in and real adverseness with respect to the subject matter, and whether the party will be harmed by an unfavorable decision." In re Charter School Application of Englewood, 320 N.J. Super. 174, 222 (App. Div. 1999), aff'd, 164 N.J. 316 (2000).

While New Jersey courts typically interpret standing more broadly than the federal "case or controversy" requirement under the United States Constitution, a court "will not render

advisory opinions or function in the abstract nor will [it] entertain proceedings by plaintiffs who are 'mere intermeddlers' . . . to the dispute." Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107 (1971) (citations omitted). In this regard, a litigant must show "a substantial likelihood of some harm" for purposes of standing. New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Comm'n, 82 N.J. 57 (1980). Where harm is purely hypothetical it is not justiciable.

Here, neither the Plaintiff students nor their guardians have standing to assert claims under any of the causes of action for alleged constitutional violations. There is no allegation in the Complaint to suggest that any Plaintiff student is currently suffering harm or is about to suffer harm attributable to the operation of the LIFO statutory provisions. Plaintiffs allege that they will be deprived of a "thorough and efficient education" should there be a layoff because the District will be required to remove teachers based on seniority, possibly resulting in the retention of more senior ineffective teachers and the removal of less senior effective teachers. However, there has not been a layoff of teachers in the Newark District. Nor is there any claim that a layoff is imminent, or even planned. Further, since the enactment of TEACHNJ in 2012, procedures have been in place to efficiently and expediently

remove ineffective and partially effective teachers. If a district adheres to those procedures, no teachers properly rated ineffective for two consecutive years should remain in the school system.

The thoroughly speculative nature of the alleged harm is underscored by the factual allegations that are noticeably absent from the Complaint. There is no allegation that any Plaintiff student is currently, ever has been, or is about to be assigned an ineffective teacher. For that matter, Plaintiff students do not allege that their test scores are below the State's minimum proficiency benchmarks in language arts or math or fall below the State's grade level expectations. Nor do Plaintiffs allege that if Newark conducts a layoff in accordance with the LIFO statute, they will be assigned ineffective teachers. They do not even speculate that this will happen. Indeed, the harm alleged here is conjectural precisely because there have not been layoffs and Plaintiffs do not allege that layoffs are planned.

Furthermore, to have standing, the Plaintiff students must not only have been assigned an ineffective teacher, but the assignment must be the result of the LIFO provisions. The Complaint does not contain such an allegation - nor could it since there have been no teacher layoffs in the District. Accordingly, Plaintiffs do not allege any concrete past, present

or imminent future harm that permits this Court to reach the merits of the Complaint.

Although not expressly identified as a source of harm suffered by the Plaintiffs, the Complaint contains allegations relative to the amount of money the District spends to maintain the EWPS pool. In this regard, the Complaint sets forth the following allegations:

1. During the 2013-14 school year Newark spent \$22.5 million in teachers' salaries for the EWPS pool. (Complaint ¶85).
2. During the 2016-2017 school year that amount was reduced to \$10 million. (Complaint ¶87).
3. Also in 2016-2017, the "forced" placement of teachers from the EWPS pool into instructional positions cost the district \$25 million. (Complaint ¶87).

The only harm that could in any manner relate to the LIFO statute is that the District spends \$10 million for the EWPS pool.¹² Notably, Plaintiffs do not identify this expenditure as a source of harm suffered by them. Rather, the Complaint alleges that Plaintiff students suffer harm when they are taught by ineffective teachers. Even if the Complaint were recast to allege that Plaintiffs are harmed because the District spends

¹² As noted previously, the \$10 million in savings assumes that teachers in the EWPS pool are not assigned duties that would have to be performed by other employees.

\$10 million to maintain the EWPS pool, such attenuated harm does not confer standing to challenge the constitutionality of the LIFO statutes.

It is unclear from the Complaint whether Plaintiffs also allege that the District should be permitted to target for layoff teachers with ineffective or partially effective ratings who are not in the EWPS pool. Ineffective teachers who are assigned instructional duties and who would have to be replaced if laid off, are not subject to removal through the LIFO provisions. Layoffs can only be carried out where there is a genuine need to reduce staffing levels, either for budgetary or programmatic reasons. N.J.S.A. 18A:28-9. They are not a vehicle to circumvent statutorily proscribed removal proceedings, thereby denying tenured teachers the due process to which they are constitutionally and statutorily entitled.

Therefore, Plaintiffs lack standing because they do not allege that they have ever been or will be in the immediate future assigned ineffective teachers. Further, although the relief they seek is to have this Court declare unconstitutional and enjoin the LIFO provisions requiring seniority-based layoffs, there have been no layoffs of teachers in the Newark Public School District.

III. The Complaint should be dismissed based on the Ripeness Doctrine

The Complaint should be dismissed because plaintiffs' claims are not ripe for review. The doctrine of ripeness requires an evaluation of "(1) the fitness of the issues for judicial decision, and (2) the hardship to the parties caused by withholding court consideration." Committee to Recall Robert Menendez from the Office of U.S. Senator v. Wells, 204 N.J. 79, 99 (2010) (internal citations omitted); Abbott Laboratories v. Gardner, 387 U.S. 136, 148 (1967). Plaintiffs' claims fail both parts of this test.

"A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." Texas v. United States, 523 U.S. 296, 300 (1996) (internal citations omitted). Echoing the United States Supreme Court, the New Jersey Supreme Court observed that "[a] declaratory judgment claim is not ripe for adjudication if the facts illustrate that the rights or status of the parties are 'future, contingent, and uncertain.'" Garden State Equality v. Dow, 434 N.J. 163, 189 (L. Div. 2013) (citing Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. 295, 302 (App. Div. 2005)). "Courts can assume jurisdiction over a claim only if there is a 'real and immediate' threat of enforcement or harm that would affect the plaintiff." Garden State, 434 N.J. at 189

(citing K. Hovnanian Co. of N. Central Jersey, Inc. v. N.J. Dep't of Env'tl. Prot., 379 N.J. 1, 10 (App. Div. 2005)).

Plaintiffs' challenge to N.J.S.A. 18A:28-10 is not ripe because it requires the inference that three conditions precedent are satisfied: first, that a reduction in force (RIF) will be implemented; second, that a reduction in force will eliminate junior, effective teachers while leaving senior, ineffective teachers in place; and third, as a result of a reduction in force Plaintiff students will be assigned ineffective teachers. Plaintiffs' claims rest on contingent future events that may not occur as anticipated, or indeed may not occur at all.

Further, the challenge to N.J.S.A. 18A:28-12 requires two additional conditions precedent: first, that ineffective senior teachers are laid off in a RIF, and second, that the District re-hires laid off teachers. Because a RIF has not been implemented and is not imminent, the conditions precedent for challenging the constitutionality of either N.J.S.A. 18A:28-10 or 18A:28-12 cannot be satisfied. As Plaintiffs have not and cannot identify a concrete, immediate harm, this Court should dismiss their claims as not ripe for judicial consideration.

IV. Tenure and other Job Security Statutes are Presumed to be Valid and Further the Constitutional Goal of a Thorough and Efficient Education

A. LIFO Statutes are presumed to be Constitutional

Any analysis of the LIFO statutes must begin with the statutes' presumed constitutionality. N.J. Sports & Exposition Authority v. McCrane, 61 N.J. 1, 8 (1972), appeal dismissed, 409 U.S. 943 (1972) ("[E]very possible presumption favors the validity of an act of the Legislature"). The burden falls on the party challenging the legislation to demonstrate clearly that it violates a constitutional provision. Lewis v. Harris, 188 N.J. 415 (2006). "[A] legislative enactment will not be declared void unless its repugnancy to the Constitution is so manifest as to leave no room for reasonable doubt." Behnke v. N.J. Highway Auth., 13 N.J. 14, 25 (1953). "[I]f possible, legislation will be so read as to sustain its constitutionality." Holster v. Bd. of Trs. of Passaic Cnty. Coll., 59 N.J. 60, 66 (1971).

Courts are obligated "to view tolerantly and with restraint the presumed validity" of the means by which the Legislature has chosen to implement a constitutional goal. Lance v. McGreevey, 180 N.J. 590, 602 (2004) (LaVecchia, J., concurring in part and dissenting in part) (quoting State v. Trump Hotels & Casino Resorts, Inc., 160 N.J. 505, 534 (1999)); see also Robinson v. Cahill, 69 N.J. 449, 456 (1976) (Robinson

V) ("We approach our analysis having in mind the presumptive validity which accompanies the legislative act"); N.J. Ass'n on Corr. v. Lan, 80 N.J. 199, 220 (1979) (when "reasonable men might differ" on constitutional interpretation, the courts should defer to "the will of the lawmakers"); Hamilton Amusement Cir. v. Verniero, 156 N.J. 254, 285 (1998) (party may overcome presumption and carry burden by demonstrating constitutional repugnancy beyond reasonable doubt).

Here, Plaintiffs attack the constitutionality of LIFO provisions that are part of the TEACHNJ reforms to the tenure statute. The Complaint does not allege any facts from which a court could conclude that the LIFO provisions are "repugnant" to any provision of the State Constitution. Indeed, as discussed in Point IVB infra, the statutory job protections afforded teachers, including LIFO, serve an important public purpose - one which promotes the constitutional goal of a thorough and efficient education.

B. The TEACHNJ Job Security Provisions Serve an Important Public Purpose

The LIFO provisions challenged by Plaintiffs as unconstitutional are part of TEACHNJ's comprehensive statutory scheme that advances the constitutional mandate of a thorough and efficient education by providing effective teachers with job security, assisting ineffective teachers in improving their

performance, and removing those teachers who, for two consecutive years, receive ineffective or partially effective performance ratings.

As the appellate court recognized in Viemeister v. Bd. of Educ. of Prospect Park, 5 N.J. Super. 215, 218 (App. Div. 1949), "the tenure provisions in our school laws were designed to aid in the establishment of a competent and efficient school system by affording to principals and teachers a measure of security in the ranks they hold after years of service. They represent important expressions of legislative policy which should be given liberal support, consistent, however, with legitimate demands for governmental economy."

"[T]he protection of teachers' tenure rights is part of the legislative effort to ensure a thorough and efficient education, a constitutionally based aspect of a clear and compelling State policy of furthering the interests of school children." Matter of Closing of Jamesburg High School, 83 N.J. at 553 (1980) (CJ Wilentz dissenting). The Chief Justice went on to observe that "tenure laws were designed to protect teachers in their positions, and by virtue of the security they engender to promote a 'competent and efficient' school system. The fundamental and overriding purpose of tenure is to benefit children by furthering the constitutional and legislative goal

of a thorough and efficient education." Id. at 557 (internal citations omitted).

In Spiewak v. Bd. of Educ. of Rutherford, 90 N.J. 63 (1982), the New Jersey Supreme Court again addressed tenure provisions. "[T]he Tenure Act was originally enacted in 1909. Since then, it has undergone numerous amendments. However, its purpose has not changed. The tenure statute prevents school boards from abusing their superior bargaining power over teachers in contract negotiations. It protects teachers from dismissal for 'unfounded, flimsy or political reasons.'" Id. at 73 (internal citations omitted). See also, Lammers v. Bd. of Educ. of Borough of Point Pleasant, 134 N.J. 264 (1993); Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth County, 322 N.J. Super. 522 (App. Div. 1999); Platia v. Bd. of Educ. of Tp. of Hamilton, Mercer County, 434 N.J. Super. 382, 388 (App. Div. 2014) (Tenure Act's remedial purpose to prevent school boards from abusing superior bargaining power therefore mandates that it be liberally construed to achieve "beneficent ends").

Thus, the courts have recognized that job security functions as a recruitment and retention inducement by acting as a check on school officials and administrators who might otherwise be tempted to base hiring and retention decisions on patronage or other invidious motives, rather than merit. Recognizing the salutary purposes served by such safeguards, in

2012 the Legislature left intact the protections afforded by tenure laws and seniority-based layoff provisions, while revamping the process by which probationary teachers earn tenure, the teacher evaluation system and the procedures for the removal of ineffective teachers.

V. The Educational Policy Changes enacted by the Legislative and Executive Branches through the 2012 TEACHNJ Reforms are designed to Remove Ineffective Teachers and should be afforded the Opportunity to Work

Plaintiffs ask this Court to declare unconstitutional and enjoin the operation of the LIFO provisions to enable the Newark School District to remove ineffective and partially effective teachers. However, the TEACHNJ reforms enacted in 2012 are expressly designed to efficiently and expeditiously remove ineffective and partially effective teachers. TEACHNJ mandates that school districts file charges of inefficiency against teachers rated ineffective or partially effective for two consecutive years.¹³

If a district adheres to statutorily mandated teacher evaluation procedures, ineffective teachers will be removed from the district. It is this procedure - not the LIFO provisions - that are designed to accomplish the relief that Plaintiffs ask this Court to grant. Leaving aside whether Plaintiffs have

¹³ Charges of inefficiency could be filed for the first time under the Act's expedited removal procedures at the end of the 2014-2015 school year, meaning that proceedings to remove ineffective teachers would have commenced during the 2015-2016 school year.

stated any cognizable constitutional claims - we argue in Points VI, VII and VIII, infra, that they do not - it would be premature for the Court to enmesh itself in this matter so soon after the Legislature and Governor enacted sweeping reforms designed to address the specific issue Plaintiffs bring before this Court - the removal of ineffective teachers from Abbott districts, including Newark.

It is also noteworthy that in the context of enacting groundbreaking reforms to a tenure system that had been in place for over a century, the Legislature decided to leave untouched the part of this cohesive statutory scheme that requires layoffs based on seniority. The judgment that a seniority-based layoff system is more efficient and more likely to increase the overall quality of a district's teaching pool than other alternative systems - two of which were proposed in the TEACHNJ bills sponsored Assemblywoman Ruiz - is uniquely the type of policy assessment our State Constitution entrusts to the Legislature. The delicate balance between providing job security as an inducement to the recruitment and retention of teachers and fashioning procedures and safeguards to remove ineffective teachers is most appropriately struck, not by the courts in this particular instance, but by the Legislature.

The AFT recognizes that the Supreme Court has not hesitated to aggressively enforce the Education Clause of the Constitution

by requiring the equalization of per pupil spending between the Abbott and other school districts and, when necessary, mandating the implementation of programmatic reforms such as Early Childhood Education. Nevertheless, the Supreme Court has always proceeded with respect for separation of powers principles, affording the two political branches ample time to enact legislation to correct the glaring inequities between the educational opportunities afforded children in Abbott districts and children in wealthier suburban districts.

This Court should not wade into these educational policy waters so soon after the two other branches acted to install statutory safeguards to ensure that ineffective teachers are identified and removed based on objective evaluation rubrics developed by local school boards and approved by the Commissioner of Education.

A. The Non-justiciability of Political Questions Doctrine Militates in Favor of Dismissal of the Complaint to Afford the 2012 Comprehensive Legislative Reform Effort in the Areas of Teacher Tenure, Evaluations and Removal Time to Work

While not dispositive with respect to the Judiciary's enforcement of the constitutional guarantee of a thorough and efficient education, cases addressing the justiciability of political questions offer guidance, and in this specific area of educational policy provide additional support for the dismissal of the Complaint.

The New Jersey courts look to federal precedent in determining if a matter raises a non-justiciable political question. De Vesa v. Dorsey, 134 N.J. 420, 429 (1993), citing Baker v. Carr, 369 U.S. 186 (1962). Baker sets forth the six factors courts look to in deciding if an issue is non-justiciable: (1) is there a "textually demonstrable constitutional commitment of the issue to a coordinate political department;" (2) is there a lack of "judicially discoverable and manageable standards" for resolving the issue; (3) is it impossible to decide the issue without "an initial policy determination of a kind clearly [reserved] for nonjudicial discretion;" (4) is it impossible for the court to "undertake[] independent resolution without expressing lack of the respect due coordinate branches of government;" (5) is there "an unusual need for unquestioning adherence to a political decision already made;" or (6) is there the "potentiality of embarrassment from multifarious pronouncements by various departments on one question." Baker, 369 U.S. at 217, 82 S. Ct. at 710.

"The nonjusticiability of a political question is primarily a function of the separation of powers." In re Gilmore, 340 N.J. Super. 303, 310 (2001), (quoting Baker v. Carr, 369 U.S. at 210). "While the doctrines of separation of powers and checks and balances do not require hermetically sealed, watertight compartments in the conduct of the State's business, their

purpose is to 'safeguard the essential integrity of each branch of government.'" In re Gilmore, 340 N.J. Super. at 311, (quoting Gilbert v. Gladden, 87 N.J. 275, 281 (1981) (internal quotes omitted)); See also, Loigman v. Trombadore, 228 N.J. Super. 437 (App. Div. 1988) (applying the first, second, third and fourth factors of the Baker analysis, the Court found as a non-justiciable political question the right of the Governor to receive advice from the New Jersey Bar Association on the selection of nominees for state court judgeships).

In Gibert, the Court, applying the first of the Baker factors, found non-justiciable the question of whether the unofficial custom of not presenting bills to the Governor until he/she calls for them, and thereby allowing the use of a pocket veto to circumvent the Legislature's constitutional power to override a gubernatorial veto, violated Article V, §1, ¶14 of the State Constitution. "In the absence of constitutional or statutory standards, it is not the function of this Court to substitute its judgment for that of the Legislature with respect to the rules it has adopted or the procedures followed in giving effect to the constitutionally declared scheme." Gilbert, 87 N.J. at 284. Relying on the political question doctrine, the Court refused to consider whether the custom of not sending bills passed by the Legislature to the Governor until he calls for them "undermines the carefully detailed constitutional

scheme which permits the Legislature to override a gubernatorial veto." Gilbert, 87 N.J. at 288 (Justices Pashman and Schreiber dissenting).

The Supreme Court's decision in Abbott v. Burke, 206 N.J. 332, 366-7 (2011) (Abbott XXI), offers guidance. There, the Court rejected the State's challenge to "the efficacy of existing tenure laws, teacher evaluation methods, and collective bargaining agreements." Although the Court did not expressly find the issue to be a non-justiciable political question, the Court observed that to achieve radical changes to educational policy in the area teacher job security, the State should initially seek those changes through the legislative process.

While there may or may not be virtue in future educational policy reforms, the debate regarding how best to transform the educational system must be reserved for a different forum. The State's presentation of such arguments in connection with the instant matter is simultaneously premature and laggard. In one respect, the State cannot transform its defense to this motion in aid of litigants' rights into a vehicle to obtain an indication of some judicial approval for collateral labor law and education policy reforms that are, as-yet, unadopted by the Legislature. Nor can the State assert that districts should have mitigated the impact of budget reductions somehow before those initiatives were legislatively obtained. Unless and until the State achieves the legislative reforms it prefers, and puts those tools in the hands of districts, arguments attacking collective bargaining agreements or targeting interest groups in the education community, do not advance the State's position in this matter.

[Id. at 367]

Thus, the Court in Abbott XXI did not accept the invitation to venture into the realm of educational policy in areas that do not implicate State funding to Abbott districts. This Court should similarly eschew Plaintiffs' entreaties to make policy with respect to statutory job protections for teachers, especially so soon after the Legislature enacted comprehensive reform measures to accomplish precisely what Plaintiffs here ostensibly seek by way of relief - the removal of ineffective teachers.

To be clear, the AFT does not suggest that justiciability principles foreclose court review of complaints brought pursuant to the Education Clause - even those that stray far afield from funding and related programmatic issues, as does the instant Complaint. But in areas of educational policy where the Legislature has recently spoken and where quantifying the impact of the assignment of an ineffective teacher on a student's constitutional right to a thorough and efficient education is extraordinarily difficult, the Court should be wary of becoming immersed in a dispute that will require it to second-guess recent policy decisions by the Executive and the Legislature - decisions designed to enhance teacher performance and remove ineffective teachers.

For example, every student is assigned a number of different teachers over time, some of whom may be highly effective and were drawn to and remain in the teaching profession in part because of the protections offered by the challenged statutes and the overall statutory tenure scheme. How is a court to weigh the competing policy considerations that, on the one hand, militate in favor of insulating teachers from hiring and retention decisions driven by patronage, politics or other invidious motives, and on the other hand, confer upon a school district the unfettered right to remove teachers? In other words, how would a court determine whether the increased risk of the assignment of an ineffective teacher, purportedly attributable to the LIFO statutes - statutes that are not designed for the removal of ineffective teachers - outweighs the statutory scheme's positive effect on the overall quality of a student's education by attracting and retaining effective teachers? For that matter, how is a court to measure the impact of an ineffective teacher on a student's overall educational experience, which includes assignments of teachers of varying effectiveness for varying lengths of time.

The Supreme Court has long grappled with the difficulty of isolating the factors responsible for the constitutionally deficient education students in Abbott districts have received. For this reason, with the exception of the programmatic reforms

ordered in Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V), the Supreme Court has primarily relied on a measurable standard - the amount of per pupil funding that districts receive - and has used that objective criterion as the basis for remedying the underlying constitutional violation. In Robinson v. Cahill, 62 N.J. 473 (1973) (Robinson I), the Court also expressed concern over its ability to devise an appropriate standard for measuring constitutional compliance. There, the Court observed that it would deal with the problem of educational disparities in terms of per pupil expenditures "because we have been shown no other viable criterion for measuring compliance with the constitutional mandate." Id. at 515-16.

Similarly, Chief Justice Wilentz forthrightly acknowledged the difficulty of identifying, with any degree of precision, the remedial measures necessary to ensure that students in poorer urban districts receive an education that enables them to compete with their more affluent counterparts in suburban districts. Recognizing that "no amount of money may be able to erase the impact of socioeconomic factors that define and cause" students' disadvantages, the Chief Justice observed that "even if not a cure, money will help, and that these students are constitutionally entitled to that help." Id. at 374-5. The difficulty of constructing objective criteria to evaluate whether children in Abbott districts are receiving a thorough

and efficient education is magnified when issues of educational policy are not readily susceptible to measurement in dollars or by the presence of concrete programmatic initiatives.

The educational policy judgments implicated by the instant Complaint require weighing the benefit of providing job security protections as an inducement to attracting and retaining highly competent teachers against the speculative chance that should there be a layoff, a senior ineffective teacher, who for some reason was not removed by operation of TEACHNJ, may be retained. It is not possible to decide the issue presented by the Complaint without "an initial policy determination of a kind clearly [reserved] for nonjudicial discretion" and it is not possible for the Court to "undertake[] independent resolution without expressing lack of the respect due coordinate branches of government." Baker, 369 U.S. at 217, 82 S. Ct. at 710. The difficulty of ascertaining "judicially discoverable and manageable standards" for resolving whether the LIFO provisions deprive Plaintiffs of a thorough and efficient education is yet another reason to dismiss the Complaint.

B. The Complaint should be Dismissed because it Prematurely asks the Court to Address the Constitutionality of a Recently Enacted Statutory Scheme

Plaintiffs seek to have the Court declare unconstitutional one part of a recently enacted comprehensive statutory scheme

addressing teacher tenure, evaluations and removals before the newly adopted reforms have had an opportunity to be fully implemented. Under such circumstances, the Court should first give the educational reforms an opportunity to work. The relief sought by Plaintiffs - the removal of ineffective teachers - is one of the primary objectives of TEACHNJ.

Even if Plaintiffs were able to state a cause of action, which they are not, this action is premature. As the court recognized in Crawford v. Davy, 2010 WL 162061 (App. Div. 2009), newly enacted educational reform legislation should be given "the opportunity to operate." Id. at *13.¹⁴ There, the appellate panel affirmed the dismissal of a complaint as premature brought under the Education Clause and challenging statutes creating local school districts. The Appellate Division noted that plaintiffs seek a "wholesale restructuring of New Jersey's system of locally-based public schools prior to there having been an opportunity for the full implementation and operation of statutory evaluative and remedial measures," which were part of the reforms enacted or enhanced by the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to 63). Id. at *12.

As Chief Justice Wilentz observed in Abbott II:

¹⁴ This unpublished decision is included in the appendix to this brief. (AFTa71). Counsel knows of no contrary unpublished opinion. R. 1:36-3.

The Board and the Commissioner claim that thorough and efficient exists now, but that in any event the Act and procedures assure its arrival in the near future. Assuming one agreed, it would be hard for this Court to justify radical interference with legislative power that is involved in the constitutional determination of insufficiency. The constitutional command does not require relief every time the slightest deviation from a thorough and efficient education is found, or any time that deviation, though proven, is likely to be corrected soon. Were we confident that a thorough and efficient education were likely to be achieved in the near future under the present system, we would not dream of intervening.

[119 N.J. at 321].

However, the Chief Justice went on to find that there is no "likelihood of achieving a decent education tomorrow, in the reasonable future, or ever," and on that basis the Court held the Public School Education Act of 1975 to be unconstitutional as applied to poorer urban districts. Ibid. Unlike the plaintiffs in Abbott II, the Plaintiffs here offer no facts to even suggest that TEACHNJ, if permitted to work as intended, will not dramatically reduce, if not eliminate, the number of teachers shown to be ineffective in the Newark District.

Abbott v. Burke, 199 N.J. 140 (2009) (Abbott XX) also provides guidance. There, the State sought a declaration that the funding formula of SFRA satisfied the requirements of the thorough and efficient education clause and therefore the State should be released from the Court's prior remedial orders

concerning education funding for students in Abbott districts. The Court considered the State's motion based on a record developed before a Special Master pursuant to an order of remand by the Court in Abbott v. Burke, 196 N.J. 544, 565 (2008) (Abbott XIX). Of particular concern to the Court was "how [the SFRA funding formula] supports accommodation of the special needs of disadvantaged students." 199 N.J. at 151. Over the objections of plaintiffs and various amici curiae, the Court granted the State's application. The Court explained that until the school funding formula expressed in SFRA "has had time to function as intended, it will be impossible to know precisely what its effect will be." Id. at 169. "We see no reason, or basis, for us to second guess the extraordinarily complex education funding determinations that went into the formulation of the many moving parts to this funding formula." Id. at 170. Recognizing that the experts who testified before the Special Master disagreed on many aspects of the funding formula, the Court commented that "the important point is that resolution of those conflicts is, in the first instance, a judgment for the Executive and Legislature to make." Id. at 171. "The judicial remedy is necessarily incomplete . . . and cannot substitute for the comprehensive remedy that can be effectuated only through legislative and executive efforts." Ibid. (quoting Abbott v. Burke, 149 N.J. 145, 189 (1997) (Abbott IV)).

Apropos of the issue before this Court, the Court in Abbott XX observed that “[u]nlike in prior moments in the history of school funding litigation in this state, we do not now confront legislative inaction or failure to identify and provide realistic education funding support to at-risk children whose severe educational challenges cause their programs to be the most costly.” Id. at 171. Concluding that the legislative effort deserves deference, the Court noted that the political branches of government are “entitled to take reasoned steps, even if the outcome cannot be assured, to address the pressing social, economic and educational challenges confronting our state. They should not be locked in a constitutional straightjacket. SFRA deserves the chance to prove in practice that, as designed, it satisfies the requirements of our constitution.” Id. at 175.

