

RAYMOND ARTHUR ABBOTT, et al.,

Plaintiffs,

v.

FRED G. BURKE, et al.,

Defendants.

SUPREME COURT OF NEW JERSEY  
DOCKET NO. M-1293

ON REMAND BEFORE THE HON. PETER  
E. DOYNE, A.J.S.C.

CIVIL ACTION

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PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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## Procedural History

In May 2009, after extensive proceedings before this Special Master, the Supreme Court declared that the School Funding Reform Act of 2008 ("SFRA") satisfied the requirements of the Thorough and Efficient Education Clause of the New Jersey Constitution, N.J. Const. art. VIII, §4, ¶1, for all students. Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX"). The Court, however, conditioned continuing constitutionality of the SFRA on the State (1) providing school funding aid "at the levels required by SFRA's formula each year" through 2011; and (2) conducting the "mandated review of the formula's weights and other operative parts" based on three years of "full implementation." Id. at 146, 174.<sup>1</sup>

On March 16, 2010, the Governor presented his FY11 State Budget, proposing to reduce state school funding aid for kindergarten through 12<sup>th</sup> grade ("K-12") by \$1.081 billion, a reduction of 13.6% from the level provided through the SFRA in 2009-10. On March 19, 2010, the State notified school districts of their aid allocations, and the districts accordingly adopted 2010-11 budgets based on the reduced funding level.

After the State refused to either revise the aid levels to

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<sup>1</sup> The State conceded in this remand proceeding that it did not conduct the three year review of the formula, as required by the SFRA. N.J.S.A. 18A:7F-46b.

comport with the SFRA, or seek relief from the Abbott XX mandates, Plaintiffs, in June 2010, filed a Motion in Aid of Litigants' Rights, requesting that the Supreme Court enjoin the State from providing school aid for 2010-11 at a level less than that required by the SFRA. On June 29, 2010, the Governor signed the FY2011 Appropriations Act, P.L. 2010, c. 35, incorporating the \$1.081 billion aid reduction.

On January 13, 2011, following oral argument, the Court issued an Order remanding this matter to a Special Master. Abbott v. Burke, M-1293 (Jan. 13, 2011) ("Remand Order I"). The Order, which made clear that "the Court's determination that SFRA was constitutional, on its face, [was] predicated on the express assumption that SFRA would be fully funded and adjusted as its terms prescribed, Abbott XX, supra, 196 N.J. at 170," directed the Special Master to develop a record and make findings of fact and conclusions of law, on a limited issue: "whether school funding through SFRA, at current levels, can provide for the constitutionally mandated thorough and efficient education for New Jersey school children." Remand Order I, at 5, ¶2. The Court placed the burden of proof on the State, requiring a demonstration "that the present level of school funding distributed through the SFRA formula can provide for a thorough and efficient education as measured by the

comprehensive core curriculum standards in districts with high, medium, and low concentrations of disadvantaged pupils." Remand Order I, at 6, ¶4.<sup>2</sup> The Court made clear that the "relative comparison of funding among districts alone shall not be sufficient" to meet the State's burden. Remand Order I, at 6, ¶5.

On January 25, 2011, Defendants filed a "Motion for Clarification" with the Supreme Court "seeking to have [the] Court make clear that the Special Master is permitted to consider the State's fiscal situation during the remand proceeding." State's Brief in Support of Motion for Clarification, at 1. On February 1, 2011, the Court denied the motion. Abbott v. Burke, M-853/854, at 3 (Feb. 1, 2011) ("Remand Order II"). The Court again made clear that the remand to the Special Master was "limited" to a single issue: whether current funding levels through the SFRA formula can provide the comprehensive Core Curriculum Content Standards ("CCCS") to New Jersey school children. Remand Order II, at 2.

After receipt of the State's proposed witness list, Plaintiffs, on February 7, 2011, filed a "Motion in Limine" to bar the introduction of evidence related to the State's fiscal

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<sup>2</sup> The parties have submitted separate briefs on the quantum of the burden of proof on the State. That issue is pending disposition by the Special Master.

condition and allocations of federal funding to districts, matters which, Plaintiffs argued, were outside the scope of the Supreme Court's limited remand. On February 11, 2011, the Special Master determined that, while the fiscal conditions and federal funds were beyond the scope of the limited remand, the State could proffer this evidence for the purpose of developing the record for the Court. Motion in Limine Hearing Tr. 18:13-24:1 (Feb. 11, 2011).

The presentation of testimony began on February 14, 2011 and continued through February 25, 2011. In total, ten witnesses testified: the State presented two Department of Education ("DOE") employees, a national school finance expert, and, by subpoena, four district superintendents previously identified as witnesses for Plaintiffs. Plaintiffs presented two additional district superintendents, along with an expert in New Jersey school finance and the SFRA formula. The six superintendents who testified represent districts with low, medium and high concentrations of at-risk students. Closing arguments were held on March 2, 2011.

#### **Limited Issue on Remand**

As noted above, the Supreme Court, in its Remand Orders, directed the Special Master to develop an evidentiary record on a specific issue: whether school districts with varying

concentrations of at-risk students "can provide" the CCCS at "the present level of school funding distributed through the SFRA formula." Remand Order I, at 6, ¶4; Remand Order II, at 2 and 3. The State was required to bear the burden of proof with respect to this remand issue. Remand Order I, ¶4.<sup>3</sup>

Given the fundamental constitutional right implicated by Plaintiff's motion, and the express terms of the remand orders, several principles guide the Special Master's consideration of the evidence on remand. First, the specific language employed by the Court, delineating the remand issue, must, of course, be given its plain meaning. See, e.g., Jablonowska v. Suther, 195 N.J. 91, 105 (2008) (noting, in the context of statutory construction, that "well-established principles of interpretation" require courts to look first at "plain meaning" of language being construed). Thus, "can provide" the CCCS means "to be able" to "deliver" or "supply" the CCCS to students. "Current levels" means the funding provided during the 2010-11 school year, not prior or future years. "For New Jersey school children" means all students, and not a subset or otherwise more limited number or category of such students,

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<sup>3</sup> As mentioned above, the Court made clear that evidence related to amount and allocation of the K-12 aid reductions in 2010-11 among districts "shall not be sufficient to carry the State's burden" on remand. Remand Order I, ¶5.



either within a particular district or among districts statewide.

Second, the "comprehensive core curriculum standards," means the curriculum standards adopted by the State Board of Education that set the expectations of what all students should know and be able to do at various grade levels in nine academic content areas: 1) language arts literacy; 2) mathematics; 3) science; 4) social studies; 5) world languages; 6) comprehensive health and physical education; 7) visual and performing arts; 8) technology; and 9) career education and consumer, family and life skills. See N.J.S.A. 18A:7F-46; and N.J.A.C. 6A:8-1.1 et. seq. (defining the CCCS, establishing statewide assessments in certain areas, and directing districts to align curriculum to the CCCS); see also Abbott v. Burke, 149 N.J. 145, 161-62, 168 (1997) ("Abbott IV") (accepting the State's CCCS and assessments as the facial definition of a thorough and efficient education).<sup>4</sup>

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<sup>4</sup> When enacted in 2008, the SFRA continued the requirement that the CCCS be reviewed and updated every five years. N.J.S.A. 18A:7F-46. As the record before this Court and the Supreme Court made clear, the CCCS "are a dynamic set of standards intended for all students" that were updated in 2004 and 2009. Abbott v. Burke, 199 N.J. 140, 191 (2009) (Opinion of Hon. Peter E. Doyne, A.J.S.C.); Dr. Jay Doolan Cert., D-73 (from 2009 remand) ¶¶ 12-13, 15, 21. By referring to the CCCS in its remand order of January 13, 2011, the Supreme Court necessarily incorporated the standards in effect at that time, namely the revised standards adopted by the New Jersey State Board of Education in science, world languages, and four other areas on

Finally, districts with "high, medium, and low concentrations of disadvantaged pupils" refer to the percentage of students living in poverty -- designated as "at-risk pupils" in the SFRA -- in respective districts statewide. On remand, the parties agreed to define "high, medium, and low" at-risk districts consistent with the SFRA as follows: a "low" at-risk district has 20% or fewer students eligible for the federal free or reduced price lunch ("FRL") program; a "medium" at-risk district has 20 to 40% of students eligible for FRL; and a "high" at-risk district has over 40% of students eligible for FRL. See N.J.S.A. 18A-7:F-45; N.J.A.C. 6A:13-3.1(a) (classifying districts as "high need" under the SFRA where 40% or more of the students are at-risk and certain assessment benchmarks are not met).

