

Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 970
Trenton, New Jersey 08625-0970

RE: Abbott, et al. v. Burke, et al.
Docket No.42,170

Dear Mr. Townsend:

The Association for Children of New Jersey (ACNJ) respectfully submits this letter brief in support of its Motion for Leave to Appear as *Amicus Curiae* in the above-captioned case.

TABLE OF CONTENTS

STATEMENT OF FACTS1

ARGUMENT

I. THE CONTINUED HIGH CONCENTRATION OF POVERTY AND EXTRAORDINARY NEEDS OF CHILDREN IN THE ABBOTT DISTRICTS DEMAND THAT THE COURT CONTINUE ITS JURISDICTION AND REMEDIAL PROTECTIONS3

II. THE SUPREME COURT MUST CONTINUE ITS JURISDICTION AND REMEDIAL PROTECTIONS TO ENSURE THAT THE PARTICULARIZED NEEDS, HIGH QUALITY STANDARDS AND ADEQUATE FUNDING OF THE ABBOTT PRESCHOOL PROGRAM CONTINUE.....11

CONCLUSION18

STATEMENTS OF FACTS

ACNJ has a longstanding interest and expertise in this area, which it believes would be of benefit to the Court in deciding this motion. ACNJ has participated as *amicus curiae* on

five prior occasions in the Abbott v. Burke litigation to speak to the consequences and outcomes of poverty and to highlight the needs of poor children. Through its Kids Count Reports on indicators of child well-being, ACNJ is uniquely positioned to show that the poverty and poverty-related conditions which are prevalent in the urban districts increase the educational needs of poor and minority children. In previous Abbott decisions, this Court has acknowledged this disparity. Our focus now, as then, is on the needs of the children, specifically the children eligible for preschool services as a result of this Court's decisions in Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V), Abbott v. Burke, 163 N.J. 95 (2000) (Abbott VI).

This Court created a unique and unprecedented opportunity for young children when it mandated preschool programs for three and four-year-old children in the Abbott districts. Realization of that opportunity was necessarily left to the State to implement. When the State's efforts were insufficient and thus ineffective, this Court again had to step in to ensure that children in the Abbott districts received the high quality preschool programs intended by the Court and promised by the State.

The ACNJ-led Early Care and Education Coalition, which continues to meet, played a key role in developing the preschool standard ultimately adopted by the Court. Since the Court's 1998

decision, significant progress has been made in preschool both in program quality and child outcomes. The State's new untested funding formula may negatively affect any continued progress, which this Court should consider in deciding the State's application. ACNJ is in a unique position to provide the Court with information on Abbott children's early learning experiences and the reasons why Abbott preschool has been so successful.

POINT I

THE CONTINUED HIGH CONCENTRATION OF POVERTY AND EXTRAORDINARY NEEDS OF CHILDREN IN THE ABBOTT DISTRICTS DEMAND THAT THE COURT CONTINUE ITS JURISDICTION AND REMEDIAL PROTECTIONS

Arguing that the School Funding Reform Act (hereinafter SFRA) "meets the requirements of the thorough and efficient clause of the New Jersey Constitution," the State asserts that the "Court's prior remedial orders entered on behalf of the Abbott districts are no longer necessary." Brief in Support of State's Motion, at 1 ("State's Br."). According to the State, the Abbott designation is no longer necessary because the SFRA incorporates "an enhanced resource model developed by the DOE . . . which includes specific additional resources for meeting the special needs of disadvantaged students." State's Br. at 1-2.

Indeed, the SFRA does expand the definition of "at-risk" to include students eligible for reduced-price lunch (185 percent of the Federal Poverty Level) rather than limited to those

students eligible for free lunch (130 percent of the FPL) and provides several tiers of additional weighted funding, which increase depending upon the district's concentration of at-risk students. New Jersey Department of Education, A Formula for Success: All Children All Communities 12

<http://www.state.nj.us/education> The SFRA also expands "full State funding for all at-risk 3- and 4-year-olds to attend full-day preschool programs in every district." Id. at 17.

The State's commitment to address the educational needs of at-risk, disadvantaged children regardless of where they live is a policy direction to be applauded. But the question before the Court is not how the SFRA addresses the needs of at-risk children statewide, but whether the Abbott designation and the special protections it ensures for children in the Abbott districts should be abandoned. The Association for Children of New Jersey (hereinafter ACNJ) respectfully argues that it should not. The continued high concentration of poverty and the extraordinary needs of children in the Abbott districts demand the Court's continued oversight. These children still need the Court's protection.

