



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO Box 112  
TRENTON, NJ 08625-0112

PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lt. Governor

GURBIR S. GREWAL  
Attorney General

MICHELLE L. MILLER  
Director

September 4, 2018

Mark Neary, Clerk  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
25 Market Street  
Trenton, New Jersey 08625-0006

RECEIVED  
2018 SEP -4 P 4: 28  
SUPREME COURT  
CLERK'S OFFICE

Re: H.G. v. Kimberley Harrington et al.  
Docket No.: 081599

Dear Mr. Neary:

I represent Defendants-Respondents Commissioner of Education and New Jersey State Board of Education ("State Respondents") in the above-referenced matter. Enclosed is an original and nine copies of State Respondents' Opposition to the Petition for Certification in the above-referenced matter. A Certification of Service is also enclosed. Kindly stamp one copy as "filed" and return it to this office in the envelope provided.

Thank you for your courtesies.

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By:

Beth N. Shore (034962011)  
Deputy Attorney General





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GURBIR S. GREWAL  
*Attorney General*

MICHELLE L. MILLER  
*Director*

September 4, 2018

(VIA HAND DELIVERY)

Mark Neary, Clerk  
Supreme Court of New Jersey  
Hughes Justice Complex  
25 Market Street  
P.O. Box 970  
Trenton, New Jersey 08625

RECEIVED  
2019 SEP - 4 P 4: 28  
SUPREME COURT  
CLERK'S OFFICE

Re: H.G., a minor, through her Guardian Tanisha  
Garner, et al. v. Kimberly Harrington, et al.  
Supreme Court Docket No.

On Petition for Certification From a Final  
Judgment of the Superior Court, Appellate  
Division

Sat Below:

Hon. Jose L. Fuentes, P.J.A.D.  
Hon. Ellen L. Koblitz, J.A.D.  
Hon. Thomas V. Manahan, J.A.D.

Letter on Behalf of Respondent, Commissioner of  
Education, in Opposition to Petition for  
Certification

Dear Mr. Neary:

Please accept this letter on behalf of the New Jersey  
Commissioner of Education and the New Jersey State Board of  
Education ("State Respondents") in opposition to the petition  
for certification filed on July 27, 2018, on behalf of



Appellants, 12 individual Newark Public School ("Newark") students through their guardians. The petition for certification should be denied as nothing in this matter rises to the level warranting certification by the Supreme Court under New Jersey Court Rule 2:12-4.

Indeed, the petition fails to raise any special reasons sufficient for this Court to grant review of the decision below. There is no conflict among the Appellate Division opinions that this Court need resolve, nor is counsel aware of any other similar question presented to this Court on appeal. Appellants contend that N.J.S.A. 18A:28-10 and 28-12, referred to as the "last-in, first-out provisions" ("LIFO"), operate to deprive Newark students, and students in similarly situated districts, of their right to a thorough and efficient education because they mandate that RIFs and re-employment following a RIF be based on seniority rather than teacher effectiveness. In support of this argument, they highlight Newark's alleged "RIF workaround" policies as depriving students of a thorough and efficient education by being forced to place ineffective tenured teachers in the classroom. (Petition at 5). The Appellate Division thoroughly considered and correctly rejected this argument, in part, because Appellants "do not deny that [Newark] has significantly reduced tenured teachers rated ineffective or

partially effective based on TEACHNJ provisions allowing tenure charges to be brought and resolved based on these evaluations." (HG16a). And since a RIF has not yet occurred and is not imminent, "[i]t 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 teachers to teach students while effective tenured teachers are removed may never occur." (HG17a). Appellants still have not disputed these facts. Thus, the Appellate Division properly determined that "the issue of LIFO ramifications should a RIF occur is speculative and not ripe for review." (Ibid.) Appellants have not suggested any new arguments to the contrary.

For these reasons, the State Respondents respectfully request that the petition for certification be denied and relies on the enclosed letter filed below.

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: 

Beth N. Shore (034962011)  
Deputy Attorney General

Melissa Dutton Schaffer  
Assistant Attorney General  
Of Counsel

/encl

cc: William H. Trousdale, Esq.  
Kelly Samuels Thomas, Esq.  
Kent Yalowitz, Esq.  
Kathleen A. Reilly, Esq.  
Colleen Lima, Esq.  
Matthew J. Tharney, Esq.  
Natalie Watson, Esq.  
Kenneth I. Nowak, Esq.  
Steven P. Weissman, Esq.



*State of New Jersey*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
25 MARKET STREET  
PO BOX  
TRENTON, NJ 08625-0

GURBIR S. GREWAL  
*Attorney General*

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

MICHELLE L. MILLER  
*Director*

April 10, 2018

Via Hand Delivery

Joseph H. Orlando, Clerk  
Superior Court of New Jersey  
Appellate Division  
R.J. Hughes Justice Complex  
P.O. Box 006  
25 Market Street  
Trenton, New Jersey 08625-0006

Re: H.G., a minor, through her Guardian Tanisha Garner, et al  
vs. Kimberly Harrington, et al  
Docket Number A-4546-16T3

Dear Mr. Orlando:

Please accept this letter on behalf of the Commissioner of the New Jersey Department of Education and the New Jersey State Board of Education ("State Respondents") in the above-referenced matter. Please be advised that the State Respondents join in the arguments of Respondents the New Jersey Education Association ("NJEA"), the American Federation of Teachers, AFL-CIO and AFT New Jersey, AFT-CIO ("AFT"), and the Newark Teachers Union ("NTU") and urge that the decision below be affirmed.



