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SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

RAYMOND ARTHUR ABBOTT, et al.,)

Plaintiffs,) Civil Action

v.) SUPPLEMENTAL CERTIFICATION
OF LUCILLE E. DAVY

FRED G. BURKE, et al.,)

Defendants.)

I, Lucille E. Davy, of full age, hereby certify that:

1. I submit this supplemental certification to clarify factual issues raised by movant Abbott districts and in further support of the State's Application for Approval of the Governor's FY2007 Proposed Budget for School Aid to Abbott Districts.

2. The State recognizes that previous attempts and approaches to solving funding problems and other Abbott implementation problems were not universally successful. Moreover, some public assurances made by the previous administration were not fulfilled. Notwithstanding how these past actions are characterized, there is agreement that these problems must be

corrected moving forward. However, the presence of lingering funding and implementation concerns and the need to take immediate and concrete steps to correct them does not mean there will be devastating effects upon the Abbott districts if Governor Corzine is given the opportunity to implement his budget proposal. The reductions will not effect mandated obligations for full-day preschool, full-day kindergarten or special education, nor will they impact intensive early literacy or secondary initiatives. Certainly, any lack of adequate supervision/fiscal accountability regarding the Abbott districts did not cause a reduction of aid to the districts -- to the contrary, districts received substantial funding increases with little oversight from the State.

2006-2007 Budget Process

3. Given the tremendous effort and difficult judgments undertaken by the Governor regarding his proposed State budget, the Governor's Budget Message occurred quite late in comparison to those of the recent past. By the time final decisions had been made regarding school funding, there was not sufficient time to get guidance to the districts in advance of the initial budget submission. Indeed, initial budgets were submitted without the benefit of state aid notifications so that the school election calendar, and mandates of Title 19, could be met.

4. The timing of the Budget Message and the Department's ability to create accurate and helpful guidance also resulted in

the budget regulations being made final after the Budget Message was delivered. The budget regulations are fairly criticized as "ever-shifting rules and regulations." See Brief of Movants at 32. The changing nature of the regulations, however, is fundamentally a result of the absence of a viable school funding formula resulting in budgets being based on projected revenues in the State budget, and the budget process in place wherein the districts ask for whatever revenue they desire and the Department needs to reduce those budgets.

5. Based on the certifications and other district submissions, it is clear that there is substantial misunderstanding about the method for calculating parity and how Education Opportunity Aid ("EOA") is derived. For some districts, EOA may be the equivalent of parity, but for the vast majority of the Abbotts, EOA represents an amount that is significantly beyond parity levels.

6. Parity is calculated based on the revenue sources in the Comprehensive Educational Improvement and Financing Act, N.J.S.A. 18A:7F-1 et seq., that support the foundation education program. For 2006-2007, parity is allocated in the amount of the difference between each Abbott district's per pupil regular education expenditure for 2006-2007 and the actual per pupil average regular education expenditure of the I&J districts for 2005-2006 indexed by the actual percentage increase in the per pupil average regular

education expenditure of I&J districts for 2005-2006 over the per pupil average regular education expenditure of I&J districts for 2004-2005. The regular education expenditure is the sum of the general fund tax levy for 2005-2006, Core Curriculum Standards Aid, Supplemental Core Curriculum Standards Aid, and stabilization aid. Beyond the appropriate adjustments for updating the appropriations language for the proper school years upon which to run the calculation, the formula has been the same since FY1998.

7. All Abbott districts are guaranteed State aid, or EOA, at a level at least at parity. Most districts, however, have supplemental funding as a portion of their EOA allotment, i.e., "above-parity EOA." As set forth in Exhibits A and B, for FY2007, pursuant to the Governor's proposed budget, the Abbott districts will collectively receive more than \$500 million in above-parity EOA. In FY2006, the year that EOA was calculated based on the presumptive budget formula, the Abbott districts collectively received almost \$645 million in above-parity EOA.

8. While above-parity EOA for FY2007 is proposed by the Governor to be a half a billion dollars, based on submitted revised budgets, the Abbott districts are seeking more than \$960 million in above-parity EOA for FY2007. Exhibit C.

9. Post-audit adjustments to State funding are virtually an annual event. Districts' state aid is adjusted because the amount initially awarded was premised on projections of surplus and other

available revenues to support the districts' budgets. After a district's annual audit (known as a "Comprehensive Annual Financial Report" or "CAFR") is submitted pursuant to N.J.S.A. 18A:23-1 et seq., the Department has exact information on the revenues the district has to support its current year budget. While EOA may be adjusted downward if the district underprojected items such as surplus, it does not reduce aggregate revenues to support the district's spending. Simply put, the March 2006 adjustments made by the Department were not a mechanism by which to reduce FY2007 EOA, but a standard adjustment conducted by the Department annually.

