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September 4, 2018

Mark Neary, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 W. Market Street, 8th Floor, North Wing
Trenton, NJ 08625-0970

Re: H.G. et al. v. Harrington, et al.
Dkt No. 081599
Our Case No. WM-16-022

Dear Mr. Neary:

My firm represents the Intervenors-Respondents, American Federation of Teachers, AFL-CIO, AFT New Jersey and the Newark Teachers Union, in the above matter. Enclosed please find an original and four copies of a Brief in Opposition to Certification, and four copies of Intervenors'-Respondents' brief and appendix and reply brief filed in the Appellate Division. A certification of service is also enclosed.

Respectfully Submitted,

Steven P. Weissman, Esq.

SPW/jr

Enc.

cc: Certificate of Service list

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Attorney for Intervenors/Respondents American Federation of
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and the Newark Teachers Union

SUPREME COURT OF NEW JERSEY

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;
W.H., a minor, through his
guardian FAREEAH HARRIS; N.H.,
a minor, through his guardian
FAREEAH HARRIS; J.H., a minor,
through his guardian SHONDA
ALLEN; O.J., a minor, through
his guardian IRIS SMITH; M.R.,
a minor, through his guardian
IRIS SMITH; Z.S., a minor,
through her guardian WENDY
SOTO; D.S.; a minor, through
his guardian WENDY SOTO,

Plaintiffs/Petitioners,

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

DOCKET NO.: 081599

APPELLATE DIVISION

DOCKET NO. A-004546-16

SAT BELOW:

HON. JOSE L. FUENTES, P.J.A.D.

HON. ELLEN L. KOBLITZ, J.A.D.

HON. THOMAS V. MANAHAN, J.A.D.

CERTIFICATE OF SERVICE

Superintendent of the Newark
School District;

Defendants/Respondents,

-and-

NEW JERSEY EDUCATION
ASSOCIATION, a New Jersey
nonprofit corporation, on
behalf of itself and its
members,

Intervenor/Respondent,

-and-

AMERICAN FEDERATION OF
TEACHERS, AFL-CIO; AFT NEW
JERSEY, and THE NEWARK TEACHERS
UNION,

Intervenors/Respondents.

I hereby certify that an original and four copies of AFT Respondents' Brief in Opposition to Petition for Certification and four copies of AFT Respondent's Brief and Appendix and Reply Brief filed with the Appellate Division were filed on this day via Messenger to:

Mark Neary, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street, 8th Floor, North Wing
Trenton, New Jersey 08625

I hereby further certify that a copy of AFT Respondents' Brief in Opposition to Petition for Certification was sent via e-mail and by Overnight mail to the following:

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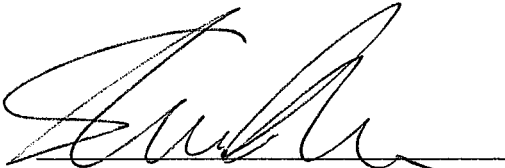
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Steven P. Weissman, Esq.

Dated: September 4, 2018

SUPREME COURT OF NEW JERSEY

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; W.H., a minor, through his guardian FAREEAH HARRIS; N.H., a minor, through his guardian FAREEAH HARRIS; J.H., a minor, through his guardian SHONDA ALLEN; O.J., a minor, through his guardian IRIS SMITH; M.R., a minor, through his guardian IRIS SMITH; Z.S., a minor, through her guardian WENDY SOTO; D.S.; a minor, through his guardian WENDY SOTO,

Plaintiffs/Petitioners,

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/Respondents,

-and-

NEW JERSEY EDUCATION ASSOCIATION, a New Jersey nonprofit corporation, on behalf

DOCKET NO.: 081599

APPELLATE DIVISION
DOCKET NO. A-004546-16

SAT BELOW:

HON. JOSE L. FUENTES, P.J.A.D.
HON. ELLEN L. KOBLITZ, J.A.D.
HON. THOMAS V. MANAHAN, J.A.D.

**BRIEF IN OPPOSITION TO PETITION
FOR CERTIFICATION ON BEHALF OF
AFT INTERVENORS/RESPONDENTS**

of itself and its members,

Intervenor/Respondent,

-and-

AMERICAN FEDERATION OF TEACHERS,
AFL-CIO; AFT NEW JERSEY, and THE
NEWARK TEACHERS UNION,

Intervenors/Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR CERTIFICATION
ON BEHALF OF AFT INTERVENORS/RESPONDENTS**

On the Brief:
Steven P. Weissman, Esq.
Attorney ID #024581978

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PRELIMINARY STATEMENT

Plaintiffs ask this Court to grant certification to review the Appellate Division's affirmance of the dismissal of their complaint because it is not ripe for review. They also ask this Court to review whether they have standing to bring their complaint. The AFT Intervenors/Respondents ("AFT") submit this brief in opposition to certification because the Petition does not raise any issues of general public importance involving unsettled questions of law or satisfy any other criteria that would justify review by this Court.