Educational need and concentration of poverty are the cornerstones of the Abbott designation. In June 2005, Department of Education (hereinafter DOE) Commissioner William Librera outlined recommendations for the Legislature to determine the

Abbott designation. Noting the lengthy history of the Court's involvement, the Commissioner asserted "Abbott is not about relative educational disparities alone. Instead, the decisions concern those districts in which both poverty and educational inadequacy are so substantial that they cannot possibly satisfy the standard absent implementation of the Abbott remedies . . ." *Librera, Designation of Abbott Remedies*, 2 (June 15, 2005) <http://www.state.nj.us/education/abbotts/regs/criteria2.pdf>.

These cornerstones of "low student achievement and concentrated poverty" *Id.* remain critical factors, which continue to set the Abbott districts apart from the rest of the state, despite the expansion of at-risk funding to more children.

a. The Abbott Districts Continue to have the Highest Concentrations of Poverty

Examination of 2006 census data provides a stark picture of the depth of poverty and disadvantage in 9 of the 31 Abbott districts (Camden, East Orange, Elizabeth, Jersey City, Newark, Passaic, Paterson, Trenton and Union City). Thirty-three percent of children in these districts live in families with incomes below the federal poverty level, compared to 12 percent of children statewide. 2006 American Community Survey, updated 2007 http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS&_submenuId=datasets_2&_lang=en. Child poverty levels in

these districts are stark: 34 percent in Jersey City, 41 percent in East Orange and Paterson, 50 percent - 1 of every 2 children in Camden. Id. In most of these districts, the percent of children living in poverty increased from 1999 to 2006.

Elizabeth's child poverty rate increased 54 percent, from 22 percent in 1999 to 34 percent in 2005. Passaic's rate increased 44 percent from 28 percent in 1999 to 40 percent in 2005. On average, poverty increased 18 percent in these cities. Id.; 2000 Census, released in 2002,

http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=DEC&_submenuld=datasets_1&lang=en

Income inequality in these districts is equally disturbing. The 2006 median income of families with children under the age of eighteen averaged 31,841 in the 9 cities, compared to \$79,097 statewide. Id. In fact, while the statewide median income increased 21 percent from 1999 to 2006, it increased just 1 percent in the 9 cities. Id. Unemployment and the percent of households spending more than thirty percent of income on rent were higher in these cities than the statewide average. Id.

b. Abbott Test Scores have Improved, but are Still Below State Averages

The second criterion to determine whether a district meets the Abbott designation is educational adequacy. "The Supreme Court accepted the Core Curriculum Content Standards

(hereinafter CCCS) as the measure of educational adequacy... Each district must offer a program the opportunity to measure the Content Standards." Librera, supra at 3. Factors indicative of educational adequacy can include, but are not limited to, course offerings, facilities, instructors' education and experience, teacher-pupil ratios, indicators of student achievement, such as statewide test scores, and drop out rates. Id.

The Abbott districts have demonstrated progress in student achievement through steady improvement in statewide test scores, especially the 4th grade student achievement tests. In general, the 4th grade test scores in the 9 Abbott districts discussed above improved overall from the 2000-01 school year to 2006-07. Department of Education, 2001 Assessment Reports, <http://www.state.nj.us/education/schools/achievement/2002> Some districts have shown great improvement, such as Newark, which had a 63 percent increase in this period. Id. The largest gains have been in 4th grade math scores, which increased by more than 100% in Jersey City and Newark. Id.

Improvement in the 4th grade test scores in these districts has outpaced state averages. Fourth grade scores in the 9 Abbott districts improved 39 percent, compared to 12 percent statewide Id. Even with these gains, however, the average overall percent of 4th graders passing state tests in the 9 Abbott districts is 63 percent, compared to 81 percent statewide. Id.

While the improvements in student achievement in these Abbott districts is positive, especially in light of the increase in child poverty over that same period of time, the data also demonstrates how much more needs to be accomplished. Educational adequacy is still a challenge for the Abbott districts, and is compounded by the disadvantage that the Abbott children face in their homes and communities. This is a factor that this court has long recognized as a reason for a greater investment of resources in the Abbott districts. In Abbott V, this Court acknowledged that "schools frequently have to step in where community structures fail." Abbott v. Burke, 153 N.J. at 510. The Abbott districts continue to have higher rates of abuse and neglect, poorer health outcomes, less access to prenatal care and a myriad of problems related to poverty. ACNJ City Kids Count (2006).

