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**Please Reply to Newark**


September 17, 2018

**VIA UPS OVERNIGHT**
Marge Hunter, Case Manager
Superior Court - Appellate Division
Hughes Justice Complex
25 W. Market Street, P.O. Box 006
Trenton, NJ 08625-0006

**Re: Rozenblit, et al. v. Lyles, et al.**
**Docket No. A-001611-17**

Dear Ms. Hunter:

Enclosed please find an original and five (5) copies of Defendant/Respondent/Cross-Appellant Jersey City Education Association's Reply Brief and Appendix in further support of its cross-appeal, along with a Certificate of Service.

Kindly file all of the above-referenced documents and return a file-stamped copy in the stamped self-addressed envelope provided for your convenience.

Thank you for your assistance.

Respectfully yours,

Flavio L. Komuves

Enclosures

cc: Jonathan Riches, Esq. (w/encl.)
Justin A. Meyers, Esq. (w/encl.)
Shontae D. Gray, Esq. (w/encl.)
**VIA EMAIL & REGULAR MAIL**

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September 17, 2018

Honorable Judges
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25 W. Market Street, P.O. Box 006
Trenton, NJ 08625-0006

**Re: Rozenblit, et al. v. Lyles, et al.**
**Docket No. A-001611-17**

Honorable Judges of the Appellate Division:

Defendant Jersey City Education Association ("JCEA") respectfully submits this reply letter-brief, in lieu of a more formal brief, in further support of its cross-appeal in this matter.

## TABLE OF CONTENTS

**BRIEF**



**APPENDIX**



### I. THE JANUS DECISION, INVOLVING THE RIGHTS OF OBJECTING AGENCY FEE PAYERS UNDER THE FIRST AMENDMENT, HAS NO APPLICATION IN A TAXPAYERS' SUIT UNDER THE GIFT CLAUSE.

Plaintiffs devote substantial effort in their brief to discussing the purported effect of the Supreme Court's decision

in Janus v. AFSCME, 138 S. Ct. 2448 (Jun. 27, 2018). Janus involved a challenge by public employees who chose not to be members of a Union, but were nevertheless required to pay a "fair share" or "agency fee" to a majority representative, to offset the costs incurred by the Union in functioning as their exclusive bargaining representative. The Court determined that because of the First Amendment rights of these agency-fee payers, they could legally be "free riders," obtaining services from the Union such as representation in contract negotiations, assistance with grievances and discipline, and related benefits, while making no payment for these services. Janus has no bearing on this case.

First, although the Janus case had itself been filed in 2015, Plaintiffs made no claims before the trial court or in their opening brief about potential Janus issues. Thus, the Court should disregard the arguments as not raised below.

Second, the Plaintiffs here are taxpayers who are objecting to their taxes being used, allegedly in violation of the State Constitution's Gift Clause, for release time. They are in a far different position from the objecting employees who were the plaintiffs in Janus, who proceeded in their case using associational and free-speech legal theories.

Third, Janus dealt with the legality of payments, by nonmembers, to a Union that served as a majority representative, that funded services rendered to those nonmembers. The release time at issue here is not paid from dues paid to the Union. Nor was it even paid from agency fees collected before Janus was decided. Since the sole fund of money at issue in Janus was agency fees collected from nonmembers of the Union, and the issue here is about expenditure of tax revenues, there is simply no similarity or relevance between the Janus claims and what is at issue here.

Finally, Janus did not change the fact that under existing state law, majority representatives must provide represent all bargaining unit employees, whether Union members or not, in negotiations, contract administration, and grievances. To the extent that a portion of release time is used to fulfill these duties - especially so when the Union is not directly funding the release time - it does not conflict with Janus; rather, it is consistent with that holding.

## II. RELEASE TIME SERVES PUBLIC PURPOSES, BUT EVEN IF IT DID NOT, THERE IS NO CONSTITUTIONAL BASIS FOR OVERTURNING A CONTRACT WHERE ONLY .07% OF ITS VALUE IS ALLOCATED TO RELEASE TIME COSTS.

Plaintiffs' protestations notwithstanding, their lawsuit must be understood as an assault on the collective bargaining agreement as a whole, not just the release time component of it.

