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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  
KIMBERLEY HARRINGTON**

I, Kimberley Harrington, of full age, hereby certify that:

1. I have served as an Assistant Commissioner, in the role of Chief Academic Officer, at the New Jersey Department of Education ("NJDOE") for the last two years, and have recently been named to be the Acting Education Commissioner of the New Jersey Department of Education. I also served as the Director of Academic Standards for two years at the NJDOE. I have been an Adjunct Graduate School Professor at the College of New

Jersey since 2014. Prior to joining the NJDOE, I taught all grades Kindergarten through Eighth grade for 16 years. I also served as a director of curriculum and instruction for three years.

2. I have reviewed the August 23, 2016 Certification of Commissioner David C. Hespe, and I wholeheartedly agree with him that certain statutory and contractual restrictions have thwarted the State's efforts to implement real, substantive reform, and absent action by this Court, will continue to do so, notwithstanding the tremendous expenditures by way of State aid to the SDA Districts. I further agree with Commissioner Hespe that it is critical that the authority be given to the Commissioner of Education to waive or suspend implementation of certain education statutes when the Commissioner determines that the statute, as applied to a particular SDA District or school within such District, is an impediment that actually prevents that school or District from fulfilling the constitutional guarantee of a thorough and efficient education. It is just as critical that the Court acknowledge the Commissioner of Education's managerial prerogative to implement education reform, on a case by case basis, as necessary in the SDA Districts, to prevent bureaucratic, contractual, legal, or regulatory impediments from blocking change geared toward

providing a Thorough and Efficient education for the children in that District.

**Our Children Deserve Great Teachers**

3. Commissioner Hesper and I agree that putting students in contact with great teachers is the single most important aspect to improving student performance. Recent studies have demonstrated that good teacher experiences result not only in higher graduation rates and higher rates of college attendance, but in higher income levels for the students who receive those positive experiences. The converse is also true for those who have poor teacher experiences. The SDA Districts, in particular, need to be filled with teachers who foster a positive learning experience, to enhance the current and future lives of the children in our urban communities. In my view, the achievement gap we see in the New Jersey SDA Districts is directly related to the SDA Districts' inability to consistently provide positive teacher experiences for all students.

4. In many districts statewide, the Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ"), N.J.S.A. 18A:6-17.3, enacted in 2012, has been a valuable tool to eliminate less than effective teachers. While the statute is new and enacted with the laudatory goal to improve teaching practice for all teachers, support struggling teachers, and remove individuals who are unable to improve their poor teaching

skills, and are a disservice to our children, the initial implementation results demonstrate that there is still need for improvement. This is particularly true within the SDA Districts as Commissioner Hesse details in his certification because the ineffective and partially ineffective teachers are so highly concentrated within these districts.

5. In 2013/2014, Camden, Newark, and Paterson, just three of the State's 591 school districts, employed 125 (60%) of the State's 205 ineffective teachers. These three districts also employed 758 (29%) of the State's 2,558 partially effective teachers. Conversely, only 526 (9%) of the 5,778 teachers employed in these three districts were rated as "highly effective" as compared to 23% of teachers Statewide who received this top rating.

6. Continuing to leave these teachers in the classroom can move a child further and further behind and widen the achievement gap. Students in our struggling districts often come to school with achievement gaps of their own - no early intervention, parents unavailable due to needing to work multiple jobs to provide for their family, communication barriers and the like. Unfortunately, these preexisting gaps inevitably expand when coupled with a lack of quality instruction, making it that much more difficult for a child to

bridge the ever-widening expanse created as school years with ineffective teachers mount.

**Training Teachers Based on State Standards is Crucial**

7. I have dedicated my work as Chief Academic Officer at the NJDOE to ensuring all children show academic improvement by having the highest academic standards for New Jersey's students as monitored through a rigorous state assessment. To meet that goal of helping students excel academically, I lead and coordinate professional development training for administrators and teachers. Recently my staff and I have offered trainings designed to help teachers and administrators understand how to use data from our state assessments to tailor their teaching techniques to the individualized needs of their students. In our underperforming school districts, using this data to tailor instruction to student weaknesses is crucial to closing the achievement gap and improving overall school quality.

8. New Jersey has set the highest standards for our students which, if implemented with fidelity, will help prepare them for college and careers. As Chief Academic Officer and formerly as the Director of Academic Standards, I have been engaged in a continuous review of our academic standards to ensure we are preparing our students for college and careers. Most recently, I led an intensive review of our English language arts and

mathematics standards to make certain New Jersey has the highest standards for our students. This review process included key stakeholders to provide an in-depth review and represent the needs of all students.