In sum, the Special Master's "assigned task" in this proceeding was clear: to develop a record, make findings of fact and reach conclusions of law as to whether low, medium and high at-risk districts are able to deliver the CCCS to all students at current funding levels allocated through the SFRA formula. Remand Order II, at 3.

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June 17, 2009, in social studies in the fall of 2009, and in language arts literacy and mathematics in 2010. P-14; P-64.

### **Proposed Findings of Fact**

The evidence adduced in the remand proceeding is undisputed with respect to numerous, critical factual matters: (1) the K-12 aid reduction from the 2009-10 level; (2) the aid reduction from the level required by the SFRA formula in 2010-11; (3) the effect of the aid reduction on districts' spending relative to the defined level of adequacy under the SFRA formula; and (4) the impact of the aid reductions on the ability of representative low, medium, and high at-risk districts to deliver the CCCS to all students.

The State has sought to rely upon several arguments in its effort to sustain its burden on remand: (1) the State's fiscal circumstances; (2) federal funding; (3) the general capacity of school districts to absorb the State's aid reduction; and (4) a lack of relationship between spending and student achievement.<sup>5</sup>

Each of these areas is addressed in the following proposed findings of fact.

#### **Aid Reduction from 2009-10 Level**

1. In 2010-11, the State reduced K-12 formula aid by \$1.081 billion statewide. This aid reduction amounts to a

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<sup>5</sup> As discussed supra, at 4, although recognizing that the issues were beyond the scope of the remand orders, the Special Master granted the State permission to proffer evidence related to the State's fiscal condition and federal funding so as to ensure a full record on Plaintiffs' motion before the Supreme Court.

decrease of 13.6% below the K-12 aid levels provided under the SFRA formula in 2009-10. (Wyns I Tr. 46:8-1; Ex. P-136 at 4).

2. In allocating the aid cut across districts, the DOE calculated the amount of each district's reduction as a percentage of the general fund budget for 2009-10, and then reduced the level of the various SFRA K-12 aid categories that had been initially determined for the district for 2010-11. This calculation was applied to every district so as to achieve the \$1.081 billion cut announced in the Governor's FY11 Budget. (Wyns I Tr. 45:5-16; Ex. P-136 at 5).

3. The DOE used a two-step process to calculate the aid cut. First, the DOE altered the amount of K-12 aid under the SFRA for 2010-11 for each district by: (1) not increasing the total amount of statewide equalization aid, as had been required by the SFRA; (2) not inflating any of the formula aid parameters by the Consumer Price Index ("CPI") as had also been required by the SFRA; (3) not applying the statutory provisions in the SFRA concerning the allowable annual growth in state aid; and (4) ignoring the SFRA's requirements for Education Adequacy Aid.<sup>6</sup> Second, the DOE reduced the altered amount of aid for 2010-11 by

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<sup>6</sup> Education Adequacy Aid "is intended to help bring" certain former Abbott districts "up to adequacy". Abbott XX, 199 N.J. at 157.

4.994% of the district's 2009-10 general fund budget. (Wyns I Tr. 37:2-38:25; Ex. P-136 at 3-5).

4. In most districts, the DOE's calculation of K-12 aid resulted in a reduction equal to 4.994% of the 2009-10 general fund budget. In some districts, the K-12 aid received was less than 4.994% of the 2009-10 general fund budget, thus resulting in a reduction of less than 4.994%. (Wyns I Tr. 44:4-11).

5. The \$1.081 billion cut in K-12 aid reflects the total reduction in the aid levels provided to districts under the SFRA in 2009-10. (Wyns I Tr. 46:8-12; Ex. P-136 at 10).

6. The aid reduction from the 2009-10 level by district at-risk category is as follows: high at-risk districts (40% of students or more) were cut by \$389.7 million, or \$868 per pupil; medium at-risk districts (20% to 40% of students) were cut by \$217 million, or \$766 per pupil; low at-risk districts (under 20% of students) were cut by \$473 million, or \$764 per pupil. High at-risk districts experienced a larger per-pupil aid reduction than low at-risk districts. (Wyns I Tr. 54:20-55:20; Ex. P-130).

#### **Aid Reduction from Required Level under SFRA**

7. If the DOE had calculated aid in accordance with the SFRA's statutory requirements, districts would have received \$8.451 billion in K-12 formula funding. Instead, the districts

received \$6.849 billion, or \$1.601 billion (19%) less than was called for by the applicable statute. That is, the \$1.601 billion amount is the reduction in K-12 aid from the level required by the SFRA in 2010-11. (Ex. P-136 at 12; see generally Wyns I Tr. 60-64; Dehmer II Tr. 41:4-42:3).

8. The aid reduction from the SFRA-required level by at-risk district category is as follows: high at-risk districts (40% of students or more) saw a reduction of \$687 million or \$1,530 per pupil; medium at-risk districts (20% to 40% of students) experienced a reduction of \$329 million or \$1,158 per pupil; and low at-risk districts (less than 20% of students) had their aid reduced by \$585 million or \$944 per pupil. Thus, high at-risk districts experienced a greater dollar amount and per-pupil reduction than did low and medium at-risk districts. (Wyns I Tr. 68:3-18; Ex. P-131).

9. The 93 districts classified by DOE as "High Need" under the SFRA, including all former Abbott districts, received \$627 million or \$1,529 per pupil less than the level required under SFRA. (Ex. P-131).

#### **District Spending Relative to SFRA Adequacy Level**

10. Under the SFRA, each district has an Adequacy Budget that represents the defined cost of providing the CCCS, which is the standard adopted by the Supreme Court for providing the

constitutionally-required Thorough and Efficient Education, for the district's elementary, middle and high school students. (Wyns I Tr. 77:21-25-78:1-16; Ex. P-136 at 16). The adequacy budget includes the "base cost" for elementary students, weighted cost for middle and high school students, weighted cost for at-risk, Limited English Proficient ("LEP") and combination students, and 2/3 of the census-based cost for special education and speech. (Wyns I Tr. 77:17-25-78:1-6; Ex. P-136 at 17; Ex. P-3 at 19).

11. The DOE is required under the SFRA to annually determine whether districts are spending above or below adequacy. (Ex. P-136 at 18; Wyns I Tr. 78:7-23). In order to make this determination, the DOE calculates the sum of each district's Adequacy Budget, special education categorical aid, and security categorical aid for the budget year and compares this amount with the district's budgeted spending for the pre-budget year (2009-10 is the pre-budget year for 2010-11). Based on the calculated difference, districts are determined to be spending either above or below adequacy. (Dehmer Tr. 54:8-14; Ex. P-136 at 19).

12. The SFRA requires the DOE to calculate district spending in relation to adequacy for purposes of determining a district's applicable state aid growth limit. (Ex. P-136 at 20).

A district is allowed up to a 20% increase if it is below adequacy -- that is, if the current spending level in that district is below the cost level defined by the SFRA formula to be adequate to provide the CCCS. Any increase in aid to districts that are above adequacy is capped at 10%. (Wyns I Tr. 81:9-25-82:1-5). For this reason, the DOE calculates districts' spending above or below adequacy prior to the commencement of the budget year. (Ex. P-136 at 20).

13. Based on the SFRA calculation of spending relative to adequacy prior to the commencement of the 2010-11 budget year, 181 of 560 districts were spending below the SFRA-defined adequacy level in 2009-10. (Wyns I Tr. 83:17-19; Ex. P-136 at 21).

14. After commencement of the 2010-11 budget year, and using the same method of calculating budgeted spending relative to adequacy, Plaintiffs' school funding expert, Mr. Melvin Wyns, determined each district's actual budgeted spending for 2010-11 compared to the district's SFRA adequacy level in the current year. (Ex. P-136 at 22).

15. Calculating spending relative to adequacy for 2010-11 (after the commencement of the budget year), 205 school districts, or 36.6% of all districts, are currently spending below adequacy. (Wyns I Tr. 90:8-91:2; Ex. P-136 at 23).



16. As a result of the State's aid reduction, thirty-one (31) districts that were above adequacy in 2009-10 are spending below adequacy in 2010-11. Districts that were already spending below adequacy in 2009-10 moved further below adequacy in 2010-11. (Wyns I Tr. 91:5-10; Ex. P-136 at 25; Ex. P-126).

17. Of the 205 districts below adequacy in 2010-11, 71 are high at-risk districts, 64 are medium at-risk districts, and 70 are low at-risk districts. (Wyns I Tr. 91:17-92:8; Ex. P-136 at 24).

