

He's been fighting for school kids for 50 years. His latest battle is in Lakewood.

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Paul Tractenberg in a recent photo, and addressing the New Jersey Supreme Court in 2001. Courtesy photo; file



By NJ Advance Media | Phil Cornell

Attorney Paul Tractenberg was arguing another school funding case before the [New Jersey Supreme Court](#) several years ago when one of the justices had some questions.

“One, how many times is it that you’ve now argued in this court in this case?” asked the justice, as related by Tractenberg recently. “To which I said, ‘14.’

“And the second question was, ‘And when do you plan to send your first bill for professional services rendered?’ Knowing that I’d been doing it pro bono all that time.”

“All that time” arguing for equal educational opportunity -- at least as measured in dollars and cents -- totals over half a century for Tractenberg.

His advocacy for underserved students extends to Robinson v. Cahill, the landmark 1973 state Supreme Court decision that struck down the inherently unequal reliance on a town’s property tax base to support school districts in New Jersey and ushered in the state income tax. His work continues to this day in Lakewood, where an overwhelming number of private school students has resulted in a chronic funding struggle for the public schools.

In between, his influence has grown exponentially as founder of the Education Law Center, which doggedly pursued funding parity for 31 poorer districts through almost two dozen Abbott v. Burke rulings, and as a teacher for 47 years at Rutgers Law School, where he is professor emeritus.

At the age of 85, Tractenberg continues to fight, said attorney Lawrence Lustberg, who has worked with Tractenberg.

Through it all, a three-word mantra has served as the gold standard for New Jersey’s public schools: “thorough and efficient,” a guarantee for education enshrined in the state constitution.

In the service of that standard, Tractenberg brings a seemingly inexhaustible supply of determination and what observers hail as an astute, stirring expressive legal mind.

“He’s just a person who has never taken his eye off the ball in terms of what’s needed for the schoolchildren of New Jersey,” observed Deborah Yaffe, author of the 2007 book “Other People’s Children: The Battle for Justice and Equality in New Jersey’s Schools.”

“He’s just a really, really strong appellate attorney,” said Lustberg. “He’s great at anticipating what the next questions are, at figuring out what the right answers will be or the most persuasive ones. And ultimately, he’s achieved amazing success as an appellate lawyer.”

“I see brilliance, absolute brilliance. His (legal) briefs, they’re impeccable,” said Arthur Lang, a math teacher in Lakewood, who brought the petition in that district almost a decade ago and later welcomed Tractenberg, his former Rutgers professor, as co-counsel in the court appeals. “It’s lucid, the words just flow. I see excellence in his legal work. He’s brilliant, he’s a brilliant man.”

However, the district, by mandate, must shoulder much of the whopping costs of busing and special education for those private school students, leaving the public schools perpetually strapped, the lawyers argue. In their recent court filings, Tractenberg and Lang pointed to \$78 million spent on transportation and special education in the 2017-2018 school year, more than half of the total school budget then of \$144 million. An internal report by the state auditor this summer, obtained by the Asbury Park Press, found a third of the students there were classified as special education, double the average.

“In effect, you have about 5,000 public school students -- virtually 100% of them are low-income, at least by the federal eligibility for school lunch standards, about 95% of them are Black or Latino, mostly Latino -- and you have them trying to receive their education on 48% of the school budget,” explained Tractenberg.

“I think the problem is fairly obvious: The state has refused to acknowledge that the school funding formula simply doesn’t work for Lakewood. Instead, they’ve been trying to prop up Lakewood with huge amounts of repayable loans that Lakewood is never going to be able to repay” he added.

The state most recently loaned the district \$50 million, though it had requested \$93 million. That latest IOU will bring the district’s total indebtedness to \$156.4 million, according to figures provided in December by a Department of Education spokesman.

Lang and Tractenberg maintain that the state is not interested in resolving the funding imbalance in Lakewood now, but in delaying the issue until after Gov. Phil Murphy leaves office in two years. It is what Tractenberg calls “a breathtaking default of responsibility.”

“If Donald Trump were being sued for educational default, his strategy would be the same strategy: Let’s delay and complicate and find ways to evade the issue,” said Tractenberg.

Asked about the pace of the case, a spokeswoman for the state Department of Education declined to comment but noted a review of the district has been ordered by acting Education Commissioner Angelica Allen-McMillan and overseen by a former commissioner, Kimberly Harrington Markus. “I anticipate the review will take approximately six months; however, this is only a preliminary estimate as the volume of information to be reviewed and complexity of the required analysis are unknown as this time,” wrote Allen-McMillan in August.