10. Moreover, as is evidenced by the chart appended hereto at Exhibit D, many of the Abbott districts have excess surplus over two percent of their general fund to be recaptured year after year. In fact, in recognition of the amount of excess surplus that could be recaptured by the Department in the subsequent school year, many districts plan ahead and build their subsequent year budgets by applying current year surplus to the subsequent year's budget expenditures - this is known as a Fund 10 Contribution. See Exhibit E. This budgeted fund balance would otherwise fall into excess surplus general fund balance and be used to reduce State aid in the current year. Historically, Abbott districts carry a substantial amount of budgeted fund balance and excess surplus year to year -- \$187 million in FY2005 and \$112 million in FY2004. See

Exhibits D and E. The amount of general fund contribution alone by the Abbott districts in these years exceed the like contributions made by the 131 I&J districts by 78% and 67% respectively. Id. at Exhibit E.

11. The movant Abbott districts suggest level funding will result in decreased revenue because they will not have surplus in FY2007 to support their budget. However, given historical patterns described in ¶10, it is unlikely surplus will not be available.

12. The Certification of Ronald Lee, submitted in support of Newark's application, references comparative spending costs from my initial certification in error. Mr. Lee suggests that my statements elicit a conclusion that Newark is spending 12% per pupil **less** than the I&J average. Mr. Lee's calculations, however, are erroneously based on his statement that "the average per pupil expenditure in the I&J Districts for FY2006 was \$14,287." Lee Certification, ¶30. However, \$14,287 does not represent the I&J per pupil average. Instead, \$14,287 represents the Abbott per pupil average. The I&J per pupil average for FY2006 was only \$11,320. So assuming, for the sake of argument, that all of Mr. Lee's other calculations are correct, and without altering his dubious premise of segregating supplemental program costs/funding, what can be concluded is that Newark is spending almost \$1,200 **more** per student, or 10.5% higher, than the I&J average of \$11,320.

13. Another misconception of my initial certification regards the requirement to raise local levy by certain of the Abbott districts. It was not my intent to define municipal overburden when directing the local levy increase. A point well below the level reflected by the tax rates in Abbott v. Burke, 119 N.J. 287 (1990) ("Abbott II") was selected when the parameters for the requirement were selected for the Governor's proposed Budget. It has been communicated to the districts through memoranda as well as my initial certification that this is a starting point for Abbott districts to begin to contribute local funds in a meaningful way after years of not being required to do so. Thus, while the State was cognizant of municipal overburden issues in selecting a point to begin this required local obligation, it is not believed that the parameters selected for FY2007 are a maximum level for increases in local levy, especially in light of the low school tax rates in almost all of the Abbott districts.

14. Of the eight districts required to raise their tax levy, the Department has submissions from seven districts -- including Asbury Park, see Exhibit F -- that they did so. The additional EOA that will be available to the Abbott districts as a result of the full required increase in tax levy will be utilized to ensure that all Abbott districts are funded at parity and then will be applied on a pro rata basis to provide operational funds to those districts

with new facilities coming on-line in 2006-07, based upon new facilities application review and approval by the Department.

15. The Governor's proposal for flat funding does not mean that districts will be unable to fund instructional priorities. Districts are guided by their submitted two-year plans, face-to-face meetings and an ongoing dialogue about prioritization of improvement activities for the upcoming year. In many instances, the recommended improvements from the face-to-face meetings are not ones that will cause districts to incur costs. The same can be said of the recommendations of the CAPA teams. Indeed, a substantial portion of these recommendations are premised upon districts taking steps to continue intensive literacy implementation and low-performing schools aligning curriculum and undertaking basic restructuring to support the Core Curriculum Content Standards.

16. With regard to the secondary initiative, there are no absolute mandates with fiscal consequences for any of the Abbott districts in the short-term. The plan is for the initiative to progress with four pilot districts and the Department providing planning and training opportunities for the balance of the districts -- all at the cost of the Department. Planning for more rigorous course work and small learning communities are accomplished by reorganizing current class and staff. Moreover, the regulations in place make clear that Statewide implementation

of the structures currently being piloted (and therefore subject to improvement and amendment) is set for 2008. See N.J.A.C. 6A:10A-3.2 and N.J.A.C. 6A:10A Appendix B.