18. The total "adequacy gap" in spending in the 205 districts currently below adequacy is \$1.071 billion. (Ex. P-136 at 25). Eighteen (18) of the 31 former Abbott districts are spending below adequacy; and 59 of the 93 districts classified as High Need under SFRA are similarly below adequacy. (Wyns I Tr. 99:10-100:23; Ex. P-136 at 26).

19. Seventy-two (72%) percent of all at-risk students statewide are enrolled in districts that are currently spending below adequacy. (Wyns I Tr. 101:13-18).

20. Had the State provided funding at the level required by the SFRA, and had districts below adequacy received their required increases since 2008-09, almost all school districts would be spending at their adequacy level in the 2010-11 school year. (Wyns I Tr. 97:6-17).

21. The State failed to consider districts' spending relative to the SFRA adequacy level, and whether the district is spending above or below adequacy, in making the K-12 aid reductions in 2010-11. (Ex. P-136 at 5).

22. The State simulated the impact of using the weights for at-risk students, and the weight for students both at-risk and LEP initially generated by the Professional Judgment Process ("PJP") in developing the SFRA, instead of the weights as "augmented" after further expert review and input. The State's simulation shows that if these "deflated" weights were used to calculate aid in 2010-11, it would have yielded a \$72 million reduction in total K-12 aid from the required SFRA level. (Dehmer I Tr. 5:4-10:1; Ex. D-115).

**Weighted Per-Pupil Revenue under the SFRA**

23. Under the SFRA, every district has a "weighted student enrollment," whereby students are counted for purposes of generating state and local revenue using the base cost plus the weights reflecting student poverty and other needs. (Ex. P-136 at 28-29). The district's weighted student enrollment can then be used to calculate each district's per-pupil spending, adjusted for student need.

24. Using the SFRA weighted student enrollments, the weighted per-pupil revenues for districts in 2010-11 are as

follows: \$9,917 per-weighted-pupil in former Abbott districts; \$9,617 per-weighted-pupil in high-need districts; and \$10,317 per-weighted-pupil in non-Abbott districts. The statewide average was \$10,315 per-weighted-pupil. (Ex. P-136 at 31).

25. When overall district per-pupil spending is compared using the SFRA weighted student enrollments, districts with the most at-risk students have the lowest levels of per-pupil spending. (Ex. P-136 at 34).

#### **Impact of Aid Reductions on Representative Districts**

26. Plaintiffs intended to call as witnesses the superintendents from the Piscataway, Montgomery Township, Bridgeton and Woodbridge Township districts. These witnesses were instead subpoenaed and called by Defendants. Plaintiffs called two additional superintendents, from Clifton and Buena Regional districts.

27. All six superintendents testified about how the aid reductions, and the current level of funding through the SFRA, has adversely affected their districts' ability to provide all students with the CCCS in 2010-11.

#### **A. Characteristics of Representative Districts**

28. The Piscataway Township district has an enrollment of approximately 7,000 students, approximately 28% of whom qualify for FRL, making it a medium at-risk district. (Copeland I Tr.

20:19-23; Ex. P-127). In 2010-11, Piscataway was \$13.7 million below its SFRA adequacy level. (Ex. P-126). From 2009-10 to 2010-11, state aid for Piscataway was reduced by \$5 million or 29%. (Copeland I Tr. 32:2-12; Ex. D-97).

29. The Woodbridge Township district has an enrollment of approximately 13,000 students and about 30% qualify for FRL, making it a medium at-risk district. In 2010-11, Woodbridge was spending approximately \$16 million below its SFRA adequacy level. (Ex. P-127). From 2009-10 to 2010-11, state aid for Woodbridge was reduced by \$8.7 million or 33%. (Ex. D-97).

30. The Montgomery Township district has an enrollment of approximately 5,000 students, approximately 3% of whom qualify for FRL, making it a low at-risk district. In 2010-11, Montgomery was spending \$4.8 million under the SFRA adequacy level. (Ex. P-127). From 2009-10 to 2010-11, state aid for Montgomery was reduced by \$3.5 million or 65%. (Ex. D-97).

31. The Clifton district has an enrollment of approximately 11,000 students. (Tardalo I Tr. 16:7-9). Approximately 43% of the students are eligible for FRL, making it a high at-risk district. (Ex. P-127). In 2009-10, Clifton was more than \$17 million below the SFRA adequacy level. (Tardalo I Tr. 29:22; Ex. P-46). In 2010-11, however, Clifton was more than \$29 million below adequacy. (Ex. P-127). Clifton received over \$7 million

less in state aid, a reduction of 26%, in school year 2010-11 than it did in school year 2009-10. (Tardalo I Tr. 42:13-15; Ex. D-97).

32. The Buena Regional district has an enrollment of approximately 2,000 students, about 49% of whom qualify for FRL, making it a high at-risk district. In 2010-11, Buena was spending approximately \$3 million below the SFRA adequacy level. (Ex. P-127). Buena is classified as a High Need district and is subject to meeting regulatory, programmatic and class size requirements under SFRA. (Whitaker II Tr. 5:13-6:9; Ex. P-2 at 8-15). From 2009-10 to 2010-11, state aid for Buena was reduced by \$1.8 million or 9.3%. (Ex. D-97).

33. The Bridgeton district has an enrollment of approximately 5,000 students, about 89% of whom qualify for FRL, making it a high at-risk district. (Gilson Tr. 118:9-11). In 2010-11, Bridgeton was spending approximately \$12.6 million below the SFRA adequacy level. (Ex. P-127). Bridgeton is classified as a High Need district and must meet regulatory, programmatic and class size requirements under the SFRA. (Ex. P-2 at 8-15). From 2009-10 to 2010-11, state aid for Bridgeton was cut by \$3.5 million or 5.5%. (Ex. D-97).

**B. Cuts to Staff, Programs and Services**

34. Because the reduction in state aid was so significant, and despite efforts to increase efficiency in spending, all districts were forced to cut a wide range of staff, programs and services which hindered their ability to deliver the CCCS to all students.

**35. Piscataway Township:**

a) Four world language teachers were cut which eliminated all certified world language instruction in kindergarten through third grade, impacting approximately 2,000 students. (Copeland I Tr. 48:20-24; 49:12-25; 100:23-101:8; Ex. D-6). In lieu of instruction by properly certificated world language teachers, world language classes are now being taught using DVDs played by instructors who may not know the language they are teaching. (Copeland I Tr. 102:18-23). Because of the reduction in world language teachers in the elementary grades, it will be extremely difficult for kindergarten through third grade students to achieve the CCCS proficiency levels in this subject area. (Copeland I Tr. 99:24-100:10).

b) Four media specialist positions were eliminated at the elementary school level. (Copeland I Tr. 50:23-51:4; 106:10-12; Ex. D-6). This reduction in staff will directly affect the

ability of elementary school students in Piscataway to achieve the CCCS in technology. (Copeland I Tr. 106:18-107:9).

c) Librarians for the kindergarten through third grade classes were cut, leaving only aides to staff the libraries. (Copeland I Tr. 51:9-15). Without librarians at the elementary level, it will be difficult for the district to fully implement the "Inquiry and Research" strand of the Language Arts Literacy Standard for "Reading." See, e.g., CCCS 3.1.K(H)(1) (requiring that kindergartners know the purposes for the library/media center) and CCCS 3.1.3(H)(1) (requiring that third graders use library classification systems to locate information), available at [http://www.nj.gov/education/cccs/2004/s3\\_lal.pdf](http://www.nj.gov/education/cccs/2004/s3_lal.pdf).

d) Four practical arts teachers were cut which led to the elimination of the home economics, consumer science, and industrial arts programs in the district's middle schools, even though they created valuable opportunities for students to apply and develop their mathematic skills. (Copeland I Tr. 53:4-12; 53:21-54:3; Ex. D-6). The district has been unable to compensate for the contributions that the eliminated programs made to achieving the CCCS. (Copeland I Tr. 130:22-131:10).

e) One technology teacher was cut, leaving only one technology teacher for two intermediate schools. (Copeland I Tr.

