

SUPREME COURT OF NEW JERSEY
DOCKET NO. M-853, 854

RAYMOND ARTHUR ABBOTT, et al.,)
Plaintiffs,) Civil Action
v.)
FRED G. BURKE, et al.,)
Defendants.)

DEFENDANTS' PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Defendants
R.J. Hughes Justice Complex
P.O. Box 112
Trenton, New Jersey 08625
(609) 292-8567

NANCY KAPLEN
Assistant Attorney General
Of Counsel and On the Brief

ROBERT LOUGY
MICHELLE LYN MILLER
Assistant Attorneys General
On the Brief

LISA KUTLIN
SHANNON RYAN
MICHAEL WALTERS
Deputy Attorneys General
On the Brief

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INTRODUCTION

The State has established that current levels of school funding can provide school districts of all concentrations of at-risk students sufficient resources to provide a thorough and efficient education and has, as a result, met the substantial burden placed upon it by the Supreme Court. By a preponderance of the evidence adduced during this remand, at each level of concentration, school districts below adequacy are able to provide the core curriculum content standards (CCCS) at the current level of funding.

This remand proceeding represents the latest in a long string of efforts by the judiciary to address difficult and persistent public policy issues of educational achievement and opportunity, issues at the focus of national discourse and extensive academic study, and yielding no easy or one-dimensional answers. Since Abbott v. Burke, 119 N.J. 287 (1990) (Abbott II), the Court has granted numerous remedies to the "Abbott districts" based on a finding that, with respect to this small subset of the State's school districts, gross disparities in spending in comparison to the State's wealthiest districts amounted to a constitutional violation. The remedies and Court orders created, however, disparities of funding opportunities in their own right.

The School Funding Reform Act (SFRA) was designed to remedy those inequities, creating a unitary system of distributing State school aid that directed funding to districts on a weighted

basis, based on characteristics of its student population, and in amounts exceeding the constitutional minimum. As one indication of its generosity, for instance, during the first year of SFRA, school districts in the State accumulated excess surplus of \$430 million; in the subsequent year (FY10), notwithstanding the impoundment of more than \$450 million pursuant to Executive Order No. 14 (2010), school districts were still able to generate more than \$190 million in excess surplus. Indeed, where even plaintiffs' own expert referred to more than \$1 billion in "excess" spending in the current fiscal year, it is impossible to conclude that there is insufficient expenditure of funds in this State supporting education.

The SFRA was developed, passed, and initially implemented during a revenue boom that came to an abrupt halt with the national recession. While the FY 2009 Appropriations Act was able to provide State aid at levels exceeding the SFRA level, by FY10, educational funding relied on more than \$1 billion in non-recurring federal State Fiscal Stabilization Fund (SFSF) revenues. The FY 2011 Appropriations Act, with no such revenues available, was required to reduce spending across all areas of the budget, including State school aid.

Though reduced from the levels provided for in the unmodified SFRA, State school aid in FY11 was distributed pursuant to the SFRA's weighting of student need, with former Abbott

districts receiving 57% of all State school aid. Although the FY 2011 Appropriations Act reduced State aid overall by 13.6% compared to FY10 levels, no district experienced a reduction in State aid greater than 4.994% of the its FY10 general fund budget. The State ensured that the reduction did not disproportionately affect those districts most reliant on State aid by considering both State and local resources supporting education in allocating the reduction.

For instance, while the DFG J districts - such as Montgomery, with its 65% reduction in State aid from the previous year - had an average reduction in State aid of 84.2% as compared to the previous fiscal year, the average reduction for the Abbott districts was 6.1%. Abbott districts accounted for twenty-five of the thirty districts with the lowest percentage aid difference between FY10 and FY11. Of course, even that minimal reduction in State aid was mitigated by the substantial stimulus-based funds - designed, intended, and distributed to minimize the effects of the national recession on local educational spending - allocated to the districts based on their reduction of State aid.

The effects of the current level of funding on educational attainment and achievement - the relevant metrics in both general constitutional terms as well as the Supreme Court's Order - are, at the moment, unknown. Not only is the Court lacking student performance data for the current school year, a gap noted by some of the district witnesses, it is lacking any historical

reference for the effects of decreases in educational spending on educational attainment. Nonetheless, given New Jersey spends more than \$20 billion annually on education and the lack of significant differential effects of that high and increasing level of spending on educational outcomes, the minimal reductions in State school aid from previous fiscal years or from the amounts calculated by an unmodified SFRA should not affect the districts' ability to provide the CCCS.

Although SFRA calculates an adequacy budget that combines both State and local resources, the SFRA does not require a district to spend at its adequacy budget, nor does it represent a minimum level of spending required for a district to provide the CCCS. At all levels of socioeconomic status, a district's status as above or below adequacy is not determinative or even significantly related to academic achievement. The adequacy budget does, however, provide a level of sufficiency; that is, the adequacy budget is generous in terms of resources and provides more than is necessary for districts to meet the constitutional standard. Simply, the two-thirds of the school districts in the State, including districts with high, medium, and low concentrations of at-risk students and sixteen Abbott districts, that are above adequacy have, as determined by the Supreme Court, sufficient resources to provide a thorough and efficient education.

