

C #177-98  
SB # 50-98

DENISE JONES ET AL., :  
 :  
 PETITIONERS-APPELLANTS, :  
 : STATE BOARD OF EDUCATION  
 V. :  
 :  
 : DECISION ON MOTION  
 LEO F. KLAGHOLZ, COMMISSIONER OF :  
 EDUCATION, AND NEW JERSEY STATE :  
 BOARD OF EDUCATION, :  
 :  
 RESPONDENTS-RESPONDENTS. :  
 :

---

Decided by the Commissioner of Education, April 28, 1998

For the Petitioners-Appellants, Education Law Center (David G. Sciarra, Esq., of Counsel) and Gibbons, Del Deo, Dolan, Griffinger & Vecchione (David B. Thronson, Esq., of Counsel)

For the Respondents-Respondents, Peter Verniero, Attorney General of New Jersey, and Nancy Kaplen, Deputy Attorney General

On August 1, 1997, a group of students and parents of children attending school in the Plainfield school district (hereinafter “petitioners”) filed the instant petition with the Commissioner of Education, seeking a determination that the School District of the City of Plainfield continued to be a poorer urban school district as defined by the Supreme Court in Abbott v. Burke, 119 N.J. 287 (1990) (Abbott II). Petitioners claimed that the District’s students were therefore entitled to the benefit of the remedial measures mandated by the Court’s subsequent decisions in that case, including Abbott v. Burke, 149 N.J. 145 (1997) (Abbott IV, requiring parity funding), and the Court’s most recent decision of May 21, 1998 (Abbott V, directing supplemental programs, preschool and facilities). Acting on a motion to dismiss filed by the State respondents, the

Commissioner dismissed the petition in its entirety by a summary decision issued on April 28, 1998.

On May 26, 1998, petitioners filed a notice of appeal to the State Board, and on June 15 they filed their appeal brief. The appeal brief was accompanied by a motion to supplement the record on appeal pursuant to N.J.A.C. 6:2-1.9 with the affidavit of Joan Ponessa, the Director of Research for the Education Law Center, and a supplemental affidavit of Dr. Larry Leverett, Superintendent of the Plainfield School District. Petitioners argue that the affidavits contain updated information and data that was not available to them when they filed their petition with the Commissioner last year.

On July 7, 1998, the State respondents filed a brief in opposition to petitioners' motion and also moved to stay the briefing schedule pending the State Board's determination of petitioners' motion.<sup>1</sup> In the event their motion to stay the briefing schedule is denied, the State respondents request a 20-day extension following our determination of petitioners' motion to file their answer brief on the merits of the case.

After consideration of the parties' submissions, we grant petitioners' motion to supplement the record with the affidavits of Ms. Ponessa and Dr. Leverett. As petitioners point out, the supplemental information consists of updated data on the performance of the District's students on the Early Warning Test and the High School Proficiency Test, updated data on graduation rates, updated demographic data, and data on Plainfield's funding under CEIFA for 1998-99. This information is material to the issues now on appeal. Furthermore, most of the information included in the affidavits is from the State Department of Education and is information of which we could appropriately take notice even in the absence of a motion.

---

<sup>1</sup> The State respondents have not yet filed their answer brief, which was due on July 6, 1998.

State respondents answer brief was due on July 6, 1998. They have not however filed any brief at this point.<sup>2</sup> Hence, as a practical matter, unless we preclude them from filing their answer brief by our decision today, State respondents have received the benefit of their motion to stay the briefing schedule regardless of whether we grant or deny it.

In order to assure that the State Board has an adequate record upon which to decide the merits of this matter, we will not bar State respondents from filing their answer. However, given the amount of time that has passed since petitioners filed their petition with the Commissioner, we decline to prolong the briefing schedule any more than is necessary. As previously indicated, most of the supplemental information upon which petitioners seek to rely is from the Department of Education. State respondents have had both petitioners' motion and their appeal brief since they were filed in June. We therefore deny any further extension of the briefing schedule and direct that the State respondents file their answer brief within ten days of the date of this decision.

August 5, 1998

Date of mailing \_\_\_\_\_

---

<sup>2</sup> We note that the State respondents did not request an extension for filing their answer brief pursuant to either N.J.A.C. 6:2-1.5(b) (extensions with consent of all parties) or N.J.A.C. 6:2-1.5(c) (extensions without consent of other parties).