54:7-13; 55:2-5; Ex. D-6). As a result, the district's intermediate students have made it only half as far as they should have with respect to the material in their curriculum. (Copeland I Tr. 117:23-118:10). There is concern as to whether the students will be able to achieve proficiency levels in the CCCS for technology. (Copeland I Tr. 118:11-15).

f) Three guidance counselors serving students in kindergarten through fifth grade were eliminated. (Copeland I Tr. 58:3-6; Ex. D-6). Some students are struggling significantly due to their lack of access to guidance counselors and services. (Copeland I Tr. 117:16-22; Copeland I Tr. 120:9-22). When students are experiencing trauma or are in crisis, and are without access to guidance counselors and services, their ability to learn is negatively affected, putting them at a serious academic disadvantage. (Copeland I Tr. 121:6-10).

g) Fourteen teacher positions were eliminated. (Copeland I Tr. 59:15-18; 72:4-10; Ex. D-6).

h) The entire middle school after-school athletics program was eliminated, affecting 1,500 students. (Copeland I Tr. 64:9-11; Ex. D-6). Such after-school co-curricular activities assist in the delivery of the CCCS by engaging students in their school, leading to improved academic performance. (Copeland I Tr. 123:1-13). Indeed, principals have affirmed that students



have experienced greater behavioral difficulties since the elimination of middle school athletics during the 2010-2011 school year. (Copeland I Tr. 123:5-22). See also CCCS 2.5 and 2.6, the Comprehensive Health and Physical Education Standards for Motor Skill Development and Fitness (establishing indicators such as teamwork and sportsmanship), available at [https://www13.state.nj.us/NJCCCS/ContentAreaTableView Health.aspx](https://www13.state.nj.us/NJCCCS/ContentAreaTableViewHealth.aspx).

i) A supplementary summer program for kindergarten children was eliminated and the program was reduced for other district students. A supplementary Saturday academic program was cut entirely. (Copeland I Tr. 66:9-67:2; Ex. D-6).

j) The budget for staff and professional development was reduced. (Copeland I Tr. 68:3-10).

k) The technology budget was reduced by \$250,000, preventing the district from upgrading its technology and equipment for the current school year. (Copeland I Tr. 68:16-18; Ex. D-6). The district's inability to replace equipment may affect students' ability to achieve proficiency in the CCCS. (Copeland I Tr. 127:16-25).

l) The budget for supplies was reduced in every department. (Copeland I Tr. 69:14-18).

m) With the present level of funding, Piscataway will have significant difficulty in meeting the CCCS in literacy, mathematics, social studies and science. (Copeland I Tr. 112:2-

22). The difficulty in meeting these CCCS is becoming more apparent as the school year progresses. (Copeland I Tr. 114:2-14).

n) At current funding levels, the district is unable to deliver the CCCS to some students who could have achieved proficiency in prior years. (Copeland I Tr. 116:13-19; Copeland II Tr. 11:11-17).

o) Because of the aid reduction, Piscataway was unable to provide additional remedial assistance to the Theodore Shore Middle School, which was not making adequate yearly progress because its students are not meeting proficiency levels under the CCCS. (Copeland II Tr. 5:11-6:2; 6:18-8:8; 9:19-10:14).

**36. Woodbridge Township:**

a) The district cut all middle school librarians, forcing high school librarians to attempt to keep middle school libraries open by dividing their time. (Crowe Tr. 68:5-9; Crowe Tr. 114:9-14). In addition, eight elementary school librarians were eliminated. As a result, there are no librarians at the elementary school level in the district. (Crowe Tr. 114:15-24). The lack of elementary and middle school librarians makes meeting the CCCS difficult. (Crowe Tr. 78:10-21). As in Piscataway, without librarians at the elementary level, it will be difficult for the district to fully implement the "Inquiry

and Research" strand of the Language Arts Literacy Standard for "Reading." CCCS 3.1 (H).

b) Five elementary school guidance counselors were cut and there are now only three guidance counselors for 16 elementary schools, which have a total of 6,800 students. (Crowe Tr. 114:25-115:18). As a result of these cuts, fewer children are receiving the support they need, and it is difficult for many students to concentrate in class, let alone achieve proficiency on the assessments. (Crowe Tr. 115:16-22).

c) The district is only teaching world languages in sixth grade for 10 weeks, and for only half a year in seventh and eighth grade, both of which represent time frames too short to provide students with a level of instruction that would allow them to demonstrate proficiency in world languages. (Crowe Tr. 121:2-21; Ex. P-26 at 1).

d) Middle school and freshman athletics were eliminated. (Ex. P-26 at 1). See ¶ 35(h), supra.

e) Police officers in each of the middle schools were eliminated, and the high schools went from having two officers each to only having one for a portion of the day. (Crowe Tr. 125:7-15).

f) All of the elementary school computer teachers were eliminated. (Crowe Tr. 120:11-19). This means that students no

longer receive direct training in technology in these grade levels, which negatively affects their ability to succeed in this area of the CCCS. (Crowe Tr. 120:14-121:1).

g) Providing support programs and services are essential to providing the CCCS to students. (Crowe Tr. 105:20-23; Crowe Tr. 128:13-129:25). These support resources include classroom aides, guidance counselors, student assistance counselors, literacy coaches, ASI teachers, special needs teachers, and security personnel. (Crowe Tr. 106:7-16). Support services are particularly important to allowing at-risk students to achieve proficiency. (Crowe Tr. 129:8-19).

h) Two substance abuse counselors at the high school level and one at the middle school level were eliminated. (Crowe Tr. 117:3-8). Five elementary level guidance counselors were also cut. (Ex. P-26 at 1).

i) One social worker was eliminated. (Crowe Tr. 119:13-15). This staff member was an essential part of educating the district's special needs students, especially in a mainstream atmosphere. (Crowe Tr. 15-22).

j) The professional development budget for the district was cut. (Crowe Tr. 80:21-81:1). Providing professional development for teachers helps improve classroom instruction and, therefore,

is essential to providing the CCCS to students. (Crowe Tr. 106:17-23).

k) The district will not be in compliance with the revised 2009 CCCS because they have been unable to update their curriculum due to the cuts in state aid. (Crowe Tr. 79:17-23). In math, the curriculum revision committees were cut in grades 7 and 8, and at the high school level for Algebra I and Math 1, 2 and 3. (Ex. P-26 at 2).

l) All Family Programs (PALS, Family Math, and Family Writing in Elementary Schools and Middle Schools) were eliminated. (Ex. P-26:1).

m) Sixteen clerical aids and two health aides were cut. (Ex. P-26:1).

n) Courtesy busing at the middle and high school levels was cut and late buses were eliminated. (Ex. P-26 at 2).

37. **Montgomery Township:**

a) Academic support teachers at the early elementary level were eliminated. These teachers, who typically had a special reading certification in addition to their regular teacher certification (Kim I Tr. 99:18-20; Ex. D-25 ¶26(b)), were also trained as Reading Recovery teachers. (Kim I Tr. 99:20-21).

b) The academic support program that served students not making progress toward the core curriculum content standards in

reading and math was reduced. (Kim I Tr. 99:21-25). The reduction affects approximately 100 to 120 students in every grade level who are not making sufficient progress towards the State's standards. (Kim I Tr. 103:20-24). None of these students are now receiving support services, (Kim I Tr. 105:13-21), and will likely not pass the State test in third grade. (Kim I Tr. 103:24-104:1).

c) The world language program at the elementary level was eliminated, directly impacting roughly 700 students. (Kim I Tr. 118:12-15; 121:13-15; Ex. D-25 ¶26(a)(ii), ¶28). The result is that students are not receiving instruction towards the CCCS in foreign language. (Kim I Tr. 121:6-12).

d) The district made significant reductions in technology. (Kim I Tr. 127:14-15; Ex. D-25 ¶26(b)). The districts' computer to student ratio is about three times the state average in kindergarten through fourth grade. Entire carts of computers were cut in addition to technical support staff and the technical director position. (Kim I Tr. 127:14-128:1). These cuts will have a significant negative effect on students' ability to achieve the CCCS in technology. (Kim I Tr. 128:15-21).

e) Senior administrative staff was reduced by 4.4 positions, a 12.6% decrease. (Kim I Tr. 132:11-13; Ex. D-25

¶26(c); Ex. D-28). At the administrative office, Montgomery reduced staff by 16.4%. (Kim I Tr. 132:16-19).

f) By September 1, 2011, all districts are required to teach students using revised curricula aligned to the "new" 2009 CCCS. (Kim II Tr. 13:21-14:4; Ex. P-64). The aid reduction has impeded the district's ability to accomplish this critical task in a timely manner. The district must develop unit plans and assessments to measure whether students are meeting the benchmarks as they are set out in the 2009 CCCS. Due to a \$100,000 reduction in the curriculum development budget, the district was not able to develop these assessments going into 2010-11. (Kim II Tr. 14:3-15:1). Professional development related to implementing the revised CCCS was also eliminated. (Kim I Tr. 134:14-135:3; Kim II Tr. 33:10-14; Ex. D-31).

g) Area supervisors were eliminated for foreign languages, math, science, humanities, health/physical education and technology, significantly impacting the district's ability to develop new curricula and assessments aligned to the 2009 standards. (Kim II Tr. 9:18-10:21; Ex. D-25 ¶26(c)(i); Ex. D-28, D-31).

h) All extracurricular activities and athletics at the Montgomery Middle School were eliminated for seventh and eighth graders, which impacted approximately 600 students. (Kim II Tr.