This understanding of the impact of extreme disadvantage on educational achievement of children was the basis for the Court's mandate for supplemental programs to achieve equity. As the Court noted, "When schools do step in, research shows that there are positive, salutary effects on student performance, attendance, and dropout rates, as well as an increased opportunity for teachers to interact with students." Abbott V, 153 N.J. at 509. In the 2003 Abbott decision, the Court specified a range of necessary supplemental programs, including

early literacy, health and social services, dropout prevention and alternative education, summer programs, transition to work and others. Abbott v. Burke, 177 N.J. 578, Appendix 590-595.

(2003) (Abbott X).

c. A Needs-Based Approach to Funding is the Cornerstone of the Court's Approach to Overcoming Disadvantage

The SFRA applies a weighted scale to determine levels of at-risk funding, beginning with those districts with 20% of children eligible for reduced-price lunch and increasing to districts where 60% or more children are eligible. NJ Department of Education, A Formula for Success, supra at 38 Twenty-four of the 31 Abbott districts have at-risk populations of 60 percent or higher. State's Br., at 62. The remaining 7 Abbott districts have at-risk populations between 40 and 60 percent. Id. By the State's definition, the Abbott districts continue to have the highest concentration of at-risk students.

However, despite the inclusion of greater at-risk aid for districts with high populations of disadvantaged children, the formula-based SFRA is a dramatic departure from this Court's historic emphasis on needs-based funding. "Beginning as early as Abbott II, we have stressed the importance of having the particularized needs of these children drive the determination of what programs should be developed." Abbott V, 153 N.J. at 511, citing Abbott II, III, and IV "The provision of

supplemental programs involving services should not be detached from the actual needs of individual Abbott schools and districts." Id.

Further, the SFRA does not direct that at-risk aid be used to fund the supplemental programs required to meet the needs of disadvantaged children. "Districts could use the additional funds for programs or services that would address particularized needs of their students or for increased professional development of staff or even to provide more competitive salaries to attract and retain highly-qualified teaching staff." State's Br., at 62.

There is nothing in the SFRA to suggest that the Court should depart from its long-held belief that the particularized needs of disadvantaged children should drive appropriate levels of funding. While it is true that at-risk aid is built into the new school funding formula, it remains a formulaic approach, with no provision for addressing particular needs of children, a cornerstone of the Abbott decisions.

The extraordinary needs of the children in the Abbott districts have not abated with the enactment of the SFRA. The Abbott districts still represent communities with the highest concentrations of poverty and the resulting problems of violence, homelessness, inadequate health care, abuse and neglect. "The lessons of the history of the struggle to bring

these children a thorough and efficient education render it essential that their interests remain prominent, paramount, and fully protected." Abbott V, 153 N.J. at 527-528. For more than 30 years, it is this Court's protection that has made the difference for disadvantaged children. It is premature for the Court to cede that protection now.

Point II

THE SUPREME COURT MUST CONTINUE ITS JURISDICTION AND REMEDIAL PROTECTIONS TO ENSURE THAT THE PARTICULARIZED NEEDS, HIGH QUALITY STANDARDS AND ADEQUATE FUNDING OF THE ABBOTT PRESCHOOL PROGRAM CONTINUE

The State acknowledges that the Abbott preschool program "is the one remedial program mandated by Abbott V that has been an unquestioned success." State's Br. at 32-33. Now in its ninth year of implementation, the Abbott preschool program has lived up to the Supreme Court's mandate of achieving a "substantial positive impact on academic achievement in both early and later school years." Abbott V, 153 N.J. at 492. During the last few years, the program has received national recognition in both its high quality and the positive outcomes for children who have participated. Lamy, Barnett and Jung, "The Effects of New Jersey's Abbott Preschool Program on Young Children's School Readiness," The National Institute for Early Education Research (December 2005); Frede, Jung and Barnett, The Abbott Preschool

Program Longitudinal Effects Study, The National Institute for Early Education Research (Interim Report, June 2007) at 37.

The Abbott program has among the highest quality standards in the nation, ranks third in providing access to 3-year olds, as well as being the highest funded. Barnett, Hustedt, Friedman, Boyd and Ainsworth, The State of Preschool 2007: State Preschool Yearbook 2007, 95 National Institute for Early Education Research (2008).