As explained in JCEA's initial opposition brief, Db44-45, challenges under the Gift Clause of New Jersey and other states requires a study of the "overall" contract under challenge, viewed "panoptically." See id. While JCEA contends, and the trial court agreed, that there is no "private benefit" at all found in release time, even if there were, it is at most "incidental" or "subordinate" to the principal contractual purpose. Remember that the value of release time at issue here is about $208,000 annually in a $261 million annual contract. Db48, 50. The paucity of release time as part of the overall contract - sums that are "incidental" or "subordinate," in the words of Roe v. Kervick, 42 N.J. 191, 231 (1964) - is alone reason to declare this arrangement to be legal.

Plaintiff makes the ridiculous point that access to a "private jet," if included in a broader labor contract, would somehow immunize the jet from review under the Gift Clause. Of course, a jet is not at issue here. What is at issue is release time, at reasonable ratios, well below what other courts have upheld. Db47. As such, the analogy is a silly one.

## III. THE BOARD OF EDUCATION DOES NOT NEED TO CALCULATE AND MONETIZE EACH COMPONENT OF ITS SPENDING TO UNDERSTAND IT CONTRIBUTES TO AN EFFECTIVE EDUCATIONAL SYSTEM.

Plaintiffs also complain that the District did not engage in a study that precisely monetizes the value of release time to

the District, and that at such, its value is too uncertain or speculative to consider. Plaintiffs, however, point to no authority that requires educators to place a monetary value on expenditures to make them lawful. For example, must the district assess what it gets in return for music teachers' salaries? For a student field trip? For a seminar to improve teacher training techniques? To state the question is to answer it. The defendants agree, as did the trial court, that release time provides monetary and nonmonetary value to the District. There is simply no requirement that as a matter of constitutional law, this value be reduced to a sum of dollars. The Court should defer to the judgment of educational administrators that the practice brings real benefits to the schools and to the public. In a related context, this Court recently rejected another taxpayers' constitutional challenge to teacher assignments, dismissing plaintiffs' claim there that a school district was unconstitutionally spending millions of dollars per year on a pool of teachers without classroom assignments. H.G. v. Harrington, No. A-4546-16 (App. Div. Jun. 27, 2018). In Harrington, the Court explained that in response to the claim that "the District's resources could be better spent elsewhere" rather than on this teacher pool, "the expenditure does not raise an issue of constitutional

proportions." See id. at 13 (Drb13). So, too here. There is no constitutional significance to a complaint over the wisdom of the expenditures of 0.07% of a labor contract's value (and an even smaller percentage of the total annual school budget).

## IV. THERE IS ADEQUATE ACCOUNTABILITY FOR RELEASEES' USE OF THEIR TIME.

Although JCEA believes that adequately explained this point it its moving brief, it is simply false to say that the releasees' use of time lacks any control by the District. See generally Db17 and materials cited therein. It is true that large portions of the releasees' days are spent in the presence of some building or central administrator, but as discussed in prior briefing, releasees are also told by administrators to conciliate grievances, and told when and where to appear for hearings and meetings. The district has the ability to compel the releasees to appear for hearings and meetings at a time specified by it. When combined with the accountability for their time, amply discussed in the trial court and prior briefing, the District maintains controls over the releasees' work and conduct that is "adequate" and "sufficient" to withstand a Gift Clause challenge.

## V. PERC HAS FULLY EARNED THE DEFERENCE THIS COURT MUST AFFORD TO IT, THROUGH ITS REAL-WORLD OBSERVATION OF THE BENEFITS OF RELEASE TIME TO SMOOTH LABOR-MANAGEMENT RELATIONS.

Regarding the deference owed to PERC, Plaintiffs' claim that little or no deference is owed to this agency is mistaken. As argued in the opening papers, PERC has analyzed constitutional law precedents, not just negotiability precedents, in upholding release time. Whatever may be said about PERC's skill in constitutional adjudication, there can be no question that PERC has hard-earned understanding, from the field, seeing how release time smooths labor-management relations in the ways cited in this brief. Put another way, PERC knows by experience that how release time serves a public purpose, and how it is consonant with a public purpose. See Bryant v. City of Atlantic City, 309 N.J. Super. 596, 612 (App. Div. 1998). To this agency, observing the linkage between release time and the public purposes it serves is not merely academic, but is based in real-world experience. As with other administrative agency decisions, its precedents upholding release time is situations similar to this one, are entitled to respect.

