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RAYMOND ARTHUR ABBOTT, et al.,
Plaintiffs,
v.
FRED G. BURKE, et al.,
Defendants.

SUPREME COURT OF NEW JERSEY
DOCKET NO.

CIVIL ACTION

**CERTIFICATION OF
SUPERINTENDENT CHRISTOPHER
CERF**

I, Christopher Cerf, of full age, hereby certify that:

1. I am the State District Superintendent for the Newark Public Schools ("NPS") in the State of New Jersey, and have held this position since July 2015.

2. Prior to becoming Superintendent in Newark, I was the New Jersey Commissioner of Education, from 2011 to 2014. Prior to that, from 2004 to 2009, I served as deputy New York City schools chancellor in charge of human capital, strategy, and innovation.

3. NPS is the largest and one of the oldest school districts in New Jersey, consisting of 66 schools and serving approximately 35,000 children from pre-K through grade 12. The district's students are diverse, including 16,467 African-American, 272 Asian, 2,758 Caucasian, 15,673 Hispanic, and 158 Native American or Pacific Islander students. We serve almost 3,500 English Language Learner students, over 6100 students with disabilities, and more than 26,236 students who receive free or reduced lunch.

4. Historically, NPS students have underperformed academically compared to their peers in suburban districts. This past year, students gained 6 percentage points in English Language Arts (ELA) and almost 3 percentage points in mathematics on the state assessment. However, in absolute terms, NPS significantly lags behind the state average. The same is true with respect to graduation rates. Over the past five years, the district has increased its graduation rate from 61% to 70%. Despite this progress, the district lags behind the state average in this metric as well.

5. The financial constraints under which the district operates are severe and are projected only to get worse. The district has faced significant budget cuts in recent years, closing almost \$150 million in projected gaps over the past two years alone. The state is debating a change in our funding

formula that could result in further cuts to our funding. However, whether or not these additional cuts occur, the district is faced with another \$60 million gap for the 2017-18 school years.

6. The largest component of any district's budget is its personnel. Almost 90% of any school's budget in Newark is tied up in salaries. Since 2012, we have gradually reduced the size of our teaching force from 3200 to 2700 classroom teachers.

7. If we are forced to further reduce the size of our teaching population due to budget cuts, under the "last in first out" ("LIFO") statute, N.J.S.A. 18A:28-10, the district must reduce its teaching staff through a reduction in force (RIF) that is indifferent to the effectiveness of a teacher. Specifically, a RIF must be conducted based only on seniority, which is defined by the regulations as based on tenured status and years of service in the district. Teachers with more years of experience have rights to their job over less senior teachers, regardless of their effectiveness.

8. The consequences of a RIF that only uses years of service as a determinant of who stays are counter to the core mission of providing a Thorough and Efficient education to our children. The results of a RIF that is blind to the effectiveness of our educators would be profound.

9. The effectiveness of a teacher is the single greatest in-school determinant of a child's academic success. The students of Newark need truly the best teachers to help them on their road to success in college and career. The majority of NPS teachers are effective. In the 2015/2016 school year, 14% of NPS teachers were rated as highly effective and 75% were rated as effective.

10. On its face, a law that says you must preserve the job of a less effective teacher and fire an indisputably more effective teacher simply because of their years of service flies in the face of good public policy and cannot be reconciled with the goal that we put children first.

11. The "LIFO" rule has already affected the district for years, even before our more severe budget cuts of the recent past. In 2012, NPS established a policy that all displaced teachers in the district must apply for, interview, and secure a placement at a school site that both the teacher and school leader agree is a good fit. (Typically, teachers have been displaced because their positions were eliminated as a result of budget cuts, school closures or school redesigns.)

12. A common practice in many districts is to force displaced teachers into schools' vacancies regardless of their fit for the position. But, as part of its effort to ensure that all Newark students have high-quality teachers, NPS has made it

a priority to fill vacancies by a "mutual consent" process whenever possible. Such a process assures that principals and teachers mutually agree to a placement to ensure that each school employs teachers who are the right fit for the students and culture of that school. Holding principals accountable for academic outcomes when they are prevented from selecting the teachers who deliver them is both unfair and irrational. By the same token, assigning a teacher to a school where the culture and fit is poor is equally unfair.

13. Some teachers have been unable to secure a placement through this mutual consent process. Because of the current seniority rules and tenure considerations, the district must retain these teachers at a cost of their full salary and benefits. (Employment rights run to the district as a whole, not the school.) NPS had a practice of not placing ineffective teachers who had not received a permanent role as the teacher of record in a classroom in order to prevent causing academic harm to students. Instead, these ineffective teachers and any teacher that could not otherwise be placed were given other assignments.

14. A consequence of this staffing policy - which was designed to afford the best education for students - was that the district was paying more than \$35 million at its peak to pay for individuals who no school in the district had chosen to hire.