Plaintiffs seek certification claiming that the courts below imposed "impossible jurisdictional requirements that require a very specific harm to occur before a claim may be brought" (Petition in Support of Certification at 1). However, the appellate panel and the trial court applied well-established precedent that a claim is not ripe for review if its adjudication "rests upon contingent future events that might not occur as anticipated or indeed may not occur at all." Texas v. United States, 523 U.S. 296, 300 (1996). Further, the Appellate Division properly did not address Plaintiffs' standing to bring this complaint after concluding that Plaintiffs' claims were not ripe for adjudication.

Plaintiffs are twelve students who attend schools in the Newark Public School District (the "District" or "Newark") and their guardians. Their complaint seeks a declaration that two education statutes that require the layoff off and recall of tenured teachers based on seniority - N.J.S.A. 18A:28-10 and 28-12 - are unconstitutional as applied "in Newark and all similarly situated districts." The gravamen of their complaint is that the operation of these two statutes in Newark - statutes they reference as the LIFO (last in, first out) statutes - result in the layoff of effective teachers and the retention of ineffective teachers. Although there have been no layoffs in the District and although no layoffs are planned, Plaintiffs nonetheless maintain that statutes requiring seniority-based layoffs deprive them of a thorough and efficient education. Alternatively, Plaintiffs claim that even though there have been no layoffs, their constitutional rights are violated by the District's decision to maintain a pool of teachers who have no permanent classroom assignments - the educators without placement ("EWPS") pool - at an annual cost of \$8 million, which equates to less than 1% of the District's budget.

The AFT agrees that District funds should be spent wisely and used to advance the education opportunities of

students. While this Court has not hesitated to broadly and specifically set requirements that Abbott districts must meet to provide students with a constitutional education, it has never enmeshed itself in the minutia of school district budgets. The courts of this State do not examine every bus contract, every food services contract, every hiring of a highly paid administrator, to determine whether the expenditure promotes a thorough and efficient education. Yet, that is what Plaintiffs ask this Court to do with respect to Newark's discretionary decision to spend less than 1% of its budget on maintaining an EWPS pool.

The Appellate Division applied well-settled legal principles in affirming the lower court's determination that that Plaintiffs' complaint is not ripe for judicial review. Accordingly, there is no question of general public importance that warrants this Court's review. Certification should therefore be denied.

PROCEDURAL HISTORY AND COUNTER-STATEMENT OF FACTS¹

On or about November 1, 2016, Plaintiffs filed a complaint in the Superior Court, Law Division seeking declaratory and injunctive relief based on the claim that

¹ The Procedural History and Statement of Facts have been combined for purposes of clarity.

the LIFO statutes violated Plaintiffs' constitutional right to a thorough and efficient education. (Pa1).²

By order dated May 4, 2017, the lower court granted the motions of the Defendants-Intervenors to dismiss the complaint. (Pa99). The trial court found that the Plaintiffs lacked "standing to pursue their claims in the absence of a particularized harm to Plaintiffs caused by N.J.S.A. 18A:28-10 and N.J.S.A. 18A:28-12 and further found that the Plaintiffs' claims lack ripeness in the absence of an actual, or immediate threat of harm to Plaintiffs caused by the LIFO statutes." (Pa101).

Plaintiffs appealed the trial court's dismissal of their complaint and on June 27, 2018 the Appellate Division affirmed the dismissal concluding that the matter was not ripe for adjudication and that the Plaintiffs' allegation regarding the District's expenditure of approximately \$8 million on the EWPS pool did not raise an issue of constitutional dimension. (HGa16-17). On or about July 27, 2018, Plaintiffs filed a Petition for Certification. (HGa1).

² "Pa_" denotes appendix to Plaintiffs'/Petitioners' Appellate Division brief; "Pb_" denotes Plaintiffs'/Petitioners' brief to the Appellate Division; "AFTa_" denotes appendix to Respondent AFT's brief to the Appellate Division; "HGP_" denotes Petitioners' petition in support of certification; "HGa ___" denotes Petitioners' appendix in support of certification.

Plaintiffs challenge the constitutionality of N.J.S.A. 18A:28-10 and 28-12. The former statute 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."