Notwithstanding the Abbott Court’s repeated forays into the legislative realm when faced with inaction, and at times outright defiance of its orders by the Legislative and Executive branches in the area of school funding and related programmatic issues, the Supreme Court has consistently proceeded with restraint in dealing with matters of educational policy, ever sensitive to the separation of powers issues that hover over any judicial incursion into the legislative arena. Courts will insert themselves into the legislative process “only so far as

demonstrably required to meet the constitutional exigency." Robinson v. Cahill, 69 N.J. 133, 144 (1975). The "Court does not purport to 'sit as a super-legislature' a role firmly disavowed by this and other courts. Our Court has previously and repeatedly shown respect for the doctrine of separation of powers of government. A court must always adhere to that concept, bending only so far as clearly required to fulfill the constitutional duty its members swore to perform" to support the Constitution. Robinson v. Cahill, 69 N.J. 449, 472 (1976) (citations omitted).

This is not a case where the Legislature or the Executive branch has turned a blind eye toward serious flaws in the State's educational system. In the areas of teacher tenure and performance the other two branches of government have recently been proactive, radically reforming the tenure and evaluation systems to ensure that only effective teachers are granted tenure and are retained. The evaluation and rating rubrics developed in conformance with the TEACHNJ standards were first used during the 2013-2014 school year. That means that pursuant to TEACHNJ, charges of inefficiency based on two consecutive annual summative ratings of ineffective or partially effective were filed for the first time in June or July of 2015, resulting in the processing of an initial round of charges during the 2015-2016 school year. The TEACHNJ process for removing

ineffective teachers is still in its infancy and deserves the opportunity to function as the Legislature and Governor intended.

Here, the two political branches have acted of their own accord to dramatically transform the system by which teachers are granted tenure, evaluated, and removed when they fail to meet objective standards approved by the Commissioner of Education. TEACHNJ deserves the chance to "prove in practice" that it is an effective tool to ensure that students in Abbott and other districts have effective teachers.¹⁵

VI. The Complaint fails to State a Claim Under the Education Clause of the New Jersey Constitution.

The Education Clause states that "The Legislature shall 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 between the ages of five and eighteen years." N.J. Const., art. VIII, §4, ¶1. In Abbott v. Burke, 119 N.J. 287, 314 (1990) (Abbott II), Chief Justice Wilentz, observed that the Robinson I requirement that a thorough and efficient education provide "that educational opportunity which is needed in the contemporary setting to equip

¹⁵ That is not to concede that the assignment of an ineffective teacher to a student results in a constitutional deprivation or that there is any basis to glean from the Complaint that Plaintiff students, or any other Newark public school students, are currently assigned ineffective teachers.

a child for his role as a citizen and as a competitor in the labor market," 62 N.J. at 515, was refined by the Court in Robinson V to mean that "poorer disadvantaged students must be given the chance to be able to compete with relatively advantaged students." Abbott II, 119 N.J. at 313.

To state a claim under the Education Clause, Plaintiffs must allege facts that establish that they are being deprived of a thorough and efficient education by virtue of being taught by ineffective teachers and that the presence of those ineffective teachers in the classrooms of the Plaintiff children is attributable to the LIFO provisions of TEACHNJ. First, as we have consistently pointed out, Plaintiffs do not allege that they are now, have ever been, or are about to be taught by ineffective teachers. Second, Plaintiffs do not allege that the Newark Public School District has conducted a layoff of teachers. Third, to the extent that there are ineffective teachers who remain employed by the District, Plaintiffs provide no facts that would permit the Court to conclude that the provisions of TEACHNJ that are expressly designed to efficiently and expeditiously remove ineffective teachers, if given time, will not function as intended.

Fourth, to the extent that there are ineffective teachers in any classrooms in the Newark School District, even if they are not in the classrooms of Plaintiff students, the District

cannot conduct a layoff unless it is for the purpose of reducing the size of its teaching staff. Layoff statutes, whether based strictly on seniority or on other factors, are not the proper vehicle to remove ineffective teachers who are not "surplus." Using layoff procedures for the purpose of circumventing TEACHNJ's statutory removal process is simply a way to deny tenured teachers the due process to which they are entitled by virtue of TEACHNJ and the federal and State Constitutions.

Fifth, Plaintiffs allege that "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." (Complaint ¶93). Plaintiffs do not claim that they are assigned ineffective teachers, but that the District is wasting \$10 million by retaining ineffective teachers in the EWPS pool. However, there are no facts alleged from which the Court could conclude that this particular \$10 million expenditure, out of a budget of almost \$1 billion,¹⁶ has deprived Plaintiff students of their constitutional right to a thorough and efficient education.

¹⁶ www.nps.k12.nj.us/departments/sba/finance/budget/2016-2017/

Nor is the District confronted by an "impossible dilemma." TEACHNJ provides Newark, and every other district, with an effective and expedient statutory mechanism for removing ineffective tenured teachers. Plaintiffs choose to ignore the 2012 historic overhaul of the State's tenure law - TEACHNJ - and allege no facts to support the conclusory allegation that the statutorily proscribed method for removing ineffective teachers is time-consuming, expensive and ineffective.

If the School District is in compliance with the mandates of TEACHNJ, beginning with the 2015-2016 school year, all teachers in Newark rated ineffective in 2013-2014 and again in 2014-2015 should have had charges of inefficiency filed against them and those charges should either be adjudicated, settled or pending arbitration. Indeed, if there has not been compliance, Plaintiffs would be better served addressing the School District's failure to carry out the mandates of TEACHNJ rather than tilt at the LIFO windmill.

Plaintiffs appear to mistakenly believe that the Newark Public School District could rid itself of the 408 teachers rated ineffective or partially effective during the 2013-2014 school year - 94 rated ineffective and 314 rated partially effective¹⁷ - if it could conduct layoffs without regard to

¹⁷ As previously noted, the number of partially effective teachers dropped from 314 in 2013-2014 to 221 in 2014-2015, the

seniority. However, Plaintiffs' factual allegations belie this incorrect assumption - an assumption that is the undergirding of the Complaint. At present, there are approximately 120 teachers in the EWPS pool representing approximately \$10 million in salaries. (Complaint ¶87).¹⁸ Based on the allegations in the Complaint, that leaves somewhere between 200 and 300 teachers who Plaintiffs allege are rated ineffective or partially effective and who are assigned to classrooms to perform instructional duties, albeit without the consent of the school principal. (Complaint ¶¶83-88).

Even assuming that the District could lay off the 120 teachers in the EWPS pool without regard to seniority, hundreds of teachers with allegedly ineffective or partially effective ratings would remain on the District's payroll assigned instructional duties. Thus, even if a claim could be made out for a violation of the Education Clause based on the presence of some ineffective teachers in a school district - the AFT argues otherwise - the presence of ineffective teachers in any Newark classroom or in any classroom in any other school district is

most recent school year for which the NJ DOE has posted data. The Complaint does not allege how many teachers were actually rated ineffective or partially effective for the 2016-2017 school year. <http://www.state.nj.us/education/data/staff/>

¹⁸ Again this assumes an average cost of salary and benefits of \$83,000, see supra at 4. In addition, Plaintiffs acknowledge that not all pool teachers are rated ineffective or partially effective.

simply not attributable to the LIFO provisions of the statutory scheme. At best, if seniority-based layoffs were struck down as unconstitutional, the only teachers who could be removed without using TEACHNJ's expedited procedures would be teachers in the EWPS pool who are allegedly surplus. Teachers who are performing instructional duties in classrooms are not "surplus," whether they are rated ineffective or effective. Those teachers cannot be laid off and then replaced. They can only be removed through the filing charges of inefficiency. It bears repeating that there is no allegation in the Complaint that any Plaintiff student has ever been or is about to be assigned an ineffective teacher. Nor is there any allegation that an ineffective teacher is assigned to any classroom in any school in the District.

No matter how "generously" or "indulgently" the Complaint is "scrutinized," it fails to articulate a legal basis for relief. Energy Rec. v. Dept. of Env. Prot., 320 N.J. Super. at 64. Where the factual allegations are "palpably insufficient to support a claim," as they are here, the Complaint should be dismissed. Rieder, 221 N.J. Super. at 552. There are no facts set forth in the Complaint that would permit this Court to find a causal connection between the LIFO provisions and the presence of ineffective or partially effective teachers in the Newark School District. Nor are any facts pled that would permit the

Court to find that the presence of ineffective or partially effective teachers has deprived any Plaintiff student, or any other student, in the District of a thorough and efficient education.

VII. The Complaint fails to State an Equal Protection Claim

Article I, ¶1 of the New Jersey Constitution provides that "every person possesses the 'unalienable rights' to enjoy life, liberty, and property, and to pursue happiness." Lewis v. Harris, 188 N.J. 415, 442 (2006). The Supreme Court has interpreted Article I, ¶1 "to embrace [the] fundamental guarantee" of equal protection. Id. In construing the right to equal protection under Article I, the New Jersey Supreme Court employs a balancing test that considers "the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction." Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985). The equal protection provision "prohibits the State from adopting statutory classifications that treat similarly situated people differently." Stubaus v. Whitman, 339 N.J. Super. 38, 57 (App. Div. 2001), certif. denied, 171 N.J. 442 (2001). "When a statute is challenged on the ground that it does not apply evenhandedly to similarly situated people, our equal protection jurisprudence requires that the legislation, in distinguishing between two classes of people, bear a substantial relationship

to a legitimate governmental purpose." Lewis v. Harris, 188 N.J. 415, 443 (2006). The Court, in Abbott v. Burke, 100 N.J. 269, 296 (1985) (Abbott I), commenting on the proofs necessary to establish an equal protection violation, observed that Plaintiffs must show that "even if all children receive a minimally thorough and efficient education, the [LIFO statute] engenders more inequality than is required by any other state interest."

Plaintiffs' core claim under their equal protection count is that the Plaintiff students have a fundamental right to a thorough and efficient education and that the LIFO statutes impinge upon that right because the statutes force the District to retain ineffective teachers in the event of a layoff. According to Plaintiffs, when this statute is applied to the admittedly speculative layoffs in the Newark School District, the Plaintiff students are or would be "disproportionately" harmed in relation to their counterparts "in wealthier, whiter, suburban districts, such as Summit." (Complaint ¶¶124, 125).

However, the challenged LIFO statutes are neutral in their application and are applied uniformly throughout the State without regard to any school districts unique socio-economic or other factors. The LIFO provisions do not "treat similarly situated people differently." Regardless of whether a student attends a public school in Newark or Summit, if a layoff of

teachers is necessary, it is conducted on the basis of seniority. Nor do the removal procedures of TEACHNJ distinguish between "two classes of people." They too are applied uniformly throughout all districts, and if properly implemented, result in the removal of ineffective teachers. There are no facts in the Complaint that demonstrate that the removal procedures established by TEACHNJ operate differently in Newark than in wealthier non-Abbott districts. Nor are there any facts in the Complaint that would permit this Court to conclude that the reason Abbott school districts have greater numbers of ineffective teachers than other districts is due to the LIFO statutes.¹⁹

The challenged statutes establish uniform requirements applicable to school districts throughout New Jersey, draw no discriminatory classifications and do not mandate the differential treatment of any ascertainable group of students. While different school districts may have different numbers of ineffective teachers, Plaintiffs allege no facts to support the

¹⁹ While the Complaint draws a comparison between Summit, which allegedly has no teachers rated ineffective, and Newark, there are no facts alleged that link the absence of ineffective teachers in Summit and the presence of ineffective teachers in Newark to the LIFO statute or to any other TEACHNJ provision. As previously noted, aside from the purely conclusory allegation that the statutory removal teacher proceedings are "inefficient" and "ineffective," there are no facts alleged that support that assertion.

finding that the LIFO statutes either created the disparity or are responsible for maintaining the disparity.

Under the equal protection balancing test "there must be some public need justifying the restriction, lest the State action be deemed arbitrary." J.D. ex rel Scipio-Derrick, 415 N.J. Super. at 393. The only restriction at issue here is the restriction on a district's ability to lay off teachers without regard to seniority. As previously discussed at Point IVB supra, for over 100 years the Legislature has determined that it is in the public interest to provide teachers with job protections that insulate them for retention decisions based on patronage, politics or other invidious considerations antithetical to providing students with a thorough and efficient education. Accordingly, the equal protection count of the Complaint should also be dismissed. There are no facts alleged in the Complaint that show that "even if all children [in Newark] receive a minimally thorough and efficient education, the [LIFO statute] engenders more inequality than is required by any other state interest." Abbott I, 100 N.J. at 296.

VIII. The Complaint fails to State a Due Process Claim

The principle of substantive due process protects individuals from the "arbitrary exercise of the powers of government" and from "governmental power being used for the purposes of oppression." Daniels v. Williams, 474 U.S. 327, 331

(1986). However, the constitutional guarantee "does not protect individuals from all governmental actions that infringe liberty or injure property in violation of some law." Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 366 (1996).

Rather, substantive due process is reserved for the most egregious governmental abuses against liberty or property rights, abuses that "shock the conscience or otherwise offend . . . judicial notions of fairness . . . [and that are] offensive to human dignity." (citing Weimer v. Amen, 870 F.2d 1400, 1405 (8th Cir. 1989)); see also Filgueiras v. Newark Public Schools, 426 N.J. Super. 449, 469 (App. Div.) (internal quotations and citation omitted), certif. denied, 212 N.J. 460 (2012). When New Jersey courts evaluate a substantive due process claim, the courts generally apply a balancing test similar to the test used in equal protection challenges. Sojourner A. v. New Jersey Dep't of Human Servs., 177 N.J. 318, 332 (2003).

In support of their due process claim, Plaintiffs allege that requiring districts to conduct layoffs based on seniority deprives Plaintiff students of their "fundamental right to a thorough and efficient education." (Complaint ¶133). Plaintiffs further allege that "no rational governmental interest justifies this deprivation." (Complaint ¶134). Accordingly, Plaintiffs recognize that to establish a substantive due process violation they must show a deprivation

of their right to a thorough and efficient education. For the reasons set forth in Point VIB supra, the Complaint fails to state a claim under the Education Clause. In addition, statutes providing teachers with job security, including seniority-based layoffs, serve the important public purpose of insulating teachers from retention decisions based on patronage, favoritism and other invidious motives. (Point IV supra). For similar reasons that the Complaint fails to state a cause of action under the equal protection provisions of the State Constitution, it fails to state a cause of action under the related due process provisions.

IX. The Complaint fails to State a Claim under the Civil Rights Act.

Plaintiffs assert a claim under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq. The Act applies to substantive rights guaranteed by the New Jersey Constitution and state laws.

The Act provides that:

Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.

[N.J.S.A. 10:6-2(c)].

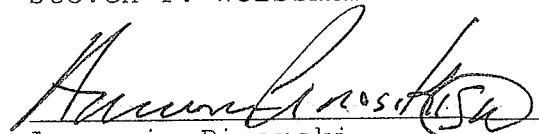
The Act is analogous to a federal claim under Section 1983, and provides "a remedy for a violation of substantive rights found in our State Constitution and laws." Brown v. State, 442 N.J. Super. 425 (App. Div. 2015). If the Complaint does not state a cause of action for any violation of the New Jersey Constitution, Plaintiffs cannot make out a claim under the Civil Rights Act.

Conclusion

For the reasons set forth in this brief, the Complaint should be dismissed in its entirety.

Respectfully submitted,


Steven P. Weissman


Annmarie Pinarski

Dated: March 13, 2017

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March 13, 2017

Via Messenger

Civil Clerk's Office
Superior Court of New Jersey
Law Division, Mercer County
175 South Broad Street
1st Floor
Trenton, New Jersey 08650-0068

Re: H.G. et al. v Harrington, et al.
Docket No. MER-L-2170-16
Motion to Dismiss

Dear Sir/Madam:

This firm represents the AFT Defendant-Intervenors in the above captioned matter. Enclosed for filing please find the following:

1. An original and two copies of a Notice of Motion to Dismiss the Complaint and a Proposed Order; and
2. An original and two copies of a Brief and of an Appendix in Support of the Motion to Dismiss; and
3. A Certificate of Service.

If there is a fee, kindly charge our Superior Court account
140552.

Sincerely,



Steven P. Weissman, Esq.

SPW/lm
Encls.

cc. Hon. Mary C. Jacoboson, A.J.S.C. (via messenger)
Beth N. Shore, DAG (via messenger)
William H. Trusdale, Esq. (via overnight and email)
Natalie Watson, Esq. (via overnight and email)
Charlotte Hitchcock, Chief General Counsel (via overnight
and email)
Colleen S. Lima, Esq. (via overnight and email)
Flavio L. Komuves, Esq. (via overnight and email)

CERTIFICATE OF SERVICE

I, Steven P. Weissman, hereby certify that:

On March 13, 2017, an original and two copies of the following documents were sent via messenger to the Clerk, Superior Court of New Jersey, Mercer County Courthouse, 175 S. Broad Street, Trenton, New Jersey 08650:

1. Notice of Motion to Dismiss Complaint and a Proposed Order; and
2. Brief and Appendix on behalf of AFT Defendant-Intervenors in Support of Motion to Dismiss; and

On March 13, 2017 two copies of the above documents were sent via messenger to:

Honorable Mary C. Jacobson, A.J.S.C.
Mercer County Criminal Courthouse
400 S. Warren Street
Trenton, New Jersey 08650

Beth N. Shore, DAG
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Attorneys for Defendants Harrington and New Jersey State Board of Education

On March 13, 2017, two copies of the above documents were sent via overnight mail and electronic copy to the following:

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I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are knowingly false I am subject to punishment.


Steven P. Weissman, Esq.

Dated: March 13, 2017

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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,

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

DOCKET NO. MER-L-2170-16

CIVIL ACTION
NOTICE OF MOTION
TO DISMISS COMPLAINT

AMERICAN FEDERATION OF
TEACHERS, AFL-CIO; NEW JERSEY
STATE FEDERATION OF TEACHERS;
NEWARK TEACHERS UNION; NEW
JERSEY EDUCATION ASSOCIATION;

Defendant-Intervenors.

To: Clerk, Superior Court of New Jersey
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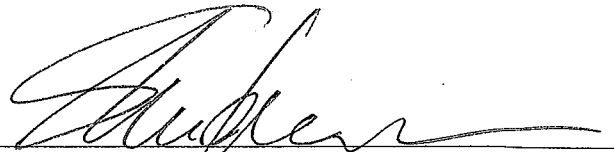
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PLEASE TAKE NOTICE that on April 13, 2017, Defendant-Intervenors AFT will apply to the Superior Court, Law Division, Mercer County, for an Order Dismissing the Complaint in the above-captioned matter. AFT Defendant-Intervenors requests oral argument.

Respectfully submitted,
Weissman & Mintz LLC

By:



Steven P. Weissman, Esq.

Dated: March 13, 2017

Steven P. Weissman, Esq.
Anmarie Pinarski, Esq.
Weissman & Mintz, LLC
One Executive Drive, Suite 200
Somerset, NJ 08844
Attorneys for Intervenor-Defendant AFT

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 NOEMI VAZQUEZ; M.P., a minor, through her guardian NOEMI VAZQUEZ; F.D., a minor, through her guardian NOEMI 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 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,

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

DOCKET NO. MER-L-2170-16

**CIVIL ACTION
ORDER GRANTING
MOTION TO DISMISS**

AMERICAN FEDERATION OF
TEACHERS, AFL-CIO; NEW JERSEY
STATE FEDERATION OF TEACHERS;
NEWARK TEACHERS UNION; NEW
JERSEY EDUCATION ASSOCIATION,

Defendant-Intervenors.

THIS MATTER having been opened to the Court by Steven P. Weissman, Esq., Weissman & Mintz, LLC, attorneys for Defendant-Intervenors AFT; and

THE COURT having considered the written submissions and the oral arguments of counsel for all parties; and

THE COURT having found that the dismissal of the Complaint is warranted and for other good cause shown;

IT IS on this ____ day of _____, 2017

ORDERED that the Motion of Defendant-Intervenor AFT to Dismiss the Complaint is GRANTED.

Hon. Mary C. Jacobson, A.J.S.C.

{ } opposed

{ } unopposed

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 NOEMI VAZQUEZ; M.P., a minor, through her guardian NOEMI VAZQUEZ; F.D., a minor, through her guardian NOEMI 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 her guardian WENDY SOTO; D.S.; a minor, through his guardian WENDY SOTO;

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Defendants,

AMERICAN FEDERATION OF TEACHERS, AFL-CIO; AFT NEW JERSEY, NEWARK TEACHERS UNION, NEW JERSEY EDUCATION ASSOCIATION;

Defendant-Intervenors.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY

DOCKET NO. MER-L-2170-16

**APPENDIX ON BEHALF OF AFT INTERVENORS IN SUPPORT OF
MOTION TO DISMISS**

On the Brief:
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Attorney ID #024581978
Anmarie Pinarski, Esq.
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TABLE OF CONTENTS OF APPENDIX

Teacher Effectiveness and Accountability for Children
of New Jersey (TEACHNJ) Act. P.L. 2012, Chapter 26 a1

Senate Bill No. 2925 a14

Senate Bill No. 1455 a26

Statement to Senate Committee Substitute for Senate Bill
No. 1455 a44

Senate Committee Substitute for Senate Bill No. 1455 a49

Assembly Budget Committee Statement to Senate Committee
Substitute for Senate Bill No. 1455 a66

Crawford v. Davy 2010 WL 162061 (App. Div. 2009) a71

CHAPTER 26

AN ACT concerning school employees, revising various parts of the statutory law, and supplementing chapters 6 and 28 of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.18A:6-117 Short title.

1. This act shall be known and may be cited as the "Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act."

C.18A:6-118 Findings, declarations relative to the TEACHNJ Act.

2. The Legislature finds and declares that:

a. The goal of this legislation is to raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators, inform the provision of aligned professional development, and inform personnel decisions;

b. The New Jersey Supreme Court has found that a multitude of factors play a vital role in the quality of a child's education, including effectiveness in teaching methods and evaluations. Changing the current evaluation system to focus on improved student outcomes, including objective measures of student growth, is critical to improving teacher effectiveness, raising student achievement, and meeting the objectives of the federal "No Child Left Behind Act of 2001"; and

c. Existing resources from federal, State, and local sources should be used in ways consistent with this law.

C.18A:6-119 Definitions relative to the TEACHNJ Act.

3. As used in sections 12 through 17, 19 through 21, and 24 of P.L.2012, c.26 (C.18A:6-117 et al.):

"Corrective action plan" means a written plan developed by a teaching staff member serving in a supervisory capacity in collaboration with the teaching staff member to address deficiencies as outlined in an evaluation. The corrective action plan shall include timelines for corrective action, responsibilities of the individual teaching staff member and the school district for implementing the plan, and specific support that the district shall provide.

"Evaluation" means a process based on the individual's job description, professional standards and Statewide evaluation criteria that incorporates analysis of multiple measures of student progress and multiple data sources. Such evaluation shall include formal observations, as well as post conferences, conducted and prepared by an individual employed in the district in a supervisory role and capacity and possessing a school administrator certificate, principal certificate, or supervisor certificate.

"Individual professional development plan" means a written statement of goals developed by a teaching staff member serving in a supervisory capacity in collaboration with a teaching staff member, that: aligns with professional standards for teachers set forth in N.J.A.C.6A:9-3.3 and the New Jersey Professional Development Standards; derives from the annual evaluation process; identifies professional goals that address specific individual, district or school needs, or both; and grounds professional development activities in objectives related to improving teaching, learning, and student achievement. The individual professional development plan shall include timelines for implementation, responsibilities of the employee and the school district for implementing the plan, and specific support and periodic feedback that the district shall provide.

"Ineffective" or "partially effective" means the employee receives an annual summative evaluation rating of "ineffective" or "partially effective" based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

"Multiple objective measures of student learning" means the results of formal and informal assessments of students. Such measures may include a combination of, but are not limited to: teacher-set goals for student learning; student performance assessments, including portfolio projects, problem-solving protocols, and internships; teacher-developed assessments; standardized assessments; and district-established assessments.

"Professional standards" means the New Jersey Professional Standards for Teachers and the New Jersey Professional Standards for School Leaders recommended by the commissioner and adopted by the State Board of Education.

"Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners and includes a school nurse and a school athletic trainer.

4. N.J.S.18A:6-9 is amended to read as follows:

Controversies, disputes arising under school laws; jurisdiction.

18A:6-9. The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.

Notwithstanding the provisions of this section to the contrary, an arbitrator shall hear and make a final determination on a controversy and dispute arising under subarticle B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes (C.18A:6-10 et seq.).

5. N.J.S.18A:6-11 is amended to read as follows:

Written charges, statement of evidence; filing; statement of position by employee; certification of determination; notice.

18A:6-11. Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the

event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant to N.J.S.18A:6-16, together with a certificate of such determination. The consideration and actions of the board as to any charge shall not take place at a public meeting.

6. N.J.S.18A:6-13 is amended to read as follows:

Dismissal of charge for failure of determination by board.

18A:6-13. If the board does not make such a determination within 45 days after receipt of the written charge, the charge shall be deemed to be dismissed and no further proceeding or action shall be taken thereon.

7. N.J.S.18A:6-14 is amended to read as follows:

Suspension upon certification of charge; compensation; reinstatement.

18A:6-14. Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the arbitrator is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed at any stage of the process, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed at any stage of the process and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension.

8. N.J.S.18A:6-16 is amended to read as follows:

Proceedings before commissioner; written response; determination.

18A:6-16. Upon receipt of such a charge and certification, or of a charge lawfully made to the commissioner, the commissioner or the person appointed to act in the commissioner's behalf in the proceedings shall examine the charges and certification. The individual against whom the charges are certified shall have 15 days to submit a written response to the charges to the commissioner. Upon a showing of good cause, the commissioner may grant an extension of time. The commissioner shall render a determination on the sufficiency of charges as set forth below within 10 days immediately following the period provided for a written response to the charges.

If, following receipt of the written response to the charges, the commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall

determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall refer the case to an arbitrator pursuant to section 22 of P.L.2012, c.26 (C.18A:6-17.1) for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.

9. N.J.S.18A:28-5 is amended to read as follows:

Requirements for tenure.

18A:28-5. a. The services of all teaching staff members employed prior to the effective date of P.L.2012, c.26 (C.18A:6-117 et al.) in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

- (1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or
- (2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
- (3) The equivalent of more than three academic years within a period of any four consecutive academic years.

b. The services of all teaching staff members employed on or after the effective date of P.L.2012, c.26 (C.18A:6-117 et al.) in the position of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses, including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect, and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

- (1) Four consecutive calendar years; or
- (2) Four consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(3) The equivalent of more than four academic years within a period of any five consecutive academic years.

In order to achieve tenure pursuant to this subsection, a teacher shall also complete a district mentorship program during the initial year of employment and receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment after the initial year of employment in which the teacher completes the district mentorship program. In order to achieve tenure pursuant to this subsection, a principal, assistant principal, and vice-principal shall also receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment with the first effective rating being received on or after the completion of the second year of employment.

For purposes of this subsection, "effective" or "highly effective" means the employee has received an annual summative evaluation rating of "effective" or "highly effective" based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

c. For purposes of this chapter, tenure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position. Tenure so accrued shall not extend to any other administrative or supervisory position and nothing herein shall limit or restrict tenure rights which were or may be acquired pursuant to N.J.S.18A:28-6 in a position in which the individual actually served.

10. N.J.S.18A:28-6 is amended to read as follows:

Tenure upon transfer or promotion.

