
Supreme Court of New Jersey

Docket No. 081599

H.G., a minor, through her guardian : CIVIL ACTION
TANISHA GARNER; F.G., a :
minor, through her guardian : ON APPEAL FROM
TANISHA GARNER; E.P., a : THE FINAL ORDER OF
minor, through his guardian : THE SUPERIOR COURT
NOEMI VAZQUEZ; M.P., a minor, : OF NEW JERSEY,
through her guardian NOEMI : APPELLATE DIVISION
VAZQUEZ; W.H., a minor, : APPELLATE DIVISION
through his guardian FAREEAH : DOCKET NO. A-004546-16T4
HARRIS; N.H., a minor, through : Sat Below:
his guardian FAREEAH HARRIS; :
J.H., a minor, through his guardian : HON. JOSE L. FUENTES, P.J.A.D.
SHONDA ALLEN; O.J., a minor, : HON. ELLEN L. KOBLITZ, J.A.D.
through his guardian IRIS SMITH; : HON. THOMAS V. MANAHAN, J.A.D.
M.R., a minor, through his guardian : TRIAL COURT DOCKET NO.
IRIS SMITH; Z.S., a minor, : MER-L-2170-16
through her guardian WENDY : Sat Below:
SOTO; D.S., a minor, through his : HON. MARY C. JACOBSON, A.J.S.C.
guardian WENDY SOTO, :
Plaintiffs/Petitioners, :
(For Continuation of Caption See :
Next Page) :

BRIEF OF *AMICUS CURIAE* CONCERNED PARENTS OF NEWARK IN SUPPORT OF PLAINTIFFS/PETITIONERS

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vs. :
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 Public 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. :

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STATEMENT OF INTEREST OF AMICUS CURIAE

Concerned Parents of Newark is an unincorporated association of parents who all have had one or more children who attend public schools in Newark ("Concerned Parents").¹ Members of Concerned Parents have fought tirelessly for their children to receive at least an *adequate* education. Of course, they hope for more - they hope for a *high-quality* education for their children. Members of Concerned Parents have met with teachers, visited schools, met with principals, and have struggled to understand and navigate Newark's school choice procedures to get their children into schools known to have effective teachers, adequate building conditions, and school safety measures in place. Concerned Parents have seen firsthand the effects of ineffective teachers and poor learning conditions on their children.

They submit this brief to help the Court understand the harm children in Newark's public schools suffer as a direct result of New Jersey's last-in-first-out, or "LIFO" statute, which is the subject of this litigation. They write to describe some of the harm which gives the plaintiffs in this case

¹Concerned Parents of Newark and their Counsel certify that this brief was prepared and submitted to the Court as a pro bono matter.

standing to bring their claims, and to show that the case is most assuredly ripe for judicial review.

Concerned Parents is a group of parents who fear the repercussions of speaking out and therefore formed this group to present their information to the Court without fear of retaliation.

PRELIMINARY STATEMENT

Petitioners have asserted five causes of action as to why the LIFO statute is unconstitutional. They have alleged that they are harmed by the LIFO statute in two main ways. First, and most obviously, that they have ineffective teachers. Second, in its attempt to solve the first problem, Newark is paying ineffective teachers while trying to keep them out of the classroom; the district does this by placing them in an Educators Without Placement Sites ("EWPS") pool, where in effect, money is being wasted to keep these individuals employed so the district and schools can retain the more effective but less senior teachers on staff. Accordingly, they endure poor school conditions because the costs of the EWPS pool diverts funds that could otherwise be spent to improve school conditions.

The trial court never reached the merits of Petitioner's constitutional claims. Rather, it held that they lacked standing and that the case was not ripe for adjudication. The

Appellate Division focused only on ripeness and affirmed the trial court's dismissal.

Amici suggest that the lower courts conflated the standing and ripeness analysis at the motion to dismiss stage with a finding on the merits. They found no standing or ripeness for parents to bring their claims in a district where:

- Students report receiving no instruction from teachers;
- Teachers rip up essays they deem to be failing in front of students; and
- Schools pay to keep unfit teachers on the payroll but can't afford to hire proper security guards, to fix plumbing issues, or to remediate lead pipes.

New Jersey has relatively liberal standards for plaintiffs to satisfy standing and ripeness requirements, and this Court should accept this case in order to clarify how standing and ripeness applies to cases where school funding issues are raised. The Concerned Parents provide additional perspective on the harms students suffer every day to help the Court see the importance of reversing the Appellate Division on these matters.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

For purposes of this *amicus* brief, the relevant facts are that the trial court dismissed the case based on a lack of

standing and ripeness. The Appellate Division affirmed solely on the basis of ripeness.

ARGUMENT

Based on the experiences of the members of the Concerned Parents, the students in the Newark Public School District are harmed every single day by New Jersey's last-in-first-out, or "LIFO" statute. They have seen firsthand that it requires Newark to retain less effective teachers in a reduction in force (RIF) due to their seniority. N.J. Rev. Stat 18A:28-10, 18A:28-12. And they see how it affects not just students of any particular teacher which Newark must retain, but also other students in the school. Moreover, they see the cumulative effect of those harms on their children, year in and year out.