The later statute 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"

In concluding that Plaintiffs' complaint was not ripe for judicial review the trial and appellate courts pointed to the absence of essential factual allegations in the complaint. Notably, the complaint does not allege:

1. that there have been any layoffs of tenured teachers in the District or that any layoffs are planned;
2. that any student Plaintiff has been assigned an ineffective teacher; or

3. that any student Plaintiff has been denied any specific educational opportunity as a result of the District spending \$8 million to maintain the EWPS pool.

In addition to failing to plead facts that satisfy basic jurisdictional requirements, Plaintiffs complaint is grounded in the flawed legal theory that if the LIFO statutes are struck down, non-surplus teachers rated ineffective or partially effective could be removed from the payroll through a reduction in force and replaced by effective teachers. By way of example, Plaintiffs claim that to fulfill the District's need for additional Spanish teachers, rather than "hiring new, highly-qualified teachers from outside the district," Newark had to place teachers from the EWPS pool in those positions. (Pa20, complaint ¶97). In other words, Plaintiffs allege that but for LIFO, the District could layoff ineffective or partially effective Spanish teachers and replace them with teachers hired from the outside.

Although Plaintiffs do not expressly seek review of the teacher evaluation and removal procedures mandated by the Teacher Effectiveness and Accountability for the Children of New Jersey ("TEACHNJ") Act, N.J.S.A. 18A:28-117 to 129, they claim that these procedures are "time-consuming," "expensive" and "ineffective" and therefore the

District should be permitted to layoff non-surplus ineffective teachers without regard to seniority. (Pa19, complaint ¶94). In effect, Plaintiffs seek judicial approval to circumvent the TEACHNJ procedures in order to summarily remove and then replace tenured teachers without according teachers the procedural protections mandated by statute and by the due process provisions of the New Jersey and federal Constitutions.

Notably, the number of teachers rated partially effective and ineffective in Newark has been steadily dropping since the TEACHNJ procedures became effective. In the 2013-14 school year there were 94 teachers rated ineffective and 314 rated partially effective. (Pa11; complaint ¶47). During the 2015-2016 school year 183 teachers were rated partially effective - a 42% reduction from 2013-14 - while the number of ineffective teachers dropped to 65 - a 31% reduction. (HGall; <http://www.state.nj.us/education/data/staff/>).³ As the appellate panel observed, "Plaintiffs do not deny that the District has significantly reduced tenured teachers rated ineffective or partially effective based on TEACHNJ

³ 2015-2016 is the most recent school year for which the Department of Education has published data on teacher evaluation ratings.

provisions allowing tenure charges to be brought and resolved based on these evaluations." (HGa16).

Finally, although the trial court dismissed Plaintiffs' complaint without prejudice, they have never sought to amend their complaint to cure the pleading defects found by both the trial and appellate courts.

ARGUMENT

I. Review by this Court is not warranted because the Appellate Division applied well-established principles in concluding that Plaintiffs' complaint was not ripe for adjudication.

Citing Garden State Equality v. Dow, 434 N.J. 163 (2013), Plaintiffs acknowledge that when facts "illustrate that the rights or status of the parties are future, contingent, and uncertain," a claim is not ripe for adjudication. As the Appellate Division noted:

A claim is "ripe" only if "the harm asserted has matured sufficiently to warrant judicial intervention." Tombetta v. Mayor of Atlantic City, 181 N.J. Super. 203, 223 (App. Div. 1981). "[R]ipeness depends on two factors: '(1) the fitness of issues for judicial review and (2) the hardship to the parties if judicial review is withheld at this time.'" Comm. To Recall Robert Menendez from the Office of U.S. Senator v. Wells, 2014 N.J. 79, 99 (2010) (quoting K. Hovanian Cos. Of N. Cent. Jersey, Inc. v. N.J. Dep't of Evntl. Prot., 379 N.J. Super. 1, 9 (App. Div. 2005)).

(HGa16).

Plaintiffs pay lip service to this settled jurisdictional requirement by alleging, in purely conclusory terms, that they are experiencing "ongoing harm due to the operation of [the LIFO] statute[s] and the policies adopted to avoid its operation." (HGP9). According to Plaintiffs, judicial review is appropriate "given what Newark is currently doing." (HGP16, emphasis in the original). However, Plaintiffs are unable to direct this Court to any harm they are currently experiencing by virtue of the operation of the LIFO statutes. This is because there have been no layoffs in Newark and no layoffs are planned. Nor are Plaintiffs able to identify any educational opportunities of which they have been deprived because Newark spends \$8 million annually to maintain a pool of teachers who perform a variety of critical functions, but who are not assigned to classrooms.