17. In short, regulatory and instructional attention on particular areas, i.e., early literacy, secondary initiatives and improvement recommendations, should not be construed to impose additional costs on the districts. The Department has taken concrete steps to improve its own operational accountability as well as assert accountability measures on the districts and will continue to do so. This work will be ongoing as the Department and Governor work towards the greater goal of restructuring school funding for all of New Jersey's schools with a focus on students, rather than districts. It is recognized that the new administration has undertaken the constitutional responsibilities of funding schools and meeting Abbott mandates. Without placing blame, the administration has concluded that these obligations can not be met without the ability to implement the fiscal and programmatic accountability protocols set forth herein. Moreover, the State can not afford to simply layer another presumptive CPI increase on top of existing Abbott funding without understanding how existing funds are being utilized.

18. Since the submission of my initial certification, the Department has received revised budgets from several more districts. At this time, eight districts have submitted budgets,

or have provided written documentation of their intent to do so, consistent with DOE budget guidance and regulations. See Exhibit G, Revised Budget Submissions as of April 25, 2006: Comparison of EOA and Supplemental Funding Sought in FY2006 and FY2007; Revised Budget Submissions as of April 25, 2006: Comparison of Total Revenue Sought in FY2006 and FY2007.

19. The ability of these districts to responsibly undertake the type of analysis and scrutiny necessary to make appropriate reallocations while maintaining essential instruction and mandated programs is a credit to their commitment to the shared sacrifice called for by the Governor. Some of these districts were effected by post-CAFR reductions of their FY06EOA and some even have new facilities scheduled to open in the fall. Yet all were able to make the assuredly-difficult decisions needed to present a budget balanced within the limits of State aid proposed by the Governor.

20. In contrast, I am disheartened by the districts that jump to the conclusion that the only way to abide by the budgeting directives is to cut direct support and instruction to children. This is particularly true in Vineland and Camden where they recently had to return federal funding because they simply did not utilize the funds. Similarly, districts such as Asbury Park (Indicator 9 Total Administrative Costs), Salem City and Keansburg (Indicator 18 Student/Administrator Ratio) rank the highest of all the Abbott districts in these administrative indicators presented

in the Comparative Spending Guide. See <<<http://www.state.nj.us/njded/guide/2006/abbott.pdf> (last visited April 24, 2006)>>. But not one of those districts suggested cuts or reductions in these administrative areas.

Concrete Steps Towards District and Operational Accountability

21. Past experience has demonstrated that an on-going audit process allows the Department to maximize accountability at the local level and to make appropriate amendments to its own operations. At the preschool level, audits are conducted of DHS-preschool providers upon indication of fiscal mismanagement as well as through a random selection process. These audits have yielded findings ranging from lack of internal controls and failure to use GAAP (Generally Accepted Accounting Principals) to maintain budgets to the misuse of State funds. Such findings resulted in the Department taking steps to recoup misspent funds from the providers, making adjustments to the form Abbott Preschool Education Program Contract to demand fiscal accountability and standards of the providers, as well as to delineate the consequences of using State funds inconsistent with the approved budget. See Current Form Contract, <<<http://www.nj.gov/njded/ece/abbott/contract/> (last visited April 21, 2006)>>. Additionally, the Department mandated that Abbott districts which contract with eight or more private providers must have a fiscal specialist responsible for working the private providers on budget development

and execution, including monitoring private provider expenditures for compliance with approved budgets. See N.J.A.C. 6A:10A-2.18.

22. The Department has moved forward with the procurement of auditors for the review of the 2006-2007 Abbott district budgets. The Department has made recommendations for the award of contracts and has forwarded those recommendations to the Department of Treasury for necessary processing.

23. Additionally, the Department has issued a Request For Proposal to solicit responses on the first comprehensive fiscal audits to be conducted -- those in the districts of Newark, Paterson, Jersey City and Camden. Exhibit H. As described in the scope of work therein, the audits will report on the districts' internal controls, provide an analysis of historical expenditures to determine how funds are being spent and review the efficiency of district operations. Notwithstanding that these districts include the three State operated districts, and that there may be additional resources in these districts for fiscal oversight given their status, it is nonetheless imperative that the State have a full and detailed understanding of how funds are being spent. The Department must be responsive to the Governor's call of full fiscal accountability particularly in those districts that have statutory oversight by the State.