Tractenberg and Lang view the six months of review and the opportunity for subsequent comment as further stalling by the state. It is a case of justice delayed being justice denied, he and Lang argue, as a child has a finite period to receive a quality education.

The Lakewood case stands apart from the seminal Robinson and Abbott decisions in the district's unusual demographics. Lakewood was not one of the Abbott districts and doesn't follow the typical urban/suburban dichotomy. Rather, the vast majority of students in the largely Orthodox Jewish township attend private yeshivas rather than public schools. Of the 52,269 students in the district in October 2020, 47,207, or nearly 90%, were in nonpublic schools, leaving a public school enrollment of 5,062, according to figures presented by Tractenberg and Lang in a brief in October.

Twists and turns

The case has taken many twists and turns. In 2021, Allen-McMillan determined Lakewood public school students were indeed receiving a thorough and efficient education, but an appellate court panel disagreed, quoting *Robinson v. Cahill*, and remanded the case back to her for reconsideration, precipitating the review. Tractenberg and Lang then returned to court and obtained a deadline of April 1 for the remand response.

By then, Allen-McMillan will likely no longer be acting commissioner, following her recent announcement she is retiring at the end of this month. The timing of the review will not be affected by her departure, the department said through a spokeswoman.

Tractenberg wrote to Allen-McMillan on Dec. 18, questioning when the review by the outside consultants actually began and calling for its completion in enough time so he and Lang, as well as the district, can respond to the results by April 1. He and Lang plan to include in their comments recommendations for remedial steps in Lakewood, Tractenberg wrote, such as amending the school funding law, legislation specifically addressing the district's predicament and loan forgiveness. He closed his letter by citing "our ethical, moral, and legal responsibilities to Lakewood's public-school students."

"My petitioners (in Lakewood) were the parents of five of my high school students, and one nonpublic school student," Lang pointed out in court documents in October. "The matter has dragged on for so long that these children are about 25 years of age by now."

David Sciarra, who in 2023 concluded a 26-year tenure as director of the Education Law Center, concurs.

"He understands that these are very political cases," said Sciarra of Tractenberg. "They raise structural inequities in our system. There's political resistance across the board to doing the right thing for these children. You had to really recognize that and make a commitment to stay on it over the long run."

'Policing a remedy'

But does a thorough and efficient education always come down to the amount of money a school district receives? One former state education official, while applauding Tractenberg for "leading the charge" on the inequities of an education system determined by a town's tax base, cautioned against solely focusing on funding.

"It's not only how much money is spent but how well it's spent," said Christopher Cerf, a former state education commissioner and former superintendent of Newark schools.

"Certainly, more and more spending shouldn't be viewed as the be-all and end-all. ... The answer can't always be more money to the exclusion of all else."

Tractenberg acknowledges that even if additional state money is allocated to Lakewood, making sure those funds reach the public-school children is a concern, despite the supervision of the Department of Education, state monitors and the local school board.

"The bottom line is policing a remedy will be a challenge," said Tractenberg, "but, unfortunately, that may be more often the case in complex educational litigation than not."

Nonetheless, Lang, who has taught in Lakewood for 20 years, says the lack of funding has taken its toll on the district.

"When I started in 2003, we had Latin, we had a really good marching band, we had industrial arts, and by 2007-08 we were losing that stuff," he said. "The test scores were going way, way down."

The Lakewood school district concurs that the funding formula doesn't work there, said Board of Education attorney and spokesman Michael Inzelbuch in a statement, "based on our unique demographics of poverty, nonpublic enrollment, etc."

"We also agree that loans are not sustainable," he added, but said those loans served to provide the children with a thorough and efficient education.

In defense of its offerings, he said the district has a 35-member marching band and, for those interested in industrial arts, provides "more opportunities at the high school and county vocational program than ever before with more than 250 students participating."

Its test scores need improvement, he conceded, but added: "We have seen growth in certain select areas and are outperforming the charter school in Lakewood."



After a hearing in Trenton, attorney Paul Tractenberg talks about his argument to the New Jersey Supreme Court on school funding in 1997. Star-Ledger file

‘Gets my advocacy juices flowing’

Given the many obstacles to overcome and years spent in his quests, does Tractenberg ever grow discouraged?