## VI. THE CASE SHOULD HAVE BEEN DISMISSED AT THE MOTION TO DISMISS STAGE.

By denying JCEA's motion to dismiss, the trial court wrongly forced the parties to go through written and testimonial discovery, and subsequent summary judgment practice. When the facts of Plaintiffs' complaint were examined (as distinct from its hyperbole and rhetoric), it was clear that Plaintiffs were alleging nothing more than an unremarkable use of release time in a New Jersey public employment setting. Specifically, the Plaintiffs alleged nothing more than a contract in which the parties had agreed to a reasonable amount of release time. There was no allegation that release time was being abused, or that it was some kind of no-show, "sweetheart deal." There was no allegation that the release time was in excess of release time ratios that have routinely been upheld in other tribunals. And there was no allegation that the contract in which release time was negotiated was not supported by valid consideration.

Put simply, Plaintiffs' complaint alleged that release time was being awarded in Jersey City, and they didn't like it. They offered no facts to suggest that the practice here was at variance from settled practice on the subject, and no facts that it was being abused or otherwise improper.

Under these circumstances, at the motion to dismiss stage, the Court should have accepted Plaintiffs' factual allegations,

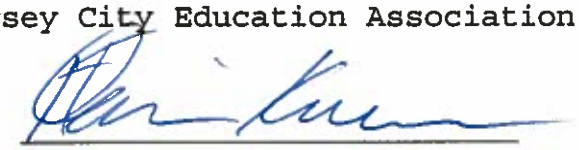
but also recognized the defense's argument that the release time alleged in the complaint was not different in kind from other forms of release time that have been upheld. The Court should have recognized then that release time was in furtherance of a public purpose, and that (like all other release time) it was a valid term in a collectively negotiated contract. Stripped of its speechifying, all Plaintiffs' complaint did was to allege that release time, in accordance with typical norms, was being practice in Jersey City. Nothing more was alleged; as such, it was eminently suitable to be disposed of on a R. 4:6-2 motion. See Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005).

**CONCLUSION**

For the foregoing reasons and those in JCEA's initial opposition brief, the trial judge's order granting summary judgment to Defendants should be affirmed. This Court should further hold that dismissal should have been granted at the motion to dismiss stage.

Respectfully submitted,

**ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN**
Attorneys for Defendant-Respondent
Jersey City Education Association

By: 
FLAVIO L. KOMUVES

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4546-16T4

H.G., a minor, through her guardian TANISHA GARNER; F.G., a minor, through her guardian TANISHA GARNER; E.P., a minor, through his guardian NOEMI VAZQUEZ; M.P., a minor, through his guardian NOEMI VAZQUEZ; F.D., a minor through her guardian, NOEMI VAZQUEZ; W.H., a minor, through his guardian FAREAH HARRIS; N.H., a minor, through his guardian FAREAH HARRIS; J.H., a minor, through his guardian SHONDA ALLEN; O.J., a minor, through his guardian IRIS SMITH; M.R., a minor, through his guardian IRIS SMITH; Z.S., a minor, through her guardian WENDY SOTO; D.S., a minor, through his guardian WENDY SOTO,

Plaintiffs-Appellants,

v.

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,
AMERICAN FEDERATION OF TEACHERS,
AFL-CIO, AFT NEW JERSEY, and the
NEWARK TEACHERS UNION,

Defendants/Intervenors-
Respondents.

---

Argued April 25, 2018 – Decided June 27, 2018

Before Judges Fuentes, Koblitz, and Manahan.

On appeal from Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2170-16.

Kathleen A. Reilly (Arnold and Porter Kaye Scholer LLP) of the New York bar, admitted pro hac vice, argued the cause for appellants (Tompkins, McGuire, Wachenfeld, and Barry, LLP, and Kathleen A. Reilly, attorneys; William H. Trousdale, Maximilian D. Cadmus, Colleen Lima (Arnold and Porter Kaye Scholer LLP) of the New York bar, admitted pro hac vice, Kent Yalowitz (Arnold and Porter Kaye Scholer LLP) of the New York bar, admitted pro hac vice, and Kathleen A. Reilly, of counsel and on the brief).

Richard E. Shapiro argued the cause for intervenors-respondents New Jersey Education Association (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, and Richard E. Shapiro, LLC, attorneys; Richard E. Shapiro, Richard A. Friedman, Kenneth I. Nowak, Flavio L. Komuvas, and Steven R. Cohen, of counsel on the brief).

Steven P. Weissman argued the cause for intervenors-respondents American Federation

of Teachers, AFL-CIO, AFT New Jersey, and the Newark Teachers Union (Weissman and Mintz LLC, attorneys; Steven P. Weissman, on the brief).

PER CURIAM

In this education matter, plaintiffs, twelve individual Newark Public School students through their guardians, appeal from a May 3, 2017 dismissal of their declaratory judgment complaint based on a lack of standing and ripeness. We affirm because the issues are not ripe for review.