To establish that a claim is ripe, the named Plaintiffs must show some individualized harm they have suffered, are suffering or are about to suffer. These essential factual allegations of harm are noticeably missing from their complaint. Plaintiffs do not allege that they ever have been taught by ineffective teachers or that they have been deprived of any specific educational opportunity or benefit. They do not even 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.

Rather than identify actual harm they have suffered, Plaintiffs point this Court to the generalized harm that they allege students in Newark suffer because they do not "meet the State's minimum proficiency benchmarks in language arts or math." (HGP3). Plaintiffs cannot evade the settled jurisdictional requirement that their claims not be future, contingent or uncertain by broadly alleging that non-parties may have suffered harm.⁴ Moreover, Plaintiffs are unable to link any harm suffered by any student in Newark to the operation of the LIFO statutes. They do not allege that any Plaintiff students are taught by ineffective teachers, that there are ineffective teachers in any Newark classrooms, or that the presence of ineffective teachers is attributable to a reduction in force carried out pursuant to the statutes at issue.

Plaintiffs' complaint is entirely dependent on the occurrence of future, contingent and uncertain events that may never occur. Specifically, Plaintiffs' challenge to N.J.S.A. 18A:28-10 is dependent on the occurrence of three contingent events: (1) that a reduction in force (RIF) is

⁴ Plaintiffs did not bring a class action complaint.

imminent; (2) that a reduction in force will eliminate junior, effective teachers while retaining senior, ineffective teachers; and (3) that as a result of a reduction in force student Plaintiffs will be assigned ineffective teachers. Their challenge to N.J.S.A. 18A:28-12 requires two additional conditions precedent: (1) that ineffective senior teachers are laid off in a RIF; and (2) that the District re-hires them. 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, their claims are not ripe for judicial consideration.

Even if at some indefinite time in the future a layoff of teachers was to occur, the layoff might never reach into the ranks of tenured teachers. Plaintiffs concede that non-tenured teachers must be laid off before tenured teachers and do not challenge the constitutionality of that requirement. (HG16).

Thus a RIF might only affect non-tenured teachers, who must be terminated first. The District is working through TEACHNJ to reduce the number of ineffective or partially effective tenured teachers. It is entirely possible that, through the termination of ineffective tenured teachers,

and reeducation and rehabilitation of others now rated ineffective or partially effective, a RIF causing ineffective tenured teachers to teach students while effective tenured teachers are removed may never occur.

(HGa16-17).

To the extent that there are any teachers rated ineffective or partially effective in any Newark classroom, invalidating the requirement that teachers be laid off in inverse order of seniority would not permit the District to remove those teachers. Teachers who are not surplus cannot be removed through a reduction in force. To remove ineffective teachers Newark must use the expedited procedures of TEACHNJ. Plaintiffs mistakenly believe that teachers who are rated ineffective and who are not "surplus" - meaning that if they were removed would have to be replaced - can be terminated through a RIF. However, a RIF cannot be used to bypass the statutory and constitutional due process rights of tenured teachers.

In 2012, the Legislature enacted TEACHNJ, which overhauled the evaluation and removal procedures for tenured teachers. It is those procedures that must be used to remove ineffective teachers in Newark and all other districts throughout the State. As the appellate panel noted, Newark has been using those procedures and as a

result has steadily and dramatically reduced the number of teachers rated ineffective and partially ineffective - either by improving the performance of seasoned teachers or by removing them from the District. (HGa16).

Unable to establish the ripeness of their primary claim - that LIFO statutes are or will be responsible for the retention of ineffective senior teachers and the removal of junior effective teachers in the event of a reduction in force - Plaintiffs ask this Court to grant certification to review comparatively small expenditures by a school district - in this case \$8 million, which is less than 1% of Newark's total school budget. (HGP4; HGa28).

Plaintiffs claim that this Court's jurisprudence in the Abbott line of cases⁵ warrants the granting of certification to clarify the "variety of educational contexts" in which a claim, rooted in a single district's discretionary decision as to the expenditure of funds, would be ripe for review. (HGP14-16). Leaving aside whether an appropriate role for the judiciary would be to scrutinize the budget decisions of individual school boards based on a constitutional challenge to a particular expenditure - e.g., a district overpaid by \$5 million for a

⁵ E.g., Abbott v. Burke, 149 N.J. 145 (1997); Abbott v. Burke, 196 N.J. 544 (2008); Abbott v. Burke, 199 N.J. 140 (2009); Abbott v. Burke, 206 N.J. 332 (2011).

transportation contract and thereby deprived students of certain educational opportunities - a necessary prerequisite for such a challenge, assuming it is a cognizable challenge under the Constitution's Education Clause, is an allegation establishing actual harm to Plaintiff students, as opposed to harm that is purely speculative or undefined.