“Lots of people, including my wife, ask me that regularly,” he said. “I can’t even really explain what motivates me. I think it raises my fighting instincts. So every delay, every distraction, every obfuscation by the state really gets my advocacy juices flowing. That has seemed to sustain me. It’s over 50 years now. I guess I’m there for the duration.”

Sciarra describes Tractenberg similarly.

“Paul is unique in his ability to hang in, despite his enormous frustration I know he feels about what goes on in Lakewood,” Sciarra said. “But in some sense that kinds of fuels Paul’s drive to keep going.”

Also fueling that drive is Tractenberg’s belief in the value of a public school education.

“Without sounding hokey, I am a product of the Newark public schools. I graduated from Weequahic High School when it was probably one of the top 10 high schools in the United States,” he recounted. “I grew up in a lower-middle-income family. So I really relate to kids who don’t come from privileged means. The fact that I got a great education and they’re not, or they haven’t been, is a lot of what motivates me.”

Tractenberg later attended Wesleyan University and Michigan Law School, much to the disappointment, he said, of his father, who had long envisioned Princeton and Harvard Law for his only child. (“I’m not sure he ever completely forgave me for that,” Tractenberg quipped.)

If not for an arm injury at Wesleyan, he said, he may have made his mark on a major league baseball diamond instead of in a courtroom.

“My life’s ambition through high school was to be a professional baseball pitcher -- a crafty little left-handed pitcher, when that was in vogue,” Tractenberg recalled. “I had a few offers in my senior year from the Detroit Tigers and the then-Milwaukee Braves but decided to go to college.”

Tractenberg said he came to the field of educational law from private practice when, while working as an attorney in New York in the late 1960s, he was retained as special counsel to help devise a plan to decentralize the city’s school system.

“That kind of lit my fire in terms of getting an idea of how I wanted to spend my professional life,” he said. “When I decided to leave private practice and go to Rutgers Law School (to teach), I knew I wanted to continue working in education law.”

Tractenberg founded the Education Law Center in 1973 and eight years later, its executive director, Marilyn Morheuser, a former nun and student of his, initiated the *Abbott v. Burke* case, seeking to level the playing field between urban and wealthier suburban districts through state aid for early education, supplemental programs and improved facilities. Out of the ensuing three-decade series of legal battles came the school funding formula in use in New Jersey to this day.

“Although they bear different names and are technically separate cases, they are really aspects of one litigation stream,” Tractenberg wrote of *Robinson* and *Abbott* in his 2013 book, *Courting Justice: Ten New Jersey Cases That Shook the Nation*. He added that the two-case “tandem ... has revolutionized New Jersey’s school funding and educational system and shaken the nation in the process.”



Paul Tractenberg makes his argument in front of the New Jersey Supreme Court in March 1997, as the court hears arguments about school funding from parties participating in the *Abbott v. Burke* case. Star-Ledger file

Morheuser was a charismatic and passionate advocate for schoolchildren, said author Yaffe, who covered the subject in Jersey City from 1989 to 1995 for *The Jersey Journal*, while Tractenberg was a “very kind, sensible and calming kind of presence” in support.

Morheuser “was often the front person, the public face of this case, and he was more often the guy in the back room, kind of keeping things going,” Yaffe said.

When Sciarra became director of the Education Law Center following Morheuser’s death from breast cancer in 1995, he knew from the start where to turn for guidance.

“I had a very steep learning curve when I took over that I had to climb in a very short period of time,” Sciarra said. “Paul was absolutely essential for me to get to where I needed to be and for us as an organization to make sure that we were doing the best job that we could representing the urban schoolchildren in the *Abbott* case.”

A resident of West Orange (where he is fighting development of a 120-acre parcel near his residence), Tractenberg said he enjoys bicycling -- not surprisingly for long distances. He has two children from a first marriage, both of whom went to public school, and a

stepchild from his second marriage, who attended a Jewish day school; two of these three, he said, became lawyers. He has five grandchildren and four step-grandchildren.

Professionally, Tractenberg can look back on a half century of educational advocacy and see “enormous progress in terms of equality of funding.”

“There have been literally billions, if not tens of billions, of extra state dollars that wound up going to the poor urban districts as a result of the effort,” he said.

With the Lakewood case still unresolved, his work is not done.

“I have no doubt that Paul is going to stay on it,” said Sciarra of the Lakewood case. “He’s going to continue to press and eventually will get there.”