

## COMMENTARY

# The Fight for Educational Justice in New Jersey

By Alissa Bernstein

Every child should be able to attend a great public school, and there is no debate that great schools require great teachers. In fact, the past decade of research has shown that teacher quality is the number one in-school factor that impacts student achievement. However, in New Jersey, unjust laws have prevented far too many students from getting the quality education they deserve.

A significant problem for New Jersey school districts is that when they are forced to cut back on teachers they are forbidden from making layoff decisions based on teacher performance. Instead, the state's "last in, first out" (LIFO) law requires that they make cuts based solely on seniority. N.J. Rev. Stat §§ 18A:28-10, 18A:28-12. This is of particular concern for the state's largest district, Newark Public Schools (NPS), because the most recently published state data shows that 248 of Newark's teachers—about 10 percent—were rated less than effective. In fact, Newark is the only district in New Jersey that the current state data reports with any ineffective teachers on staff.

These outdated LIFO statutes have put NPS in a no-win situation. Following enrollment decreases in

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2012, Newark was forced to choose between one of two terrible options: (1) fire great, but less-senior teachers, and keep ineffective, but more-senior

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teachers; or (2) fire no one and shift the worst teachers out of classrooms and into a pool of displaced teachers who continue to collect their full salaries even when they do not have full-time teaching assignments.

Initially, Newark opted for the latter. The problem is that this option still subjects students to an alternative

harm, being deprived of millions of dollars *each year*—35 million in its peak year—that could otherwise be spent on students' needs. Because of the high price tag required to maintain this practice, in 2015, it became financially unsustainable. So, for new openings, instead of bringing in new, talented staff, these laws caused the district to resort to force-placing some of the displaced, ineffective teachers back into classrooms.

Newark parents see the impact of this law on their children every single day, which is why several of them joined together to file *HG v. Harrington*, a lawsuit that challenges New Jersey's quality-blind teacher layoff law. For about two years, the parties have been litigating motions to dismiss the case, which were filed by the teachers' unions that intervened as defendants in the trial court. The plaintiffs recently filed a petition for certification to the New Jersey Supreme

Court, which will soon rule whether the appeal will be granted and these parents can move forward to have their case determined on the merits.

In New Jersey, reform of the LIFO law is supported by the state's strong legal precedent, which has established the importance of education, and the right of children to an education in the state.

Education has long been firmly established as a fundamental right in New Jersey, and the New Jersey courts have stressed the importance of this right. The foundational importance of education is outlined in the New Jersey Constitution, which requires the legislature to provide "for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State." Art. VIII, Sect. IV, ¶ 1.

New Jersey courts have an admirable history of protecting this fundamental right to education in the state and ensuring that lower-income and struggling districts—known as *Abbott* districts from the *Abbott v. Burke* education funding cases—receive additional resources needed to assist in delivering a constitutionally compliant education. In these districts, of which Newark is one, this fundamental right to a thorough and efficient education requires the State to provide an education that "exceeds that needed by students in more affluent districts," according to the New Jersey Supreme Court. *Abbott v. Burke*, 119 N.J. 287, 575 A.2d 359, 375. Yet, in Newark, the LIFO statute has the reverse effect. Because NPS has a higher concentration of ineffective teachers on staff, the LIFO statutes have a harmful and damaging impact

on children in NPS that is not experienced by more affluent school districts. This harm warrants reform of the LIFO law as it is applied in Newark.

The *HG v. Harrington* parents have seen the resulting harm first-hand and have tirelessly argued to the courts why the harm merits having their case move forward. The efforts of these courageous plaintiffs have inspired others to stand up as well. Another group of Newark public school parents submitted an amicus brief in support of the plaintiffs' petition for certification to the New Jersey Supreme Court. Their personal stories highlight real-life harms suffered by children in Newark when they are taught by ineffective teachers.

One mother shared that her fourth grader told her about an English teacher who handed out books and directed the students to teach themselves their own lessons. A sixth grader had an English teacher who had been at her school for over 20 years and had students write essays without guidance or instruction, and would hand back worksheets without corrections or feedback. Parents complained, but no changes were made. As NPS continues force-placing its less than effective teachers back into classrooms, the district will perpetuate these harms.

As if these troubling classroom experiences weren't bad enough, the limited funding being squandered on displaced ineffective teachers is diverted away from addressing pressing long-term challenges—like aging infrastructure and poor building conditions. For example, in 2016, 30 schools in Newark had their water turned off due to elevated lead levels, and in

2017, the district was forced to reduce the number of per diem police officers at a time of heightened concerns about school safety. More recently, parent organization leaders complained about foul conditions caused by leaking pipes that cause flooding in bathrooms. In conditions like these, it is clear that the district should instead be investing funds in improvements that benefit students, where millions of dollars, or even hundreds of thousands of dollars, would have a real and substantial impact on students.

While the parents' amicus brief offers just some examples of issues that arise every day in NPS, it affirms that the *HG v. Harrington* complaint presents a systemic problem that impacts all the district's students. The stories from parents outside the plaintiff group also underscores that the issues raised in *HG v. Harrington* are wide-reaching and present "question[s] of general public importance," clear grounds for granting their petition for certification. R. 2-12:4.

New Jersey's outdated LIFO law prevents children in Newark from getting the education they deserve. Legislative reform efforts have been derailed by powerful special interests that actively work to perpetuate a system designed to maintain this broken status quo.

When politicians fail to protect children, the court system provides impacted communities with a way to seek justice, enforce their constitutional rights and make positive change. The *HG v. Harrington* plaintiffs' appeal merits review from the New Jersey Supreme Court, and these parents deserve to have their day in court. ■