18A:28-6. a. Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter on or after July 1, 1962, shall not obtain tenure in the new position until after:

- (1) the expiration of a period of employment of two consecutive calendar years in the new position unless a shorter period is fixed by the employing board for such purpose; or
- (2) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or
- (3) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;

provided that the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position held by such teaching staff member, and in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

b. Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter on or after the effective date of P.L.2012, c.26 (C.18A:6-117 et al.), shall not obtain tenure in the new position until after:

(1) the expiration of a period of employment of two consecutive calendar years in the new position; or

(2) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or

(3) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;

provided that the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position held by such teaching staff member, and in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

In order to receive tenure pursuant to this subsection, a teacher, principal, assistant principal, and vice-principal shall be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position.

For purposes of this subsection, "effective" or "highly effective" means the employee has received an annual summative evaluation rating of "effective" or "highly effective" based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

C.18A:28-5.1 Tenure upon transfer to an underperforming school.

11. A tenured teaching staff member who has been rated effective or highly effective on his most recent annual summative evaluation, and who accepts employment in the same position in an underperforming school shall be under tenure in that position in the new district during good behavior and efficiency and shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after the employee receives a rating of effective or highly effective in at least one of the annual summative evaluations within the first two years of employment in the new school.

For purposes of this subsection, "effective" or "highly effective" means the employee has received an annual summative evaluation rating of "effective" or "highly effective" based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

As used in this section, "underperforming school" means a school which has been identified by the Department of Education as a "focus school" or a "priority school" for any year within a two-year period.

C.18A:6-120 School improvement panel.

12. a. In order to ensure the effectiveness of its teachers, each school shall convene a school improvement panel. A panel shall include the principal, or his designee, an assistant or vice-principal, and a teacher. The principal's designee shall be an individual employed in the district in a supervisory role and capacity who possesses a school administrator certificate, principal certificate, or supervisor certificate. The teacher shall be a person with a demonstrated record of success in the classroom who shall be selected in consultation with the majority representative. An individual teacher shall not serve more than three

consecutive years on any one school improvement panel. In the event that an assistant or vice-principal is not available to serve on the panel, the principal shall appoint an additional member to the panel, who is employed in the district in a supervisory role and capacity and who possesses a school administrator certificate, principal certificate, or supervisor certificate.

Nothing in this section shall prevent a district that has entered a shared services agreement for the functions of the school improvement panel from providing services under that shared services agreement.

b. The panel shall oversee the mentoring of teachers and conduct evaluations of teachers, including an annual summative evaluation, provided that the teacher on the school improvement panel shall not be included in the evaluation process, except in those instances in which the majority representative has agreed to the contrary. The panel shall also identify professional development opportunities for all instructional staff members that are tailored to meet the unique needs of the students and staff of the school.

c. The panel shall conduct a mid-year evaluation of any employee in the position of teacher who is evaluated as ineffective or partially effective in his most recent annual summative evaluation, provided that the teacher on the school improvement panel shall not be included in the mid-year evaluation process, except in those instances in which the majority representative has agreed to the contrary.

d. Information related to the evaluation of a particular employee shall be maintained by the school district, shall be confidential, and shall not be accessible to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.

C.18A:6-121 Evaluations of principal, assistant principal, vice-principal.

13. a. In order to ensure the effectiveness of the schools in the district, the superintendent of schools or his designee shall conduct evaluations of each principal employed by the school district, including an annual summative evaluation.

b. The principal, in conjunction with the superintendent or his designee, shall conduct evaluations of each assistant principal and vice-principal employed in his school, including an annual summative evaluation.

c. The superintendent or his designee and the principal, as appropriate, shall conduct a mid-year evaluation of any principal, assistant principal, or vice-principal who is evaluated as ineffective or partially effective in his most recent annual summative evaluation.

d. Information related to the evaluation of a particular employee shall be maintained by the school district, shall be confidential, and shall not be accessible to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.

C.18A:6-127 Researched-based mentoring program.

14. a. A board of education shall implement a researched-based mentoring program that pairs effective, experienced teachers with first-year teachers to provide observation and feedback, opportunities for modeling, and confidential support and guidance in accordance with the Professional Standards for Teachers and the evaluation rubric.

b. The mentoring program shall: enhance teacher knowledge of, and strategies related to, the core curriculum content standards in order to facilitate student achievement and growth; identify exemplary teaching skills and educational practices necessary to acquire and maintain excellence in teaching; and assist first-year teachers in the performance of their duties and adjustment to the challenges of teaching. To the greatest extent feasible,

mentoring activities shall be developed in consultation with the school improvement panels established pursuant to section 12 of P.L.2012, c.26 (C.18A:6-120) in order to be responsive to the unique needs of different teachers in different instructional settings.

C.18A:6-128 Ongoing professional development.

15. a. A board of education, principal, or superintendent shall provide its teaching staff members with ongoing professional development that supports student achievement and with an individual professional development plan. To the greatest extent feasible, professional development opportunities shall be developed in consultation with the school improvement panels established pursuant to section 12 of P.L.2012, c.26 (C.18A:6-120) in order to be responsive to the unique needs of different instructional staff members in different instructional settings.

b. A board of education, principal, or superintendent shall provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board, as documented in the teaching staff member's annual summative evaluation. The additional professional development shall be designed to correct the needs identified in the annual summative evaluation.

A corrective action plan shall be developed by the teaching staff member and a teaching staff member serving in a supervisory capacity to address deficiencies outlined in the evaluation when the employee is rated ineffective or partially effective. The corrective action plan shall include timelines for corrective action and responsibilities of the teaching staff member and the school district for implementation of the plan.

c. All funds budgeted by a school district for professional development shall be used primarily to provide the professional development required pursuant to the provisions of P.L.2012, c.26 (C.18A:6-117 et al.).

C.18A:6-122 Annual submission of evaluation rubrics.

16. a. A school district shall annually submit to the Commissioner of Education, for review and approval, the evaluation rubrics that the district will use to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members. The board shall ensure that an approved rubric meets the minimum standards established by the State Board of Education.

b. Notwithstanding the provisions of subsection a. of this section, a school district may choose to use the model evaluation rubric established by the commissioner pursuant to subsection f. of section 17 of P.L.2012, c.26 (C.18A:6-123) to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members. In the case in which the district fails to submit a rubric for review and approval, the model rubric shall be used by the district to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members.

C.18A:6-123 Review, approval of evaluation rubrics.

17. a. The Commissioner of Education shall review and approve evaluation rubrics submitted by school districts pursuant to section 16 of P.L.2012, c.26 (C.18A:6-122). The board of education shall adopt a rubric approved by the commissioner.

b. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to set standards for

the approval of evaluation rubrics for teachers, principals, assistant principals, and vice-principals. The standards at a minimum shall include:

(1) four defined annual rating categories for teachers, principals, assistant principals, and vice-principals: ineffective, partially effective, effective, and highly effective;

(2) a provision requiring that the rubric be partially based on multiple objective measures of student learning that use student growth from one year's measure to the next year's measure;

(3) a provision that allows the district, in grades in which a standardized test is not required, to determine the methods for measuring student growth;

(4) a provision that multiple measures of practice and student learning be used in conjunction with professional standards of practice using a comprehensive evaluation process in rating effectiveness with specific measures and implementation processes. Standardized assessments shall be used as a measure of student progress but shall not be the predominant factor in the overall evaluation of a teacher;

(5) a provision that the rubric be based on the professional standards for that employee;

(6) a provision ensuring that performance measures used in the rubric are linked to student achievement;

(7) a requirement that the employee receive multiple observations during the school year which shall be used in evaluating the employee;

(8) a provision that requires that at each observation of a teacher, either the principal, his designee who shall be an individual employed in the district in a supervisory role and capacity and who possesses a school administrator certificate, principal certificate, or supervisor certificate, the vice-principal, or the assistant principal shall be present;

(9) an opportunity for the employee to improve his effectiveness from evaluation feedback;

(10) guidelines for school districts regarding training and the demonstration of competence on the evaluation system to support its implementation;

(11) a process for ongoing monitoring and calibration of the observations to ensure that the observation protocols are being implemented correctly and consistently;

(12) a performance framework, associated evaluation tools, and observation protocols, including training and observer calibration resources;

(13) a process for a school district to obtain the approval of the commissioner to utilize other evaluation tools; and

(14) a process for ensuring that the results of the evaluation help to inform instructional development.

c. A board of education shall adopt a rubric approved by the commissioner by December 31, 2012.

d. Beginning no later than January 31, 2013, a board of education shall implement a pilot program to test and refine the evaluation rubric.

e. Beginning with the 2013-2014 school year, a board of education shall ensure implementation of the approved, adopted evaluation rubric for all educators in all elementary, middle, and high schools in the district. Results of evaluations shall be used to identify and provide professional development to teaching staff members. Results of evaluations shall be provided to the commissioner, as requested, on a regular basis.

f. The commissioner shall establish a model evaluation rubric that may be utilized by a school district to assess the effectiveness of its teaching staff members.

C.18A:6-17.5 Determination of certain tenure charge.

18. Any tenure charge transmitted to the Office of Administrative Law pursuant to N.J.S.18A:6-16 prior to the effective date of P.L.2012, c.26 (C.18A:6-117 et al.) shall be determined in accordance with the provisions of subarticle B of Article 2 of chapter 6 of Title 18A of the New Jersey Statutes, N.J.S.18A:6-10 et seq., as the same read prior to the effective date of P.L.2012, c.26 (C.18A:6-117 et al.).

C.18A:6-125 Evaluation rubric not subject to collective negotiations.

19. A school district's evaluation rubric approved by the commissioner pursuant to section 16 of P.L.2012, c.25 (C.18A:6-122) shall not be subject to collective negotiations.

C.18A:6-129 Funds provided.

20. The Department of Education shall provide the funds necessary to effectuate the provisions of this act.

C.18A:6-126 Conflicts with collective bargaining agreements.

21. No collective bargaining agreement or other contract entered into by a school district after July 1, 2013 shall conflict with the educator evaluation system established pursuant to P.L.2012, c.26 (C.18A:6-117 et al.). A district with an existing collective bargaining agreement on July 1, 2013 which conflicts in whole or in part with the educator evaluation system established pursuant to that act, shall implement in accordance with that act those provisions not in conflict with the collective bargaining agreement.

Notwithstanding the provisions of this act, aspects of evaluation not superseded by statute or regulation shall continue to be mandatory subjects of collective negotiations.

C.18A:6-17.1 Panel of arbitrators.

22. a. The Commissioner of Education shall maintain a panel of 25 permanent arbitrators to hear matters pursuant to N.J.S.18A:6-16. Of the 25 arbitrators, eight arbitrators shall be designated by the New Jersey Education Association, three arbitrators shall be designated by the American Federation of Teachers, nine arbitrators shall be designated by the New Jersey School Boards Association, and five arbitrators shall be designated by the New Jersey Principals and Supervisors Association. The commissioner shall inform the appropriate designating entity when a vacancy exists. If the appropriate entity does not designate an arbitrator within 30 days, the commissioner shall designate an arbitrator to fill that vacancy.

All arbitrators designated pursuant to this section shall serve on the American Arbitration Association panel of labor arbitrators and shall be members of the National Academy of Arbitrators. The arbitrators shall have knowledge and experience in the school employment sector. Arbitrators on the permanent panel shall be assigned by the commissioner randomly to hear cases.

b. The following provisions shall apply to a hearing conducted by an arbitrator pursuant to N.J.S.18A:6-16, except as otherwise provided pursuant to P.L.2012, c.26 (C.18A:6-117 et al.):

(1) The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case;

(2) The arbitrator shall receive no more than \$1250 per day and no more than \$7500 per case. The costs and expenses of the arbitrator shall be borne by the State of New Jersey;

(3) Upon referral of the case for arbitration, the employing board of education shall provide all evidence including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. At least 10 days prior to the hearing, the employee shall provide all evidence upon which he will rely including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employing board of education or its representative. The employee shall be precluded from presenting any additional evidence at the hearing except for purposes of impeachment of witnesses.

Discovery shall not include depositions, and interrogatories shall be limited to 25 without subparts.

c. The arbitrator shall determine the case under the American Arbitration Association labor arbitration rules. In the event of a conflict between the American Arbitration Association labor arbitration rules and the procedures established pursuant to this section, the procedures established pursuant to this section shall govern.

d. Notwithstanding the provisions of N.J.S.18A:6-25 or any other section of law to the contrary, the arbitrator shall render a written decision within 45 days of the start of the hearing.

e. The arbitrator's determination shall be final and binding and may not be appealable to the commissioner or the State Board of Education. The determination shall be subject to judicial review and enforcement as provided pursuant to N.J.S.2A:24-7 through N.J.S.2A:24-10.

f. Timelines set forth herein shall be strictly followed; the arbitrator or any involved party shall inform the commissioner of any timeline that is not adhered to.

g. An arbitrator may not extend the timeline of holding a hearing beyond 45 days of the assignment of the arbitrator to the case without approval from the commissioner. An arbitrator may not extend the timeline for rendering a written decision within 45 days of the start of the hearing without approval from the commissioner. Extension requests shall occur before the 41 day of the respective timelines set forth herein. The commissioner shall approve or disapprove extension requests within five days of receipt.

h. The commissioner may remove any arbitrator from an arbitration case or an arbitration panel if an arbitrator does not adhere to the timelines set forth herein without approval from the commissioner. If the commissioner removes an arbitrator from an arbitration case, the commissioner shall refer the case to a new arbitrator within five days. The newly-assigned arbitrator shall convene a new hearing and then render a written decision within 45 days of being referred the case.

C.18A:6-17.2 Considerations for arbitrator in rendering decision.

23. a. In the event that the matter before the arbitrator pursuant to section 22 of this act is employee inefficiency pursuant to section 25 of this act, in rendering a decision the arbitrator shall only consider whether or not:

- (1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;
- (2) there is a mistake of fact in the evaluation;

(3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or

(4) the district's actions were arbitrary and capricious.

b. In the event that the employee is able to demonstrate that any of the provisions of paragraphs (1) through (4) of subsection a. of this section are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.

c. The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review.

d. The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.

e. The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case. The arbitrator shall render a written decision within 45 days of the start of the hearing.

C.18A:6-124 Regulations.

24. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in accordance with an expeditious time frame, to set standards for the approval of evaluation rubrics for all teaching staff members, other than those included under the provisions of subsection b. of section 17 of P.L.2012, c.26 (C.18A:6-123). The standards at a minimum shall include: four defined annual rating categories: ineffective, partially effective, effective, and highly effective.

C.18A:6-17.3 Evaluation process, determination of charges.

25. a. Notwithstanding the provisions of N.J.S.18A:6-11 or any other section of law to the contrary, in the case of a teacher, principal, assistant principal, and vice-principal:

(1) the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency whenever the employee is rated ineffective or partially effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation;

(2) if the employee is rated partially effective in two consecutive annual summative evaluations or is rated ineffective in an annual summative evaluation and the following year is rated partially effective in the annual summative evaluation, the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency, except that the superintendent upon a written finding of exceptional circumstances may defer the filing of tenure charges until after the next annual summative evaluation. If the employee is not rated effective or highly effective on this annual summative evaluation, the superintendent shall promptly file a charge of inefficiency.

b. Within 30 days of the filing, the board of education shall forward a written charge to the commissioner, unless the board determines that the evaluation process has not been followed.

c. Notwithstanding the provisions of N.J.S.18A:6-16 or any other section of law to the contrary, upon receipt of a charge pursuant to subsection a. of this section, the commissioner shall examine the charge. The individual against whom the charges are filed shall have 10 days to submit a written response to the charges to the commissioner. The commissioner

shall, within five days immediately following the period provided for a written response to the charges, refer the case to an arbitrator and appoint an arbitrator to hear the case, unless he determines that the evaluation process has not been followed.

d. The only evaluations which may be used for purposes of this section are those evaluations conducted in accordance with a rubric adopted by the board and approved by the commissioner pursuant to P.L.2012, c.26 (C.18A:6-117 et al.).

C.18A:6-17.4 Commissioner's authority.

26. The commissioner shall have the authority to extend the timelines in the tenure charge process upon a showing of exceptional circumstances.

Repealer.

27. The following section is repealed:

Section 1 of P.L.1998, c.42 (C.52:14B-10.1).

28. This act shall take effect in the 2012-2013 school year, except that section 17 of this act shall take effect immediately. The Department of Education shall take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved August 6, 2012.

SENATE, No. 2925
STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED JUNE 6, 2011

Sponsored by:

Senator M. TERESA RUIZ
District 29 (Essex and Union)

SYNOPSIS

“Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act.”

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning school employees, revising various parts of the statutory law, and supplementing chapters 6 and 28 of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) This act shall be known and may be cited as the “Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act.”

2. N.J.S.18A:6-10 is amended to read as follows:

18A:6-10. a. No person shall be dismissed or reduced in compensation,

[(a)] (1) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state, or

[(b)] (2) if he is or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other educational institution conducted under the supervision of the commissioner;

except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.

b. For the purposes of this section: "incapacity, unbecoming conduct, or other just cause" includes but shall not be limited to, an employee's conviction of, or alleged involvement in, a felony or other crime involving moral turpitude, or an employee's engagement in:

(1) the improper use of physical force against students including excessive student discipline;

(2) inappropriate physical contact with students;

(3) sexual abuse or harassment of any individual through any means of communication including all forms of electronic communication;

(4) excessive and repeated absenteeism or tardiness;

(5) continued and repeated violation of or refusal to obey State or school district rules and regulations;

(6) racial, gender, religious, and other forms of discrimination;

(7) alcohol or drug abuse which renders the employee unfit to perform his professional duties or associate with students; and

(8) health violations that make the teacher unfit to instruct or associate with students.

(cf: N.J.S.18A:6-10)

3. N.J.S.18A:6-11 is amended to read as follows:

18A:6-11. Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant to N.J.S. 18A:6-16, together with a certificate of such determination. [Provided, however, that if the charge is inefficiency, prior to making its determination as to certification, the board shall provide the employee with written notice of the alleged inefficiency, specifying the nature thereto, and allow at least 90 days in which to correct and overcome the inefficiency.] The consideration and actions of the board as to any charge shall not take place at a public meeting.

(cf: P.L.1975, c. 304, s. 1)

4. N.J.S.18A:6-13 is amended to read as follows:

18A:6-13. If the board does not make such a determination within 45 days after receipt of the written charge [, or within 45 days after the expiration of the time for correction of the inefficiency, if the charge is

of inefficiency], the charge shall be deemed to be dismissed and no further proceeding or action shall be taken thereon.

(cf: N.J.S.18A:6-13)

5. N.J.S.18A:6-16 is amended to read as follows:

18A:6-16. Upon receipt of such a charge and certification, or of a charge lawfully made to the commissioner, the commissioner or the person appointed to act in the commissioner's behalf in the proceedings shall examine the charges and certification. The individual against whom the charges are certified shall have 15 days to submit a written response to the charges to the commissioner. Upon a showing of good cause, the commissioner may grant an extension of time. The commissioner shall render a determination on the sufficiency of charges and shall refer the case to the Office of Administrative Law, if appropriate, as set forth below within [15] 10 days immediately following the period provided for a written response to the charges.

If, following receipt of the written response to the charges, the commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall [within 10 days of making that determination] refer the case to the Office of Administrative Law for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.

(cf: P.L.1998, c.42, s.2)

6. N.J.S.18A:28-5 is amended to read as follows:

18A:28-5. a. The services of all teaching staff members employed prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

[(a)] (1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or

[(b)] (2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

[(c)] (3) The equivalent of more than three academic years within a period of any four consecutive academic years.

b. The services of all teaching staff members employed on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) in the position of assistant superintendent, school nurse, including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting employees in the position of teacher, principal, assistant principal, and vice-principal, those who are not the holders of proper certificates in full force and effect, and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

(1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or

(2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(3) The equivalent of more than three academic years within a period of any four consecutive academic years.

c. The services of all teaching staff members employed on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) by a district or a board in the position of teacher, principal, other than administrative principal, assistant principal, and vice-principal shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after the employee receives a rating of effective in each of three consecutive annual evaluations with the first effective rating being received on or after the completion of the second year of employment.

In order to achieve tenure pursuant to this subsection, a teacher shall also complete a district mentorship program during the initial year of employment.

For purposes of this subsection, "effective" means the employee meets the performance standards established by the board of education for his position, as documented in the annual evaluation of the employee.

d. For purposes of this chapter, tenure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position. Tenure so accrued shall not extend to any other administrative or supervisory position and nothing herein shall limit or restrict tenure rights which were or may be acquired pursuant to N.J.S.18A:28-6 in a position in which the individual actually served.

(cf: P.L.1999, c.87, s.3)

7. N.J.S.18A:28-6 is amended to read as follows:

18A:28-6. Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter on or after July 1, 1962, shall not obtain tenure in the new position until after:

(a) the expiration of a period of employment of two consecutive calendar years in the new position unless a shorter period is fixed by the employing board for such purpose; or

(b) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or

(c) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;

provided that the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position held by such teaching staff member, and in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

In order to receive tenure pursuant to this section, a teacher, principal, assistant principal, or vice-principal shall be evaluated as effective in three consecutive annual evaluations.

For purposes of this section, "effective" means the employee meets the performance standards established by the board of education for his position, as documented in the annual evaluation of the employee.

(cf: N.J.S.18A:28-6)

8. N.J.S.18A:28-10 is amended to read as follows:

18A:28-10. Dismissals resulting from any such reduction shall not be made by reason of residence, age, sex, marriage, race, religion or political affiliation but except in the case of a teaching staff member employed in the position of teacher, principal, assistant principal, or vice-principal who acquires tenure after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), shall be made on the basis of seniority according to standards to be established by the commissioner with the approval of the state board.

(cf: N.J.S.18A:28-10)

9. N.J.S. 18A:28-12 is amended to read as follows:

18A:28-12. If any teaching staff member, other than a teacher, principal, assistant principal, or vice-principal who acquires tenure after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), shall be dismissed as a result of such reduction, such person shall be and remain upon a preferred eligible list in the order of seniority for reemployment whenever a vacancy occurs in a position for which such person shall be qualified and he shall be reemployed by the body causing dismissal, if and when such vacancy occurs and in determining seniority, and in computing length of service for reemployment, full recognition shall be given to previous years of service, and the time of service by any such person in or

with the military or naval forces of the United States or of this State, subsequent to September 1, 1940, and the time of service of any member of the American Merchant Marine during World War II who is declared by the United States Department of Defense to be eligible for federal veterans' benefits, shall be credited to him as though he had been regularly employed in such a position within the district during the time of such military or naval service, except that the period of that service shall not be credited toward more than four years of employment or seniority credit.

(cf: P.L.1991, c.389, s.3)

10. (New section) a. Any teaching staff member under tenure pursuant to State law who accepts employment in the same position in another school district shall be under tenure in that position in the new district during good behavior and efficiency and shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district for:

(1) Two consecutive calendar years; or

(2) Two consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(3) The equivalent of two academic years within a period of any three consecutive academic years.

b. In order to receive tenure pursuant to subsection a. of this section, a teacher, principal, assistant principal, or vice-principal shall be evaluated as effective in two consecutive annual evaluations.

For purposes of this subsection, "effective" means the employee meets the performance standards established by the board of education for his position, as documented in the annual evaluation of the employee.

11. (New section) Notwithstanding N.J.S.18A:6-17 or any other section of law to the contrary, any tenure charge transmitted to the Office of Administrative Law pursuant to N.J.S.18A:6-16 shall be adjudicated in an expeditious and timely manner as follows:

a. The initial hearing on the charge shall commence within 30 days of its transmittal to the Office of Administrative Law.

b. Upon transmittal of the charge, the employing board of education shall provide all evidence to the employee or the employee's representative. At least 10 days prior to the hearing, the employee shall provide all evidence upon which he will rely to the employing board of education or its representative. Both parties shall be precluded from presenting any additional evidence at the hearing except for purposes of impeachment of witnesses.

c. Notwithstanding the provisions of N.J.S.18A:6-25 or any other section of law to the contrary, the final determination on the controversy or dispute shall be rendered within 30 days of the start of the hearing by the administrative law judge.

12. (New section) a. If the decision of the administrative law judge is in support of the tenure charges, the Commissioner of Education shall notify the State Board of Examiners, in writing, of the decision.

b. The State Board of Examiners shall only review a tenure charge case referred to an administrative law judge pursuant to N.J.S.18A:6-16 if it has received notification pursuant to subsection a. of this section.

13. (New section) For the purposes of sections 14 through 18 of P.L. , c. (C.) (pending before the Legislature as this bill), "ineffective" means the employee fails to meet the performance standards established by the board of education for his position, as documented in the annual evaluation of the employee.

14. (New section) a. In order to ensure the effectiveness of its teachers, each school shall convene a school improvement panel. A panel shall include the principal, an assistant or vice-principal, and a teacher or other member of the instructional staff nominated by the principal and approved by the instructional staff. In the event that an assistant or vice-principal is not available to serve on the panel, the principal shall appoint an additional member to the panel.

b. The panel shall be directly involved in the hiring of new teachers, oversee the mentoring of teachers, and conduct annual evaluations of teachers. The panel shall also identify professional development opportunities for all instructional staff members that are tailored to meet the unique needs of the students and staff of the school.

c. The panel shall conduct a mid-year evaluation of any tenured employee in the position of teacher who is evaluated as ineffective in his most recent annual evaluation.

d. A member of the panel shall be prohibited from participating in his own evaluation.

e. Information related to the evaluation of an employee shall be maintained by the school district and shall be confidential.

15. (New section) a. In order to ensure the effectiveness of the schools in the district, the superintendent of schools or his designee shall conduct an annual evaluation of each principal employed by the school district.

b. The principal, in conjunction with the superintendent or his designee, shall conduct an annual evaluation of each assistant principal and vice-principal employed in his school.

c. The superintendent or his designee and the principal, as appropriate, shall conduct a mid-year evaluation of any tenured principal, assistant principal, or vice-principal who is evaluated as ineffective in his most recent annual evaluation.

d. Information related to the evaluation of an employee shall be maintained by the school district and shall be confidential.

16. (New section) a. Except as otherwise provided pursuant to N.J.S.18A:28-10, the principal, in consultation with the school improvement panel, shall have sole authority to appoint or remove an employee in the position of teacher, assistant principal, or vice-principal. Notwithstanding any provision of law to the contrary, any action taken by a principal to appoint or remove an employee shall not be subject to approval by either the superintendent of schools or the board of education.

b. Notwithstanding any provision of law to the contrary, the principal, in consultation with the panel, shall revoke the tenure granted to an employee in the position of teacher, assistant principal, or vice-principal if the employee is evaluated as ineffective in two consecutive annual evaluations.

c. The revocation of the tenure status of a teacher, assistant principal, or vice-principal shall not be subject to grievance or appeal unless the grievance or appeal relates to a charge that the principal failed to adhere substantially to the approved evaluation system. Any such appeal initiated by an employee shall be directed to an administrative law judge within 30 days of the revocation of the employee's tenure status. The appeal shall be reviewed by an administrative law judge within 30 days of the receipt of the appeal.

d. Information related to the revocation of an employee's tenure status shall be maintained by the school district and shall be confidential.

17. (New section) a. Notwithstanding any provision of law to the contrary, the superintendent, or a designee with expertise in school district personnel, shall revoke the tenure granted to a principal if the principal is evaluated as ineffective in two consecutive annual evaluations.

b. The revocation of the tenure status of a principal shall not be subject to grievance or appeal unless the grievance or appeal relates to a charge that the superintendent, or his designee, failed to adhere substantially to the approved evaluation system. Any such appeal initiated by a principal shall be made to an administrative law judge within 30 days of the revocation of the principal's tenure status. The appeal shall be reviewed by an administrative law judge within 30 days of the receipt of the appeal.

c. Information related to the revocation of a principal's tenure status shall be maintained by the school district and shall be confidential.