24. Another step that the Department will be taking to enhance its operational accountability is to join the fiscal

resources and expertise available within the Department with the Abbott fiscal staff. Previously, the determination was made to restructure the Department and create the Division of Abbott Implementation that would bring together all of the Abbott functions under one Division. Experience has led to the conclusion that examining Abbott fiscal issues in isolation has not proven to be sufficiently rigorous. As a result, Abbott fiscal staff will be reorganized so that they are working in conjunction with and report to the Division of Finance.

25. On April 17, 2006, Governor Corzine signed the School District Fiscal Accountability Act into law. Found at P.L. 2006, c.15, the Act authorizes the Commissioner of Education to appoint a State monitor to provide direct oversight of a district's business operations and personnel matters when a district receives an adverse opinion by its independent auditor or shows evidence of material weaknesses in internal controls and/or the presence of a deficit and fails to implement appropriate corrective actions. I will be moving to appoint State monitors in those Abbott districts that meet the statutory criteria in the near future.

Closing the Achievement Gap/Programmatic Results

26. Contrary to the suggestion of several movants, it can not be concluded that a specific amount of funds provided to the Abbott districts has caused the Abbott districts to show improvement on State assessments. We know this because some of the highest

spending districts are some of the lowest performing on the State assessments, and conversely, some of the lowest spending Abbott districts are having the best results on the State assessments. It is more likely that the districts with the best results have done the basic and foundational work to align curriculum to the Core Curriculum Content Standards and have focused on early literacy. Moreover, as movant Association for Children of New Jersey suggests, much of the gains may also be attributable to the full-day preschool and full-day kindergarten programs.

27. To this end, the Department will be engaging the services of Dr. Deanna Burney to spearhead the programmatic accountability initiatives in the Abbott districts. As set forth in her curriculum vitae, attached as Exhibit I, Dr. Burney earned both a Doctorate and a Masters Degree in Administration and Social Policy from Harvard University. Currently Dr. Burney is a senior consultant for the Annenberg Institute for School Reform and comes to this task with significant experience in improving education for urban, low-income students.

28. Also of assistance in this area will be the EDSmart database. The Department has begun implementation of this statewide student level database. Although the State had been working on the creation of a database for the past four years, lack of funding and other difficulties with implementation delayed its start-up. Implementation is being phased in with the Abbott

districts being the first ones connected to the system. One of the main advantage of EDSmart is its compatibility with other computer systems, which means that districts can transmit their data in whatever form it is collected and EdSmart makes the conversion to the State system. This will allow for easier and less costly district implementation. Additionally, the Department has already downloaded the last eight years of statewide assessment data, all of which will be incorporated into the State's database. The Abbott districts are expected to be online by September 1, 2006. During the 2006-07 school year, the remainder of the State's school districts will be integrated into the system. Finally, the establishment of a system to create unique identifiers for each student is underway.

29. The criticism of the Department in not completing the "Court-ordered" program evaluation warrants a short response. In Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V"), the Court directed the Department to expeditiously undertake an evaluation of the Success For All whole school reform evaluation. Id. at 501-502. In Abbott v. Burke, 177 N.J. 578 (2003) ("Abbott X"), that task was expanded to a review of all Abbott mandates. Id. at 589. Initially, the Evaluation Working Group sought to undertake an evaluation of this magnitude, but limited to a small number of districts. Evaluating such a large number of programs and services, in practical terms, precluded the undertaking in all of

the Abbott districts; however, concerns were subsequently raised that the small number of districts involved would not yield a statistically significant outcome. Given the significant fiscal investment involved and the limited utility of the study, the decision was made to abandon that RFP process. Moreover, given the small number of districts that are using SFA, or have a traditional whole school reform model, it does not make sense to undertake an evaluation as initially contemplated by the Court in Abbott V at this point. This does not mean that steps to address the critical yet complex issues identified in Abbott X and in the Education Law Center's brief as the focus of an evaluation should not be completed. Rather, it is simply time to take a different approach, as there is agreement by most that what works in one district may not work in another. The findings of the curriculum and program audits will give insight on which programs and services are successful in helping students achieve the CCCS. Where appropriate, such programs could be replicated or exported to other districts with similar needs. The fiscal audits described herein will also assist in determining the efficacy of the programs in place in the Abbott districts.

30. Finally, I am providing revised exhibits to ensure the Court has the most up-to-date information on the amount of aid to the Abbott districts. The attachments found at Exhibit A, B, J and K, appended hereto, reflect post-CAFR adjustments of aid,

adjustments due to the required tax levy increase, and adjustments in FY2007 early childhood program approvals. These Exhibits should replace those found at Exhibit N, O, P and Q of my initial certification.

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.

Lucille E. Davy

Dated: April ____, 2006