While there may not be a "constitutional litmus test based on money spent" (HGP16) to determine if the Education Clause of the Constitution has been violated, this Court's Abbott v. Burke jurisprudence [supra, n.5] addresses broad systemic problems in providing educational opportunities to students in Abbott school districts - violations that are severe in degree and pervasive in scope - such as the failure of the State to provide adequate funding for dozens of Abbott districts or the failure to equalize educational opportunities by implementing full day kindergarten and pre-school.

The appellate panel, addressing the allegation that Plaintiff students are deprived of educational opportunities because Newark spends \$8 million annually on the EWPS pool, correctly held that whether or not the District's resources could be better spent elsewhere "does

not raise an issue of constitutional proportions.”
(HGa17).

II. The Appellate Division's failure to address Plaintiffs' standing does not warrant review by this Court.

There was no reason for the appellate panel to address the issue of standing once the court concluded that the matter was not ripe for adjudication. Nevertheless, Plaintiffs ask this Court to grant certification to review the appellate panel's failure address the issue of standing and “to clarify the connection between a student's ongoing educational experience and claims challenging statutes that infringe upon their fundamental constitutional rights. . . .” (HBP14, 7).

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, the trial court properly concluded that neither the student Plaintiffs nor their guardians have standing to assert claims under any of the causes of action for alleged constitutional violations. The related doctrines of standing and ripeness both require some showing that plaintiffs have suffered, are suffering, or will suffer harm. Plaintiffs are unable to satisfy this pleading threshold. Although the gravamen of Plaintiffs' complaint is that Plaintiff students suffer a constitutional harm when they are taught by ineffective teachers, they do not allege facts sufficient to establish a causal connection between the operation of LIFO statutes and the presence of ineffective or partially effective teachers in any classroom in the Newark District.

Leaving aside whether being taught by an ineffective teacher violates the constitutional rights of student Plaintiffs, as a threshold requirement, to state a cause of action under the Education, Due Process or Equal Protection provisions of the New Jersey Constitution, Plaintiffs must plead facts establishing that the presence of ineffective teachers in Newark classrooms is causally connected to the LIFO statutes. However, the complaint is devoid of any

allegations that would permit this essential connection to be drawn. Indisputably, there have been no layoffs of teachers in Newark - a necessary prerequisite to linking LIFO statutes to ineffective classroom teachers.

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 student Plaintiff is currently, ever has been, or is about to be assigned an ineffective teacher. 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 student Plaintiffs 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 would have permitted the trial court to adjudicate the merits of the complaint.

Recognizing they do not have standing to challenge the constitutionality of the LIFO statutes based on a claim that layoffs in Newark resulted in the retention of senior ineffective teachers, Plaintiff students allege that they are harmed because the District spends \$8 million to maintain the EWPS pool. Plaintiffs lack standing to challenge the EWPS pool expenditures for similar reasons that their complaint is not ripe for adjudication. Absent any allegation that the use of funds for the EWPS pool caused student Plaintiffs to be deprived of a specific educational opportunity, Plaintiffs do not satisfy the standing requirement of showing immediate, concrete or imminent harm causally linked to the operation of the LIFO statutes. Although Plaintiffs assert that the "EWPS pool . . . deprives them of critical resources," the complaint contains no allegation that the use of funds for the EWPS pool caused student Plaintiffs to be deprived of a specific educational opportunity.

Asserting a "grave constitutional harm," is not the same as pleading facts that support a finding that Plaintiffs or other students have suffered a severe and pervasive constitutional deprivation. No matter how Plaintiffs attempt to characterize the harm they have suffered, they are simply unable to point to any facts in

the complaint that causally link the existence of the LIFO statutes or the funding of the EWPS pool to their allegation that District schools continue to fall below proficiency benchmarks and grade level expectations.

The constitutional deprivations that animated our Supreme Court in the Abbott v. Burke cases [supra, n.5] did not involve how an Abbott district decides to spend some relatively nominal portion of its overall budget. Even if this granular level of scrutiny of a school district's spending decisions comports with the Supreme Court's analytical framework, as set forth in its Abbott line of cases, Plaintiffs' complaint does not allege facts demonstrating that the expenditure of \$8 million to maintain an EWPS pool causes Plaintiffs to be denied a thorough and efficient education. No facts are alleged that if the District did not spend \$8 million on the EWPS pool, those funds would be used in a manner that would meaningfully impact the quality of education in the District or alter educational outcomes.

Conclusion

For the reasons stated in this brief, certification should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven P. Weissman", written over a horizontal line.

Steven P. Weissman

Dated: September 4, 2018