15. Unfortunately, starting in 2015, the district could no longer afford to carry these teachers as additional support given our dire financial situation. So, to the detriment of students and to avoid the untenable financial impact of carrying the cost of these teachers, the district had no choice but to assign these teachers to schools that did not select them. Instead of allowing our principals to select and form a staff who share a common vision, the district has now had to force staff into schools. In 2016-17, while we are still carrying almost \$10million in teachers who were not able to secure a role in the district, we also had to place \$25million worth of teachers into vacancies at schools. These staff may not share the vision of the leader, may not share the vision of their colleagues in classrooms, and simply put, may not be a good fit for the school or its students.

16. In addition to hurting the schools' chances at success, a second consequence of this is that our principals cannot go out and hire the best and brightest for their schools. If they need an elementary teacher, they must take one from the district's available pool, even if the only ones available are partially effective or ineffective teachers, because we have an excess number of elementary teachers. If they need a Spanish teacher, they cannot hire the one from a neighboring district that has demonstrated tremendous gains—they must select from the

individuals within the district who no school selected during the hiring process.

17. For the reasons outlined above, the consequences for the LIFO policy have been extremely limiting and harsh already. For that reason, the district requested regulatory relief from the LIFO policy in 2014 in the form of an equivalency application to the New Jersey Department of Education. As remains true today, the district was "in the untenable position of having to choose between balancing its budget and ensuring students have the most effective teachers possible." In fact, the looming prospect of severe additional budget cuts makes this request of relief even more urgent today.

18. If NPS were to conduct a RIF, the LIFO statute would require NPS to terminate effective teachers and retain ineffective teachers who have more years of experience. The LIFO Statute requires that the RIF be conducted without any regard to teacher quality. When NPS was considering conducting a large-scale teacher RIF in 2014, it ran a model to show what the results of the RIF conducted pursuant to LIFO would have been. The model revealed that in a quality-blind RIF that followed the LIFO statute, only 4% of the teachers laid off would be rated as ineffective. Conversely, three-quarters of the teachers who were predicted to be laid off in this model were effective or highly effective. The RIF would have forced the district to cut more

than 300 of its effective or highly effective teachers while retaining 72% of the district's lowest-rated teachers. The effects would be wide-spread across the district—over half of the district's schools would have lost 20% or more of their effective or highly effective teachers. This would be especially damaging for NPS' lowest-performing schools, where NPS intentionally hired successful teachers to encourage progress in the school.

19. Under N.J.S.A. 18A:28-12, even if we were granted the ability to conduct a RIF based on quality, the exited teachers would remain on a "special re-employment" or recall list in perpetuity. Thus, even after exiting ineffective teachers in a RIF, NPS would still be prevented from filling vacancies with talented, out-of-district teachers because NPS would be required to first draw from the recall list, even if the teachers on that list had less than effective ratings.

20. For all of these reasons, the district has sought to avoid a RIF at any cost, due to the damaging effects on schools. As such, NPS continues to employ more teachers than are needed because the children in NPS's schools simply cannot afford to lose the outstanding teachers currently serving them.

21. The district has already pursued every other available avenue to close the budget gap. For instance, the district just experienced the pain of a RIF based on "LIFO" for other

instructional staff. In June 2016 the district for the first time did a RIF of nine guidance counselors and six librarians. This RIF, which saved the district almost \$1.5million, was based solely on seniority. The district was forced to lay off very talented people who we would have otherwise retained, if it were not for the seniority provisions of LIFO.

22. The district has aggressively pursued every other available avenue to exit our lowest-performing teachers. The Tenure Act, N.J.S.A. 18A:28-1 et seq., as modified by TEACHNJ, N.J.S.A. 18A:6-117 and the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10, sets forth a procedure for exiting teachers who receive ratings below effective after two or three years. NPS has aggressively and consistently followed this process, bringing more than 200 teachers up on tenure charges over the past four years, orders of magnitude more than any other district in the State.

23. However, proceeding under TEACHNJ and the Tenure Employees Hearing Law does not provide sufficient relief from the problems outlined above. Removing teachers through a tenure charge is a time-consuming and cost-intensive process that takes at least two years of intensive supports for and documentation of the teacher, followed by legal proceedings that may take over a year and cost the district more than \$50,000. The district has and will continue to pursue this avenue. But a three- to four-

year process for a single teacher does not provide the necessary and time-sensitive relief that is called for in RIF of many teachers.

24. The "LIFO" statute, N.J.S.A. 18A:28-10, does not differentiate among teachers on any basis other than seniority. Without question, a district that is forced to keep teachers that will not improve student performance, suffers an impediment to a Thorough and Efficient education.

25. NPS schools are making great strides to meet the constitutionally mandated Thorough and Efficient education requirement for all children in the District. Even without any additional cuts to the district's funding, we have been hampered by statutory restrictions that essentially protect the interests of adults over the rights of the children of Newark. As this Court has recognized, we must do everything we can to create an environment where these children can learn effectively in order 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.

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


Christopher Cerf

Dated: August 23, 2016