9. Following the adoption of those revised standards - the New Jersey Student Learning Standards (NJSLs) - by the State Board of Education, local districts are realigning their curriculum and instruction to those higher standards. The alignment among academic standards, curriculum, and instruction is a critical process in improving student success. My staff at the NJDOE developed resources and professional development trainings to support educators in this work. When those components move in concert and a skilled teacher implements targeted instruction, we can close the achievement gap and prepare our children for post-secondary success.

10. Teachers have more and more data to inform their instruction with students. They have access to a level of student data from our current state assessment (PARCC) which they never had under the previous assessment (NJASK). With this increase in data which supports teachers in understanding the strengths and weaknesses of each and every student comes a need for flexibility in their schedule to ensure they have time to collaborate with grade level peers to understand the data,

identify the action areas, and develop instructional plans to support student needs.

11. I have had the privilege of meeting and working with quality teachers who are helping their students make significant gains in academic achievement. In providing support for how to use the state assessment data to inform instruction, I have had numerous teachers and administrators share with me their experiences where not just one student, but entire classes of students are achieving more because of the changes in instructional practices the teacher brought to the classroom based on the specific needs of his/her students as reflected in the data. These are opportunities for learning all students deserve.

#### Our Children Deserve Increased Opportunities to Learn

12. Teachers in every district in the State of New Jersey are currently unionized, including in all thirty-one SDA Districts. Thus, all of the SDA Districts are bound by a collective negotiations agreement ("CNA") that addresses virtually every aspect of the teacher positions in those districts. Student success and the closing of the achievement gap is inhibited by the limits imposed by the CNAs on time for professional development, collaborative curriculum and lesson planning, extended teaching periods, extended school days, and afterschool programs.

13. New Jersey's college and career ready practices of today are not the same as those of yesterday. Today's career ready practices incorporate the communication, critical thinking, collaboration, and decision-making skills employers are looking for in filling their workforce needs. These attributes coupled with the academic skills and knowledge are a tall, yet critical order for educators to fill. We cannot prepare our students for the world that awaits them working under the confines of a traditional education system. We must be nimble and flexible to readily adjust and adapt to meet the needs of each and every student in the State to ensure future success.

14. Certain consequences of the restrictions in the CNAs, which were negotiated through the collective negotiation process, have led to impediments to a thorough and efficient system of education as applied at times in the SDA Districts. We cannot allow needed reforms that will benefit our children to be blocked by bureaucratic agreements. Our children must have those restrictions lifted, to ensure that they have an opportunity to receive a thorough and efficient education.

15. For instance, the New Jersey Education Association ("NJEA") participates in labor negotiations in almost every district, thereby affecting the resulting CNA in each district. The NJEA maintains that "school boards are required to negotiate



with an employee representative" over at least 70 topics, including but not limited to:

- teacher-pupil contact time
- number of teaching periods
- transfer and assignment procedures
- workload
- length and number of preparation periods
- length of the workday
- hours of work
- certain aspects extracurricular assignments
- merit pay - including evaluation criteria
- Reduction in Force (RIF) - notice provisions and compensation for remaining staff if there is a significant increase in workload
- RIF procedures if NOT covered in statutes, such as: seniority, recall, bumping rights
- release time
- shifting unit work from unit employees to employees outside the unit
- work schedule including creation of new shift(s).

16. Similarly, the American Federation of Teachers ("AFT") participates in negotiations for teachers unions in several New Jersey school districts, including SDA Districts Newark, Perth Amboy and Garfield. American Federation of Teachers New Jersey, Prekindergarten to 12, <<<http://aftnj.org/about-aftnj/prekindergarten-to-12>>> (last visited Sept. 13, 2016). It also provides guidelines for contract negotiations and offers the services of its legal department, the state federation, and the national office to help "interpret your state's bargaining law or otherwise assist in your effort to bargain." AFT Leader's Handbook for Success: A Guide to Building an Effective

Union at pg. 54 << [http://mo.aft.org/files/article\\_assets/2A739070-C2E1-CF9C15B86FFD3547D12A .pdf](http://mo.aft.org/files/article_assets/2A739070-C2E1-CF9C15B86FFD3547D12A.pdf)>>  
(last visited Sept. 13, 2016).

17. Consequently, CNAs between teachers' unions and school boards in New Jersey are typically lengthy, restrictive, and address virtually every aspect of the teacher's position. Certain items in CNAs, as applied in certain SDA Districts, often place insurmountable barriers to needed educational reforms necessary to guarantee a Thorough and Efficient education to the students in those districts. These impediments include CNA provisions that (1) limit, restrict and reduce teaching time, including but not limited to length of the school year, length of the school day, starting and ending time for the school day, the structure of the school day, and amount of teacher-student contact time during working hours; and (2) limit, restrict and reduce the flexibility of superintendents and principals to reorganize schedules for professional development and teaching time around the teachers' required duty-free time, unassigned time and preparatory periods, which must take place during the work day.