I.

On November 1, 2016, plaintiffs filed a civil complaint for declaratory and injunctive relief, alleging five causes of action against defendants Kimberly Harrington, in her capacity as the Acting Commissioner of the New Jersey Department of Education, and the New Jersey State Board of Education (collectively "DOE"). Plaintiffs also sought relief against the Newark Public School District and District Superintendent Christopher Cerf (collectively "the District").[1]

[1] At the time of the notice of appeal, Newark was a state-operated school district. On February 1, 2018, the District returned to local control. See Press Release, DOE Approves the Transition Plan for Local Control in Newark Public Schools (December 21, 2017), http://www.state.nj.us/education/news/2017. The District, however, still receives substantial state aid. DOE, Office of School Finance, 2017-2018 K-12 State Aid School Districts, http://www.nj.gov/education/stateaid/1718/district.pdf.

In the first cause of action, plaintiffs asked the court to enjoin the enforcement of two provisions of the Tenure Act, N.J.S.A. 18A:28-1 to -18, which plaintiffs refer to as the "last-in, first-out" (LIFO) provisions--N.J.S.A. 18A:28-10 and 18A:28-12. N.J.S.A. 18A:28-10 requires the District to use seniority as the exclusive factor when conducting a reduction in force (RIF) of tenured teachers, or when re-staffing following a RIF, pursuant to N.J.S.A. 18A:28-12. Plaintiffs alleged that "[t]his policy has required, and will continue to require, Newark and other similarly situated districts to retain ineffective teachers while laying off effective teachers," depriving plaintiffs of the "thorough and efficient education" guaranteed them under our Constitution. N.J. Const. art. VIII, § IV, ¶ 1.

In the second cause of action, plaintiffs claimed that the same statutes, as applied to them, violated their right to equal protection under Article I, Paragraph 1 of the New Jersey Constitution, because the statutes have disproportionately affected students of color in areas of concentrated poverty, thereby denying such students the opportunity to receive a thorough and efficient education.

In the third cause of action, plaintiffs alleged that the statutes violated their due process rights, also under Article I,

Paragraph 1, by depriving them of their fundamental right to a thorough and efficient education.

In the fourth cause of action, plaintiffs alleged that enforcing the LIFO provisions in the District violated their rights under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2, by depriving them of a thorough and efficient education.

The fifth cause of action sought a declaratory judgment under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, finding the LIFO statutes unconstitutional as applied to plaintiffs and students in similarly situated districts.

In December 2016, the American Federation of Teachers, the AFL-CIO, AFT New Jersey, and the Newark Teachers Union (collectively, "AFT"), and the New Jersey Education Association (NJEA) successfully moved to intervene as defendants.

The DOE raised several affirmative defenses, including that plaintiffs lacked standing, and that the claims were not ripe for review. AFT and NJEA moved to dismiss the complaint in lieu of filing answers, also on the basis of a lack of standing and ripeness. The Law Division dismissed the complaint under Rule 4:6-2(e) due to a lack of standing and ripeness.

Each minor plaintiff attends one of the District's public schools. Plaintiffs alleged the following facts in their complaint. The District is failing to provide a high-quality

education to its students, resulting in a graduation rate of just over 69%, which is 20% lower than the statewide graduation rate. The literacy rate for students in the District is in the bottom 25% of the State, and their mathematics proficiency rating is in the bottom 10%. Only 50% of eighth graders meet the State's minimum proficiency for literacy and only 40% also meet the minimum standard for mathematics.

Plaintiffs placed the blame for these outcomes on the District's retention of ineffective tenured teachers. Plaintiffs relied on statistics published by the DOE, which tracks educator evaluation data that schools submit pursuant to the Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act, N.J.S.A. 18A:7-117 to -129. The Act requires school districts to evaluate teaching staff annually with one of four descriptors: ineffective, partially effective, effective, and highly effective. N.J.S.A. 18A:6-123(b). The Act further empowers the superintendent of a school district to bring tenure charges against a teacher found ineffective in two consecutive annual evaluations or partially effective in one evaluation and ineffective in the next. N.J.S.A. 18A:6-17.3.

> TEACHNJ was enacted in August 2012. Its goal "is to raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators . . . ." N.J.S.A. 18A:6-118(a). The Legislature declared: "Changing the current

> evaluation system to focus on improved student outcomes . . . is critical to improving teacher effectiveness, raising student achievement, and meeting the objectives of the federal '[No Child Left Behind Act, 20 U.S.C. § 6301 to -7941] of 2001' . . . ." N.J.S.A. 18A:6-118(b).
>
> [Pugliese v. State-Operated Sch. Dist. of City of Newark, 440 N.J. Super. 501, 508 (App. Div. 2015).]