18. (New section) A teacher, principal, assistant principal, or vice-principal whose tenure is revoked pursuant to the provisions of section 16 or 17 of P.L. , c. (C.) (pending before the Legislature as this bill) shall reacquire tenure in that position, in the event that the district determines to continue his employment, during good behavior and efficiency and shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after the employee receives a rating of effective in each of two consecutive annual evaluations.

19. (New section) A board of education shall adopt a policy to establish a mentoring program that pairs experienced teachers with first-year teachers to provide confidential support and guidance in accordance with the Professional Standards for Teachers. The program shall: enhance teacher knowledge of, and strategies related to, the core curriculum content standards in order to facilitate student achievement; identify exemplary teaching skills and educational practices necessary to acquire and maintain excellence in teaching; and assist first-year teachers in the performance of their duties and adjustment to the challenges of teaching. To the greatest extent feasible, mentoring activities shall be developed in consultation with the school improvement panels established pursuant to section 14 of P.L. , c. (C.) (pending before the Legislature as this bill) in order to be responsive to the unique needs of different teachers in different instructional settings.

20. (New section) a. A board of education shall adopt a policy to provide its teaching staff members with ongoing professional development that supports student achievement. To the greatest extent feasible, professional development opportunities shall be developed in consultation with the school improvement panels established pursuant to section 14 of P.L. ; c. (C.) (pending before the Legislature as this bill) in order to be responsive to the unique needs of different instructional staff members in different instructional settings.

b. A board of education shall provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board, as documented in the teaching staff member's annual evaluation. The additional professional development shall be designed to correct the needs identified in the evaluation.

21. (New section) A school district shall annually submit to the Commissioner of Education, for review and approval, the evaluation rubrics that the district will use to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals. The board shall ensure that an approved rubric is partially based on objective measures of student growth.

22. (New section) The Commissioner of Education shall review and approve evaluation rubrics submitted by school districts pursuant to section 21 of P.L. ; c. (C.) (pending before the Legislature as this bill).

23. (New section) a. In the event of a school closure, a teacher who has acquired tenure on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) whose position is eliminated due to the closure shall be designated by the school district as a member of a priority hiring pool. A member of a priority hiring pool shall be provided an opportunity to interview for vacant in-district teaching positions for which he is qualified before a school improvement panel may consider outside applicants. In order to qualify as a member of the priority hiring pool, the employee shall have received an effective rating on his most recent annual evaluation.

b. A member of the priority hiring pool shall continue to receive his salary and benefits in the 12 months following the school closure, or until such time as he secures another position within the district or submits his resignation.

c. Notwithstanding any provision of law to the contrary, in the event that the teacher has not secured an in-district teaching position within 12 months of the school closure, the district shall place the teacher on an unpaid leave of absence. The teacher shall remain a member of the priority hiring pool until such time as he secures employment in the district.

d. In the event that a member of a priority hiring pool secures employment in the district in a position that is comparable to the position that he previously held, the district shall compensate the member at the same level that was received during his employment at the closed school.

24. (New section) Any tenure charge transmitted to the Office of Administrative Law pursuant to N.J.S.18A:6-16 prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be determined in accordance with the provisions of subarticle B of Article 2 of chapter 6 of Title 18A of the New Jersey Statutes, N.J.S.18A:6-10 et seq., as the same read prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

25. (New section) The provisions of N.J.S.18A:28-5, N.J.S. 18A:28-6, and section 10 and sections 13 through 22 of the "Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act," P.L. , c. (C.) (pending before the Legislature as this bill) shall apply to a charter school that is established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.).

26. The following section is repealed:

Section 1 of P.L.1998, c. 42 (C.52:14B-10.1).

27. This act shall take effect immediately.

STATEMENT

Under current law, teachers, principals, and other teaching staff members whose positions require that they hold a certificate issued by the State Board of Examiners receive tenure after completing three years of employment in a school district. This bill provides that a person who is employed in the position of teacher, principal, assistant principal, or vice-principal on or after the bill's effective date will receive tenure after the employee receives a rating of effective in each of three consecutive annual evaluations, with the first effective rating being received on or after the completion of the second year of employment. This means that, under the bill, a newly hired teacher, principal, assistant principal, or vice-principal could qualify for tenure after 4 or more years of employment in the district, depending on his evaluations. Also, in the case of a teacher, he must complete a mentorship program in the first year of employment. All other school district employees currently eligible for tenure will be able to obtain tenure after a three-year period of employment, as established by existing law.

The bill provides that a teacher, principal, assistant principal, or vice-principal who is transferred or promoted must be evaluated as effective in three consecutive annual evaluations in order to qualify for tenure in the new position. The bill provides that any teaching staff member under tenure who accepts employment in the same position in another school district will be eligible for tenure after two years of employment in the new district and, in the case of a person employed in the position of teacher, principal, assistant principal, or vice-principal, after being evaluated as effective in two consecutive annual evaluations.

The bill empowers a school principal to make certain personnel decisions relating to instructional staff employed at his school, although the bill preserves the seniority rights of teachers, principals, assistant principals, and vice-principals who have acquired tenure prior to the bill's effective date. Under current

law, the board of education has the authority to appoint, transfer or remove employees upon the recommendation of the superintendent. This bill provides that, except as otherwise constrained by seniority rights that have accrued to employees who acquired tenure prior to the bill's effective date, the principal, in consultation with school improvement panels established under the bill, will have sole authority to appoint or remove an employee in the position of teacher, assistant principal, or vice-principal. Any action taken by a principal to appoint or remove an employee will not be subject to approval by either the superintendent of schools or the board of education.

In order to ensure the effectiveness of its teachers, the bill directs each school to convene a school improvement panel. The panel will include the principal, an assistant or vice-principal, and a teacher or other member of the instructional staff nominated by the principal and approved by the instructional staff. The bill provides that the panel will be directly involved in the hiring of new teachers, oversee the mentoring of teachers, and conduct annual evaluations of teachers. Under the bill, the panel is also charged with identifying professional development opportunities for all instructional staff members. The panel must conduct a mid-year evaluation of any tenured teacher who is evaluated as ineffective in his most recent annual evaluation. Panel members are prohibited from participating in their own evaluations.

The bill further provides that the principal, in consultation with the panel, must revoke the tenure granted to an employee in the position of teacher, assistant principal, or vice-principal if the employee is evaluated as ineffective in two consecutive annual evaluations. Similarly, the bill provides that the superintendent, or his designee, must revoke a principal's tenure if the principal is evaluated as ineffective in two consecutive annual evaluations. Under the bill, the revocation of the tenure status of a teacher, principal, assistant principal, or vice-principal will not be subject to grievance or appeal unless the grievance or appeal relates to a charge that the principal, superintendent, or designee of the superintendent failed to adhere substantially to the approved evaluation system.

The bill provides that, in the event of a school closure, a teacher who acquires tenure on or after the effective date of the bill and whose position was eliminated due to the closure must be designated by the school district as a member of a priority hiring pool. A member of a priority hiring pool must be provided an opportunity to interview for vacant in-district teaching positions for which he is qualified before a school improvement panel may consider outside applicants. A member will continue to receive his salary and benefits in the 12 months following the school closure, or until such time as he secures another position within the district or submits his resignation. In the event that the teacher has not secured an in-district teaching position within 12 months of the school closure, the district will place the teacher on an unpaid leave of absence but will keep him in the priority hiring pool until such time as he secures employment in the district. A teacher who acquired tenure prior to the bill's effective date and whose position was eliminated due to a school closure, or any other type of reduction in force, will retain his seniority rights pursuant to N.J.S.18A:28-10 and N.J.S.18:28-12 and will be placed on a preferred eligible list in the order of seniority for reemployment and, whenever a vacancy occurs in a position for which he is qualified, he will be reemployed.

Under the bill, each board of education must:

- adopt a policy to establish a mentoring program in which experienced teachers are paired with first-year teachers to provide confidential support and guidance in accordance with the

Professional Standards for Teachers;

- adopt a policy to provide its teaching staff members with ongoing professional development and provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board for his job; and
- annually submit to the Commissioner of Education, for review and approval, the evaluation rubrics that will be used by the district to assess the effectiveness of its principals, assistant principals, vice-principals, and teachers.

This bill streamlines the process under the current tenure hearing laws by establishing timelines designed to expedite the process. The bill shortens the timeframe under which the Commissioner of Education must render a determination on the sufficiency of a tenure charge and refer the case to the Office of Administrative Law from a 25-day period to a 10-day period. The bill provides that the hearing on a tenure charge before an administrative law judge will be held within 30 days of the transmittal of the charge to the Office of Administrative Law. The bill further provides that the final determination on the charge will be made by an administrative law judge rather than the Commissioner of Education and such determination must be made within 30 days of the start of the hearing. Under current law, a determination of any controversy or dispute must be made within 60 days after the close of the hearing. The bill also provides that the State Board of Examiners may only review those tenure cases in which the administrative law judge's findings were in support of the charges.

The bill repeals section 1 of P.L.1998, c.42 (C.52:14B-10.1), which outlines the procedure tenure cases currently follow when referred to the Office of Administrative Law.

SENATE, No. 1455

STATE OF NEW JERSEY

215th LEGISLATURE

INTRODUCED FEBRUARY 6, 2012

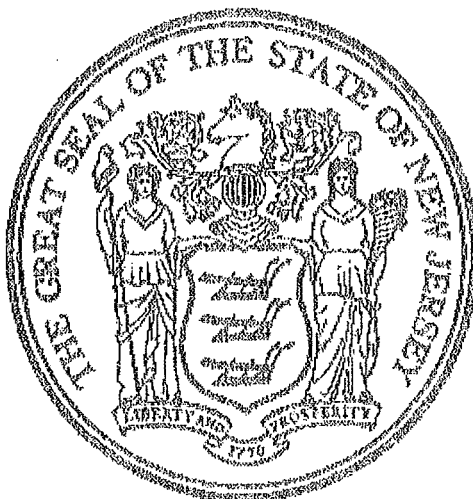
Sponsored by:
Senator M. TERESA RUIZ
District 29 (Essex)

SYNOPSIS

“Teacher Effectiveness and Accountability for the Children of New Jersey
(TEACHNJ) Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning school employees, revising various parts of the
2 statutory law, and supplementing chapters 6 and 28 of Title 18A
3 of the New Jersey Statutes.
4

5 *BE IT ENACTED by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. (New section) This act shall be known and may be cited as
9 the "Teacher Effectiveness and Accountability for the Children of
10 New Jersey (TEACHNJ) Act."
11

12 2. (New section) The Legislature finds and declares:

13 a. The goal of this legislation is to raise student achievement
14 by improving instruction through the adoption of evaluations that
15 provide specific feedback to educators, inform the provision of
16 aligned professional development, and inform personnel decisions.

17 b. The New Jersey Supreme Court has found that a multitude
18 of factors play a vital role in the quality of a child's education,
19 including effectiveness in teaching methods and evaluations.
20 Changing the current evaluation system to focus on improved
21 student outcomes, including objective measures of student growth,
22 is critical to improving teacher effectiveness, raising student
23 achievement, and meeting the objectives of the federal "No Child
24 Left Behind Act of 2001."

25 c. Existing resources from federal, State, and local sources
26 should be used in ways consistent with this law.
27

28 3. N.J.S.18A:6-11 is amended to read as follows:

29 18A:6-11. Any charge made against any employee of a board of
30 education under tenure during good behavior and efficiency shall be
31 filed with the secretary of the board in writing, and a written
32 statement of evidence under oath to support such charge shall be
33 presented to the board. The board of education shall forthwith
34 provide such employee with a copy of the charge, a copy of the
35 statement of the evidence and an opportunity to submit a written
36 statement of position and a written statement of evidence under oath
37 with respect thereto. After consideration of the charge, statement of
38 position and statements of evidence presented to it, the board shall
39 determine by majority vote of its full membership whether there is
40 probable cause to credit the evidence in support of the charge and
41 whether such charge, if credited, is sufficient to warrant a dismissal
42 or reduction of salary. The board of education shall forthwith
43 notify the employee against whom the charge has been made of its
44 determination, personally or by certified mail directed to his last
45 known address. In the event the board finds that such probable

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 cause exists and that the charge, if credited, is sufficient to warrant
2 a dismissal or reduction of salary, then it shall forward such written
3 charge to the commissioner for a hearing pursuant to N.J.S. 18A:6-
4 16, together with a certificate of such determination. [Provided,
5 however, that if the charge is inefficiency, prior to making its
6 determination as to certification, the board shall provide the
7 employee with written notice of the alleged inefficiency, specifying
8 the nature thereto, and allow at least 90 days in which to correct and
9 overcome the inefficiency.] The consideration and actions of the
10 board as to any charge shall not take place at a public meeting.
11 (cf. P.L.1975, c. 304, s. 1)

12
13 4. N.J.S.18A:6-13 is amended to read as follows:

14 18A:6-13. If the board does not make such a determination
15 within 45 days after receipt of the written charge [, or within 45
16 days after the expiration of the time for correction of the
17 inefficiency, if the charge is of inefficiency], the charge shall be
18 deemed to be dismissed and no further proceeding or action shall be
19 taken thereon.
20 (cf. N.J.S.18A:6-13)

21
22 5. N.J.S.18A:6-16 is amended to read as follows:

23 18A:6-16. Upon receipt of such a charge and certification, or of
24 a charge lawfully made to the commissioner, the commissioner or
25 the person appointed to act in the commissioner's behalf in the
26 proceedings shall examine the charges and certification. The
27 individual against whom the charges are certified shall have 15 days
28 to submit a written response to the charges to the commissioner.
29 Upon a showing of good cause, the commissioner may grant an
30 extension of time. The commissioner shall render a determination
31 on the sufficiency of charges and shall refer the case to the Office
32 of Administrative Law, if appropriate, as set forth below within
33 [15] 10 days immediately following the period provided for a
34 written response to the charges.

35 If, following receipt of the written response to the charges, the
36 commissioner is of the opinion that they are not sufficient to
37 warrant dismissal or reduction in salary of the person charged, he
38 shall dismiss the same and notify said person accordingly. If,
39 however, he shall determine that such charge is sufficient to warrant
40 dismissal or reduction in salary of the person charged, he shall
41 [within 10 days of making that determination] refer the case to the
42 Office of Administrative Law for further proceedings, except that
43 when a motion for summary decision has been made prior to that
44 time, the commissioner may retain the matter for purposes of
45 deciding the motion.
46 (cf. P.L.1998, c.42, s.2)

1 6. N.J.S.18A:28-5 is amended to read as follows:

2 18A:28-5. a. The services of all teaching staff members
3 employed prior to the effective date of P.L. , c. (C.) (pending
4 before the Legislature as this bill) in the positions of teacher,
5 principal, other than administrative principal, assistant principal,
6 vice-principal, assistant superintendent, and all school nurses
7 including school nurse supervisors, head school nurses, chief school
8 nurses, school nurse coordinators, and any other nurse performing
9 school nursing services, school athletic trainer and such other
10 employees as are in positions which require them to hold
11 appropriate certificates issued by the board of examiners, serving in
12 any school district or under any board of education, excepting those
13 who are not the holders of proper certificates in full force and effect
14 and school business administrators shared by two or more school
15 districts, shall be under tenure during good behavior and efficiency
16 and they shall not be dismissed or reduced in compensation except
17 for inefficiency, incapacity, or conduct unbecoming such a teaching
18 staff member or other just cause and then only in the manner
19 prescribed by subarticle B of article 2 of chapter 6 of this Title,
20 after employment in such district or by such board for:

21 [(a)] (1) Three consecutive calendar years, or any shorter period
22 which may be fixed by the employing board for such purpose; or

23 [(b)] (2) Three consecutive academic years, together with
24 employment at the beginning of the next succeeding academic year;
25 or

26 [(c)] (3) The equivalent of more than three academic years
27 within a period of any four consecutive academic years.

28 b. The services of all teaching staff members employed on or
29 after the effective date of P.L. , c. (C.) (pending before the
30 Legislature as this bill) in the position of assistant superintendent,
31 school nurse, including school nurse supervisors, head school
32 nurses, chief school nurses, school nurse coordinators, and any
33 other nurse performing school nursing services, school athletic
34 trainer and such other employees as are in positions which require
35 them to hold appropriate certificates issued by the board of
36 examiners, serving in any school district or under any board of
37 education, excepting employees in the position of teacher, principal,
38 assistant principal, and vice-principal, those who are not the holders
39 of proper certificates in full force and effect, and school business
40 administrators shared by two or more school districts, shall be
41 under tenure during good behavior and efficiency and they shall not
42 be dismissed or reduced in compensation except for inefficiency,
43 incapacity, or conduct unbecoming such a teaching staff member or
44 other just cause and then only in the manner prescribed by
45 subarticle B of article 2 of chapter 6 of this Title, after employment
46 in such district or by such board for:

47 (1) Three consecutive calendar years, or any shorter period
48 which may be fixed by the employing board for such purpose; or

1 (2) Three consecutive academic years, together with
2 employment at the beginning of the next succeeding academic year;
3 or

4 (3) The equivalent of more than three academic years within a
5 period of any four consecutive academic years.

6 c. The services of all teaching staff members employed on or
7 after the effective date of P.L. , c. (C.)(pending before the
8 Legislature as this bill) by a district or a board in the position of
9 teacher, principal, other than administrative principal, assistant
10 principal, and vice-principal shall be under tenure during good
11 behavior and efficiency and they shall not be dismissed or reduced
12 in compensation except for inefficiency, incapacity, or conduct
13 unbecoming such a teaching staff member or other just cause and
14 then only in the manner prescribed by subarticle B of article 2 of
15 chapter 6 of this Title, after the employee receives a rating of
16 effective or highly effective in each of three consecutive annual
17 summative evaluations with the first effective rating being received
18 on or after the completion of the second year of employment.

19 In order to achieve tenure pursuant to this subsection, a teacher
20 shall also complete a district mentorship program during the initial
21 year of employment.

22 For purposes of this subsection, "effective" or "highly effective"
23 means the employee has received an annual summative evaluation
24 rating of "effective" or "highly effective" based on the performance
25 standards for his position established through the evaluation rubric
26 adopted by the board of education and approved by the
27 commissioner.

28 d. For purposes of this chapter, tenure in any of the
29 administrative or supervisory positions enumerated herein shall
30 accrue only by employment in that administrative or supervisory
31 position. Tenure so accrued shall not extend to any other
32 administrative or supervisory position and nothing herein shall limit
33 or restrict tenure rights which were or may be acquired pursuant to
34 N.J.S.18A:28-6 in a position in which the individual actually
35 served.

36 (cf. P.L.1999, c.87, s.3)

37
38 7. N.J.S.18A:28-6 is amended to read as follows:

39 18A:28-6. Any such teaching staff member under tenure or
40 eligible to obtain tenure under this chapter, who is transferred or
41 promoted with his consent to another position covered by this
42 chapter on or after July 1, 1962, shall not obtain tenure in the new
43 position until after:

44 (a) the expiration of a period of employment of two consecutive
45 calendar years in the new position unless a shorter period is fixed
46 by the employing board for such purpose; or

1 (b) employment for two academic years in the new position
2 together with employment in the new position at the beginning of
3 the next succeeding academic year; or

4 (c) employment in the new position within a period of any three
5 consecutive academic years, for the equivalent of more than two
6 academic years;

7 provided that the period of employment in such new position
8 shall be included in determining the tenure and seniority rights in
9 the former position held by such teaching staff member, and in the
10 event the employment in such new position is terminated before
11 tenure is obtained therein, if he then has tenure in the district or
12 under said board of education, such teaching staff member shall be
13 returned to his former position at the salary which he would have
14 received had the transfer or promotion not occurred together with
15 any increase to which he would have been entitled during the period
16 of such transfer or promotion.

17 In order to receive tenure pursuant to this section, a teacher,
18 principal, assistant principal, or vice-principal shall be evaluated as
19 effective or highly effective in three consecutive annual summative
20 evaluations.

21 For purposes of this subsection, "effective" or "highly effective"
22 means the employee has received an annual summative evaluation
23 rating of "effective" or "highly effective" based on the performance
24 standards for his position established through the evaluation rubric
25 adopted by the board of education and approved by the
26 commissioner.

27 (cf: N.J.S.18A:28-6)

28

29 8. N.J.S.18A:28-10 is amended to read as follows:

30 18A:28-10. [Dismissals] Except as otherwise provided in
31 section 23 of P.L. , c. (C.) (pending before the Legislature as
32 this bill), dismissals resulting from any such reduction shall not be
33 made by reason of residence, age, sex, marriage, race, religion or
34 political affiliation but shall be made on the basis of seniority
35 according to standards to be established by the commissioner with
36 the approval of the state board.

37 (cf: N.J.S.18A:28-10)

38

39 9. N.J.S. 18A:28-12 is amended to read as follows:

40 18A:28-12. [If] Except as otherwise provided in section 23 of
41 P.L. , c. (C.) (pending before the Legislature as this bill), if
42 any teaching staff member shall be dismissed as a result of such
43 reduction, such person shall be and remain upon a preferred eligible
44 list in the order of seniority for reemployment whenever a vacancy
45 occurs in a position for which such person shall be qualified and he
46 shall be reemployed by the body causing dismissal, if and when
47 such vacancy occurs and in determining seniority, and in computing
48 length of service for reemployment, full recognition shall be given

1 to previous years of service, and the time of service by any such
2 person in or with the military or naval forces of the United States or
3 of this State, subsequent to September 1, 1940, and the time of
4 service of any member of the American Merchant Marine during
5 World War II who is declared by the United States Department of
6 Defense to be eligible for federal veterans' benefits, shall be
7 credited to him as though he had been regularly employed in such a
8 position within the district during the time of such military or naval
9 service, except that the period of that service shall not be credited
10 toward more than four years of employment or seniority credit.
11 (cf. P.L.1991, c.389, s.3)

12
13 10. (New section) A teacher, principal, assistant principal, or
14 vice-principal under tenure pursuant to State law who accepts
15 employment in the same position in an underperforming school
16 district shall be under tenure in that position in the new district
17 during good behavior and efficiency and shall not be dismissed or
18 reduced in compensation except for inefficiency, incapacity, or
19 conduct unbecoming such a teaching staff member or other just
20 cause and then only in the manner prescribed by subarticle B of
21 article 2 of chapter 6 of this Title, after the employee receives a
22 rating of effective or highly effective in each of two consecutive
23 annual summative evaluations.

24 For purposes of this subsection, "effective" or "highly effective"
25 means the employee has received an annual summative evaluation
26 rating of "effective" or "highly effective" based on the performance
27 standards for his position established through the evaluation rubric
28 adopted by the board of education and approved by the
29 commissioner.

30
31 11. (New section) Notwithstanding N.J.S.18A:6-17 or any other
32 section of law to the contrary, any tenure charge transmitted to the
33 Office of Administrative Law pursuant to N.J.S.18A:6-16 shall be
34 adjudicated in an expeditious and timely manner as follows:

35 a. The initial hearing on the charge shall commence within 30
36 days of its transmittal to the Office of Administrative Law.

37 b. Upon transmittal of the charge, the employing board of
38 education shall provide all evidence to the employee or the
39 employee's representative. At least 10 days prior to the hearing, the
40 employee shall provide all evidence upon which he will rely to the
41 employing board of education or its representative. Both parties
42 shall be precluded from presenting any additional evidence at the
43 hearing except for purposes of impeachment of witnesses.

44 c. Notwithstanding the provisions of N.J.S.18A:6-25 or any
45 other section of law to the contrary, the final determination on the
46 controversy or dispute shall be rendered within 30 days of the start
47 of the hearing by the administrative law judge.

1 12. (New section) a. If the decision of the administrative law
2 judge is in support of the tenure charges, the Commissioner of
3 Education shall notify the State Board of Examiners, in writing, of
4 the decision.

5 b. The State Board of Examiners shall only review a tenure
6 charge case referred to an administrative law judge pursuant to
7 N.J.S.18A:6-16 if it has received notification pursuant to subsection
8 a. of this section.

9
10 13. (New section) For the purposes of sections 14 through 18 of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 "ineffective" or "partially effective" means the employee receives
13 an annual summative evaluation rating of "ineffective" or "partially
14 effective" based on the performance standards for his position
15 established through the evaluation rubric adopted by the board of
16 education and approved by the commissioner.

17
18 14. (New section) a. In order to ensure the effectiveness of its
19 teachers, each school shall convene a school improvement panel. A
20 panel shall include the principal, an assistant or vice-principal, and
21 a teacher from the district who shall not be employed at the school
22 at which the panel is convened. The teacher shall be a person with
23 a demonstrated record of success in the classroom. An individual
24 teacher shall not serve more than three consecutive years on any
25 one school improvement panel. In the event that an assistant or
26 vice-principal is not available to serve on the panel, the principal
27 shall appoint an additional member to the panel.

28 b. The panel shall oversee the mentoring of teachers and
29 conduct evaluations of teachers, including an annual summative
30 evaluation. The panel shall also identify professional development
31 opportunities for all instructional staff members that are tailored to
32 meet the unique needs of the students and staff of the school.

33 c. The panel shall conduct a mid-year evaluation of any
34 employee in the position of teacher who is evaluated as ineffective
35 or partially ineffective in his most recent annual summative
36 evaluation.

37 d. Information related to the evaluation of a particular
38 employee shall be maintained by the school district, shall be
39 confidential, and shall not be accessible to the public pursuant to
40 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.

41
42 15. (New section) a. In order to ensure the effectiveness of the
43 schools in the district, the superintendent of schools or his designee
44 shall conduct evaluations of each principal employed by the school
45 district, including an annual summative evaluation.

46 b. The principal, in conjunction with the superintendent or his
47 designee, shall conduct evaluations of each assistant principal and

1 vice-principal employed in his school, including an annual
2 summative evaluation.

3 c. The superintendent or his designee and the principal, as
4 appropriate, shall conduct a mid-year evaluation of any principal,
5 assistant principal, or vice-principal who is evaluated as ineffective
6 or partially effective in his most recent annual summative
7 evaluation.

8 d. Information related to the evaluation of a particular
9 employee shall be maintained by the school district, shall be
10 confidential, and shall not be accessible to the public pursuant to
11 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.
12

13 16. (New section) a. The superintendent shall identify the pool
14 of qualified candidates from which the principal shall select
15 teachers, assistant principals, and vice-principals for his school.

16 Notwithstanding the provisions of section 1 of P.L.1995, c.125
17 (C.18A:27-4.1) to the contrary, a superintendent of schools may not
18 recommend a candidate for employment as a teacher, assistant
19 principal, or vice-principal to the board of education for
20 appointment as a new employee of the district without the consent
21 of the principal of the school at which the employee will be
22 assigned upon employment.

23 b. Except as otherwise provided pursuant to N.J.S.18A:28-10,
24 an employee in the position of teacher, assistant principal, or vice-
25 principal may be assigned to another school in the district only with
26 the mutual consent of the principal and the employee. The school
27 improvement panel may make recommendations to the principal on
28 the assignment of an employee, but it shall be the responsibility of
29 the principal to make a formal determination on the assignment.

30 In the event that no principal in the district consents to the
31 assignment of a teacher, assistant principal or vice-principal, and
32 the person in the prior school year was rated effective or highly
33 effective, the person shall be placed in the priority hiring pool in
34 accordance with the provisions of section 23 of P.L. ,c. (C.)
35 (pending before the Legislature as this act).