45:14-20; Ex. D-25 ¶26(h)). All 23 sports, including football, lacrosse, soccer, cheering, softball and basketball were eliminated. (Kim II Tr. 45:21-25). These reductions negatively affect the district's ability to deliver the CCCS related to social emotional learning in the 21<sup>st</sup> Century Life and Careers standard. (Kim II Tr. 46:15-17).

i) All field trips were eliminated except with respect to those students whose parents can pay. (Kim II Tr. 52:3-17).

**38. Clifton:**

a) Three custodians, two maintenance workers, the Supervisor of Custodians and the Energy Education Manager were eliminated. (Tardalo I Tr. 56:23-57:4, Ex. P-100).

b) Eleven media specialists and the supervisor of media services were cut. (Tardalo I Tr. 56:23-57:4, Ex. P-100). Media specialists formerly provided support to students struggling in the areas of language arts and mathematics and provided differentiated instruction for students who were struggling. The elimination of these positions has negatively impacted the ability of elementary students to achieve proficiency under the CCCS. (Tardalo I Tr. 57:12-20, 57:25-58:5, 70:3-4).

c) The science supervisor for grades K-8 and the supervisor of social studies for grades K-8 were eliminated. (Tardalo I Tr. 59:3-15; Ex. P-100).



d) The supervisors for physical education and health were eliminated. In the prior year, there were two supervisors: one for K-8 and one for 9-12. The Athletic Director currently assumes responsibility for the job of supervising implementation of the CCCS in this area. Internal indicators show that the curriculum in Physical Education and Health is not being delivered as required by the CCCS as a result of the elimination of the supervisory positions in the current year. (Tardalo I Tr. 61:15-22, 61:25, 62:1-12, 62:14-63:2; Ex. P-100).

e) All eight elementary school guidance counselors were eliminated, (Ex. P-100), which has negatively affected the ability of elementary students to achieve proficiency under the CCCS. The remaining secondary guidance counselors cannot compensate for the services formerly provided by the elementary level counselors. (Tardalo I Tr. 65:21-67:25, 68:19-69:1; Tardalo II Tr. 60:3-16, 60:19-61:16).

f) Three basic skills instructors were cut. (Ex. P-100). The elimination of these positions has had a negative effect upon the ability of struggling students to achieve proficiency in literacy and language arts by increasing class sizes for such instruction and by reducing the amount of support available to struggling students. (Tardalo I Tr. 69:15-21).

g) One special education teacher and one nurse were eliminated. (Tardalo I Tr. 72:1-8, Ex. P-100).

h) Clerical aides to the Child Study Team and to the guidance counselors were cut, along with 8 administrative aides. (Ex. P-100).

i) There currently is no supervisor for science in the district. In the current year, the positions of K-8 science supervisor and 9-12 science supervisor were combined. The K-8 supervisor assumed responsibility for supervising the entire district's implementation of the science curriculum, but quit in the middle of the school year in part because of the enormity of the task. A replacement has not yet been found. (Tardalo I Tr. 59:3-5, 59:7-15, 60:24-61:11; Ex. P-100).

j) The budget for professional development was cut by 50%. (Tardalo I Tr. 73:15-16, Ex. P-100).

39. **Buena Regional:**

a) At the district's elementary schools, the arts, music and technology programs have all been severely cut, and the world language program had to be completely eliminated. (Whitaker I Tr. 51:20-24; 53:20-54:12; 51:8-15).

b) The gifted and talented program was eliminated, even though the CCCS requires these programs to foster proficiency at the advanced level. (Whitaker I Tr. 56:1-8, 12-15).

c) Instructional staff was reduced at all levels -- five at the high school, four at the middle school, and four at the elementary level. In addition, two administrators, three secretarial positions, one full-time and one part-time custodian, and one security officer were also eliminated. (Whitaker I Tr. 92:9-24; 93:6-13; 96:6-13; Ex. P-92).

d) After-school sports programs and the freshman sports program at the high school were eliminated. Assistant coaches for many sports have been eliminated and the district has required coaches to coach more than one sport. (Whitaker I Tr. 96:14-25; 98:2-16; Ex. P-92).

e) Supplies for the library and curriculum and guidance were reduced. (Whitaker I Tr. 101:6-8; Ex. P-92).

f) A highly successful after-school program called BOOST was eliminated. The program provided students with additional academic support after-school and activities to foster teamwork. This was an important support for the district's at-risk students. (Whitaker II Tr. 13:15-22).

40. **Bridgeton:**

a) Because of the aid reduction, Bridgeton had to eliminate, among other positions, 45 teachers, one substance abuse coordinator, two anger management coordinators, seven non-child study team social workers, a full-time bilingual director,

seven supervisors of instruction, fifteen instructional coaches and four parent liaisons. (Ex. D-53).

b) Among the net total of 45 teachers eliminated were 19 language arts and math tutors who provided assistance to students who required special attention because of deficits in those areas. (Gilson Tr. 80:22-82:10; 138:15-139:8). The tutors provided services to individual students on a push-in basis in the classroom or on a pull-out basis at some other location in the school depending on the student's need. (Gilson Tr. 82:11-82:25). The tutors were assigned to students primarily based on the NJASK scores. (Gilson Tr. 83:5).

c) In the prior year (2009-10), tutor remediation services were provided to 871 low achieving students in math and language arts. In the current year, those services are only being provided to 294 students in language arts. There are no math tutors in FY11. (Joint Stipulations at ¶ 190).

d) At Bridgeton High School, two math teachers, two English teachers, one social studies teacher, and two physical education teachers were eliminated. (Gilson Tr. 85:1-13).

e) Several classes necessary for the delivery of the CCCS were eliminated including family and consumer science, social studies, economics, the Reading Recovery program, and some

English courses. (Gilson Tr. 123:20-23, 144:11-24, 147:10-12, 155:1-10).

f) At the elementary school level, Bridgeton had to eliminate one art teacher, two music teachers and two English as a Second Language ("ESL") teachers (Gilson Tr. 88:3-88:25; 89:18-25). At the same time, since there is a growing Hispanic population in Bridgeton, the need for resources for LEP students has increased. (Gilson Tr. 120:17-24).

g) All fifteen instructional coaches who were trained to visit classrooms, observe teachers, and then assist the teacher with professional development were eliminated. (Gilson Tr. 124:15-125:13; 156:4-23). Having teachers who are constantly coached with high quality professional development is necessary to provide and deliver the CCCS. (Gilson Tr. 126:7-13).

h) Superintendent Gilson is concerned about student performance getting worse in the current year because of the loss of staff, programs and other supports. (Gilson Tr. 128:24-129:12).

i) In addition to other areas, Bridgeton is currently not meeting the CCCS in world language in the elementary schools. World languages are required to be taught throughout the year, but Bridgeton only provides instruction during a quarter of the year on a semester basis. (Gilson Tr. 157:4-159:5).

**C. Impact of Aid Reductions on Class Sizes**

41. Due to reductions in staff, all of the districts experienced increases in class size.

42. The definitive study on the relationship between classroom size and student achievement was the Tennessee Star Study, which found that, particularly in the primary and elementary grades, large class size had a negative impact on student achievement. (Copeland I Tr. 74:6-12). In particular, economically disadvantaged students will not make as much progress in a larger class size (over 18) as they would in a class size between 15 and 18 students. (Kim I Tr. 114:19-115:4).

**43. Piscataway Township:**

a) As a result of the elimination of several teaching positions, many classes increased in size. For example, high school classes in some subject areas have increased from a class size in the mid-twenties to thirty-one (31) or thirty-two (32) students. (Copeland I Tr. 72:11-23).

b) The district attempted to maintain smaller class sizes in the elementary grades, but it became too difficult given the reductions in aid. (Copeland I Tr. 74:18-75:12). For example, to keep kindergarten class sizes at fifteen (15) or sixteen (16) children, the district would have been forced to increase class

size in other grades to forty (40) children. (Copeland I Tr. 75:3-12).

c) Some high school teachers are teaching six classes instead of five, with well over 30 children in each class. These class sizes do not allow for the kind of individual instruction necessary to improve student achievement. (Copeland I Tr. 85:6-18).

**44. Woodbridge Township:**

a) In grade three, class size went from 20 to 25, in grades four and five the limit went from 25 to 30, and in the middle and high school they are now in the high 20s. (Crowe Tr. 126:12-24; 127:2-7; Ex. P-26 at 3).

b) Because of staff reductions, there have been significant increases in the world language class sizes. (Crowe Tr. 121:8-14).