Greater Opportunities for Essential Job Training Is Needed in SDA Districts To Ensure the Delivery of an Education Tailored to Close the Achievement Gap

18. Essential job training for teachers with respect to district/school/state education initiatives is critical. To stay current on research-supported best practices for classroom instruction, teachers must be offered on-going essential job training (including professional development opportunities) to support their capacity for sustainable implementation in the classroom. I have supported many administrators with training about the importance of professional learning communities ("PLC") and on-going professional development opportunities as vehicles for sustainable change. Research shows that one-dose professional development does not transfer to instructional gains for children. For sustainable change to take place and student gains to increase, the professional development doses must be job embedded and repeated. I have heard time and time again from administrators how frustrated they are with the inability to implement these training opportunities with their staff knowing how important they are for student growth. Most obstacles come in by way of scheduling limitations due to contractual restrictions.

19. Numerous administrators have informed me that when they sought to adjust their building schedules to accommodate (i) grade level planning time; (ii) professional learning

communities; (iii) additional professional development opportunities; and/or (iv) student contact time, they were unable to do so because of the rigidity imposed by contractual mandates for individual preparatory periods and duty periods. I have recommended administrators use their faculty meeting times to provide instructional trainings for their staff only to be told they are unable to do this because the contract specifically states they may only use that time for agenda items and may not use it for teacher training. These meetings range from weekly to biweekly and in time increments of 30-45 minutes. This means a minimum of 60 minutes a month, which I believe is the low end, that could be used for support and training to shift classroom instruction is instead being used to check off agenda items which are not impactful on student learning.

20. I have also worked with many administrators who are frustrated because they have teachers in the classroom who are not willing to make changes or receive additional training which would likely increase their teaching capacity in the classroom. These administrators are limited by not only a lack of flexibility with teacher hiring and exiting but also by restrictions around time allowed in the contracts for teacher professional development. For example, when the NJDOE was supporting the implementation of the Common Core State Standards and providing professional development across the state,

administrators expressed frustration with being limited in the support they could offer their staff. These administrators recognized the critical importance of supporting their teachers through training to fully understand the shifts in instruction necessary to move from the New Jersey Core Curriculum Content Standards to the Common Core State Standards. They wanted to use faculty meeting time for such trainings as well as offer afterschool and summer trainings to ensure the instruction in the classroom matched the rigor and expectations of the standards in preparing students for college and careers. The administrators were restricted by the contract allowance for the pre-set number of days/hours that could be used for professional development and knew they needed to offer their staff more support in order to make certain the standards, which schools are legally mandated to implement through their local curriculums, were being fully implemented.

21. Finally, the integration of technology into the classroom in rigorous ways can be daunting for educators, many of whom do not have the confidence to use and infuse the technology across their curriculum. Professional development is needed to support educators in this area and to help them increase their own capacity as well as their ability to comfortably use technology to enhance student learning

experiences and ready students with the skills business and industry are seeking.

**Extended Teaching Periods, Extended School Days,  
and Afterschool Instruction Are Needed in SDA Districts**

22. There is a serious need for innovation in the scheduling of student learning. Today's modern classroom does not easily fit within the traditional academic structure and calendar. Innovations must not only be reflected in the classroom instruction but also throughout the school day in its routines and structures as well.

23. I have had conversations with administrators and teachers alike who know innovative practices and technology need to be infused throughout the learning process to best support their students to be ready for success in college and careers. To implement these programs and strategies may require a shift in class and school schedules. Both administrators and teachers are crippled by those CNAs which do not allow for such flexibility even though it is in the best interests of the students. Some of these innovations which increase student focus, reinforce concepts, and scaffold instruction for individual students include after school programs to support and/or enrich student learning, individual tutoring time, and double class periods. These methods are important for low achieving districts because they are often the way to supplement

the barriers to learning a student may come to school with due to lack of early intervention and/or parental support. These programs provide an opportunity to reinforce, personalize, and extend classroom learning for children to increase understanding and academic achievement. It is critical that these at-risk populations have both additional support and the highest quality teachers providing that support.