36 c. Notwithstanding any provision of law to the contrary, the
37 principal shall revoke the tenure granted to an employee in the
38 position of teacher, assistant principal, or vice-principal, regardless
39 of when the employee acquired tenure, if the employee is evaluated
40 as ineffective or partially effective in one year's annual summative
41 evaluation and in the next year's annual summative evaluation the
42 employee does not show improvement by being evaluated in a
43 higher rating category. The only evaluations which may be used by
44 the principal for tenure revocation are those evaluations conducted
45 in the 2013-2014 school year and thereafter which use the rubric
46 adopted by the board and approved by the commissioner. The
47 school improvement panel may make recommendations to the
48 principal on a teacher's tenure revocation.

1 d. The revocation of the tenure status of a teacher, assistant
2 principal, or vice-principal shall not be subject to grievance or
3 appeal except where the ground for the grievance or appeal is that
4 the principal failed to adhere substantially to the evaluation process.
5 Any such appeal initiated by an employee shall be directed to an
6 administrative law judge within 30 days of the revocation of the
7 employee's tenure status. The appeal shall be reviewed by an
8 administrative law judge within 30 days of the receipt of the appeal.

9 e. Information related to the revocation of an individual
10 employee's tenure status shall be maintained by the school district,
11 shall be confidential, and shall not be accessible to the public
12 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and
13 supplemented.

14 f. Notwithstanding any provision of law to the contrary, in the
15 case of all nontenured teachers, assistant principals or vice-
16 principals, including those whose tenure is revoked pursuant to this
17 section, the principal shall have the sole authority to determine to
18 terminate the employment of that person or not renew the
19 employment contract. The principal shall inform the superintendent
20 of his determination and that determination by the principal may not
21 be overruled by the superintendent or the board of education.
22

23 17. (New section) a. Notwithstanding any provision of law to
24 the contrary, the superintendent, or a designee with expertise in
25 school district personnel, shall revoke the tenure granted to a
26 principal, regardless of when the principal acquired tenure, if the
27 principal is evaluated as ineffective or partially effective in one
28 year's annual summative evaluation and in the next year's annual
29 summative evaluation the principal does not show improvement by
30 being evaluated in a higher rating category. The only evaluations
31 which may be used by the superintendent or a designee for tenure
32 revocation are those evaluations conducted in the 2013-2014 school
33 year and thereafter which use the rubric adopted by the board and
34 approved by the commissioner.

35 b. Except as otherwise provided pursuant to N.J.S.18A:28-10, a
36 principal may be assigned to another school in the district only with
37 the mutual consent of the principal and the superintendent.

38 c. Notwithstanding the provisions of section 1 of P.L.1995,
39 c.125 (C.18A:27-4.1) to the contrary, a superintendent of schools
40 may not recommend a candidate for employment as a principal to
41 the board of education for appointment as a new employee of the
42 district without the consent of the candidate to a particular school
43 assignment upon employment.

44 d. The revocation of the tenure status of a principal shall not be
45 subject to grievance or appeal except where the ground for the
46 grievance or appeal is that the superintendent or designee failed to
47 adhere substantially to the evaluation process. Any such appeal
48 initiated by a principal shall be made to an administrative law judge

1 within 30 days of the revocation of the principal's tenure status. The
2 appeal shall be reviewed by an administrative law judge within 30
3 days of the receipt of the appeal.

4 e. Information related to the revocation of an individual
5 principal's tenure status shall be maintained by the school district,
6 shall be confidential, and shall not be accessible to the public
7 pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and
8 supplemented.

9

10 18. (New section) A teacher, principal, assistant principal, or
11 vice-principal whose tenure is revoked pursuant to the provisions of
12 section 16 or 17 of P.L. , c. (C.) (pending before the
13 Legislature as this bill) shall reacquire tenure in that position, in the
14 event that a determination has been made to continue his
15 employment in the district, during good behavior and efficiency and
16 shall not be dismissed or reduced in compensation except for
17 inefficiency, incapacity, or conduct unbecoming such a teaching
18 staff member or other just cause and then only in the manner
19 prescribed by subarticle B of article 2 of chapter 6 of this Title,
20 after the employee receives a rating of effective or highly effective
21 in each of two consecutive annual summative evaluations.

22

23 19. (New section) a. A board of education shall implement a
24 researched-based mentoring program that pairs effective,
25 experienced teachers with first-year teachers to provide observation
26 and feedback, opportunities for modeling, and confidential support
27 and guidance in accordance with the Professional Standards for
28 Teachers and the evaluation rubric.

29 b. The mentoring program shall: enhance teacher knowledge
30 of, and strategies related to, the core curriculum content standards
31 in order to facilitate student achievement and growth; identify
32 exemplary teaching skills and educational practices necessary to
33 acquire and maintain excellence in teaching; and assist first-year
34 teachers in the performance of their duties and adjustment to the
35 challenges of teaching. To the greatest extent feasible, mentoring
36 activities shall be developed in consultation with the school
37 improvement panels established pursuant to section 14 of P.L. , c.
38 (C.) (pending before the Legislature as this bill) in order to be
39 responsive to the unique needs of different teachers in different
40 instructional settings.

41

42 20. (New section) a. A board of education shall provide its
43 teaching staff members with ongoing professional development that
44 supports student achievement. To the greatest extent feasible,
45 professional development opportunities shall be developed in
46 consultation with the school improvement panels established
47 pursuant to section 14 of P.L. , c. (C.) (pending before the
48 Legislature as this bill) in order to be responsive to the unique

1 needs of different instructional staff members in different
2 instructional settings.

3 b. A board of education shall provide additional professional
4 development for any teaching staff member who fails or is
5 struggling to meet the performance standards established by the
6 board, as documented in the teaching staff member's annual
7 summative evaluation. The additional professional development
8 shall be designed to correct the needs identified in the annual
9 summative evaluation.

10 c. All funds budgeted by a school district for professional
11 development shall be used primarily to provide the professional
12 development required pursuant to the provisions of P.L. , c. (C.)
13 (pending before the Legislature as this bill).

14
15 21. (New section) a. A school district shall annually submit to
16 the Commissioner of Education, for review and approval, the
17 evaluation rubrics that the district will use to assess the
18 effectiveness of its teachers, principals, assistant principals, and
19 vice-principals. The board shall ensure that an approved rubric
20 meets the minimum standards established by the State Board of
21 Education.

22 b. Notwithstanding the provisions of subsection a. of this
23 section, a school district may choose to use the model evaluation
24 rubric established by the commissioner pursuant to subsection f. of
25 section 22 of P.L. , c. (C.) (pending before the Legislature as
26 this bill) to assess the effectiveness of its teachers, principals,
27 assistant principals, and vice-principals. In the case in which the
28 district fails to submit a rubric for review and approval, the model
29 rubric shall be used by the district to assess the effectiveness of its
30 teachers, principals, assistant principals, and vice-principals.

31
32 22. (New section) a. The Commissioner of Education shall
33 review and approve evaluation rubrics submitted by school districts
34 pursuant to section 21 of P.L. , c. (C.) (pending before the
35 Legislature as this bill).

36 b. The State Board of Education shall promulgate regulations
37 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
38 (C.52:14B-1 et seq.) to set standards for the approval of evaluation
39 rubrics for teachers, principals, assistant principals, and vice-
40 principals. The standards at a minimum shall include:

41 (1) four defined annual rating categories for teachers, principals,
42 assistant principals, and vice-principals: ineffective, partially
43 effective, effective, and highly effective;

44 (2) a provision requiring that the rubric be partially based on
45 multiple objective measures of student learning that use student
46 growth from one year's quantifiable measure to the next year's
47 quantifiable measure;

1 (3) a provision that allows the district, in grades in which a
2 standardized test is not required, to determine the method for
3 measuring student growth;

4 (4) a provision that multiple measures of practice and student
5 learning be used in rating effectiveness with specific measures and
6 implementation processes;

7 (5) a provision that the rubric be based on the professional
8 standards for that employee;

9 (6) a provision ensuring that all performance measures used in
10 the rubric are linked to student achievement;

11 (7) a requirement that the employee receive multiple
12 observations during the school year which shall be used in
13 evaluating the employee, at least one annual summative evaluation
14 for the school year, and a conference with his superior or superiors
15 following this evaluation;

16 (8) a provision that requires that at each observation of a
17 teacher, either the principal, the vice-principal, or the assistant
18 principal shall be present;

19 (9) an opportunity for the employee to improve his effectiveness
20 from routine evaluation feedback;

21 (10) guidelines for school districts regarding training on the
22 evaluation system to support its implementation;

23 (11) a process for ongoing monitoring and calibration of the
24 observations to ensure that the observation protocols are being
25 implemented correctly and consistently;

26 (12) a performance framework, associated evaluation tools, and
27 observation protocols, including training and observer calibration
28 resources; and

29 (13) a process for a school district to obtain the approval of the
30 commissioner to utilize other evaluation tools.

31 c. A board of education shall adopt a rubric approved by the
32 commissioner by December 31, 2012.

33 d. Beginning no later than January 31, 2013, a board of
34 education shall implement a pilot program to test and refine the
35 evaluation rubric.

36 e. Beginning with the 2013-2014 school year, a board of
37 education shall ensure implementation of the approved, adopted
38 evaluation rubric for all educators in all elementary, middle, and
39 high schools in the district. Results of evaluations shall be used to
40 identify and provide professional development to teaching staff
41 members. Results of evaluations shall be provided to the
42 commissioner, as requested, on a regular basis.

43 f. The commissioner shall establish a model evaluation rubric
44 that may be utilized by a school district to assess the effectiveness
45 of its teachers, principals, assistant principals, and vice-principals.

46

47 23. (New section) a. Beginning with the 2014-2015 school
48 year, in the event of a reduction in force, tenured and nontenured

1 teachers, principals, assistant principals and vice-principals, other
2 than those who acquired tenure prior to the effective date of P.L. ,
3 c. (C.) (pending before the Legislature as this bill) and
4 continuously maintain their tenure, shall be dismissed based on
5 district and school needs in each certification area, and then in the
6 following order:

7 (1) rating of ineffective on the annual summative evaluation
8 from the previous school year, and then on the basis of seniority;

9 (2) rating of partially effective on the annual summative
10 evaluation from the previous school year, and then on the basis of
11 seniority;

12 (3) rating of effective on the annual summative evaluation from
13 the previous school year, and then on the basis of seniority;

14 (4) rating of highly effective on the annual summative
15 evaluation from the previous school year, and then on the basis of
16 seniority.

17 b. Beginning in the 2014-2015 school year, in the event of a
18 reduction in force for a teacher, principal, assistant principal or
19 vice-principal or the inability of a principal and teacher, assistant
20 principal or vice-principal to reach mutual consent on the
21 assignment of the employee to a school pursuant to subsection a. of
22 section 16 of P.L. , c. (C.) (pending before the Legislature as
23 this bill), a teacher, principal, assistant principal or vice principal
24 who has acquired tenure on or after the effective date of P.L. ,
25 c. (C.) (pending before the Legislature as this bill) whose
26 position is eliminated due to a reduction in force or who is unable to
27 be assigned to a school due to the inability of the principal and the
28 employee to reach mutual consent, shall be designated by the school
29 district as a member of a priority hiring pool. A member of a
30 priority hiring pool shall be provided an opportunity to interview
31 for vacant in-district teaching positions for which he is qualified
32 before a principal may consider outside applicants. In order to
33 qualify as a member of the priority hiring pool, the employee shall
34 have received an effective or highly effective rating on the prior
35 school year's annual summative evaluation.

36 c. A member of the priority hiring pool shall continue to
37 receive his salary and benefits in the 12 months following
38 designation as a member of the pool or until such time as he secures
39 another position within the district or submits his resignation.

40 d. Notwithstanding any provision of law to the contrary, in the
41 event that the teacher has not secured an in-district teaching
42 position within 12 months following designation as a member of the
43 pool, the district shall place the teacher on an unpaid leave of
44 absence. The teacher shall remain a member of the priority hiring
45 pool until such time as he secures employment in the district.

46 e. In the event that a member of a priority hiring pool secures
47 employment in the district in a position that is comparable to the
48 position that he previously held, the district shall compensate the

1 member at the same level that was received during his employment
2 in the position that he previously held.

3
4 24. (New section) Any tenure charge transmitted to the Office
5 of Administrative Law pursuant to N.J.S.18A:6-16 prior to the
6 effective date of P.L. , c. (C.) (pending before the Legislature
7 as this bill) shall be determined in accordance with the provisions of
8 subarticle B of Article 2 of chapter 6 of Title 18A of the New Jersey
9 Statutes, N.J.S.18A:6-10 et seq., as the same read prior to the
10 effective date of P.L. , c. (C.) (pending before the Legislature
11 as this bill).

12
13 25. (New section) The provisions of N.J.S.18A:28-5, N.J.S.
14 18A:28-6, and section 10 and sections 13 through 22 of the
15 "Teacher Effectiveness and Accountability for the Children of New
16 Jersey (TEACHNJ) Act," P.L. , c. (C.) (pending before the
17 Legislature as this bill) shall apply to a charter school that is
18 established pursuant to P.L.1995, c.426 (C.18A:36A-1 et seq.).

19
20 26. (New section) A school district's evaluation rubric
21 approved by the commissioner pursuant to section 21 of P.L. , c.
22 (C.) (pending before the Legislature as this bill) shall not be
23 subject to collective negotiations.

24
25 27. (New section) The Department of Education shall provide
26 the funds necessary to effectuate the provisions of this act.

27
28 28. (New section) No collective bargaining agreement or other
29 contract entered into by a school district after July 1, 2013 shall
30 conflict with the educator evaluation system established pursuant to
31 P.L. , c. (C.) (pending before the Legislature as this bill). A
32 district with an existing collective bargaining agreement on July 1
33 2013 which conflicts in whole or in part with the educator
34 evaluation system established pursuant to that act, shall implement
35 in accordance with that act those provisions not in conflict with the
36 collective bargaining agreement.

37
38 29. The following section is repealed:
39 Section 1 of P.L.1998, c. 42 (C.52:14B-10.1).

40
41 30. This act shall take effect in the 2013-2014 school year,
42 except that section 22 of this act shall take effect immediately. The
43 Department of Education shall take such anticipatory administrative
44 action in advance thereof as shall be necessary for the
45 implementation of this act.

STATEMENT

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This bill requires each school district to annually submit to the Commissioner of Education the evaluation rubric that the district will use to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals. The district may use the model rubric which the commissioner is required to establish or it may use one that meets the minimum standards provided in the bill.

Under current law, teachers, principals, and other teaching staff members whose positions require that they hold a certificate issued by the State Board of Examiners receive tenure after completing three years of employment in a school district. This bill provides that a person who is employed as a teacher, principal, assistant principal, or vice-principal on or after the bill's effective date will receive tenure after the employee receives a rating of effective or highly effective in each of three consecutive annual summative evaluations, with the first effective rating being received on or after the completion of the second year of employment. This means that, under the bill, a newly hired employee in one of these positions could qualify for tenure after 4 or more years of employment in the district, depending on his evaluations. Also, in the case of a teacher, he must complete a mentorship program in the first year of employment. All other school district employees currently eligible for tenure will be able to obtain tenure after a three-year period of employment, as established by existing law.

The bill provides that a teacher, principal, assistant principal, or vice-principal who is transferred or promoted to another position in the same district must be evaluated as effective or highly effective in three consecutive annual summative evaluations in order to qualify for tenure in the new position. In the case of any teacher, principal, assistant principal, or vice-principal under tenure who accepts employment in the same position in an underperforming school district, that person will be eligible for tenure after being evaluated as effective or highly effective in two consecutive annual summative evaluations.

The bill provides for mutual consent by the principal and a teacher, assistant principal and vice-principal for assignment to another school in the district. If no principal consents to an employee's placement, and that employee was rated effective or highly effective in the prior year, then the employee would be placed in a priority hiring pool, in accordance with the provisions of the bill. The superintendent will identify a pool of qualified candidates from which the principal will select teachers, assistant principals, and vice-principals for his school. In the case of a candidate for employment for teacher, assistant or vice-principal in a district, the bill provides that the superintendent may not recommend that person to the board of education for appointment in the district without the consent of the principal of the school at

1 which the person will be assigned upon appointment. In the case of
2 a principal, both the principal and the superintendent must consent
3 to the assignment of the principal to a particular school. In
4 addition, when a person is a candidate for employment as a
5 principal in the district, the superintendent may not recommend the
6 person to the board of education for appointment without the
7 consent of the candidate to a particular school assignment upon
8 employment.

9 In order to ensure the effectiveness of its teachers, the bill directs
10 each school to convene a school improvement panel. The panel will
11 include the principal, an assistant or vice-principal, and a teacher
12 who will not be employed at the school at which the panel is
13 convened. The panel will: oversee the mentoring of teachers;
14 conduct evaluations of teachers; and identify professional
15 development opportunities for all instructional staff members.

16 Under the bill the principal must revoke the tenure granted to an
17 employee in the position of teacher, assistant principal, or vice-
18 principal, regardless of when the employee acquired tenure, if the
19 employee is evaluated as ineffective or partially effective in one
20 year's annual summative evaluation and in the next year's annual
21 summative evaluation the employee does not show improvement.
22 Similarly, the bill provides that the superintendent, or his designee,
23 must revoke a principal's tenure, regardless of when the principal
24 acquired tenure, if the principal is evaluated as ineffective or
25 partially effective in one year's annual summative evaluation and in
26 the next year's annual summative evaluation the principal does not
27 show improvement. Under the bill, the revocation of the tenure
28 status of a teacher, principal, assistant principal, or vice-principal
29 will not be subject to grievance or appeal except where the ground
30 for the grievance or appeal is that the principal, superintendent or
31 the superintendent's designee failed to adhere substantially to the
32 evaluation process.

33 The bill provides that, beginning in the 2014-2015 school year,
34 in the event of a reduction in force or the inability of a teacher,
35 assistant principal or vice-principal to reach mutual consent on the
36 assignment of the employee, the employee who acquires tenure on
37 or after the effective date of the bill and whose position was
38 eliminated due to a reduction in force or who is unable to be
39 assigned to a school due to the inability of the principal and
40 employee to reach mutual consent, must be designated by the
41 school district as a member of a priority hiring pool. A member of
42 a priority hiring pool must be provided an opportunity to interview
43 for vacant in-district teaching positions for which he is qualified
44 before a principal may consider outside applicants. A member will
45 continue to receive his salary and benefits in the 12 months
46 following placement in the pool, or until such time as he secures
47 another position within the district or submits his resignation. In
48 the event that the teacher has not secured an in-district teaching

1 position within 12 months of being placed in the pool, the district
2 will place the teacher on an unpaid leave of absence but will keep
3 him in the priority hiring pool until such time as he secures
4 employment in the district.

5 Under the bill, each board of education must:

- 6 • implement a mentoring program in which effective
7 experienced teachers are paired with first-year teachers to
8 provide confidential support and guidance;
- 9 • provide its teaching staff members with ongoing
10 professional development and provide additional
11 professional development for any teaching staff member
12 who fails or is struggling to meet the performance
13 standards established by the board for his job.

14 This bill streamlines the process under the current tenure hearing
15 laws by establishing timelines designed to expedite the process.
16 The bill shortens the timeframe under which the Commissioner of
17 Education must render a determination on the sufficiency of a
18 tenure charge and refer the case to the Office of Administrative Law
19 from a 25-day period to a 10-day period. The bill provides that the
20 hearing on a tenure charge before an administrative law judge will
21 be held within 30 days of the transmittal of the charge to the Office
22 of Administrative Law. The bill further provides that the final
23 determination on the charge will be made by an administrative law
24 judge rather than the Commissioner of Education and such
25 determination must be made within 30 days of the start of the
26 hearing. Under current law, a determination of any controversy or
27 dispute must be made within 60 days after the close of the hearing.
28 The bill also provides that the State Board of Examiners may only
29 review those tenure cases in which the administrative law judge's
30 findings were in support of the charges.

31 The bill repeals section 1 of P.L.1998, c.42 (C.52:14B-10.1),
32 which outlines the procedure tenure cases currently follow when
33 referred to the Office of Administrative Law.

34 The provisions of this bill will take effect in the 2013-2014
35 school year, except that the provision of the bill that sets forth the
36 requirements of the new evaluation rubric will take effect
37 immediately.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1455

STATE OF NEW JERSEY

DATED: JUNE 18, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Committee Substitute to Senate Bill No. 1455.

The committee substitute requires each school district to submit annually to the Commissioner of Education, for review and approval, an evaluation rubric that the district will use to assess the effectiveness of its teaching staff members. The district may use the model rubric which the commissioner is required to establish or it may use one that meets the minimum standards provided in the substitute. A board of education must: adopt a rubric approved by the commissioner by December 31, 2012; implement a pilot program to test the rubric beginning no later than January 31, 2013; and beginning with the 2013-2014 school year, ensure implementation of the rubric for all educators in the district.

Under current law, all teaching staff members whose positions require that they hold a certificate issued by the State Board of Examiners receive tenure after completing three years of employment in a school district. This substitute provides that all teaching staff members employed on or after the substitute's effective date will become tenured after completing four years of employment in the school district. According to the provisions of the substitute, teachers, principals, assistant principals, and vice-principals will have the following additional requirements for acquiring tenure:

- a teacher will be required to complete a district mentorship program and receive a rating of effective or highly effective in two annual summative evaluations within the first three years after the initial year in which the teacher completes the mentorship program; and
- a principal, assistant principal, or vice-principal will be required to be rated as effective or highly effective in two annual summative evaluations within the first three years of employment following the initial year of employment.

The substitute provides that a teacher, principal, assistant principal, or vice-principal who is transferred or promoted to another position in the same district on or after the effective date of the substitute must meet the current statutory requirement of two years of employment in

the new position in order to acquire tenure in that position, but additionally the employee must be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position. In the case of any tenured teacher, principal, assistant principal, or vice-principal who has been rated effective or highly effective on his most recent annual summative evaluation, and who accepts employment in the same position in an underperforming school in another district, that person will be eligible for tenure after being evaluated as effective or highly effective in at least one annual summative evaluation within the first two years of employment in the underperforming school.

In order to ensure the effectiveness of its teachers, the substitute directs each public school to convene a school improvement panel. The panel will include the principal, or his designee who is serving in a supervisory capacity, an assistant or vice-principal, and a teacher. The teacher will be selected in consultation with the majority representative and must have a demonstrated record of success in the classroom. The panel will: oversee the mentoring of teachers; conduct evaluations of teachers, provided that the teacher on the panel will not be included in the evaluation process unless the majority representative has agreed to the contrary; and identify professional development opportunities for all instructional staff members.

Under the substitute, each board of education must implement a mentoring program in which effective experienced teachers are paired with first-year teachers to provide observation and feedback, opportunities for modeling, and confidential support and guidance. The substitute also provides that the board of education, the principal or the superintendent must provide teaching staff members with ongoing professional development and provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board for his job. When a teaching staff member is rated ineffective or partially effective, a corrective action plan must also be developed to address deficiencies outlined in the employee's evaluation.

Under the provisions of the substitute the superintendent of schools is required to promptly file a charge of inefficiency whenever a tenured teacher, principal, assistant principal, and vice-principal is rated ineffective or partially effective in an annual summative evaluation and in the following year the employee is rated ineffective. A charge of inefficiency must also be filed when the employee is rated partially effective in two years or is rated ineffective in one year's annual summative evaluation and in the next year is rated partially effective, however in this case, upon a written finding of exceptional circumstances, the superintendent may defer filing the tenure charge until after the next annual summative evaluation.

The substitute requires binding arbitration for contested cases involving the dismissal or reduction in compensation of tenured

employees in the school district. These contested cases will no longer be referred to Administrative Law Judges, and the final determination on the case will no longer be made by the Commissioner of Education, which is the process under current law. The substitute provides that the Commissioner of Education will maintain a panel of 25 arbitrators, with eight designated by the New Jersey Education Association, three designated by the American Federation of Teachers, nine designated by the New Jersey School Boards Association, and five designated by the New Jersey Principals and Supervisors Association. The substitute includes a cap on the costs of the arbitration, with the arbitrator being limited to no more than \$1250 per day and no more than \$7500 per case. The costs and expenses of the arbitrator will be borne by the State. Arbitrators will be assigned by the commissioner randomly to hear cases.

The substitute provides that for a charge of inefficiency filed against a teacher, principal, assistant principal, or vice-principal based on the rating given in an annual summative evaluation, as described above, the board of education must forward the charge to the commissioner within 30 business days of the filing, unless the board determines that the evaluation process has not been followed. If the charge is forwarded to the commissioner, the individual against whom the charges are filed will have 10 business days to submit a written response to the charges to the commissioner, and the commissioner, unless he determines that the evaluation process has not been followed, is required to forward the case to the arbitrator within five business days following the period provided for the response to the charges. The hearing before the arbitrator must be held within 30 business days of his assignment to the case, and he must render a decision within 30 business days of the start of the hearing.

In rendering a decision on one of these cases, the arbitrator is only permitted to consider whether or not:

- the employee's evaluation failed to adhere substantially to the evaluation process;
- there is a mistake of fact in the evaluation;
- the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination, or other conduct prohibited by State or federal law; or
- the district's actions were arbitrary and capricious.

If the employee is able to demonstrate that any of these facts are applicable, the arbitrator must then determine if that fact materially affected the outcome of the evaluation and if it did not, the arbitrator is required to decide in favor of the board and the employee must be dismissed.

The substitute repeals section 1 of P.L.1998, c.42 (C.52:14B-10.1), which outlines the procedure tenure cases currently follow when referred to the Office of Administrative Law.

The provisions of this substitute will take effect in the 2013-2014 school year, except that the provision of the substitute that requires the State Board of Education to promulgate regulations to set standards for the approval of evaluation rubrics and sets forth the minimum requirements of the new evaluation rubric, will take effect immediately.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the Senate Committee Substitute for Senate Bill No. 1455 of 2012 will lead to an indeterminate change in costs incurred by local school districts, and an indeterminate increase in costs incurred by the State.

School District Costs and Savings

- The number of tenure hearings may increase, which would contribute to increased costs. S-1455 (SCS) requires that a superintendent file tenure charges with the board of education against a teacher, principal, assistant principal, or vice-principal who receives a low rating in consecutive annual summative evaluations. Relative to current law, where the filing of charges is left to the discretion of the superintendent, there may be an increase in the number of tenure hearings and the associated costs.
- S-1455 (SCS) establishes a timeframe in which an arbitrator must complete a tenure hearing and render a decision. A school district that retains outside legal representation in its tenure cases may experience a reduction in legal costs associated with tenure hearings.
- Under current law, a school district may suspend an employee, with or without pay, once tenure charges are certified by the board of education to the Commissioner of Education. However, an employee who is suspended without pay will begin to receive full pay if the arbitrator has not made a determination after 120 calendar days. The substitute changes this to 105 business days, thereby increasing the amount of time that may elapse before the employee's pay is resumed, leading to a possible cost savings to school districts.

State Costs

Section 22 of S-1455 (SCS) specifies that the Department of Education will provide the funding necessary to effectuate the provisions of the substitute. Based on this provision, there are four potential costs that the State may incur:

- The State would incur additional costs for compensating arbitrators who preside over tenure proceedings. The substitute sets their

compensation at \$1,250 per day, not to exceed \$7,500 per case. The OLS does not anticipate any savings associated with shifting tenure cases from administrative law judges to arbitrators. To the extent that administrative law judges hear cases unrelated to tenure, the proposed shift would likely not lead to a reduction in administrative law judges.