**45. Montgomery Township:**

a) Due to reductions in staff, class sizes have increased in all grades levels. (Kim I Tr. 106:21-109:8; Ex. D-30).

b) Every class size is over 18 except for kindergarten (Kim I Tr. 117:21-118:9; Ex. D-30). However, in the 2009-2010 school year, academic support services were available for students and as of 2010-2011, those services were eliminated. (Kim I Tr. 118:1-10).

46. **Clifton:**

a) Class sizes have increased in Clifton schools. In school year 2006-07 (FY07), classes at the elementary level ranged from 18-21 students. Today they are between 25 and 27 students. At the secondary level, in school year 2006-07 (FY07), class sizes were in the range of 23-24 students. Today they are at 28-29 students. (Tardalo I Tr. 70:10-71:12).

b) Student enrollment has remained consistent. Increases in class size are thus attributable to reductions in staff over the years, including non-replacement of retiring teachers. (Tardalo II Tr. 64:8-17).

c) The elimination of basic skills instructors has hindered students' ability to achieve proficiency in literacy and language arts by increasing class sizes for such instruction and by reducing the amount of support available. (Tardalo I Tr. 69:15-21).

d) It is more difficult to differentiate instruction as class size increases. (Tardalo I Tr. 69:17-21 (regarding size of basic skills instruction classes); Tardalo II Tr. 63:9-64:4 (regarding class size generally)).

47. **Buena Regional:**

a) A significant proportion of classes throughout the schools exceed the maximum number of students permitted by the



administrative code. N.J.A.C. 6A:13-3.1. (Whitaker II Tr. 5:13-6:9; Ex. P-2 at 8-14).

b) While there is capacity in some of the schools, including some extra classrooms, class sizes are dictated by such factors as geography, transportation, family and academic needs, and lack of teachers. They cannot be reapportioned. (Whitaker II Tr. 7:16-8:6).

c) The State executive county superintendent issued a directive to the district to reduce class size to the levels prescribed by the State for High Need districts in regulation. (Ex. P-60). The State official offered no suggestions as to how to do so or any additional funds or funding sources that the schools could use to help get achieve compliance. The district has advised the State that, without additional funding, it cannot comply with the State's class size requirements for High Need districts. (Whitaker II 8:10-9:17).

**48. Bridgeton:**

a) The staff positions that were eliminated resulted in increases in class size and reductions in course offerings, impeding the delivery of the CCCS to all students. (Gilson Tr. 133:19-25, 134:1-3, 139:9-12; 141:7-13).

b) Courses that were not eliminated in the current year experienced large increases in class sizes, so that there are

some classes at every grade and in every school that do not meet the State's requirements for class size in High Need districts. (Gilson Tr. 87:16-25, 141:7-13, 143:7-21, 144:25, 145:1-25, 146:1-25; Ex. P-2 at 8-14).

**D. Cost Savings and Efficiencies**

49. All district superintendents testified as to the feasible cost savings and other efficiencies achieved by their districts in 2010-11 to minimize the reductions to staff, programs and services.

50. The State offered no evidence that the DOE rejected a portion of any district's proposed 2010-11 budget based on a failure to implement all potential efficiencies in administrative operations or for including excessive non-instructional expenses. N.J.S.A. 18A:7-8(1); N.J.A.C. 6A:23A-9.2(a)(1).

51. The State also offered no evidence that the DOE directed any district to change proposed budget expenditures in 2010-11 because they were unsuitable, inappropriate or unreasonable. N.J.A.C. 6A:23A-9.1(d).

**52. Piscataway Township:**

a) Among other measures, Piscataway generated \$300,000 in savings by offering transportation to neighboring districts; by increasing special education tuition by 50% over the past two

years; and by earning higher interest rates through pooled cash management programs. The district also saved over \$700,000 by outsourcing substitute teachers, first year and new hire paraprofessionals, and lunch time cleaning services. (Copeland I Tr. 32:16-40:1, 42:11-44:7, 60:10-63:13; Ex. D-2 at 3, 6; see also Ex. D-6 at 2-3, 11-12).

b) Piscataway recaptured funds by procuring the agreement of its teachers to furlough two (2) days and to reduce the district's contractual obligation to reimburse professional development tuition. (Copeland I Tr. 70:12-19; Ex. D-2 at 10).

**53. Woodbridge Township:**

a) Woodbridge developed an extensive list of shared services and interlocal agreements in order to reduce costs. (Ex. D-11 at 2-3).

b) Woodbridge realized approximately \$3.3 million in savings in the past two years by outsourcing custodial services, and estimates it will realize \$400,000 in savings for FY11 by outsourcing food services. (Crowe Tr. 60:7-61:4).

c) The administrative staff all agreed to forego the 4% contractual pay raise to save money. (Crowe Tr. 88:9-88:21).

54. **Montgomery Township:**

a) Montgomery has reduced energy costs by \$3 million over the past 3-4 years through participation in the Energy Education program. (Ex. D-38 at 3).

b) Montgomery was able to find other cost savings, amounting to less than one percent of its budget. (Kim I Tr. 45:21-46:11).

55. **Clifton:**

a) Clifton has the lowest per-pupil spending rate and per-pupil administrative cost of any district in Passaic County. (Tardalo I Tr. 26:19-25).

b) Before making cuts, Clifton sought to realize efficiencies and identify cost savings. Savings were found by lowering the cost for Student Resource Officers, supplies, athletics, legal services, communications, purchased services, and health insurance. (Tardalo I Tr. 43:11-12, 54:11-18, 75:12-22, 77:9-15, 77:17-78:13, 82:16-21; Tardalo II Tr. 39:16-18; Ex. P-100). Additional savings were effected by improving the efficiency of transportation routes, (Tardalo I Tr. 78:16-24), and by bringing outsourced services such as occupational therapy and speech therapy in-house. (Tardalo I Tr. 79:8-20).

c) Clifton did not provide any salary increase in the current school year to teachers, (Tardalo I Tr. 81:4-6), or to its non-affiliated staff. (Tardalo I Tr. 81:11-14).

d) The Clifton superintendent voluntarily accepted a pay freeze in the current year. (Tardalo I Tr. 81:14-21, 25, 82:13).

e) Identifying cost savings was difficult because Clifton is already a low-spending district and has sought to maximize efficiencies in recent years. (Tardalo II Tr. 64:8-17). Indeed, the State acknowledges that Clifton is a "very efficient" district. (Tardalo II Tr. 37:13-14).

**56. Buena Regional:**

a) Buena has made significant cuts to its food service program to realize cost savings, including firing staff, asking various staff members to retire, negotiating heavily with food services personnel to outsource as many services as possible, and renegotiating with suppliers where possible. (Whitaker I Tr. 98:2-16).

b) Despite being heavily dependent on their transportation program due to the size and diversity of the district, Buena has made many cuts in this program. Thus, Buena has sold its fleet of buses to generate money and now depends fully on outsourcing for all transportation. (Whitaker I Tr. 99:8-15).

c) Given the district's circumstances, the Buena superintendent effectuated efficiencies to the best of his ability. (Whitaker II Tr. 83:20-25).

57. **Bridgeton:** Bridgeton has taken steps to increase efficiencies, including entering into a shared services agreement with Downe Township and negotiating with the City of Bridgeton with respect to shared services. (Gilson Tr. 161:2-11).

#### **E. Surplus Funds**

58. New Jersey school districts routinely budget surplus funds for emergency or "rainy day" use. See, e.g., Crowe Tr. 53:13-23; Kim Tr. 36:5-22.

59. By statute, districts are allowed to maintain up to 2% of their general fund budget as surplus. (Joint Stipulation of Facts ¶ 149; N.J.S.A. 18A:7F-7(a)).

60. The budgeting of surplus of up to two percent is recommended by the DOE; when a district's surplus falls significantly below 2%, the DOE expresses concern. (Crowe Tr. 54:12-16, 57:13-59:4).

61. District budgets are audited annually at the conclusion of the fiscal year on June 30<sup>th</sup> and an audit report is released to the district in or around November of that year. (Gilson Tr. 105:13-24).

62. Through the audit process, a determination is made whether a district had "excess surplus" for the fiscal year that just ended, meaning surplus in excess of 2%. (Gilson Tr. 105:25-106:3; Joint Stipulation of Facts ¶ 150).

63. Any excess surplus determined through the audit process is required to be appropriated in the district's budget in the fiscal year following the release of the audit. (Gilson Tr. 106:4-14; Joint Stipulation of Facts ¶ 150). By statute, such excess surplus must generally be used to provide property tax relief. N.J.S.A. 18A:7F-7(a).