Another harm that students face is the wasted resources that go into keeping ineffective teachers on the payroll but out of the classroom doing nothing. Because Newark Public Schools recognizes the harm of having bad teachers in the classroom, but the LIFO statute precludes them from eliminating those teachers through a reduction in force, Newark has come up with a workaround: paying ineffective teachers while trying to keep them out of the classroom. The district does this by placing them in an Educators Without Placement Sites ("EWPS") pool, which allows the district and schools to retain the more effective but less senior teachers on staff while also keeping

these sub-standard teachers employed. Paying teachers not to teach is expensive and a drain on resources. The Concerned Parents see that their children experience bad conditions in their schools that could be remedied if some of that money were spent where it is needed.

The Concerned Parents ask this Court to grant the Petition because the lower courts have gotten the standing and ripeness analysis wrong, as evidenced by parents' experiences with the Newark Public School District.

I. THE COURT SHOULD GRANT THE PETITION TO CLARIFY THE STANDARDS FOR STANDING IN EDUCATION CASES.

The trial court said that the Petitions in this case "lack standing to pursue their claims in the absence of particularized harm" to them "caused by the" LIFO statutes. That is not the appropriate standard for evaluating standing in New Jersey. Moreover, as shown below, the LIFO statutes cause harm to students day in and day out.

A. The trial court set an impossibly-high bar for standing and the Appellate Division did not address the issue.

In New Jersey, standing requires "a sufficient stake and real adverseness with respect to the subject matter of the litigation [and a] substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision." Jen. Elec., Inc. v. City of Essex, 197 N.J. 627, 645 (2009)

(quoting *In re Adoption of Baby T*, 160 N.J. 332, 340 (1999)). Additionally, New Jersey cases "have historically taken a much more liberal approach on the issue of standing than have the federal cases." *Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York*, 58 N.J. 98 (1971) (citations omitted). However, the Appellate Division's finding indicates that rather than having a more liberal approach to standing than federal cases, its holding below appears to be more restrictive than recent United States Supreme Court precedent.²

B. There is ample evidence of harm necessary to provide standing based on the experiences of the Concerned Parents.

Concerned Parents submit to this Court that students and their parents or guardians are able to identify when a teacher is ineffective, although they may never see a teacher's official review. In Newark, some teachers come to school unprepared, lack lesson plans, do not provide their students with feedback on their work, and in some instances, may even ridicule students and create negative learning environments. When a teacher has

² In 2007, on the issue of standing, the U.S. Supreme Court found that "[t]he fact that those children may not be denied such admission based on their race because of undersubscription or oversubscription that benefits them does not eliminate the injury claimed" and found the school district's argument to be unavailing when the district alleged that the "claimed injuries are not imminent and are too speculative." *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 702 (2007).

been at a school for a significant number of years, it is reasonable to conclude that his or her seniority would impact him or her favorably under the LIFO statute, where he or she would be kept in the classroom over an effective teacher who had been hired more recently.

Of Concerned Parents' children, one experienced the harmful effects of having ineffective teachers while he was in the public schools and has experienced gains in his learning since he transitioned to private school. The student's grades have risen from failing some courses at public school to earning all As and Bs in private school. Given that the harm a child experiences from having an ineffective teacher can have significant effects on his or her learning and development, parents should not be required to wait for their child to experience harmful effects and make a case against one specific teacher to be fired in order to challenge the LIFO statute.

For example, one student had a fourth grade English teacher who had been with the school a long time, yet seemingly did not teach his students. The teacher would tell the class to take out their books and do a lesson on their own; the teacher would not teach a lesson, put anything instructive on the board, or go over the lesson after students finished the assignment. After the teacher gave a test on a lesson that was not taught, that student's mother asked the teacher about this, and the teacher

did not offer an explanation. His mother inquired as to why she was not told sooner when she first learned her child's academics were in jeopardy at the parent teacher conference, and the teacher did not offer an explanation.

Another student also experienced the harmful effects of having ineffective teachers while she was in public school. During her sixth grade year in public school, she had an English teacher who had been with the school for over twenty years. A typical assignment in the class would be for the teacher to assign students an essay with no instruction regarding the format or how to write the essay. The teacher would not correct the work or explain what students did incorrectly on their work. Worksheets included no corrections or feedback from the teacher explaining areas for improvement. On one occasion, the teacher ripped up the student's essay and told her to redo it.

In addition to these stories, parents have articulated the harms their students suffer at school board meetings. At the Newark Public School Board of Education Business/Budget Meeting on April 20, 2017, parents, teachers, and stakeholders expressed their concerns over the budget, and among those concerns was school safety. Upon hearing of the potential reduction in per diem officers, the second Newark resident to speak on the matter expressed that "We shootin' in Newark. And we had a shooting today, by JFK, at 2:30." Newark Public School Board of

Education Business/Budget Meeting, 2:51-52:07 (April 20, 2017), <https://www.youtube.com/watch?v=kWZSIOTc10A&t=0s&list=PLqbdEr8tEwIXai7iyBTRBFXnsjfiI7R9gy&index=5>. The community advocate went on to explain that the shooting happened so quickly that Newark police did not have time to get there, and students were being dismissed to get on busses while it happened. Id.