- S-1455 (SCS) requires that all school districts adopt an evaluation rubric for teaching staff members that is approved by the commissioner. If one uses the information included in the department's Notice of Grant Opportunity (NGO) for the teacher effectiveness and principal effectiveness pilot programs, and extrapolates the cost Statewide, the potential cost of adopting such rubrics is \$52.4 million for classroom teachers and \$11.9 million for administrators; the NGO did not include comparable information for other teaching staff members. As noted in the NGO, the actual cost is contingent on decisions made by school districts, and may be higher or lower.

- S-1455 (SCS) requires that each school establish a school improvement panel, and that a teacher serves on that panel. The inclusion of a teacher on the panel would likely lead to an expenditure increase, since this would likely require additional compensation.

- The substitute requires that each board of education establishes a mentoring program for first-year teachers. Under current State Board of Education regulations, the cost of the current required mentorship is borne by the novice teacher, if State funds are not available. The substitute would presumably shift the cost of the mentorship program to the State.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1455

STATE OF NEW JERSEY
215th LEGISLATURE

ADOPTED JUNE 18, 2012

Sponsored by:

Senator M. TERESA RUIZ

District 29 (Essex)

Senator KEVIN J. O'TOOLE

District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:

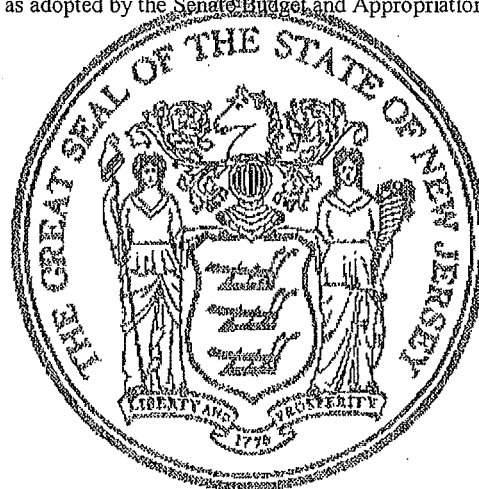
Senator Allen

SYNOPSIS

“Teacher Effectiveness and Accountability for the Children of New Jersey
(TEACHNJ) Act.”

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.



(Sponsorship Updated As Of: 6/22/2012)

1 AN ACT concerning school employees, revising various parts of the
2 statutory law, and supplementing chapters 6 and 28 of Title 18A
3 of the New Jersey Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) This act shall be known and may be cited as
9 the "Teacher Effectiveness and Accountability for the Children of
10 New Jersey (TEACHNJ) Act."

11
12 2. (New section) The Legislature finds and declares that:

13 a. The goal of this legislation is to raise student achievement
14 by improving instruction through the adoption of evaluations that
15 provide specific feedback to educators, inform the provision of
16 aligned professional development, and inform personnel decisions;

17 b. The New Jersey Supreme Court has found that a multitude
18 of factors play a vital role in the quality of a child's education,
19 including effectiveness in teaching methods and evaluations.
20 Changing the current evaluation system to focus on improved
21 student outcomes, including objective measures of student growth,
22 is critical to improving teacher effectiveness, raising student
23 achievement, and meeting the objectives of the federal "No Child
24 Left Behind Act of 2001"; and

25 c. Existing resources from federal, State, and local sources
26 should be used in ways consistent with this law.

27
28 3. (New section) As used in sections 13 through 18, 20 through
29 22, and 25 of P.L. , c. (C.) (pending before the Legislature as
30 this bill):

31 "Business day" means any day other than Saturday, Sunday, or a
32 nationally or State recognized holiday.

33 "Corrective action plan" means a written plan developed by a
34 teaching staff member serving in a supervisory capacity in
35 collaboration with the teaching staff member to address deficiencies
36 as outlined in an evaluation. The corrective action plan shall
37 include timelines for corrective action, responsibilities of the
38 individual teaching staff member and the school district for
39 implementing the plan, and specific support that the district shall
40 provide.

41 "Individual professional development plan" means a written
42 statement of goals developed by a teaching staff member serving in
43 a supervisory capacity in collaboration with a teaching staff
44 member, that: aligns with professional standards for teachers set
45 forth in N.J.A.C.6A:9-3.3 and the New Jersey Professional

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Development Standards; derives from the annual evaluation
2 process; identifies professional goals that address specific
3 individual, district or school needs, or both; and grounds
4 professional development activities in objectives related to
5 improving teaching, learning, and student achievement. The
6 individual professional development plan shall include timelines for
7 implementation, responsibilities of the employee and the school
8 district for implementing the plan, and specific support and periodic
9 feedback that the district shall provide.

10 "Ineffective" or "partially effective" means the employee
11 receives an annual summative evaluation rating of "ineffective" or
12 "partially effective" based on the performance standards for his
13 position established through the evaluation rubric adopted by the
14 board of education and approved by the commissioner.

15 "Teaching staff member" means a member of the professional
16 staff of any district or regional board of education, or any board of
17 education of a county vocational school, holding office, position or
18 employment of such character that the qualifications, for such
19 office, position or employment, require him to hold a valid and
20 effective standard, provisional or emergency certificate, appropriate
21 to his office, position or employment, issued by the State Board of
22 Examiners and includes a school nurse and a school athletic trainer.

23

24 4. N.J.S.18A:6-9 is amended to read as follows:

25 18A:6-9. The commissioner shall have jurisdiction to hear and
26 determine, without cost to the parties, all controversies and disputes
27 arising under the school laws, excepting those governing higher
28 education, or under the rules of the state board or of the
29 commissioner. For the purposes of this Title, controversies and
30 disputes concerning the conduct of school elections shall not be
31 deemed to arise under the school laws.

32 Notwithstanding the provisions of this section to the contrary, an
33 arbitrator shall hear and make a final determination on a
34 controversy and dispute arising under subarticle B of article 2 of
35 chapter 6 of Title 18A of the New Jersey Statutes (C.18A:6-10 et
36 seq.).

37 (cf. P.L.1995, c.278, s.24)

38

39 5. N.J.S.18A:6-11 is amended to read as follows:

40 18A:6-11. Any charge made against any employee of a board of
41 education under tenure during good behavior and efficiency shall be
42 filed with the secretary of the board in writing, and a written
43 statement of evidence under oath to support such charge shall be
44 presented to the board. The board of education shall forthwith
45 provide such employee with a copy of the charge, a copy of the
46 statement of the evidence and an opportunity to submit a written
47 statement of position and a written statement of evidence under oath

1 with respect thereto. After consideration of the charge, statement of
2 position and statements of evidence presented to it, the board shall
3 determine by majority vote of its full membership whether there is
4 probable cause to credit the evidence in support of the charge and
5 whether such charge, if credited, is sufficient to warrant a dismissal
6 or reduction of salary. The board of education shall forthwith
7 notify the employee against whom the charge has been made of its
8 determination, personally or by certified mail directed to his last
9 known address. In the event the board finds that such probable
10 cause exists and that the charge, if credited, is sufficient to warrant
11 a dismissal or reduction of salary, then it shall forward such written
12 charge to the commissioner for a hearing pursuant to N.J.S. 18A:6-
13 16, together with a certificate of such determination. [Provided,
14 however, that if the charge is inefficiency, prior to making its
15 determination as to certification, the board shall provide the
16 employee with written notice of the alleged inefficiency, specifying
17 the nature thereto, and allow at least 90 days in which to correct and
18 overcome the inefficiency.] The consideration and actions of the
19 board as to any charge shall not take place at a public meeting.
20 (cf: P.L.1975, c. 304, s. 1)

21

22 6. N.J.S.18A:6-13 is amended to read as follows:

23 18A:6-13. If the board does not make such a determination
24 within 45 business days after receipt of the written charge [, or
25 within 45 days after the expiration of the time for correction of the
26 inefficiency, if the charge is of inefficiency], the charge shall be
27 deemed to be dismissed and no further proceeding or action shall be
28 taken thereon.

29 (cf: N.J.S.18A:6-13)

30

31 7. N.J.S.18A:6-14 is amended to read as follows:

32 18A:6-14. Upon certification of any charge to the commissioner,
33 the board may suspend the person against whom such charge is
34 made , with or without pay, but, if the determination of the charge
35 by the [Commissioner of Education] arbitrator is not made within
36 [120 calendar] 105 business days after certification of the charges,
37 excluding all delays which are granted at the request of such
38 person, then the full salary (except for said [120] 105 business
39 days) of such person shall be paid beginning on the one hundred
40 [twenty-first] sixth business day until such determination is made.
41 Should the charge be dismissed at any stage of the process, the
42 person shall be reinstated immediately with full pay from the first
43 day of such suspension. Should the charge be dismissed at any
44 stage of the process and the suspension be continued during an
45 appeal therefrom, then the full pay or salary of such person shall
46 continue until the determination of the appeal. However, the board
47 of education shall deduct from said full pay or salary any sums

1 received by such employee or officers by way of pay or salary from
2 any substituted employment assumed during such period of
3 suspension. Should the charge be sustained on the original hearing
4 or an appeal therefrom, and should such person appeal from the
5 same, then the suspension may be continued unless and until such
6 determination is reversed, in which event he shall be reinstated
7 immediately with full pay as of the time of such suspension.

8 (cf: P.L.1971, c.435, s.2)

9

10 8. N.J.S.18A:6-16 is amended to read as follows:

11 18A:6-16. Upon receipt of such a charge and certification, or of
12 a charge lawfully made to the commissioner, the commissioner or
13 the person appointed to act in the commissioner's behalf in the
14 proceedings shall examine the charges and certification. The
15 individual against whom the charges are certified shall have 15
16 business days to submit a written response to the charges to the
17 commissioner. Upon a showing of good cause, the commissioner
18 may grant an extension of time. The commissioner shall render a
19 determination on the sufficiency of charges [and shall refer the case
20 to the Office of Administrative Law, if appropriate,] as set forth
21 below within [15] 10 business days immediately following the
22 period provided for a written response to the charges.

23 If, following receipt of the written response to the charges, the
24 commissioner is of the opinion that they are not sufficient to
25 warrant dismissal or reduction in salary of the person charged, he
26 shall dismiss the same and notify said person accordingly. If,
27 however, he shall determine that such charge is sufficient to warrant
28 dismissal or reduction in salary of the person charged, he shall
29 [within 10 days of making that determination,] refer the case to [the
30 Office of Administrative Law] an arbitrator pursuant to section 23
31 of P.L. , c. (C.) (pending before the Legislature as this bill) for
32 further proceedings, except that when a motion for summary
33 decision has been made prior to that time, the commissioner may
34 retain the matter for purposes of deciding the motion.

35 (cf: P.L.1998, c.42, s.2)

36

37 9. N.J.S.18A:28-5 is amended to read as follows:

38 18A:28-5. a. The services of all teaching staff members
39 employed prior to the effective date of P.L. , c. (C.) (pending
40 before the Legislature as this bill) in the positions of teacher,
41 principal, other than administrative principal, assistant principal,
42 vice-principal, assistant superintendent, and all school nurses
43 including school nurse supervisors, head school nurses, chief school
44 nurses, school nurse coordinators, and any other nurse performing
45 school nursing services, school athletic trainer and such other
46 employees as are in positions which require them to hold
47 appropriate certificates issued by the board of examiners, serving in

1 any school district or under any board of education, excepting those
2 who are not the holders of proper certificates in full force and effect
3 and school business administrators shared by two or more school
4 districts, shall be under tenure during good behavior and efficiency
5 and they shall not be dismissed or reduced in compensation except
6 for inefficiency, incapacity, or conduct unbecoming such a teaching
7 staff member or other just cause and then only in the manner
8 prescribed by subarticle B of article 2 of chapter 6 of this Title,
9 after employment in such district or by such board for:

10 ~~[(a)]~~ (1) Three consecutive calendar years, or any shorter period
11 which may be fixed by the employing board for such purpose; or

12 ~~[(b)]~~ (2) Three consecutive academic years, together with
13 employment at the beginning of the next succeeding academic year;
14 or

15 ~~[(c)]~~ (3) The equivalent of more than three academic years
16 within a period of any four consecutive academic years.

17 b. The services of all teaching staff members employed on or
18 after the effective date of P.L. , c. (C.) (pending before the
19 Legislature as this bill) in the position of teacher, principal, other
20 than administrative principal, assistant principal, vice-principal,
21 assistant superintendent, and all school nurses, including school
22 nurse supervisors, head school nurses, chief school nurses, school
23 nurse coordinators, and any other nurse performing school nursing
24 services, school athletic trainer and such other employees as are in
25 positions which require them to hold appropriate certificates issued
26 by the board of examiners, serving in any school district or under
27 any board of education, excepting those who are not the holders of
28 proper certificates in full force and effect, and school business
29 administrators shared by two or more school districts, shall be
30 under tenure during good behavior and efficiency and they shall not
31 be dismissed or reduced in compensation except for inefficiency,
32 incapacity, or conduct unbecoming such a teaching staff member or
33 other just cause and then only in the manner prescribed by
34 subarticle B of article 2 of chapter 6 of this Title, after employment
35 in such district or by such board for:

36 (1) Four consecutive calendar years; or

37 (2) Four consecutive academic years, together with employment
38 at the beginning of the next succeeding academic year; or

39 (3) The equivalent of more than four academic years within a
40 period of any five consecutive academic years.

41 In order to achieve tenure pursuant to this subsection, a teacher
42 shall also complete a district mentorship program during the initial
43 year of employment and receive a rating of effective or highly
44 effective in two annual summative evaluations within the first three
45 years of employment after the initial year of employment in which
46 the teacher completes the district mentorship program. In order to
47 achieve tenure pursuant to this subsection, a principal, assistant

1 principal, and vice-principal shall also receive a rating of effective
2 or highly effective in two annual summative evaluations within the
3 first three years of employment with the first effective rating being
4 received on or after the completion of the second year of
5 employment.

6 For purposes of this subsection, "effective" or "highly effective"
7 means the employee has received an annual summative evaluation
8 rating of "effective" or "highly effective" based on the performance
9 standards for his position established through the evaluation rubric
10 adopted by the board of education and approved by the
11 commissioner.

12 c. For purposes of this chapter, tenure in any of the
13 administrative or supervisory positions enumerated herein shall
14 accrue only by employment in that administrative or supervisory
15 position. Tenure so accrued shall not extend to any other
16 administrative or supervisory position and nothing herein shall limit
17 or restrict tenure rights which were or may be acquired pursuant to
18 N.J.S.18A:28-6 in a position in which the individual actually
19 served.

20 (cf: P.L.1999, c.87, s.3)

21
22 10. N.J.S.18A:28-6 is amended to read as follows:

23 18A:28-6. a. Any such teaching staff member under tenure or
24 eligible to obtain tenure under this chapter, who is transferred or
25 promoted with his consent to another position covered by this
26 chapter on or after July 1, 1962, shall not obtain tenure in the new
27 position until after:

28 **[(a)]** (1) the expiration of a period of employment of two
29 consecutive calendar years in the new position unless a shorter
30 period is fixed by the employing board for such purpose; or

31 **[(b)]** (2) employment for two academic years in the new
32 position together with employment in the new position at the
33 beginning of the next succeeding academic year; or

34 **[(c)]** (3) employment in the new position within a period of any
35 three consecutive academic years, for the equivalent of more than
36 two academic years;

37 provided that the period of employment in such new position
38 shall be included in determining the tenure and seniority rights in
39 the former position held by such teaching staff member, and in the
40 event the employment in such new position is terminated before
41 tenure is obtained therein, if he then has tenure in the district or
42 under said board of education, such teaching staff member shall be
43 returned to his former position at the salary which he would have
44 received had the transfer or promotion not occurred together with
45 any increase to which he would have been entitled during the period
46 of such transfer or promotion.

1 b. Any such teaching staff member under tenure or eligible to
2 obtain tenure under this chapter, who is transferred or promoted
3 with his consent to another position covered by this chapter on or
4 after the effective date of P.L. , c. (C.) (pending the
5 Legislature as this bill), shall not obtain tenure in the new position
6 until after:

7 (1) the expiration of a period of employment of two consecutive
8 calendar years in the new position; or

9 (2) employment for two academic years in the new position
10 together with employment in the new position at the beginning of
11 the next succeeding academic year; or

12 (3) employment in the new position within a period of any three
13 consecutive academic years, for the equivalent of more than two
14 academic years;

15 provided that the period of employment in such new position
16 shall be included in determining the tenure and seniority rights in
17 the former position held by such teaching staff member, and in the
18 event the employment in such new position is terminated before
19 tenure is obtained therein, if he then has tenure in the district or
20 under said board of education, such teaching staff member shall be
21 returned to his former position at the salary which he would have
22 received had the transfer or promotion not occurred together with
23 any increase to which he would have been entitled during the period
24 of such transfer or promotion.

25 In order to receive tenure pursuant to this subsection, a teacher,
26 principal, assistant principal, and vice-principal shall be evaluated
27 as effective or highly effective in two annual summative evaluations
28 within the first three years of employment in the new position.

29 For purposes of this subsection, "effective" or "highly effective"
30 means the employee has received an annual summative evaluation
31 rating of "effective" or "highly effective" based on the performance
32 standards for his position established through the evaluation rubric
33 adopted by the board of education and approved by the
34 commissioner.

35 (cf: N.J.S.18A:28-6)

36
37 11. (New section) A tenured teaching staff member who has
38 been rated effective or highly effective on his most recent annual
39 summative evaluation, and who accepts employment in the same
40 position in an underperforming school shall be under tenure in that
41 position in the new district during good behavior and efficiency and
42 shall not be dismissed or reduced in compensation except for
43 inefficiency, incapacity, or conduct unbecoming such a teaching
44 staff member or other just cause and then only in the manner
45 prescribed by subarticle B of article 2 of chapter 6 of this Title,
46 after the employee receives a rating of effective or highly effective

1 in at least one of the annual summative evaluations within the first
2 two years of employment in the new school.

3 For purposes of this subsection, "effective" or "highly effective"
4 means the employee has received an annual summative evaluation
5 rating of "effective" or "highly effective" based on the performance
6 standards for his position established through the evaluation rubric
7 adopted by the board of education and approved by the
8 commissioner.

9 As used in this section, "underperforming school" means a
10 school which has been identified by the Department of Education as
11 a "focus school" or a "priority school" for any year within a two
12 year period.

13
14 12. (New section) a. If the decision of the arbitrator is in
15 support of the tenure charges, the Commissioner of Education shall
16 notify the State Board of Examiners, in writing, of the decision.

17 b. The State Board of Examiners shall only review a tenure
18 charge case referred to an arbitrator pursuant to N.J.S.18A:6-16 if it
19 has received notification pursuant to subsection a. of this section.

20

21 13. (New section) a. In order to ensure the effectiveness of its
22 teachers, each school shall convene a school improvement panel. A
23 panel shall include the principal, or his designee who is serving in a
24 supervisory capacity, an assistant or vice-principal, and a teacher.
25 The teacher shall be a person with a demonstrated record of success
26 in the classroom who shall be selected in consultation with the
27 majority representative. An individual teacher shall not serve more
28 than three consecutive years on any one school improvement panel.
29 In the event that an assistant or vice-principal is not available to
30 serve on the panel, the principal shall appoint an additional member
31 to the panel, who is serving in a supervisory capacity.

32 Nothing in this section shall prevent a district that has entered a
33 shared services agreement for the functions of the school
34 improvement panel from providing services under that shared
35 services agreement.

36 b. The panel shall oversee the mentoring of teachers and
37 conduct evaluations of teachers, including an annual summative
38 evaluation, provided that the teacher on the school improvement
39 panel shall not be included in the evaluation process, except in
40 those instances in which the majority representative has agreed to
41 the contrary. The panel shall also identify professional
42 development opportunities for all instructional staff members that
43 are tailored to meet the unique needs of the students and staff of the
44 school.

45 c. The panel shall conduct a mid-year evaluation of any
46 employee in the position of teacher who is evaluated as ineffective
47 or partially effective in his most recent annual summative

1 evaluation, provided that the teacher on the school improvement
2 panel shall not be included in the mid-year evaluation process,
3 except in those instances in which the majority representative has
4 agreed to the contrary.

5 d. Information related to the evaluation of a particular
6 employee shall be maintained by the school district, shall be
7 confidential, and shall not be accessible to the public pursuant to
8 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.
9

10 14. (New section) a. In order to ensure the effectiveness of the
11 schools in the district, the superintendent of schools or his designee
12 shall conduct evaluations of each principal employed by the school
13 district, including an annual summative evaluation.

14 b. The principal, in conjunction with the superintendent or his
15 designee, shall conduct evaluations of each assistant principal and
16 vice-principal employed in his school, including an annual
17 summative evaluation.

18 c. The superintendent or his designee and the principal, as
19 appropriate, shall conduct a mid-year evaluation of any principal,
20 assistant principal, or vice-principal who is evaluated as ineffective
21 or partially effective in his most recent annual summative
22 evaluation.

23 d. Information related to the evaluation of a particular
24 employee shall be maintained by the school district, shall be
25 confidential, and shall not be accessible to the public pursuant to
26 P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.
27

28 15. (New section) a. A board of education shall implement a
29 researched-based mentoring program that pairs effective,
30 experienced teachers with first-year teachers to provide observation
31 and feedback, opportunities for modeling, and confidential support
32 and guidance in accordance with the Professional Standards for
33 Teachers and the evaluation rubric.

34 b. The mentoring program shall: enhance teacher knowledge
35 of, and strategies related to, the core curriculum content standards
36 in order to facilitate student achievement and growth; identify
37 exemplary teaching skills and educational practices necessary to
38 acquire and maintain excellence in teaching; and assist first-year
39 teachers in the performance of their duties and adjustment to the
40 challenges of teaching. To the greatest extent feasible, mentoring
41 activities shall be developed in consultation with the school
42 improvement panels established pursuant to section 13 of P.L. , c.
43 (C.) (pending before the Legislature as this bill) in order to be
44 responsive to the unique needs of different teachers in different
45 instructional settings.

1 16. (New section) a. A board of education, principal, or
2 superintendent shall provide its teaching staff members with
3 ongoing professional development that supports student
4 achievement and with an individual professional development plan.
5 To the greatest extent feasible, professional development
6 opportunities shall be developed in consultation with the school
7 improvement panels established pursuant to section 13 of P.L. , c.
8 (C.) (pending before the Legislature as this bill) in order to be
9 responsive to the unique needs of different instructional staff
10 members in different instructional settings.

11 b. A board of education, principal, or superintendent shall
12 provide additional professional development for any teaching staff
13 member who fails or is struggling to meet the performance
14 standards established by the board, as documented in the teaching
15 staff member's annual summative evaluation. The additional
16 professional development shall be designed to correct the needs
17 identified in the annual summative evaluation.

18 A corrective action plan shall be developed by the teaching staff
19 member and a teaching staff member serving in a supervisory
20 capacity to address deficiencies outlined in the evaluation when the
21 employee is rated ineffective or partially effective. The corrective
22 action plan shall include timelines for corrective action and
23 responsibilities of the teaching staff member and the school district
24 for implementation of the plan.

25 c. All funds budgeted by a school district for professional
26 development shall be used primarily to provide the professional
27 development required pursuant to the provisions of P.L. , c. (C.)
28 (pending before the Legislature as this bill).

29
30 17. (New section) a. A school district shall annually submit to
31 the Commissioner of Education, for review and approval, the
32 evaluation rubrics that the district will use to assess the
33 effectiveness of its teachers, principals, assistant principals, and
34 vice-principals and all other teaching staff members. The board
35 shall ensure that an approved rubric meets the minimum standards
36 established by the State Board of Education.

37 b. Notwithstanding the provisions of subsection a. of this
38 section, a school district may choose to use the model evaluation
39 rubric established by the commissioner pursuant to subsection f. of
40 section 18 of P.L. , c. (C.) (pending before the Legislature as
41 this bill) to assess the effectiveness of its teachers, principals,
42 assistant principals, and vice-principals and all other teaching staff
43 members. In the case in which the district fails to submit a rubric
44 for review and approval, the model rubric shall be used by the
45 district to assess the effectiveness of its teachers, principals,
46 assistant principals, and vice-principals and all other teaching staff
47 members.

- 1 18. (New section) a. The Commissioner of Education shall
2 review and approve evaluation rubrics submitted by school districts
3 pursuant to section 17 of P.L. , c. (C.) (pending before the
4 Legislature as this bill). The board of education shall adopt a rubric
5 approved by the commissioner.
- 6 b. The State Board of Education shall promulgate regulations
7 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
8 (C.52:14B-1 et seq.), to set standards for the approval of evaluation
9 rubrics for teachers, principals, assistant principals, and vice-
10 principals. The standards at a minimum shall include:
- 11 (1) four defined annual rating categories for teachers, principals,
12 assistant principals, and vice-principals: ineffective, partially
13 effective, effective, and highly effective;
- 14 (2) a provision requiring that the rubric be partially based on
15 multiple objective measures of student learning that use student
16 growth from one year's measure to the next year's measure;
- 17 (3) a provision that allows the district, in grades in which a
18 standardized test is not required, to determine the methods for
19 measuring student growth;
- 20 (4) a provision that multiple measures of practice and student
21 learning be used in rating effectiveness with specific measures and
22 implementation processes;
- 23 (5) a provision that the rubric be based on the professional
24 standards for that employee;
- 25 (6) a provision ensuring that performance measures used in the
26 rubric are linked to student achievement;
- 27 (7) a requirement that the employee receive multiple
28 observations during the school year which shall be used in
29 evaluating the employee, at least one annual summative evaluation
30 for the school year, and a conference with his superior or superiors
31 following this evaluation;
- 32 (8) a provision that requires that at each observation of a
33 teacher, either the principal, his designee who is serving in a
34 supervisory capacity, the vice-principal, or the assistant principal
35 shall be present;
- 36 (9) an opportunity for the employee to improve his effectiveness
37 from routine evaluation feedback;
- 38 (10) guidelines for school districts regarding training and the
39 demonstration of competence on the evaluation system to support
40 its implementation;
- 41 (11) a process for ongoing monitoring and calibration of the
42 observations to ensure that the observation protocols are being
43 implemented correctly and consistently;
- 44 (12) a performance framework, associated evaluation tools, and
45 observation protocols, including training and observer calibration
46 resources;

- 1 (13) a process for a school district to obtain the approval of the
2 commissioner to utilize other evaluation tools; and
3 (14) a process for ensuring that the results of the evaluation help
4 to inform instructional development.
5 c. A board of education shall adopt a rubric approved by the
6 commissioner by December 31, 2012.
7 d. Beginning no later than January 31, 2013, a board of
8 education shall implement a pilot program to test and refine the
9 evaluation rubric.
10 e. Beginning with the 2013-2014 school year, a board of
11 education shall ensure implementation of the approved, adopted
12 evaluation rubric for all educators in all elementary, middle, and
13 high schools in the district. Results of evaluations shall be used to
14 identify and provide professional development to teaching staff
15 members. Results of evaluations shall be provided to the
16 commissioner, as requested, on a regular basis.
17 f. The commissioner shall establish a model evaluation rubric
18 that may be utilized by a school district to assess the effectiveness
19 of its teaching staff members.
20
21 19. (New section) Any tenure charge transmitted to the Office
22 of Administrative Law pursuant to N.J.S.18A:6-16 prior to the
23 effective date of P.L. , c. (C.) (pending before the Legislature
24 as this bill) shall be determined in accordance with the provisions of
25 subarticle B of Article 2 of chapter 6 of Title 18A of the New Jersey
26 Statutes, N.J.S.18A:6-10 et seq., as the same read prior to the
27 effective date of P.L. , c. (C.) (pending before the Legislature
28 as this bill).
29
30 20. (New section) A school district's evaluation rubric
31 approved by the commissioner pursuant to section 17 of P.L. ,
32 c. (C.) (pending before the Legislature as this bill) shall not be
33 subject to collective negotiations.
34
35 21. (New section) The Department of Education shall provide
36 the funds necessary to effectuate the provisions of this act.
37
38 22. (New section) No collective bargaining agreement or other
39 contract entered into by a school district after July 1, 2013 shall
40 conflict with the educator evaluation system established pursuant to
41 P.L. , c. (C.) (pending before the Legislature as this bill). A
42 district with an existing collective bargaining agreement on July 1
43 2013 which conflicts in whole or in part with the educator
44 evaluation system established pursuant to that act, shall implement
45 in accordance with that act those provisions not in conflict with the
46 collective bargaining agreement.