64. Excess surplus funds are not a dependable revenue source that is counted in the determination of a district's adequacy budget under the SFRA; like federal aid, these funds are unpredictable and vary from year to year. (Ex. D-162 at 10(compare total audited excess surplus of \$430 million for 2008-09 with total audited excess surplus of \$190 million for 2009-10)).

**F. Local Levy**

65. Among the legislative goals of the SFRA is to implement an equitable and adequate school funding formula that not only assures students a constitutional education, but also "may help to reduce property taxes." (N.J.S.A. 18A:7F-44(q)).

66. All six districts in the remand proceeding contribute local tax levies that are well above, or in one case, equivalent to, the minimum tax levy required by the SFRA. (Compare Proposed Base Budget Tax Levy with Minimum Tax Levy for Buena Regional, P-37 at 2, Clifton, P-46 at 2, Piscataway, P-34 at 2, Woodbridge, P-52 at 2, Montgomery, D-33 at 1, and Bridgeton, P-16.)

67. For Buena Regional, Clifton, Piscataway, and Woodbridge, their FY11 local levy exceeds their FY11 required minimum levy -- or the equivalent, for those districts, to their local fair share as defined by SFRA -- by approximately \$1 million, \$16.7 million, \$13.4 million, and \$29.8 million, respectively. P-37 at 2; P-46 at 2; P-34 at 2; P-52 at 2).

68. Despite exceeding its minimum, Buena proposed a 4% increase in its local levy for FY11. (Whitaker II Tr. 35:20-23). That budget, like Buena's two preceding school budgets, was defeated by its voters; subsequent negotiations between the district and the municipality resulted in a 1% tax levy increase. (Whitaker II Tr. 36:1-3, 36:10-12). An appeal was not considered by the Buena board in light of its efforts to establish a better working relationship with the community and its recognition that the community has been overtaxed relative to its wealth. Whitaker II Tr. 40:8-41:20.



69. Montgomery's local levy exceeds its minimum requirement by almost \$1.5 million. (D-33 at 1). The district's proposal to increase the general fund tax levy by 5.63% in FY 2011 was defeated by the district's voters. (Kim I Tr. 38:18-40:6). Ultimately, Montgomery's tax levy was determined by the Commissioner who certified a tax levy of 3.2% less than the original proposal - or 2.4% - for FY11. (Kim I Tr. 41:20-42:2).

70. Bridgeton increased its local tax levy by SFRA's 4% cap for FY11. (Gilson Tr. 95:20-24). The district did not request a waiver of the 4% cap on the local tax levy because, according to Dr. Gilson, it would have been "foolish" to seek additional local taxes because of the poverty in Bridgeton. (Gilson Tr. 96:9-12; 159:22 to 160:3).

**G. Effect on Provision of the CCCS**

71. All superintendents testified that, at current funding levels, their districts cannot provide the CCCS to all students.

72. **Piscataway:** Because of the drastic reductions in aid, the district is facing overwhelming obstacles in its effort to deliver the CCCS to all students. (Copeland I Tr. 85:16-18). Due to the loss of staff, the district will not be able to deliver the world language CCCS to students in grades K-3, (Copeland I Tr. 104:1-10), and it will be very difficult to

deliver standards to at-risk students in science, math, English language arts and social studies. (Copeland I Tr. 115:5-23).

73. **Woodbridge:** The district is not able to provide the CCCS to all students, (Crowe Tr. 70:2-71:1), and faces significant hurdles in getting at-risk students to meet proficiency levels due to the lack of supports. (Crowe Tr. 77:23-78:9; 128:13-129:25).

74. **Montgomery:** The district cannot deliver a thorough and efficient education to its students because of the reductions in state aid that occurred in the 2010-2011 school year. (Kim I Tr. 96:25-97:4; Ex. D-25 ¶59). In particular, it is especially difficult for the district to deliver the CCCS in the area of world languages to approximately 700 elementary students, (Kim I Tr. 118:12-15; 121:6-15; Ex. D-25 ¶26(a)(ii), ¶28); in the areas of reading and math, up to 100-120 students at every grade level are not making sufficient progress towards State's standards in those areas, (Kim I Tr. 99:21-25, 103:20-104:1, 105:13-21); and in the area of social emotional learning in the 21<sup>st</sup> Century Life and Careers standard, approximately 600 students are likewise not being provided the CCCS. (Kim II Tr. 45:14-25, 46:15-17; Ex. D-25 ¶26(h)).

75. **Clifton:** The district is not able to deliver the CCCS to more than half of all students at the elementary level (Tardalo

I Tr. 91:23-24); half of all students at the middle school level (Tardalo I Tr. 91:24-25); and thirty percent of high school students. (Tardalo I Tr. 91:25-92:6). Clifton is unable to provide the CCCS in language arts and mathematics for "at-risk" students across the board (Tardalo I Tr. 92:14-17) and cannot provide the CCCS in language arts and mathematics for over half of special education students. (Tardalo I Tr. 92:23-93:4). The superintendent believes that proficiency levels among Clifton students will likely drop when assessment under the 2009 CCCS begins. (Tardalo I Tr. 93:22-23; 95:15-25).

76. **Buena Regional:** Because of the cuts at the elementary school level in art, music, technology and world language, the district is not able to provide the CCCS in these areas. (Whitaker I Tr. 51:20-24; 53:20-54; 51:8-15). The district is not providing the CCCS in any area to disadvantaged students at the elementary level. (Whitaker I Tr. 59:11-21). The district also cannot provide the CCCS in math to disadvantaged students at the high school level. (Whitaker I Tr. 73:15-74:8).

77. **Bridgeton:** The district eliminated positions, resulting in increases in class size, reductions in course offerings, and Bridgeton's inability to deliver the CCCS to all students. (Gilson Tr. 133:19-25, 134:1-3, 139:9-12; 141:7-13). The superintendent is concerned about student performance

deteriorating further in 2010-11 because of the reductions in funding and loss of staff. (Gilson Tr. 128:24 to 129:12).

### **Overall Capacity of Districts to Absorb Aid Reduction**

78. The State's expert, Dr. Eric Hanushek, a school finance expert, offered his opinion that the reduction in funding in 2010-11 should have a minimal impact on districts' ability to provide a thorough and efficient education. (Hanushek Tr. 56:11-19).

79. Dr. Hanushek reached that opinion based entirely upon a half-hour conversation with a Deputy Attorney General, and based upon the representation that the cuts were around 5-10%. (Hanushek Tr. 76:23-77:5). To form his opinion, Hanushek did not ask for, or receive, more detailed information as to the nature of the cuts or how they would be implemented in any particular district in New Jersey. (Hanushek Tr. 77:10-12; 80:6-81:3).

80. Dr. Hanushek admitted that he would have given the same opinion – that a 5-10% budget cut would not affect a school district's ability to provide a thorough and efficient education if he were giving testimony in any other state in the country, regardless of the state's spending level or the manner in which the cuts were implemented. (Hanushek Tr. 63:5-64:8).

81. Dr. Hanushek reached his conclusion without having analyzed actual school spending and funding in New Jersey

(Hanushek Tr. 62:20-64:20), even though he admitted that the manner in which the funds are spent is of great importance in the school-funding context. (Hanushek Tr. 68:5-16).

82. Dr. Hanushek testified that he was unfamiliar with the CCCS, had not spoken to anyone who prepared the CCCS, and had no knowledge of how the CCCS are prepared. He was also unaware that the CCCS represent the definition of a thorough and efficient education for New Jersey students. (Hanushek Tr. 76:5-22).

83. Dr. Hanushek gave his opinion that increased class sizes resulting from staff cuts would have a minimal educational impact, though he admitted other experts disagree with him, particularly with regard to the K-3 level. (Hanushek Tr. 81:4-82:16). He did not know if class sizes were taken into account in establishing the SFRA cost model, (Hanushek Tr. 82:17-23), or how much class sizes would increase given the aid reduction in 2010-11. (Hanushek Tr. 80:5-81:3).

### **Correlation between Spending and Outcomes**

84. Dr. Hanushek also offered his opinion that, on a national level, there has been very little relationship between added school funding and increases in student performance over the last 30 years. (Hanushek Tr. 21:1-4). From this proposition, Dr. Hanushek conversely inferred that there would

be little change to achievement if a state cut school funding. However, he admitted there has only been one period historically where school funding has been reduced nationally -- in 1933 -- so there is little evidence about what actually happens to achievement when in fact education funds are reduced. (Hanushek Tr. 21:14-15).