The need to continue providing Abbott preschoolers with this quality program is critical to their long-term educational success. The SFRA's future funding for preschool however, will be a dramatic change from the existing approach, which has been linked to both needs and high standards. The Court's removal of the Abbott remedial protections, which include the preschool mandates of Abbott V and Abbott VI is premature and may jeopardize districts' ability to sustain the high level of program quality and put in question future educational gains of Abbott preschoolers.

a. The Success of the Abbott Preschool Program has been Based on a "Quality Equation"

Much of the success of the Abbott preschool program is linked with the winning equation of programs based on the particularized needs of the participating children in each

district, high quality state standards and adequate funding to support those standards.

Abbott preschool, one of Abbott V's remedial measures, was clearly designed and implemented to meet the particularized needs of the diverse 3- and 4- year olds living in those districts. In the nine years of Abbott preschool, this unique framework of identifying specific programs to address district needs including recruitment and outreach, curriculum and programs, English language learners, inclusion, transition, program evaluation, child assessment and community collaboration has become an integral component of the program's high quality. New Jersey Department of Education, Abbott Preschool Program Two-Year Report on Instructional Priorities Report, 2008-2009 to 2009-2010,

<http://www.nj.gov/education/ece/abbott/forms/priorities.doc>

The second component to the quality equation has been high quality state standards. In April 2000, the State, in collaboration with early childhood experts developed the Early Childhood Education Program Expectations: Standards of Quality. This document was revised in July 2004. Department of Education, Preschool Teaching and Learning Expectations: Standards of Quality. www.nj.gov/education/ece/code/expectation The Preschool Teaching and Learning Expectations "set a standard for preschool learning outcomes and serves as a benchmark for how

effectively the classroom curriculum is being implemented. Id. at 6. It presents principles for working with home, school and community partnerships, the learning environment and assessments. Moreover, it addresses those areas that are key components to a high quality program including social/emotional development, creative arts, healthy, safety and physical education, language arts literacy, math, science, social studies, family life skills and world languages. Id. at 7.

The Abbott preschool standards have received high-marks in an annual profile of state funded preschool programs in the United States. The Abbott preschool program has consistently received a "9" out of "10" on the report's Quality Standards Checklist, which include such benchmarks as early learning standards, teaching degree, maximum class size, staff/child ratio, screening/referral and meals. Barnett, Hustedt, Friedman, Boyd and Ainsworth, *supra* at 96.

Lastly, pivotal to the success of Abbott preschool has been the high level of state funding for program implementation. In 2007, state spending for every enrolled Abbott preschooler was \$11,831, ranking New Jersey first in the nation for state spending. Id. at 96. This funding has been able to financially support the implementation of the high quality standards including, competitive teachers' salaries, professional development, a class size of 15, adequate classroom supplies,

supporting staff, including master teachers and family workers. Moreover, the financial supports permit the implementation of services to meet the particularized needs of the children.

b. The Preschool Expansion Component of the SFRA is a Sound Policy Initiative to Address the Educational Needs of All At-Risk Preschoolers

The SFRA includes a significant expansion of high quality preschool throughout the state. A program expansion that meets the needs of all at-risk preschoolers is logical due to the success of the Abbott preschool program. This initiative will provide all of New Jersey's at-risk 3- and 4- year olds and other preschoolers living in high-poverty districts with access to early childhood programs that meet the standards of quality currently in place in Abbott districts. Approximately 460 school districts currently have eligible preschoolers and will be required to implement this initiative over a six-year period. Wolock and Joye, *Preschool Expansion in New Jersey's Public Schools*. Regional Meeting April 2008, New Jersey Department of Education, Division of Early Childhood Education. http://www.nj.gov/education/ece/expansion/expansion_files/frame.htm.

The opportunity for an additional 30,000 low-income 3- and 4-year olds to reap the benefits of this proven effective preschool program is a sound policy decision. *Id.* ACNJ applauds the State's vision and commitment to quality preschool for

children beyond the Abbott districts and strongly supports this initiative.

c. The State's Preschool Expansion Formula May Not Adequately Support the Implementation of the High-Quality Abbott Program

In the past, the preschool state aid for each Abbott district was determined by individual district and provider budget reviews as part of the DOE approval of the Abbott early childhood plans. State's Br. at 40.