1 23. (New section) a. The Commissioner of Education shall
2 maintain a panel of 25 permanent arbitrators to hear matters
3 pursuant to N.J.S.18A:6-16. Of the 25 arbitrators, eight arbitrators
4 shall be designated by the New Jersey Education Association, three
5 arbitrators shall be designated by the American Federation of
6 Teachers, nine arbitrators shall be designated by the New Jersey
7 School Boards Association, and five arbitrators shall be designated
8 by the New Jersey Principals and Supervisors Association. The
9 commissioner shall inform the appropriate designating entity when
10 a vacancy exists. If the appropriate entity does not designate an
11 arbitrator within 30 business days, the commissioner shall designate
12 an arbitrator to fill that vacancy.

13 All arbitrators designated pursuant to this section shall serve on
14 the American Arbitration Association panel of labor arbitrators and
15 shall be members of the National Academy of Arbitrators. The
16 arbitrators shall have knowledge and experience in the school
17 employment sector. Arbitrators on the permanent panel shall be
18 assigned by the commissioner randomly to hear cases.

19 b. The following provisions shall apply to a hearing conducted
20 by an arbitrator pursuant to N.J.S.18A:6-16, except as otherwise
21 provided pursuant to P.L. , c. (C) (pending before the
22 Legislature as this bill):

23 (1) The hearing shall be held before the arbitrator within 30
24 business days of the assignment of the arbitrator to the case;

25 (2) The arbitrator shall receive no more than \$1250 per day
26 and no more than \$7500 per case. The costs and expenses of the
27 arbitrator shall be borne by the State of New Jersey;

28 (3) Upon referral of the case for arbitration, the employing
29 board of education shall provide all evidence including, but not
30 limited to, documents, electronic evidence, statements of witnesses,
31 and a list of witnesses with a complete summary of their testimony,
32 to the employee or the employee's representative. The employing
33 board of education shall be precluded from presenting any
34 additional evidence at the hearing, except for purposes of
35 impeachment of witnesses. At least 10 business days prior to the
36 hearing, the employee shall provide all evidence upon which he will
37 rely including, but not limited to, documents, electronic evidence,
38 statements of witnesses, and a list of witnesses with a complete
39 summary of their testimony, to the employing board of education or
40 its representative. The employee shall be precluded from
41 presenting any additional evidence at the hearing except for
42 purposes of impeachment of witnesses.

43 Discovery shall not include depositions, and interrogatories shall
44 be limited to 25 without subparts.

45 c. The arbitrator shall determine the case under the American
46 Arbitration Association labor arbitration rules. In the event of a
47 conflict between the American Arbitration Association labor

1 arbitration rules and the procedures established pursuant to this
2 section, the procedures established pursuant to this section shall
3 govern.

4 d. Notwithstanding the provisions of N.J.S.18A:6-25 or any
5 other section of law to the contrary, the arbitrator shall render a
6 written decision within 30 business days of the start of the hearing.

7 e. An appeal of the arbitrator's determination shall be final and
8 binding and may not be appealable to the Commissioner or the State
9 Board of Education. The determination shall be subject to judicial
10 review and enforcement as provided pursuant to N.J.S.2A:24-7
11 through N.J.S.2A:24-10.

12

13 24. (New section) a. In the event that the matter before the
14 arbitrator pursuant to section 23 of this act is employee inefficiency
15 pursuant to section 26 of this act, in rendering a decision the
16 arbitrator shall only consider whether or not:

17 (1) the employee's evaluation failed to adhere substantially to
18 the evaluation process, including, but not limited to providing a
19 corrective action plan;

20 (2) there is a mistake of fact in the evaluation;

21 (3) the charges would not have been brought but for
22 considerations of political affiliation, nepotism, union activity,
23 discrimination as prohibited by State or federal law, or other
24 conduct prohibited by State or federal law; or

25 (4) the district's actions were arbitrary and capricious.

26 b. In the event that the employee is able to demonstrate that any
27 of the provisions of paragraph (1) through (4) of subsection a. of
28 this section are applicable, the arbitrator shall then determine if that
29 fact materially affected the outcome of the evaluation. If the
30 arbitrator determines that it did not materially affect the outcome of
31 the evaluation, the arbitrator shall render a decision in favor of the
32 board and the employee shall be dismissed.

33 c. The evaluator's determination as to the quality of an
34 employee's classroom performance shall not be subject to an
35 arbitrator's review.

36 d. The board of education shall have the ultimate burden of
37 demonstrating to the arbitrator that the statutory criteria for tenure
38 charges have been met.

39 e. The hearing shall be held before the arbitrator within 30
40 business days of the assignment of the arbitrator to the case. The
41 arbitrator shall render a written decision within 30 business days of
42 the start of the hearing.

43

44 25. (New section) The State Board of Education shall
45 promulgate regulations pursuant to the "Administrative Procedure
46 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in accordance with an
47 expeditious time frame, to set standards for the approval of

1 evaluation rubrics for all teaching staff members, other than those
2 included under the provisions of subsection b. of section 18 of
3 P.L. , c. (C.) (pending before the Legislature as this bill). The
4 standards at a minimum shall include: four defined annual rating
5 categories: ineffective, partially effective, effective, and highly
6 effective.

7
8 26. (New section) a. Notwithstanding the provisions of
9 N.J.S.18A:6-11 or any other section of law to the contrary, in the
10 case of a teacher, principal, assistant principal, and vice-principal:

11 .(1) the superintendent shall promptly file with the secretary of
12 the board of education a charge of inefficiency whenever the
13 employee is rated ineffective or partially effective in an annual
14 summative evaluation and the following year is rated ineffective in
15 the annual summative evaluation;

16 (2) if the employee is rated partially effective in two consecutive
17 annual summative evaluations or is rated ineffective in an annual
18 summative evaluation and the following year is rated partially
19 effective in the annual summative evaluation, the superintendent
20 shall promptly file with the secretary of the board of education a
21 charge of inefficiency, except that the superintendent upon a written
22 finding of exceptional circumstances may defer the filing of tenure
23 charges until after the next annual summative evaluation. If the
24 employee is not rated effective or highly effective on this annual
25 summative evaluation, the superintendent shall promptly file a
26 charge of inefficiency.

27 b. Within 30 business days of the filing, the board of education
28 shall forward a written charge to the commissioner, unless the board
29 determines that the evaluation process has not been followed.

30 c. Notwithstanding the provisions of N.J.S.18A:6-16 or any
31 other section of law to the contrary, upon receipt of a charge
32 pursuant to subsection a. of this section, the commissioner shall
33 examine the charge. The individual against whom the charges are
34 filed shall have 10 business days to submit a written response to the
35 charges to the commissioner. The commissioner shall, within five
36 business days immediately following the period provided for a
37 written response to the charges, refer the case to an arbitrator and
38 appoint an arbitrator to hear the case, unless he determines that the
39 evaluation process has not been followed.

40 d. The only evaluations which may be used for purposes of this
41 section are those evaluations conducted in accordance with a rubric
42 adopted by the board and approved by the commissioner pursuant to
43 P.L. , c. (C.) (pending before the Legislature as this bill).

44
45 27. (New section) The commissioner shall have the authority to
46 extend the timelines in the tenure charge process upon a showing of
47 exceptional circumstances.

1 28. The following section is repealed:

2 Section 1 of P.L.1998, c. 42 (C.52:14B-10.1).

3

4 29. This act shall take effect in the 2012-2013 school year,
5 except that section 18 of this act shall take effect immediately. The
6 Department of Education shall take such anticipatory administrative
7 action in advance thereof as shall be necessary for the
8 implementation of this act.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 1455

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 21, 2012

The Assembly Budget Committee reports favorably Senate Bill No. 1455 (SCS), with committee amendments.

As amended, this bill requires each school district to submit annually to the Commissioner of Education, for review and approval, an evaluation rubric that the district will use to assess the effectiveness of its teaching staff members. The district may use the model rubric which the commissioner is required to establish or it may use one that meets the minimum standards provided in the bill. A board of education must: adopt a rubric approved by the commissioner by December 31, 2012; implement a pilot program to test the rubric beginning no later than January 31, 2013; and beginning with the 2013-2014 school year, ensure implementation of the rubric for all educators in the district.

Under current law, all teaching staff members whose positions require that they hold a certificate issued by the State Board of Examiners receive tenure after completing three years of employment in a school district. This bill provides that all teaching staff members employed on or after the bill's effective date will become tenured after completing four years of employment in the school district. According to the provisions of the bill, teachers, principals, assistant principals, and vice-principals will have the following additional requirements for acquiring tenure:

- a teacher will be required to complete a district mentorship program and receive a rating of effective or highly effective in two annual summative evaluations within the first three years after the initial year in which the teacher completes the mentorship program; and
- a principal, assistant principal, or vice-principal will be required to be rated as effective or highly effective in two annual summative evaluations within the first three years of employment following the initial year of employment.

The bill provides that a teacher, principal, assistant principal, or vice-principal who is transferred or promoted to another position in the

same district on or after the effective date of the bill must meet the current statutory requirement of two years of employment in the new position in order to acquire tenure in that position, but additionally the employee must be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position. In the case of any tenured teacher, principal, assistant principal, or vice-principal who has been rated effective or highly effective on his most recent annual summative evaluation, and who accepts employment in the same position in an underperforming school in another district, that person will be eligible for tenure after being evaluated as effective or highly effective in at least one annual summative evaluation within the first two years of employment in the underperforming school.

In order to ensure the effectiveness of its teachers, the bill directs each public school to convene a school improvement panel. The panel will include the principal, or his designee, an assistant or vice-principal, and a teacher. The principal's designee must be an individual employed in the district in a supervisory role and capacity who possesses a school administrator certificate, principal certificate, or supervisor certificate. The teacher will be selected in consultation with the majority representative and must have a demonstrated record of success in the classroom. The panel will: oversee the mentoring of teachers; conduct evaluations of teachers, provided that the teacher on the panel will not be included in the evaluation process unless the majority representative has agreed to the contrary; and identify professional development opportunities for all instructional staff members.

Under the bill, each board of education must implement a mentoring program in which effective experienced teachers are paired with first-year teachers to provide observation and feedback, opportunities for modeling, and confidential support and guidance. The bill also provides that the board of education, the principal or the superintendent must provide teaching staff members with ongoing professional development and provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board for his job. When a teaching staff member is rated ineffective or partially effective, a corrective action plan must also be developed to address deficiencies outlined in the employee's evaluation.

Under the provisions of the bill the superintendent of schools is required to promptly file a charge of inefficiency whenever a tenured teacher, principal, assistant principal, and vice-principal is rated ineffective or partially effective in an annual summative evaluation and in the following year the employee is rated ineffective. A charge of inefficiency must also be filed when the employee is rated partially effective in two years or is rated ineffective in one year's annual summative evaluation and in the next year is rated partially effective,

however in this case, upon a written finding of exceptional circumstances, the superintendent may defer filing the tenure charge until after the next annual summative evaluation.

The bill requires binding arbitration for contested cases involving the dismissal or reduction in compensation of tenured employees in the school district. These contested cases will no longer be referred to Administrative Law Judges, and the final determination on the case will no longer be made by the Commissioner of Education, which is the process under current law. The bill provides that the Commissioner of Education will maintain a panel of 25 arbitrators, with eight designated by the New Jersey Education Association, three designated by the American Federation of Teachers, nine designated by the New Jersey School Boards Association, and five designated by the New Jersey Principals and Supervisors Association. The bill includes a cap on the costs of the arbitration, with the arbitrator being limited to no more than \$1250 per day and no more than \$7500 per case. The costs and expenses of the arbitrator will be borne by the State. Arbitrators will be assigned by the commissioner randomly to hear cases.

The bill provides that for a charge of inefficiency filed against a teacher, principal, assistant principal, or vice-principal based on the rating given in an annual summative evaluation, as described above, the board of education must forward the charge to the commissioner within 30 days of the filing, unless the board determines that the evaluation process has not been followed. If the charge is forwarded to the commissioner, the individual against whom the charges are filed will have 10 days to submit a written response to the charges to the commissioner, and the commissioner, unless he determines that the evaluation process has not been followed, is required to forward the case to the arbitrator within five business day following the period provided for the response to the charges. The hearing before the arbitrator must be held within 45 days of his assignment to the case, and he must render a decision within 45 days of the start of the hearing.

In rendering a decision on one of these cases, the arbitrator is only permitted to consider whether or not:

- the employee's evaluation failed to adhere substantially to the evaluation process;
- there is a mistake of fact in the evaluation;
- the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination, or other conduct prohibited by State or federal law; or
- the district's actions were arbitrary and capricious.

If the employee is able to demonstrate that any of these facts are applicable, the arbitrator must then determine if that fact materially affected the outcome of the evaluation and if it did not, the arbitrator is

required to decide in favor of the board and the employee must be dismissed.

The bill repeals section 1 of P.L.1998, c.42 (C.52:14B-10.1), which outlines the procedure tenure cases currently follow when referred to the Office of Administrative Law.

The provisions of this bill will take effect in the 2012-2013 school year, except that the provision of the bill that requires the State Board of Education to promulgate regulations to set standards for the approval of evaluation rubrics and sets forth the minimum requirements of the new evaluation rubric, will take effect immediately.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the Senate Committee Substitute for Senate Bill No. 1455 (1R) of 2012 will lead to an indeterminate change in costs incurred by local school districts, and an indeterminate increase in costs incurred by the State.

School District Costs and Savings

- The number of tenure hearings may increase, which would contribute to increased costs. S-1455 (SCS) (1R) requires that a superintendent file tenure charges with the board of education against a teacher, principal, assistant principal, or vice-principal who receives a low rating in consecutive annual summative evaluations. Relative to current law, where the filing of charges is left to the discretion of the superintendent, there may be an increase in the number of tenure hearings and the associated costs.
- S-1455 (SCS) (1R) establishes a timeframe in which an arbitrator must complete a tenure hearing and render a decision. A school district that retains outside legal representation in its tenure cases may experience a reduction in legal costs associated with tenure hearings.

State Costs

Section 20 of S-1455 (SCS) (1R) specifies that the Department of Education will provide the funding necessary to effectuate the provisions of the substitute. Based on this provision, there are four potential costs that the State may incur:

- The State would incur additional costs for compensating arbitrators who preside over tenure proceedings. The substitute sets their compensation at \$1,250 per day, not to exceed \$7,500 per case. The OLS does not anticipate any savings associated with shifting tenure cases from administrative law judges to arbitrators. To the extent that

administrative law judges hear cases unrelated to tenure, the proposed shift would likely not lead to a reduction in administrative law judges.

- S-1455 (SCS) (1R) requires that all school districts adopt an evaluation rubric for teaching staff members that is approved by the commissioner. If one uses the information included in the department's Notice of Grant Opportunity (NGO) for the teacher effectiveness and principal effectiveness pilot programs, and extrapolates the cost Statewide, the potential cost of adopting such rubrics is \$52.4 million for classroom teachers and \$11.9 million for administrators; the NGO did not include comparable information for other teaching staff members. As noted in the NGO, the actual cost is contingent on decisions made by school districts, and may be higher or lower.
- S-1455 (SCS) (1R) requires that each school establish a school improvement panel, and that a teacher serves on that panel. The inclusion of a teacher on the panel would likely lead to an expenditure increase, since this would likely require additional compensation.
- The substitute requires that each board of education establishes a mentoring program for first-year teachers. Under current State Board of Education regulations, the cost of the current required mentorship is borne by the novice teacher, if State funds are not available. The substitute would presumably shift the cost of the mentorship program to the State.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- add definitions of "evaluation," "multiple objective measures of student learning," and "professional standards";
- remove references to "business" days so that "calendar" days are referred to throughout the bill;
- provide that the principal's designee on a school improvement panel, which will be conducting teacher evaluations, must be an individual employed in the district in a supervisory role and capacity who possess a school administrator certificate, principal certificate, or supervisor certificate;
- include a statement providing that aspects of evaluation which are not superseded by statute or regulation will continue to be mandatory subjects of collective negotiation; and
- permit the Commissioner of Education to remove an arbitrator from an arbitration case or from an arbitration panel if the arbitrator does not adhere to the timelines set forth in the bill without approval from the commissioner.

2010 WL 162061

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

Joshua CRAWFORD, Jason Crawford, and Justin Crawford, minors, by their guardian ad litem, Van-Ness Crawford; Tywan Davis, minor, by his guardian ad litem, Floyd Tally; Cathya Velasquez and Cathydia Ruiz, minors, by their guardian ad litem, Enrique Ruiz; Keyina Royall, minor, by her guardian ad litem, Michele Royall; Shakur McNair and Vanisha McNair, minors, by their guardians ad litem, Ericka and Sharon McNair; Alexis Mendez, minor, by his guardian ad litem, Melitza Mendez; Najee and J-Ajanae Bey, minors, by their guardian ad litem, Anetra Bey; Donte Ramos, minor, by her guardian ad litem, Maribel Ramos, Plaintiffs-Appellants,

v.

Lucille DAVY, State Commissioner of Education; Yut'se Thomas, Director of the Office of School Funding; Robert G. Koertz, Director of State Budget and Accounting; Bradley Abelow, New Jersey State Treasurer; State Board of Education; and Boards of Education of Asbury Park, Atlantic City, Beverly City, Bound Brook, Bridgeton, Camden, Clementon Borough, East Orange, Elizabeth, Englewood City, Irvington, Jersey City, Lakewood Township, Lawnside Borough, Millville City, New Brunswick, Newark, Orange, Paterson, Perth Amboy, Salem City, Trenton, Wildwood, Woodbine, and Woodlyne Borough, Defendants-Respondents.

Argued Dec. 17, 2008. ¹

Decided Nov. 23, 2009.

West KeySummary

1 Education

✦ Right to instruction in general

Students' class action claims under thorough and efficient education clause of state constitution, alleging that state public education structure was unconstitutional, were premature; thus, a general equity judge properly found that the students did not state a claim to survive dismissal. Students had not sought available administrative action under school funding reform act providing evaluative and remedial measures. Proper implementation of thorough and efficient education clause was through statutory measures and through state funding of school districts in need of additional funding. N.J.S.A. 18A:7A-11, 18A:7A-14, 52:14B-1-15; N.J.A.C. 6A:8-4.5(a).

Cases that cite this headnote

On appeal from the Superior Court of New Jersey, Chancery Division, Mercer County, Docket No. C-137-06.

Attorneys and Law Firms

Patricia Bombelyn and Julio C. Gomez argued the cause for appellants (Perez & Bombelyn, P.C. and Gomez LLC, attorneys; Ms. Bombelyn and Mr. Gomez on the briefs).

Michelle Lyn Miller, Senior Deputy Attorney General, argued the cause for the State respondents (Anne Milgram, Attorney General, attorney; Nancy Kaplen, Assistant Attorney General, of counsel; Ms. Miller and Cynthia Raymond, Deputy Attorney General, on the brief).

Richard A. Friedman argued the cause for amicus curiae New Jersey Education Association (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys; Mr. Friedman, of counsel and on the brief; Michael P. Chiacchio, on the brief).

Frances Wang Deveney argued the cause for respondent Atlantic City Board of Education (Marks, O'Neill, O'Brien & Courtney, P.C., attorneys; Ms. Deveney, on the brief).

Richard E. Shapiro argued the cause for respondents Asbury Park, East Orange, Elizabeth, Jersey City, Paterson, Perth Amboy, Salem City and City of Trenton Boards of Education.

Melvin C. Randall argued the cause for respondent Orange Township Board of Education (Love & Randall, attorneys; Mr. Randall, on the brief).

Rita F. Barone argued the cause for respondents Bound Brook, Englewood, Wildwood, and Woodbine Boards of Education (Purcell, Ries, Shannon, Mulcahy & O'Neill, attorneys; Ms. Barone, of counsel and on the brief; Alyssa K. Weinstein, on the brief).

John S. Favate argued the cause for respondent New Brunswick Board of Education (Hardin, Kundla, McKeon & Poletto, P.A., attorneys; Mr. Favate, of counsel and on the brief).

Michael I. Inzelbuch, attorney for respondent Lakewood Board of Education, joins in the briefs of all respondents.

Hunt, Hamlin & Ridley, attorneys for respondent Irvington Board of Education, join in the briefs of all respondents.

Perry L. Lattiboudere, attorney for respondent Newark Board of Education, joins in the briefs of all respondents.

Comegno Law Group, P.C., attorneys for respondent Woodlynne Board of Education, join in the briefs of all respondents.

Wolf Block, LLP, attorneys for respondents Camden and Lawnside Boards of Education, join in the briefs of all respondents.

Parker McCay, attorneys for respondents Borough of Clementon and City of Beverly Boards of Education, join in the briefs of all respondents.

Casarow, Kienzle & Raczenbek, attorneys for respondent City of Bridgeton Board of Education, join in the briefs of all respondents.

Robinson, Andujar & Webb, attorneys for respondent City of Millville Board of Education, join in the brief of respondent Orange Township Board of Education.

Before Judges RODRÍGUEZ, WAUGH and NEWMAN.

Opinion

PER CURIAM.

*1 Plaintiffs appeal the dismissal of their putative class action seeking to vindicate their rights, and those of the proposed class, to a “thorough and efficient education” as guaranteed by the New Jersey Constitution, *N.J. Const.* art. VIII, § 4 (“thorough and efficient education” clause), and other constitutional and statutory provisions. They allege that those rights have been violated by various defendant State officials² and various defendant school districts,³ as evidenced by the overall poor performance of students in the defendant school districts on standardized tests designed to measure proficiency in connection with applicable State educational standards.

According to their amended complaint, the primary injunctive relief sought by plaintiffs is (1) an injunction against enforcement of the statutes creating local school districts for free public education, *N.J.S.A.* 18A:8-1 and *N.J.S.A.* 18A:38-1, and requiring attendance at those schools, *N.J.S.A.* 18A:38-25, by those unable to afford private school tuition; and (2) a corresponding injunction requiring such failing school districts to permit students in their districts to withdraw from the district's schools and attend other schools of their choice, whether public or private, at the district's expense.

The amended complaint was dismissed by the Chancery Division, which concluded (1) that the defendant school districts were not appropriate defendants because they cannot “unilaterally” provide the relief sought by plaintiffs; and (2) that plaintiffs' claims are not “justiciable” and, in any event, premature in the absence of a well-developed factual record. On appeal, plaintiffs ask us to reverse the Chancery Division, reinstate their amended complaint, and either remand the case to the Chancery Division or to a special master for the creation of a factual record. They resist any suggestion that they have failed to exhaust administrative remedies or that the matter should be transferred to the New Jersey Department of Education.

I.

The named plaintiffs, who are suing through their respective parents or legal guardians, are students at public schools operated by the defendant districts. Plaintiffs characterize those school districts as “failing” because their schools “have failed achievement of Core Curriculum Content Standards [(CCCS), *N.J.A.C.* 6A:8-1.1 to -3.4,] for the last two years or longer,” based upon fifty percent of their students having failed both the language arts and mathematics sections of state-mandated assessment tests, *N.J.A.C.* 6A:8-4.1, or seventy-five percent having failed one of those test sections. Plaintiffs seek to represent a purported class of 60,000 schoolchildren from ninety-six public schools in twenty-five municipalities that are similarly “failing.”

Plaintiffs filed their initial complaint on July 13, 2006, in the Chancery Division, General Equity Part in Essex County. The action was subsequently transferred to the General Equity Part in Mercer County by consent. On October 2, 2006, the State defendants filed a motion to dismiss for failure to state a claim upon which relief may be granted, pursuant to *Rule* 4:6-2(e). The Boards of Education of Bound Brook, Englewood, Wildwood, Woodbine, Atlantic City, Asbury Park, East Orange, Elizabeth, Jersey City, Paterson, Perth Amboy, Salem and Trenton also filed motions to dismiss. The School Boards of Millville, Woodlynne, Bridgeton, Camden, Lawnside, Newark, Lakewood, Irvington, Orange, Beverly City and Clementon filed answers. The Board of Education of Millville filed a motion to dismiss in addition to its answer.

*2 The General Equity judge held a case management conference in December 2006, at which he gave plaintiffs leave to file an amended complaint and set forth a briefing schedule on the pending motions. Plaintiffs filed their amended complaint in January 2007, adding two additional named plaintiffs. Those districts that had initially filed answers duly filed answers to the amended complaint.

The amended complaint contained four counts alleging that defendants: (1) violated plaintiffs' right to a “thorough and efficient education” guaranteed by the “thorough and efficient education” clause; (2) violated their equal protection rights under Article 1, Paragraph 1 of the New Jersey Constitution by allowing “[d]istrict boundaries and mandatory attendance zones [to] consign plaintiff schoolchildren to schools that are failing, while other similarly situated schoolchildren ... are assigned

to schools that are not failing;” (3) violated their equal protection rights under the Fourteenth Amendment to the United States Constitution on the same basis; and (4) violated the New Jersey Civil Rights Act, *N.J.S.A.* 10:6-2(c), by depriving them of the constitutional rights asserted in the first three counts.

Plaintiffs sought the following relief:

- (a) Declare that district boundaries, *N.J.S.A.* 18A:8-1 and 18A:38-1, and compulsory attendance laws, *N.J.S.A.* 18A:38-25, and/or mandatory attendance zones, violate the Thorough and Efficient Education and Equal Protection clauses of the Constitution of the State of New Jersey and the Fourteenth Amendment of the Constitution of the United States when they are applied to consign children to failing schools;
- (b) Declare that a defined level of on-going partial proficiency (or failure) on any of the State's standardized assessment tests is evidence of, or constitutes, a violation of the Thorough and Efficient Education clause of the Constitution of the State of New Jersey;
- (c) Declare that the Defendants' actions and omissions violate the Thorough and Efficient Education and Equal Protection clauses of the Constitution of the State of New Jersey and the Fourteenth Amendment of the United States Constitution;
-
- (f) Preliminarily and permanently enjoin Defendants from enforcing the district boundaries, *N.J.S.A.* 18A:8-1 and 18A:38-1, the compulsory attendance law, *N.J.S.A.* 18A:38-25, and any residential school assignments or mandatory attendance zones when they would consign plaintiff schoolchildren to failing schools;
- (g) Preliminarily and permanently order Defendants to permit plaintiff schoolchildren to withdraw from the failing schools they attend or will attend in future school years;
- (h) Preliminarily and permanently order Defendants to utilize the share of State and local district funding allocable to each plaintiff schoolchild, who chooses to withdraw from a failing school, to pay for the cost of tuition of that plaintiff schoolchild in an alternative

non-failing public or private school of his or her choice within the State of New Jersey;

*3 (i) Preliminarily and permanently enjoin Defendants from expending or authorizing the expenditure of state and local per pupil funding annually appropriated for plaintiff schoolchildren and allotted to the public schools to which plaintiff schoolchildren are presently assigned in any way that impairs the ability of the Defendants to comply with the relief to which plaintiff schoolchildren are entitled;

(j) Award plaintiff schoolchildren reasonable attorney's fees and costs of suit pursuant to *N.J.S.A. 10:6-2(f)*; and

(k) Grant plaintiff schoolchildren such other relief as the Court deems just and proper.