24. The contractual restrictions reach beyond the school day, even affecting the provision of afterschool programs. These programs are a rich opportunity to provide students with additional instruction designed to strengthen the foundation of skills and reinforce the classroom learning. Teachers with specific content knowledge and/or connections to the child are a natural fit to provide these extended learning opportunities. Sometimes, however, these are not the teachers who wind up working with these children. Rather because these positions are afterschool, stipend positions, they typically go to teachers with the most years of seniority - not necessarily the most qualified to support struggling learners in a given content area. This problem nullifies the value of the afterschool program which is meant to provide extended learning for struggling students if we do not have the most highly qualified teacher providing the instruction.

### Greater Staffing Flexibility is Needed in SDA Districts

25. I agree with Commissioner Hesse that greater staffing flexibility is needed in SDA Districts. In some SDA Districts, seniority (at the expense of any other factor) dictates how teachers are transferred or assigned. A junior teacher must be involuntarily transferred before a more senior teacher is impacted. The end result is that the CNA will often dictate a result contrary to the principal's judgment as to the needs of the particular classroom and the fit of the teacher to be assigned.

26. Moreover, some SDA Districts' CNAs contain restrictions regarding essential job training. Some educational reforms require teaching the teachers a new methodology. In working with advisory groups of teachers, I have had highly qualified, junior teachers be selected to participate due to their excellent work become frustrated about their inability to share the information they learned in their own district/school. They are being trained by the NJDOE staff and are supposed to serve as a resource to their district/school in providing a model of best practices. However, they are inhibited in doing so due to their inability to have access to or connect with the school administrator; chastisement from grade level teachers due to junior status, thereby making it difficult to turnkey the learning to their peers, as well as being told they were setting



a precedent for going above and beyond the requirements of the contract; and limited access to faculty meeting agenda time to share the initiative updates and resources from the NJDOE with fellow colleagues. When sharing these best practices with their senior colleagues, some of these teachers are also told to change what they were doing because "that's not how we do it here." Wanting to be accepted by their colleagues, junior teachers often acquiesce to the demands of senior colleagues, thereby compromising the quality of classroom instruction and student learning.

27. Often in these advisory groups and in these trainings are junior teachers who know that they could lose their position during a RIF. Many of these teachers have a deep passion and dedication to the students they serve and a working knowledge of current best practices in education. They are at risk of being let go simply because they were the last to arrive and/or are a junior staff member, regardless of their performance in the classroom. Meanwhile, I have had senior teachers in these trainings who challenge the information and techniques being taught, as well as provide reason after reason about why they cannot implement these practices into their classroom. Those excuses - why they cannot implement the tailored best practices - are rooted in a school culture where teachers feel required to do only what the CNA provides. The CNA serves as a ceiling to

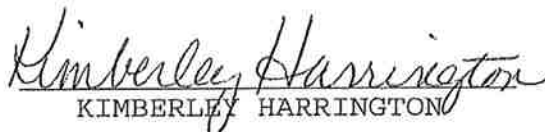
what they will do, rather than a floor; this restricts professional growth, and in turn, student growth.

28. Where a CNA does not allow for adequate, targeted professional development, the superintendent, with the Commissioner's approval, should be permitted to move ahead with needed professional development after a showing that the school administration made a good faith, responsible proposal and the union failed to move forward with it.

29. In conclusion, Commissioner Hespe and I agree that for the achievement gap to be substantially reduced so as to provide a constitutionally mandated thorough and efficient education to the public school children in the SDA districts, the Court should clarify that the Commissioner may allow SDA superintendents to obviate certain restrictive statutory and contractual provisions, in those limited circumstances in SDA Districts, on an as needed basis, when the Commissioner determines that a thorough and efficient system of education in the SDA Districts is being compromised and educational reforms are needed in that particular situation. The Supreme Court has stated the importance of those reforms in stating that: "[f]unding is merely one tool that may be employed to achieve" a thorough and efficient education. See Horne v. Flores, 557 U.S. 433, 465, 129 S. Ct. 2579, 174 L. Ed. 2d 406 (2009). The remedy

sought to be added to the Abbott v. Burke rubric is fundamental to education - the need for quality teachers that can be deployed and utilized as the needs of a school or district dictate, and the flexibility for school administrators to create a learning environment that will result in significant and lasting achievement. The need for this reform is imperative and it is needed now. Every year that goes by where children do not receive the best education we can provide is a lost opportunity. There are many great teachers in New Jersey and in the SDA Districts. Increasing both the number of those teachers and their contact time with students are the keys to education reform and to closing the achievement gap in our most struggling districts. The statutory and contractual impediments that prevent us from delivering the Thorough and Efficient education that our Constitution mandates must give way for the benefit of the children.

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.

  
KIMBERLEY HARRINGTON

Dated: September 14, 2016