Under the SFRA, the State's per-pupil amount for preschool was determined by actual cost data, since the DOE had collected detailed fiscal data on the Abbott preschool programs. State's Br. at 34. Under the new formula, for students served in district preschool classrooms, the per pupil amount for 2008-2009 will be \$11,506; for children in private providers, the amount will be \$12,934; and for students served in Head Start, the amount will be \$7,146, thus providing a fairer and more realistic way to meet the varied actual costs of those different auspices providing the program. Id. at 34. Moreover, the State will fully fund each per-pupil amount based on actual preschool enrollment numbers. Id. at 35.

In future years, however, ACNJ is concerned that a disconnect between particularized needs/high quality standards and adequate funding may occur. No longer will Abbott programs be based on the specific needs of individual districts, but rather on three

prescribed options identified in the SFRA. Districts will receive the greater of the formula's per-pupil allocation, a district's per-pupil allocation in its approved 2008-2009 early childhood plan or the district's total 2008-2009 Preschool Aid amount. L. 2007, c. 260, s12c(4).

The ability to sustain the level of high quality programs currently enjoyed by over 40,000 Abbott preschoolers will now be based on formulaic determinations that may not address the realistic costs of implementation. While the high quality standards will remain the same for Abbott districts and now the new preschool expansion districts, ACNJ is concerned that districts may not receive adequate state funding to support those standards.

Even with annual increases tied to CPI adjustments (State's Br. at 2) previous state increases indicate such inflationary increases may be inadequate. Since 2004-2005, no state budgeted increases were less than 2.3% and went as high in one year to 7.5%. E-Mail from Karin Garver, Division of Early Childhood Education, Department of Education, to Cynthia Rice, Sr. Policy Analyst, ACNJ (February 19, 2008)

Future state aid that does not adequately support the high quality standards of the Abbott preschool program will eventually undermine its effectiveness and diminish the continued outcomes that were the ultimate vision of this Court

in Abbott V and Abbott VI. “Without adequate resources, content standards can have little actual impact on the quality of education.” Abbott v. Burke, 149 N.J. 145, 171 (1998) (Abbott IV). Unlike the State’s claim, the CCCS is not the foundation of the funding formula in SFRA. State’s Br. at 11. Those standards, like the Preschool Teaching and Learning Expectations are pivotal components however they must be inextricably tied with adequate funding.

From its inception, had the Abbott Preschool Program been based on a formula, it would never have achieved the level of quality that thousands of preschoolers have benefited from during the past nine years. The ability to meet the needs of our state’s youngest citizens through adequate program funding clearly explains the success of this program.

CONCLUSION

While the State’s brief outlines in detail the steps taken in the formula’s development, it remains untested. The impact that it will have on the viability of supplemental programs including preschool, remains in question. The State’s motion to remove all remedial protections is premature. For example, there are too many questions that remain as to whether the preschool funding component of the SFRA will affect the quality of the Abbott preschool programs. It is ACNJ’s fear that it is a real possibility that future preschool funding will be

inadequate to support and will effectively dilute the quality of the program, particularly in difficult economic times.

ACNJ's concerns are further exacerbated because of the current fiscal problems of the State. Although included in the SFRA and a top priority of both Governor Corzine and the DOE, the assurance that adequate funding will be available to support the Abbott preschool program, regardless of its effectiveness, may be in question in the future.

Although CEIFA was the permitted funding formula for all districts other than the Abbott districts, the State admits that since 2002, CEIFA has not been used as the basis for providing State Aid to any school districts. The "fiscal situation in the State made it impossible to continue to implement the CEIFA formula for the remaining school districts given the limited increase in State aid available for education had to be devoted almost exclusively to the Abbott districts." State's Br. at 6.

The State is in the midst of significant budgetary problems. The FY 09 proposed budget includes the second largest spending cut in New Jersey's history. See Governor Jon Corzine Budget Address, February 26, 2008 at <http://www.state.nj.us/budget09/speech.html>. Moreover, it does not appear that New Jersey's fiscal problems will end this year.

Even with the State's commitment to preschool, without the Court's previous Abbott remedial orders remaining in place, the

chances that fiscal pressures may win out to adequate funding for effective programs such as preschool are a harsh reality. Because of the uncertainty of how the funding formula will affect the ability to sustain the Abbott program at a high quality level, the Court's continued oversight is necessary.

Respectfully submitted,

Cecilia Zalkind, Esq.
Executive Director
Association for Children of New Jersey

On the Brief:
Cynthia Rice, Esq.
Alexander Violette, J.D.