Plaintiffs lacked specific information about the number of ineffective or partially effective teachers in particular schools, due to confidentiality requirements. See N.J.S.A. 18A:6-121(d), They cited DOE data reflecting that, in the 2013-2014 school year, out of 2775 teachers in the District, 94 (3.4%) had been rated as ineffective and 314 (11.3%) had been rated partially effective.[2] Only 205 teachers were rated ineffective in the entire State, meaning that, as of 2014, nearly 46% of the ineffective public school teachers in New Jersey were employed by the District.

Plaintiffs compared these figures to the more affluent Summit School District where none of its 337 teachers was rated as ineffective or partially effective. Plaintiffs added that if a RIF were to take place in both districts, only in Newark would there be a risk that students would be placed with below-par

[2] The AFT points out that in the 2015-2016 school year only 183 teachers in the District were rated partially effective and only 65 rated ineffective. DOE, Data, http://www.state.nj.us/education/data/staff.

teachers, because of the percentage of ineffective or partially effective teachers in the District.

Plaintiffs further alleged that enrollment has declined in the District, resulting in about $200 million in lost education funding. While declining enrollment would ordinarily lead to a RIF to make up for lost revenue, plaintiffs believe the District has avoided a RIF of teachers in recent years specifically because of the LIFO statutes.

Plaintiffs alleged that to avoid the consequences of RIFs and the risk of having to remove less senior but nevertheless highly effective teachers in favor of more senior ineffective teachers, the District has "resorted to the harmful and unsustainable tactic of keeping ineffective teachers on the district payroll," by creating the Educators Without Placement Sites (EWPS) pool.

In the 2013-2014 school year, the EWPS pool included 271 teachers who were not placed in schools. About 70% of the teachers in the EWPS pool had ten or more years of experience. Plaintiffs alleged that maintenance of this pool has cost the District millions of dollars annually.[3]

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[3] The total Newark public school budget for 2013-14 school year was $1,017,400,000. Newark Public Schools, 2013-2014 Final Budget & Hearing, http://www.nps.k12.nj.us/mdocs-posts/2013-2014-final-budget-hearing/.

According to plaintiffs, the District paid the EWPS teachers about $22.5 million during the 2013-14 school year, even though they did not have a permanent teaching position. In 2015, the District began to "force place" these teachers in schools without the principal's consent.

Because not everyone from the EWPS pool was placed, in the following year, the District paid about $10 million to the teachers remaining in the EWPS pool. If another RIF occurred, tenured teachers in the pool might be retained while tenured teachers with higher ratings but less experience might be removed. Plaintiffs do not dispute that non-tenured teachers would and should be the first to leave.

Plaintiffs alleged that this practice affects their ability to obtain a thorough and efficient education, because, to comply with the LIFO statutes, the District must either conduct a "quality-blind" RIF and terminate effective teachers or, to avoid that result, pay to preserve the EWPS pool and thereby divert millions of dollars away from plaintiffs' education.

Moreover, plaintiffs asserted that "the specter of quality-blind layoffs at the end of every school year serves to exacerbate qualified teachers' reluctance to apply to work in districts like Newark where the likelihood of layoffs is higher for new teachers,"

and that, as a consequence, qualified candidates will instead seek employment in other school districts.

Finally, plaintiffs alleged that the District's enforcement of the quality-blind statutory scheme governing RIFs results in the removal of quality teachers, lower test scores, lower high school graduation rates, and reduced lifetime earnings for plaintiffs and other students in Newark and "districts like Newark throughout the State."

Superintendent Cerf attested that the District had brought tenure charges against "more than 200 teachers" under the procedure set forth in the TEACHNJ Act. N.J.S.A. 18A:6-17.3(a). Cerf stated, however, that removing teachers through this process "is a time-consuming and cost-intensive process that takes" years "and cost[s] the [D]istrict more than $50,000."