As Newark schools spend money on the EWPS, and at the same time are forced to cut per diem officers who are needed to ensure school safety, Concerned Parents beg the Court to realize how somber it is to ask at what point would the Appellate Division determine that parents and children had experienced sufficient harm to have a ripe case and standing in court.

At the same meeting, the president of one Parent-Teacher Organization explained that pipes in her child's school were leaking and backed up, and that the bathrooms "smell horrible." Id. at 2:23. Again, this is a problem that could be remedied if funds were not parked in the EWPS program.

The news provides other examples of harm to students when schools do not have enough funding. In 2016, thirty schools in Newark had their water turned off because of elevated lead levels. The issue was reportedly discovered when there were reports of discolored water found at Louise A. Spencer Elementary School. "30 Newark Public Schools Shut Down Drinking Water Due to Elevated Lead Levels," CBS New York, March 9, 2016,

<https://newyork.cbslocal.com/2016/03/09/newark-public-schools-lead-in-water/>. At the time, Bob Constantine of the Department of Environmental Protection explained that “A lot of these are older schools with older piping, with lead piping, or solder, that we need to address long-term.” Id. Lead exposure, even exposure to low levels, has been found to have “irreversible damage” to brain development. “Lead Poisoning”, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/lead-poisoning/symptoms-causes/syc-20354717>. Further, higher levels of exposure can cause damage to the kidneys and nervous systems; and very high levels may cause seizures, unconsciousness, and death. Id.

As the District wastes money on ineffective teachers and paying for the EWPS, children are exposed to poor building conditions. Moreover, as shown, there already has been at least one incident relating to school building conditions in the District where something as harmful as lead-contaminated water has been found.

Moreover, in its Answer to the Complaint, Newark Public School District (the “District”) admitted to numerous allegations. Concerned Parents submit to the Court that the District’s Answer demonstrates that parents have standing through the particularized harm their children are currently

facing, and will continue to face as long as the LIFO statute remains in effect.

- The District admitted that “. . . even without any additional cuts to the District’s funding, the District has been hampered by statutory restrictions that essentially protect the interests of adults over the rights of the children of Newark.” Dist. Answer ¶8 (emphasis added).
- The District repeated the phrase the “District has been hampered by statutory restrictions that essentially protect the interests of adults over the rights of the children of Newark” more than thirty times in its Answer.
- The District admitted that “we must do everything we can to create an environment where [the children of Newark] can learn effectively to create a pathway to success in school and in life. The most important way to make that happen is to ensure we are able to retain our best teachers in the Newark Public Schools.” Dist. Answer ¶9.
- With respect to the EWPS, the District admitted:
 - . . . Defendants are unable to separate from employment low performing teachers, meaning that Defendants carry the cost of that burden centrally. Defendants further respond that Defendants are forced to place Educators

Without Placement Sites in classrooms. Defendants further respond that when Defendants were unable to carry the cost of the burden centrally, the financial burden of such placement fell to the school budgets directly. Defendants also respond that forced placement had a detrimental impact on certain students.

Dist. Answer ¶86 (emphasis added).

II. THE HARM STUDENTS FACE DEMONSTRATES THE RIPENESS OF THIS CASE.

The Appellate Division erred in holding that Petitioners' claims were not ripe. The standard in New Jersey requires an evaluation of (i) whether the issues are fit for judicial review and (ii) "the hardship to the parties if judicial review is withheld at this time." See Hogan v. Donovan, 2012 WL 1328279, at *10 (Law Div. Apr. 17, 2012) (internal quotations and citations omitted).

As provided above, the immediate harm to the children of New Jersey is evident; under the status quo, Newark children are forced to attend schools in a system that is wasting money to pay salaries to teachers who the District knows to be ineffective and is keeping out of classrooms through the EWPS pool. At the same time, students are subject to other ineffective teachers, poor building conditions, and schools that are not prioritizing school safety. Even without engaging in an argument regarding the precise amount of money being wasted on the salaries of teachers who are in the EWPS pool, Concerned

Parents contend that any dollar that, in the words of Defendant, "essentially protect the interests of adults over the rights of the children of Newark" is unacceptable. Dist. Answer ¶8 (emphasis added). As community members shared at the Newark Public School budget meeting, and as a part of a nationwide concern for school safety, the Newark Public Schools could use any amount of money to ensure that the schools are safer and have the proper security in place in the event of an emergency. Further, in any single year, one ineffective teacher harms numerous students by not providing them with an adequate education, and in the event of an RIF, principals should be able to hold on to their best and most effective teachers to ensure the best outcomes in student achievement, and the best outcome for the children of New Jersey.

CONCLUSION

Due to the harm that students of Newark are experiencing every day in schools, which could be alleviated through funds that are currently diverted to the EWPS pool as a result of the LIFO statute, Concerned Parents urge the Court to grant certiorari, reverse the Appellate Division's holding, and remand to the trial court.

Dated: September 24, 2018

Respectfully submitted,

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