Appellants, parents or guardians of twelve Newark public school students, assert an as-applied challenge to the constitutionality of statutes governing the lay-off and re-employment process of tenured teachers when there is need for a reduction-in-force ("RIF"). Appellants allege that N.J.S.A. 18A:28-10 and 28-12 operate to deprive Newark Public School District students, and students in similarly situated districts, of their right to a thorough and efficient education because they mandate that RIFs and re-employment following a RIF be based on seniority rather than on teacher effectiveness. The State Respondents contend that, not only are the challenged statutes constitutionally valid on their face, but the trial court correctly determined that Appellants lack standing and that their challenges are not ripe for review.

As individuals bringing claims on their own behalf, Appellants failed to allege any present or imminent particularized harm due to the challenged statutes. As the trial court found, "the complaint is completely devoid of facts of how any of these individual students are harmed by the LIFO statute." (T70:5-7). Absent such factual allegations, and where the plaintiffs fail to demonstrate "a sufficient stake in the outcome of the litigation, a real adverseness with respect to

the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision," In re Camden County, 170 N.J. 439, 449 (2002), the complaint must be dismissed.

The trial court also properly found that Appellants' claims were not ripe for disposition. Appellants challenge the constitutionality of statutes governing the implementation of a RIF; yet, they did not allege that the Newark Public School District actually implemented a RIF or that a RIF was forthcoming. The claims were based on pure speculation and such allegations are insufficient to demonstrate the threat of real or immediate harm necessary to invoke the court's jurisdiction of constitutional claims.

For all of the foregoing reasons, the State Respondents join with Respondents NJEA and AFT/NTU and submit that the decision below should be affirmed.

Respectfully submitted,

GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY

By: 

Donna Arons  
Deputy Attorney General



GURBIR S. GREWAL  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Defendants-Respondents  
Commissioner of Education and New Jersey State Board of  
Education

Richard J. Hughes Justice Complex  
25 Market Street  
P.O. Box 112  
Trenton, New Jersey, 08625

By: Beth N. Shore (Attorney ID 034962011)  
Deputy Attorney General  
609-376-2563  
Beth.Shore@law.njoag.gov

RECEIVED  
2019 SEP -4 P 4: 28  
SUPREME COURT  
CLERK'S OFFICE

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 081599  
CIVIL ACTION

\_\_\_\_\_  
H.G. a minor, through her  
Guardian, TANISHA GARNER, et al.,

Plaintiffs-Petitioners,

v.

KIMBERLY HARRINGTON, in her  
Official capacity as Acting  
Commissioner of the New Jersey  
Department of Education, et al.,

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, et als.,

Intervenor-Respondent.

:  
: APPELLATE DIVISION  
: DOCKET NO. A-004546-16T4  
:  
: SAT BELOW:  
:  
: HON. JOSE L. FUENTES, P.J.A.D.  
: HON. ELLEN L. KOBLITZ, J.A.D  
: HON. THOMAS V. MANAHAN, J.A.D.

: CERTIFICATION OF SERVICE

I, Beth N. Shore, hereby certify as follows:

1. I am a Deputy Attorney General in the Division of Law, Department of Law and Public Safety, State of New Jersey.

2. On September 4, 2018, I filed an original and nine copies of the within letter in Opposition to the Petition for Certification with:

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

3. I further certify that I served a copy of the Verified Petition via email and U.S. mail to the following:

William H. Trousdale, Esq.  
Kelly Samuels Thomas, Esq.  
Tompkins, McGuire, Wachenfeld & Barry LLP  
3 Becker Farm Road  
Suite 402  
Roseland, NJ 07068  
[kthomas@tompkinsmcguire.com](mailto:kthomas@tompkinsmcguire.com)  
[wtrousdale@tompkinsmcguire.com](mailto:wtrousdale@tompkinsmcguire.com)

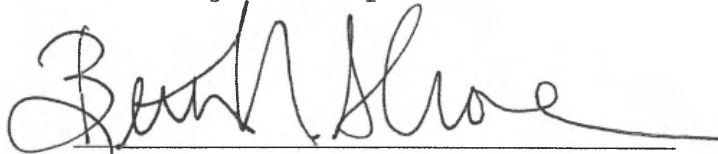
Kent Yalowitz, Esq.  
Kathleen A. Reilly, Esq.  
Colleen Lima, Esq.  
Arnold & Porter Kaye Scholer LLP  
250 West 55th Street  
New York, NY 10019  
[Kent.Yalowitz@apks.com](mailto:Kent.Yalowitz@apks.com)  
[Kathleen.Reilly@apks.com](mailto:Kathleen.Reilly@apks.com)  
[Colleen.Lima@apks.com](mailto:Colleen.Lima@apks.com)

Matthew J. Tharney, Esq.  
Natalie Watson, Esq.  
McCarter & English  
Four Gateway Center  
100 Mulberry St.  
Newark, NJ 07102  
[mtharney@McCarter.com](mailto:mtharney@McCarter.com)  
[nwatson@McCarter.com](mailto:nwatson@McCarter.com)

Kenneth I. Nowak, Esq.  
Zazzali, Fagella, Nowak, Kleinbaum &  
Friedman  
570 Broad Street, Suite 1402  
Newark, NJ 07102  
fkomuves@zazzali-law.com  
knowak@zazzali-law.com

Steven P. Weissman, Esq.  
Weissman & Mintz LLC  
One Executive Drive  
Suite 200  
Somerset, NJ 08873  
sweissman@weissmanmintz.com

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

  
Beth N. Shore

DATED: 9/4/18