Plaintiffs sought class certification as to both plaintiffs and defendants. *See R. 4:32.*

The General Equity judge heard oral argument on the motions to dismiss in April 2007. On October 4, 2007, the judge issued a detailed written decision and accompanying order, granting defendants' motions to dismiss. The judge first determined that plaintiffs had standing to file the lawsuit. He next concluded that the school boards "have no authority to simply ignore district boundaries or compulsory attendance laws" and "cannot unilaterally provide the relief sought by Plaintiffs." The judge observed that, while "under appropriate circumstances," he could order that the defendant school boards "actively pursue entering into sending/receiving relationships," the plaintiffs were not seeking that specific relief. Consequently, he dismissed the amended complaint as to the defendant school districts.

Focusing on the primary remedies sought by plaintiffs, the judge held that plaintiffs' claims were non-justiciable because he could not "craft this remedy to be 'at once effective and judicially enforceable.'" The judge also held that, even if the claims were justiciable, plaintiffs could not state a cause of action on the basis of an equal protection violation, under either the State or Federal Constitutions, because there were no allegations that the Legislature intended to discriminate against any class when creating the state's school systems on the basis of districts primarily congruent with existing municipal boundaries. The judge also determined that plaintiffs' claim under *N.J.S.A. 10:6-2(c)* failed because their claim under the "thorough and

efficient education" clause was non-justiciable and their federal and state equal protection clause claims were deficient.

This appeal followed.

II.

Our standard of review is de novo when reviewing an order granting dismissal under *Rule 4:6-2(e)*. A reviewing court must examine "the legal sufficiency of the facts alleged on the face of the challenged claim." *Rieder v. Dep't of Transp.*, 221 *N.J. Super.* 547, 552, 535 A.2d 512 (App.Div.1987) (quoting *P & J Auto Body v. Miller*, 72 *N.J. Super.* 207, 211, 178 A.2d 237 (App.Div.1962)). In doing so, we must search "the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Leon v. Rite Aid Corp.*, 340 *N.J. Super.* 462, 466, 774 A.2d 674 (App.Div.2001) (quoting *Printing Mart/Morristown v. Sharp Electronics Corp.*, 116 *N.J.* 739, 746, 563 A.2d 31 (1989)).

*4 However, we review judgments, not decisions, and may affirm on any ground. *Serrano v. Serrano*, 367 *N.J. Super.* 450, 461, 843 A.2d 358 (App.Div.2004) ("Although we affirm for different reasons, a judgment will be affirmed on appeal if it is correct, even though 'it was predicated upon an incorrect basis.'" (quoting *Isko v. Planning Bd. of Livingston Twp.*, 51 *N.J.* 162, 175, 238 A.2d 457 (1968))).

A.

We begin by noting that the core issue raised by plaintiffs, that students in certain school districts do not receive the "thorough and efficient education" guaranteed by the "thorough and efficient education" clause, has been the subject of extensive and ongoing litigation, primarily before our Supreme Court, since the early 1970's. *See, e.g., Robinson v. Cahill*, 62 *N.J.* 473, 515-16, 303 A.2d 273 (1973) (finding New Jersey's then existing system of financing elementary and secondary public schools to be unconstitutional); *Abbott v. Burke*, 119 *N.J.* 287, 295, 575 A.2d 359 (1990) (*Abbott II*) (finding the then school funding formula unconstitutional); *Abbott v.*

Burke, 136 N.J. 444, 454, 643 A.2d 575 (1994) (*Abbott III*) (finding that funding needed to be coupled to a set of educational program standards); and *Abbott v. Burke*, 199 N.J. 140, 146, 971 A.2d 989 (2009) (*Abbott XX*) (declaring the current school funding, evaluation and remediation system to be constitutional).⁴ The most recent special master's report, annexed as an appendix to *Abbott XX*, *supra*, 199 N.J. at 178–89, 971 A.2d 989, contains a detailed history of the prior litigation concerning efforts to enforce the “thorough and efficient education” clause.

In *Abbott XX*, the Supreme Court reflected on its role in the *Abbott* cases:

For several decades, this Court has superintended the ongoing litigation that carries the name *Abbott v. Burke*. The Court's one goal has been to ensure that the constitutional guarantee of a thorough and efficient system of public education becomes a reality for those students who live in municipalities where there are concentrations of poverty and crime. Every child should have the opportunity for an unhindered start in life—an opportunity to become a productive and contributing citizen to our society.

[*Id.* at 174, 971 A.2d 989.]

Consequently, it cannot be said that the question of compliance with the “thorough and efficient education” clause is itself a non-justiciable issue.

At the same time, the Supreme Court also reflected on the fact that primary responsibility for implementation of that constitutional provision rests with the elected branches of State government.

The legislative and executive branches of government have enacted a funding formula that is designed to achieve a thorough and efficient education for every child, regardless of where he or she lives. On the basis of the record before us, we conclude that [the School Funding Reform Act] is a constitutionally adequate scheme. There is no absolute guarantee that SFRA will achieve the results desired by all. The political branches of government, however, are entitled to take reasoned steps, even if the outcome cannot be assured, to address the pressing social, economic, and educational challenges confronting our state. They should not be locked in a constitutional straitjacket. SFRA deserves

the chance to prove in practice that, as designed, it satisfies the requirements of our constitution.

*5 [*Id.* at 175, 971 A.2d 989.]

Consequently, the Court upheld the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -63, as facially constitutional, subject to reevaluation following “the chance to prove in practice that, as designed, it satisfies the requirements of our constitution.” *Ibid.*

As is evidenced by the history outlined above and set out in more detail in the appendix to *Abbott XX*, the Supreme Court's primary method of enforcing the “thorough and efficient education” clause has been to assure that there are sufficient State funds available to supplement those raised through property taxes in school districts found to be in need of additional funding. Nevertheless, the Court has on occasion required the adoption of programs and policies it deemed necessary to implement the constitutional requirement, after an extensive factfinding process involving the other branches of government:

In summary, and consistent with this opinion, we determine and direct that the Commissioner implement whole-school reform; implement full-day kindergarten and a half-day pre-school program for three—and four-year olds as expeditiously as possible; implement the technology, alternative school, accountability, and school-to-work and college-transition programs; prescribe procedures and standards to enable individual schools to adopt additional or extended supplemental programs and to seek and obtain the funds necessary to implement those programs for which they have demonstrated a particularized need; implement the facilities plan and timetable he proposed; secure funds to cover the complete cost of remediating identified life-cycle and infrastructure deficiencies in *Abbott* school buildings as well as the cost of providing the space necessary to house *Abbott* students adequately; and promptly initiate effective managerial responsibility over school construction, including necessary funding measures and fiscal reforms, such as may be achieved through amendment of the Educational Facilities Act.

In directing remedial relief in the areas of whole school reform, supplemental programs, and facilities improvements, the Court remains cognizant of the

interests of the parties, particularly those of plaintiffs who speak for and represent the at-risk children of the special needs districts. The lessons of the history of the struggle to bring these children a thorough and efficient education render it essential that their interests remain prominent, paramount, and fully protected.

Whether the measures for education reform that are to be implemented will result in a thorough and efficient education for the children in the Abbott districts depends, in the final analysis, on the extent to which there is a top-to-bottom commitment to ensuring that the reforms are conscientiously undertaken and vigorously carried forward. That commitment on the part of the Executive Branch has been demonstrated by the Commissioner's strong proposals and positive avowals to see these reforms through. The Legislature's commitment is evidenced by the sound and comprehensive public education that is contemplated by the statute within which these reforms will be effected. It is not enough, however, that the three branches of government, sometimes working together and sometimes at apparent odds, have each responded to the challenge to carry out the Constitution's command of a thorough and efficient education. We must reach the point where it is possible to say with confidence that the most disadvantaged school children in the State will not be left out or left behind in the fulfillment of that constitutional promise. Success for all will come only when the roots of the educational system—the local schools and districts, the teachers, the administrators, the parents, and the children themselves—embrace the educational opportunity encompassed by these reforms.

*6 [*Abbott v. Burke*, 153 N.J. 480, 527–28, 710 A.2d 450 (1998) (*Abbott V*).]

Consequently, it is clear that the Court will, under appropriate circumstances and on an appropriate record, go beyond the issue of funding.

In their amended complaint, plaintiffs contend that the defendant school districts are “failing” because of their students’ scores on tests intended “to evaluate student achievement of the [CCCS].” *N.J.A.C.* 6A:8–4.1(b). Rather than seeking available administrative action to improve what they perceive as a “failing” performance by the districts, plaintiffs seek instead a judicial declaration of unconstitutionality with respect

to the State's longstanding structure of public education based on school districts that are largely contiguous with municipality of residence. While we decline to address the hypothetical issue of whether such a remedy would ever be appropriate to facilitate the proper implementation of the “thorough and efficient education” clause, we agree with the General Equity judge that even to contemplate such a remedy at this time is exceedingly premature and, consequently, inappropriate.

In addition to providing State funding, the Legislature has enacted a series of reforms intended to assure the provision of a “thorough and efficient education” on a statewide basis. For example, *N.J.S.A.* 18A:7A–10 provides for the creation and implementation of the New Jersey Quality Single Accountability Continuum:

For the purpose of evaluating the thoroughness and efficiency of all the public schools of the State, the commissioner, with the approval of the State board and after review by the Joint Committee on the Public Schools, shall develop and administer the New Jersey Quality Single Accountability Continuum for evaluating the performance of each school district. The goal of the New Jersey Quality Single Accountability Continuum shall be to ensure that all districts are operating at a high level of performance. The system shall be based on an assessment of the degree to which the thoroughness and efficiency standards established pursuant to [*N.J.S.A.* 18A:7F–46] are being achieved and an evaluation of school district capacity in the following five key components of school district effectiveness: instruction and program; personnel; fiscal management; operations; and governance. A school district's capacity and effectiveness shall be determined using quality performance indicators comprised of standards for each of the five key components of school district effectiveness. The quality

performance indicators shall take into consideration a school district's performance over time, to the extent feasible. Based on a district's compliance with the indicators, the commissioner shall assess district capacity and effectiveness and place the district on a performance continuum that will determine the type and level of oversight and technical assistance and support the district receives.

The tests relied upon by plaintiffs in their amended complaint were administered as part of the resulting program. See *N.J.A.C.* 6A:8-4.1. The testing program results in annual reports to the school districts and the public "on the progress of all students and student subgroups in meeting the [CCCS] as measured by the Statewide assessment system." *N.J.A.C.* 6A:8-4.5(a) and (b).

*7 *N.J.S.A.* 18A:7A-14 requires the Commissioner to review the test results and take appropriate remedial action when necessary. The broad array of remedial measures range from the provision of "technical assistance" to "partial" or "full" "state intervention" in the operation of the school district.

a. The commissioner shall review the results of the report submitted pursuant to sections [*N.J.S.A.* 18A:7A-10 and *N.J.S.A.* 18A:7A-11] and after examination of all relevant data, including student assessment data, determine where on the performance continuum the district shall be placed. The commissioner, through collaboration, shall establish a mechanism for parent, school employee and community resident input into the review process....

b. If a school district satisfies 50 percent to 79 percent of the quality performance indicators in any of the five key components of school district effectiveness, the commissioner shall require the district to develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance and other measures designed to meet the district's needs. The improvement plan shall be submitted to and approved by the commissioner. In accordance with the improvement plan, the

commissioner shall provide technical assistance to the district. If necessary, the commissioner may authorize an in-depth evaluation of the district to determine the causes for the district's noncompliance with the quality performance indicators.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. If the commissioner finds, based on those reviews, that after two years the district has not satisfied 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness, the commissioner may require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

If a district effectively implements its improvement plan and is able to satisfy 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness through the interventions set forth in this subsection, the commissioner shall issue the district a letter of recognition designating the district as a high performing district. The commissioner shall recommend that the State board certify the school district for a period of three years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators. If the district has not effectively implemented its improvement plan and has not satisfied 80 to 100 percent of the quality performance indicators in each of the five key components of school district effectiveness through the interventions set forth in this subsection, the commissioner shall issue the district a letter detailing the areas in which the district remains deficient.

*8 c. (1) If a school district satisfies less than 50 percent of the quality performance indicators in four or fewer of the five key components of school district effectiveness, the commissioner shall authorize an in-depth evaluation of the district's performance and capacity unless the commissioner determines that a comprehensive evaluation of the district by or directed by the department has occurred within the last year. Based on the findings and recommendations of that evaluation, the district, in cooperation with the department, shall develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance

and other measures designed to meet the district's needs. The improvement plan shall be submitted to the commissioner for approval. Upon approval, the commissioner shall provide the district with the technical assistance outlined in the plan and shall assure that the district's budget provides the resources necessary to implement the improvement plan.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. The reviews shall include an on-site visit. If the commissioner finds, based on those reviews, that after two years the district has not satisfied at least 50% of the quality performance indicators in each of the key components of school district effectiveness, the commissioner may require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

Nothing in this paragraph shall be construed to prohibit the State board from directing the district to enter partial State intervention prior to the expiration of the two-year period.

(2) The district's improvement plan may include the appointment by the commissioner of one or more highly skilled professionals to provide technical assistance to the district in the areas in which it has failed to satisfy the quality performance indicators. Each highly skilled professional shall work collaboratively with the district to increase local capacity in the areas of need identified in the improvement plan. The cost for the compensation of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the cost and the school district being responsible for one-half of the cost.

(3) If the district satisfies less than 50% of the quality performance indicators in one to four of the five key components of school district effectiveness, the commissioner may also order the district board of education to show cause why an administrative order placing the district under partial State intervention should not be implemented. The plenary hearing before a judge of the Office of Administrative Law pursuant to the "Administrative Procedure Act," [N.J.S.A. 52:14B-1 to -15], upon said order to show cause, shall be conducted on an expedited basis and in the manner prescribed by subdivision B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes. In the proceeding

the State shall have the burden of showing that the recommended administrative order is not arbitrary, unreasonable or capricious.

*9 If, after a plenary hearing, the commissioner determines that it is necessary to take corrective action, the commissioner shall have the power to order necessary budgetary changes within the district or other measures the commissioner deems appropriate to establish a thorough and efficient system of education.

If the board fails to show cause why an administrative order placing the district under partial State intervention should not be implemented, the commissioner shall recommend to the State board that it issue an order placing the district under partial State intervention. Notwithstanding any other provision of law to the contrary and upon its determining that the school district is not providing a thorough and efficient system of education, the State board may place the district under partial State intervention. Nothing herein shall limit the right of any party to appeal the State board's order to the Superior Court, Appellate Division.

....

(5) In addition to the highly skilled professionals appointed pursuant to paragraph (2) of this subsection to provide technical assistance to the district in implementing its improvement plan, the commissioner, in consultation with the local board of education, may appoint one or more highly skilled professionals in a district under partial State intervention to provide direct oversight in the district regarding the quality performance indicators with which the district has failed to comply. The highly skilled professional shall represent the interests of the commissioner in all matters relating to the component of school district effectiveness that is under intervention and over which the highly skilled professional is providing direct oversight. The powers and authorities of the highly skilled professional shall include, but not be limited to:

(a) overseeing the operations of the district in the area of intervention over which the highly skilled professional is assigned to provide direct oversight;

(b) ensuring the development and implementation of the district improvement plan with respect to the area

over which the highly skilled professional is assigned to provide direct oversight;

(c) overriding a chief school administrator's action and a vote by the board of education regarding matters under direct oversight of the highly skilled professional;

(d) attending all meetings of the board of education, including closed sessions; and

(e) obligating district funds for matters relating to the area under State intervention over which the highly skilled professional is providing direct oversight.

In the event that there is a need to hire, promote, or terminate employees working in the area of intervention over which the highly skilled professional is assigned to provide direct oversight, the hiring, promotion, and termination of those employees shall be determined by the State board upon the recommendation of the commissioner.

The highly skilled professional shall work collaboratively with the superintendent, the board of education and the employees of the district working in the area of the oversight to address areas identified in the improvement plan.

***10** When the commissioner appoints more than one highly skilled professional in a district under partial State intervention, he shall delineate the scope and extent of authority of each highly skilled professional appointed and shall establish a decision-making hierarchy for the highly skilled professionals and personnel in the district. The highly skilled professional shall report directly to the commissioner or his designee on a bi-weekly basis and shall report monthly to the board of education and members of the public at the regularly scheduled board of education meeting. The salary of a highly skilled professional appointed pursuant to this paragraph shall be fixed by the commissioner and adjusted from time to time as the commissioner deems appropriate. The cost of the salaries of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the cost and the school district being responsible for one-half of the cost. For the purpose of the New Jersey Tort Claims Act, [*N.J.S.A.* 59:1-1 to -7], the highly skilled

professional appointed pursuant to this paragraph shall be considered a State officer.

(6) With the State board's approval the commissioner may appoint up to three additional members to the board of education of a district under partial State intervention. The board of education's membership shall remain increased by these additional seats until the State withdraws from intervention. If the commissioner appoints three additional members pursuant to this paragraph, the commissioner shall appoint one of these additional members from a list of three candidates provided by the local governing body of the municipality in which the school district is located. The commissioner shall make every effort to appoint residents of the district. A board member appointed by the commissioner shall be a nonvoting member of the board and shall have all the other rights, powers and privileges of a member of the board. A board member appointed by the commissioner shall report to the commissioner on the activities of the board of education and shall provide assistance to the board of education on such matters as deemed appropriate by the commissioner, including, but not limited to, the applicable laws and regulations governing specific school board action. A member appointed by the commissioner shall serve for a term of two years. The commissioner shall obtain approval of the State board for any extension of the two-year term. Any vacancy in the membership appointed by the commissioner shall be filled in the same manner as the original appointment.

If a board of education is subject to additional appointments pursuant to [*N.J.S.A.* 52:27BBB-63], then the provisions of this paragraph shall not be applicable during the period in which the board is subject to those appointments.

Six months following the district being placed under partial State intervention, the commissioner shall determine whether or not the board members he has appointed shall become voting members of the board of education. If the commissioner determines that the board members he has appointed shall become voting members, the school district shall have 30 days to appeal the commissioner's determination to the State Board of Education.

***11** (7) Based on the district's success in implementing its improvement plan, the commissioner shall make a

determination to withdraw from intervention in one or more of the areas that have been under State intervention, to leave one or more areas under State intervention or to recommend to the State Board of Education that the district be placed under full State intervention.

If the commissioner determines that the district has successfully implemented the improvement plan and achieved sufficient progress in satisfying the performance indicators in one or more areas under intervention, the State shall withdraw from intervention in the district in those areas.

....

e. (1) If a school district satisfies less than 50 percent of the quality performance indicators in each of the five key components of school district effectiveness, the commissioner shall authorize an in-depth evaluation of the district's performance and capacity, unless the commissioner determines that a comprehensive evaluation of the district by or directed by the department has occurred within the last year. Based on the findings and recommendations of that evaluation, the district, in cooperation with the department, shall develop an improvement plan to address the quality performance indicators with which the district has not complied and to increase district capacity through the provision of technical assistance and other measures designed to meet the district's needs. The improvement plan shall be submitted to the commissioner for approval. Upon approval, the commissioner shall provide the district with the technical assistance outlined in the plan and shall assure that the district's budget provides the resources necessary to implement the improvement plan.

The commissioner shall review the district's progress in implementing the improvement plan not less than every six months. The reviews shall include an on-site visit. If the commissioner finds, based on those reviews, that after two years the district has not satisfied at least 50% of the quality performance indicators in each of the key components of school district effectiveness, the commissioner may require the district to amend the improvement plan. The amended plan shall be submitted to the commissioner for approval.

Nothing in this paragraph shall be construed to prohibit the State board from directing the district to enter full

State intervention prior to the expiration of the two-year period.

(2) The district's improvement plan may include the appointment by the commissioner of one or more highly skilled professionals to provide technical assistance to the district in the areas in which it has failed to satisfy the quality performance indicators. Each highly skilled professional shall work collaboratively with the district to increase local capacity in the areas of need identified in the improvement plan. The cost for the compensation of the highly skilled professionals shall be a shared expense of the school district and the State, with the State assuming one-half of the cost and the school district being responsible for one-half of the cost.

*12 [N.J.S.A. 18A:7A-14.]

The Commissioner's broad statutory authority is implemented through a set of comprehensive regulations. *N.J.A.C. 6A:30* (Chapter 30). The "purpose and scope" of Chapter 30

is to establish rules to implement the New Jersey Quality Single Accountability Continuum (NJQSAC) system, as required by *N.J.S.A. 18A:7A-3 et seq.*, for evaluating and monitoring all public school districts in the State. NJQSAC is designed to be a single, comprehensive accountability system that consolidates and incorporates the monitoring requirements of applicable State and Federal programs. NJQSAC is also intended to complement, and serve in part to implement, Federal requirements. Under NJQSAC, public school districts are evaluated in five key component areas of school district effectiveness—instruction and program, personnel, fiscal management, operations and governance—to determine the extent to which public school districts are providing a thorough and efficient education. The standards and criteria by which public

school districts are evaluated will assess actual achievement, progress toward proficiency, local capacity to operate without State intervention, and the need for support and assistance provided by the State. Under NJQSAC, once a public school district is identified as requiring assistance in one or more of the five areas of school district effectiveness, the Department and the public school district will work collaboratively to improve public school district performance in those targeted areas. The measures used to achieve this goal include evaluations of the public school district by the Department, development of a school district improvement plan, close monitoring of the implementation of the plan, and the provision of technical assistance as appropriate. NJQSAC also provides that in circumstances where a public school district fails to develop or implement an improvement plan as required, or other emergent circumstances warrant, the Department may seek partial or full intervention in the public school district to effect the changes necessary to build local capacity to provide a thorough and efficient education.

As noted in the language quoted above, in addition to implementing the applicable State statutes, Chapter 30 also implements the provisions of the "No Child Left Behind Act," 20 U.S.C.A. §§ 6301 to 6578, with respect to remedial actions to be taken by the states to ensure that school districts comply with the requirements of federal law. See 34 C.F.R. § 200.53(c).

Plaintiffs seek a wholesale restructuring of New Jersey's system of locally-based public schools prior to there having been an opportunity for the full implementation and operation of the statutory evaluative and remedial measures outlined above. Those measures were part of the reforms enacted or enhanced by SFRA. They are implemented by the State's educational officials, with the

assistance of outside experts when necessary. Plaintiffs would have the Chancery Division shortcut SFRA's evaluative and remedial process by making its own determination of whether the defendant school districts have achieved compliance with the CCCS and to impose a dramatic remedy if that court determines they have not. They do so at a time when the Supreme Court has determined that "SFRA deserves the chance to prove in practice that, as designed, it satisfies the requirements of our constitution." *Abbott XX, supra*, 199 N.J. at 175, 971 A.2d 989.

*13 Our reading of *Abbott XX* requires us to affirm the dismissal, without prejudice, of the plaintiffs' claims under the "thorough and efficient education" clause because they are premature. While plaintiffs may have the right to pursue their claims under the "thorough and efficient education" clause in an appropriate forum at some point in the future, they cannot do so until SFRA has had the opportunity to operate as required by *Abbott XX*. That period of operation will presumably supply a factual record of testing results and corresponding remedial measures at the local and State level to facilitate an evaluation of SFRA's performance in constitutional terms.

B.

We turn briefly to plaintiffs' equal protection arguments. Although the Supreme Court in *Robinson v. Cahill, supra*, 62 N.J. at 482-501, 303 A.2d 273, found New Jersey's then existing system of providing a thorough and efficient public education to be unconstitutional, it declined to do so on either State or Federal equal protection grounds. See also *Spencer v. Kugler*, 326 F.Supp. 1235 (D.N.J.1971), affirmed, 404 U.S. 1027, 92 S.Ct. 707, 30 L. Ed.2d 723 (1972) (upholding N.J.S.A. 18A:8-1 and -2 on a Fourteenth Amendment challenge). Consequently, we conclude that there are no viable equal protection claims and affirm their dismissal.

C.

Having determined that plaintiffs' claim under the "thorough and efficient education" clause is premature and that there are no viable claims under either Federal or State equal protection grounds, we affirm the dismissal

of the claims pursuant to *N.J.S.A.* 10:6-2(c). That statute creates a vehicle to pursue enforcement of constitutional rights, it does not create independent rights. Consequently, we affirm the dismissal of plaintiffs' claims under that statute as well.

D.

In light of our decision, we need not reach the issue of whether the defendant school districts were proper parties defendant.

III.

In summary, we affirm the order on appeal for reasons somewhat different from those articulated by the General Equity judge. This is primarily the result of the Supreme Court's intervening decision in *Abbott XX*, which we interpret as precluding a challenge to the State's current school funding, evaluation, and remediation structure on "thorough and efficient education" clause grounds at this time.

Affirmed.

All Citations

Not Reported in A.2d, 2010 WL 162061

Footnotes

- 1 Following the Supreme Court's decision in *Abbott v. Burke*, 199 N.J. 140, 971 A.2d 989 (2009) (*Abbott XX*), we requested the parties submit supplemental briefs discussing the effect, if any, of that decision on the issues in this appeal. The supplemental briefs were received in July and August 2009.
- 2 The State defendants are the State Commissioner of Education; the Director of the Office of School Funding in the Department of Education; the Director of State Budget and Accounting in the Department of Education; the State Treasurer; and the New Jersey State Board of Education.
- 3 The school district defendants are the boards of education in the following municipalities: Asbury Park, Atlantic City, Beverly City, Bound Brook, Bridgeton, Camden, Clementon Borough, East Orange, Elizabeth, Englewood City, Irvington, Jersey City, Lakewood Township, Lawnside Borough, Millville City, New Brunswick, Newark, Orange, Paterson, Perth Amboy, Salem City, Trenton, Wildwood, Woodbine, and Woodlynne Borough. Fifteen of the school districts, Camden, Bridgeton, Millville, East Orange, Irvington, Newark, Orange, Jersey City, Trenton, New Brunswick, Perth Amboy, Asbury Park, Paterson, Salem City and Elizabeth, have been deemed "Abbott Districts" by the State. See *Abbott v. Burke*, 196 N.J. 544, 548, 960 A.2d 360 (2008) (*Abbott XIX*).
- 4 See also *Abbott v. Burke*, 153 N.J. 480, 519-20, 710 A.2d 450 (1998) (*Abbott V*) (concerning funding for school facilities) and *Abbott v. Burke*, 196 N.J. 451, 956 A.2d 923 (2008) (*Abbott XVIII*) (concerning the current status of funding for the Education Facilities Construction and Financing Act, *N.J.S.A.* 18A:7G-1 to -48, for the provision of funds necessary to construct or repair school facilities in Abbott districts).