In February 2014, in response to a "fiscal crisis" resulting from declining enrollment, the District submitted an "equivalency request" to the Commissioner pursuant to N.J.A.C. 6A:5-1.1 to -1.7. These regulations authorize the Commissioner to approve an application from a school district to "achieve the intent of a specific rule through an alternative means that is different from, yet judged to be comparable to or as effective as, those prescribed within the rule." N.J.A.C. 6A:5-1.2. The District requested an equivalency that, if approved, would allow it to consider teacher

quality in addition to years of service when determining "seniority" under N.J.A.C. 6A:32-5.1.[4]

According to the District's request, if it were to conduct a RIF that strictly followed the seniority preference embedded in the LIFO statutes and the administrative code, 75% of the terminated teachers would have been rated as either effective or highly effective and only 4% would be teachers who had been rated as ineffective. Conversely, if the equivalency request were granted and the District could consider teacher performance as a criterion in conducting the RIF, then no highly effective teachers would be removed, and 14% of removed teachers would be teachers who had been rated ineffective. We were not informed of the status of this request.

II.

The trial court dismissed the complaint, finding plaintiffs lacked standing and the case was not ripe. We review a decision to dismiss for failure to state a claim under Rule 4:6-2(e) de novo. Stop and Shop Supermarket Co., v. Cty. of Bergen, 450 N.J. Super. 286, 290 (App. Div. 2017). A claim is "ripe" only if "the harm asserted has matured sufficiently to warrant judicial

[4] Newark Public Schools, Overview of Equivalency Request: Protecting Our Best Teachers During a Fiscal Crisis, http://www.nps.k12.nj.us/wp-content/uploads/2014/08/Overview_of_Equivalency_February_2014_FINAL.pdf.

intervention." Trombetta v. Mayor of Atlantic City, 181 N.J. Super. 203, 223 (App. Div. 1981). "[R]ipeness depends on two factors: '(1) the fitness of issues for judicial review and (2) the hardship to the parties if judicial review is withheld at this time.'" Comm. to Recall Robert Menendez from the Office of U.S. Senator v. Wells, 204 N.J. 79, 99 (2010) (quoting K. Hovnanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep't of Envtl. Prot., 379 N.J. Super. 1, 9 (App. Div. 2005)). "A declaratory judgment claim is not ripe for adjudication if the facts illustrate that the rights or status of the parties 'are future, contingent, and uncertain.'" Garden State Equality v. Dow, 434 N.J. 163, 189 (quoting Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. Super. 295, 302 (App. Div. 2005)).

Plaintiffs do not deny that the District 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.

Plaintiffs concede that the termination of non-tenured teachers in a LIFO situation is beyond their complaint, and do not provide the number or percentage of non-tenured teachers in the District. Thus, a RIF might only affect non-tenured teachers, who must be terminated first. The District is working through TEACHNJ to reduce the number of ineffective or partially effective tenured

teachers. It 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 tenured teachers to teach students while effective tenured teachers are removed may never occur.

To the extent the District's resources could be better spent elsewhere absent an EWPS pool of ineffective or partially effective teachers, the expenditure does not raise an issue of constitutional proportions.

Thus, the issue of LIFO ramifications should a RIF occur is speculative and not ripe for review. We need not address the standing issue.

Affirmed.

**ZAZZALI, FAGELLA, NOWAK,**
**KLEINBAUM & FRIEDMAN**
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Attorneys for Defendant/Respondent/
Cross-Appellant Jersey City Education Association, Inc.

| | |
|---|---|
| MOSHE ROZENBLIT, et al., | SUPERIOR COURT OF NEW JERSEY<br>APPELLATE DIVISION |
| Plaintiffs/Appellants/<br>Cross-Respondents | Docket No.: A-001611-17 |
| v. | Civil Action<br>On Appeal from Superior Court, |
| MARCIA V. LYLES, et al. | Chancery Division, General Equity, Hudson County |
| Defendants/Respondents/<br>Cross-Appellants | Sat Below:<br>Hon. Barry P. Sarkisian, J.S.C. |

**CERTIFICATION OF SERVICE**

Elaine Barnett of full age, hereby certifies as follows:

1. I am a secretary employed by the Law Firm of Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys for the Defendant/Respondent/Cross-Appellant, Jersey City Education Association, Inc. ("JCEA") in the within matter.

2. On September 17, 2018, I forwarded via UPS Overnight, an original and five copies of Defendant/Respondent/Cross-Appellant Jersey City Education Association's reply brief, appendix and Certification of Service to:

Marge Hunter, Case Manager
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
25 W. Market Street, P.O. Box 006
Trenton, New Jersey 08625-0006

3. On September 17, 2018, I forwarded via email and regular mail, two copies of the documents referred to in Paragraph 2 to:

Jonathan Riches (pro hac vice)
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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.

Elaine M. Barnett

Elaine M. Barnett

Dated: September 17, 2018