85. Dr. Hanushek testified that he reviewed New Jersey achievement data from 2009 and funding data through 2008, and offered his opinion that additional funding over the last decade did not impact achievement, even though New Jersey's scores on the National Assessment of Educational Progress ("NAEP") in fact improved during that period. (Hanushek Tr. 33:11-13; Ex. D-84, D-85, D-86). Dr. Hanushek admitted that his data preceded the 2010-11 funding cut and that the achievement scores only reflect performance in math in 4<sup>th</sup> and 8<sup>th</sup> grades and language arts in 4<sup>th</sup> grade, not the full complement of subjects and grades addressed in the CCCS. (Ex. D-84, D-85, D-86).

86. Dr. Bari Erlichson, a DOE researcher, presented scatterplots intended to depict the relationship between districts' spending levels in relation to adequacy under SFRA and performance on state assessments. The charts were also presented separately by student poverty levels and district factor groups. (Ex. D-46, D-47, D-48, D-49, D-50).

87. The charts contained achievement data with respect to math and language arts proficiency rates for the 4<sup>th</sup> and 8<sup>th</sup> grades from 2009-10. The adequacy funding level was also calculated based on 2009-10 data. (Erlichson I Tr. 37:16-25, 38:1; Erlichson II Tr. 14:5-11, 15:17-21). There was no comparison data included from any prior year, and certainly none for 2010-11. (Ex. D-46, D-47, D-48, D-49, D-50).

88. Dr. Erlichson agreed that the charts show a strong correlation between district poverty levels and assessment results, with achievement rates decreasing as district poverty increases. (Erlichson I Tr. 87:22-88:17). Schools in districts with poverty rates of 40% or more have much lower proficiency rates than those with lesser poverty rates. (Erlichson I Tr. 39:10-15). Thus, the poorest districts are almost all performing below standards, while the wealthiest school districts are almost all performing above standards. (Erlichson I Tr. 85:7-21).

89. Dr. Erlichson did not offer any opinion as to whether performance would improve or get worse were there a change in the amount of funding provided. (Erlichson II Tr. 46:1-6).

90. Dr. Erlichson testified that if spending levels were lowered to a certain point, they would be insufficient to provide a thorough and efficient education. (Erlichson II Tr.

44:23-25). But she could not identify that point and did not know what percentage of funding reductions would render funding insufficient. (Erlichson II Tr. 45:1-4).

91. In a previous study by Dr. Erlichson where funding to Abbott schools had increased, she found that test scores rose in those districts. (Erlichson II Tr. 18:21-25, 19: 1-18).

92. Dr. Erlichson conceded that sufficient funding is necessary to provide the CCCS, along with effective administration, efficient use of funds, and other factors. (Erlichson Tr. II 20:2-22:4).



## CONCLUSIONS OF LAW

1. To the extent that any of the foregoing findings of fact incorporate conclusions of law or the application of law to fact, they are incorporated herein as conclusions of law.

2. In May 2009, the Supreme Court, based on an extensive remand proceeding and an opinion and recommendations by this Special Master, upheld the School Funding Reform Act, N.J.S.A. 18A:7F-43 to 63, as satisfying the requirements of the Thorough and Efficient clause of the New Jersey Constitution, N.J. Const. Art. VIII, §4, ¶1. Abbott XX, 199 N.J. at 145-46.

3. The Court expressly determined that the State "convincingly demonstrate[d] that the SFRA "is designed to provide school districts in the state, including the [former] Abbott districts, with adequate resources to provide the necessary programs consistent with state standards," that is, the CCCS. Abbott XX, 199 N.J. at 147.

4. The Court further determined that "SFRA is a constitutionally adequate scheme" designed "to address the education needs of at-risk pupils, no matter where those children attend school," but will remain constitutional "only if the State is firmly committed to ensuring that the formula provides those resources necessary for the delivery of State

education standards across the state." Abbott XX, 199 N.J. at 170, 172 and 175.

5. The Court authorized the State to proceed with "full implementation" of the SFRA in all school districts, including former Abbott districts, premised on the expectation that the State will provide funding at the levels required by the SFRA formula for the first three years and will conduct the statutorily mandated review of the formula's weights and operative parts after three years of implementation. Abbott XX, 199 N.J. at 146 and 174.

6. Because of "the many layers of cost that were factored into the base per-pupil amount, the added weights, and the many types of additional aid that are provided in order to transition districts to the SFRA's funding levels," and because "all are designed to provide sufficient resources and at the same time incentivize fiscal efficiency," the Court underscored that the continuing constitutionality of SFRA depends on the formula being "allowed to work as it was intended." Abbott XX, 199 N.J. at 173.

7. The Court further directed the State to allow the SFRA formula to work "as it is designed" during the first three years to ensure that "all districts will benefit from the formula's insistence on predictability and transparency in budgeting, and

accountability, and, at the same time, at-risk children across the state will benefit." Abbott XX, 199 N.J. at 172-73.

8. The Court predicated constitutionality of the SFRA during the first three years on the State's commitment to operating the formula "at its optimal level" as a "fair and equitable means designed to fund the costs of a thorough and efficient education, measured against the delivery of the CCCS." Abbott XX, 199 N.J. at 148, 172.

9. The State reduced K-12 State aid by \$1.60 billion below the level required by the SFRA formula in 2010-11, in direct violation of the State's continuing obligation to fully fund and implement the SFRA formula during the first three years of the SFRA's operation. Abbott XX, 199 N.J. at 146, 169.

10. The State's reduction of state aid by \$1.60 billion below the level required by the SFRA in 2010-11 disregarded district spending in relation to the defined level of adequacy in the SFRA formula, in direct violation of the State's obligation to provide those resources deemed adequate and necessary to provide the CCCS to all New Jersey students. Abbott XX, 199 N.J. at 170.

11. The State's formula aid reduction in 2010-11, by depriving 72% of at-risk students across the state of the resources deemed adequate and necessary to provide those

students with the CCCS, represents a clear deprivation of the “realistic education funding” in the SFRA designed to “support at-risk children whose severe educational challenges cause their programs to be the most costly.” Abbott XX, 199 N.J. at 171-72.

12. The overwhelming evidence presented by Superintendents of representative low, medium, and high at risk districts who testified on remand demonstrated that the present level of school funding distributed through the SFRA cannot provide for a thorough and efficient education as measured by the CCCS for all students. Abbott XX, 199 N.J. at 147.

13. The State conceded on remand that it failed to review and make appropriate adjustments to the SFRA formula after three years of operation and full implementation, in direct violation of the SFRA statute, N.J.S.A. 18A:7F-46b, and Abbott XX, 199 N.J. 146, 169.

14. The State’s evidence of a lack of relationship between spending and student achievement does not address the limited issue on remand, and the opinion testimony that districts could absorb the State aid reduction without affecting their ability to provide a thorough and efficient education is belied by the evidence of record and the State’s proofs are accordingly insufficient to meet its burden.

15. In this remand proceeding, the State has failed to meet its burden of demonstrating that the present level of school funding distributed through the SFRA formula can provide for a thorough and efficient education as measured by the comprehensive core curriculum content standards in districts, with high, medium, and low concentrations of disadvantaged pupils. Remand Order I, at 6, ¶4; Remand Order II, at 2 and 3.

16. The State's evidence of fiscal conditions and federal funding, even if within the scope of this remand, does not alter this conclusion.

17. The State's underfunding of the SFRA in 2010-11; the resulting deprivation of the resources determined to be adequate and necessary to provide the CCCS in low, medium and high at-risk school districts; and the State's failure to fully implement, review and adjust the SFRA formula in its first three years of operation constitutes a violation of the constitutional right of New Jersey school children to a thorough and efficient education that requires prompt remediation by the Supreme Court. Abbott XX, 199 N.J. at 146.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is fluid and cursive, with the first name "David" written in a larger, more prominent script than the last name "Sciarra".

By: \_\_\_\_\_  
David G. Sciarra, Esquire  
Education Law Center  
Counsel for Plaintiffs

Dated: March 14, 2011

**Transcript References**

**2011 Abbott Remand Hearing**

Motion in Limine Hearing	February 11 am
Copeland I	February 14 am
Copeland II	February 14 pm
Crowe	February 14 pm
Erlichson I	February 15 am
Erlichson II	February 15 pm
Gilson	February 15 pm
Hanushek	February 16 am
Kim I	February 16 pm
Kim II	February 21 am
Dehmer I	February 21 am
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Whitaker II	February 23 pm
Tardalo I	February 24 am
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Wyns I	February 25 am
Wyns II	February 25 pm
Closing Argument	March 2 pm