Districts below adequacy are also meeting the CCCS. The

witnesses that testified before the Special Master represented districts who were below adequacy in each category of concentration of at-risk students. At the lowest concentration of at-risk students and at the highest socioeconomic status, the Montgomery school district provides, at the current level of funding, an educational experience to its students far exceeding the constitutional minimum, notwithstanding the Superintendent's protestations to the contrary. While plaintiffs ask the Court to ignore the 95% of Montgomery's students that go to college, or the 94% of its students taking an advanced placement exam that score well enough to qualify for college credit, and instead focus on the district's anomalous decision to offer its students no World Language instruction in grades one and two, the testimony of this and other witnesses regarding the World Language CCCS bears no relation to the standard itself and is of little weight.

Even with less resources and higher concentrations of at-risk students, the record before this Court demonstrates that districts can sustain, and might even improve, outcomes while spending less. Testimony from the Piscataway and Woodbridge school districts illustrates both a commitment to providing CCCS at current levels and the ability to do so through effective management, increased efficiencies, revenue-generating activities, and reductions targeted to avoid core instructional areas. Similarly, even at high concentrations of at-risk student,

testimony from both the Buena Regional and Clifton school districts demonstrates that districts under adequacy can provide the CCCS through effective administration, cost savings, and programmatic and curricular reforms, even when constrained by questionable expenditures approved by the school boards. In contrast, testimony from the sole former Abbott failed to demonstrate any similar effort to sustain or improve academic performance at current funding levels.

As an example of cost-saving measures that do not negatively affect a districts' ability to meet the CCCS, the State proved that increased class size should not affect a districts' ability to provide the CCCS. Modest increases in class size are, in fact, among the first adjustments a district should make when faced with budgetary constraints. Decreasing student/teacher ratios over the past five decades have not improved achievement. Moreover, no studies show that class size has an effect beyond the first years of education, and the study frequently referenced on the topic only shows that a dramatic reduction in class size at the earliest levels has any impact on performance. Yet, the Bridgeton school district, with relatively low class sizes, chose not to implement this cost effective option.

The provision of a thorough and efficient education as measured by the CCCS does not require full funding of the SFRA. The State has shown that current levels of funding are sufficient

and, as equally important, that the marginal differences in funding from previous years will have no measurable effect on student achievement. This Court, sitting as Special Master, should therefore conclude and recommend to the Supreme Court that the current level of funding provides sufficient resources for districts at all levels of concentration of at-risk students to meet the CCCS.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. The Constitution delegates to the Legislature the responsibility to provide for the maintenance and support of a thorough and efficient system of free public schools.

1. Article 8, section 4, paragraph 4 of the New Jersey Constitution provides "[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years."

2. The Supreme Court has interpreted this constitutional provision, the thorough and efficient education clause, as requiring "a certain level of education, a minimum level, that will equip the student to become 'a citizen and ... a competitor in the labor market.'" Abbott II, 119 N.J. at 306.

3. In Abbott II, the Supreme Court found that gross disparities in expenditures between poorer urban school districts (hereinafter referred to as Abbott districts) and wealthier suburban school districts (hereafter referred to as I&J districts) that resulted from the operation of the funding formula combined with a significantly inferior education being delivered in the Abbott districts as compared to the I&J districts provided compelling proofs of a constitutional violation. Ibid.

4. In Abbott II, the Supreme Court found that for the overwhelming number of districts, there had been no showing that the constitutional promise had not been met. Ibid.

5. By the 1997-98 school year, Abbott districts were required, pursuant to a Supreme Court Order, to be funded at the average of the I&J districts. Abbott v. Burke, 149 N.J. 145 (1997) (Abbott IV).

6. Beginning in the 1998-99 school year and until the implementation of the SFRA for the 2008-09 school year, Abbott districts were able to seek supplemental funding to support the programs, positions, and services necessary for those districts to meet the constitutional standard subject to certain one-year modifications to the process. Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V). See also Abbott v. Burke, 187 N.J. 191 (2006) (Abbott XV) (approving "flat funding" but districts had right to appeal inadequate funding to support demonstrably needed programs); Abbott v. Burke, 177 N.J. 596 (2003) (Abbott XI) (maintenance year for supplemental funding so that districts can implement current approved programs services and positions including increases in non-discretionary expenditures); Abbott v. Burke, 172 N.J. 294 (2002) (Abbott IX) (denying State's request to preclude supplemental funding appeals but permitting presumptive level of supplemental funding).

7. Beginning in the 1999-00 school year, Abbott districts were required to offer preschool programs to three- and four-year old children. By the 2001-02 school year, the required preschool programs in Abbott districts had to be full-day programs. Abbott

v. Burke, 163 N.J. 95, 119 (2000) (Abbott VI); N.J.A.C. 6:19A-3.4 (repealed).

8. The Abbott-specific remedies divided school districts into Abbott and non-Abbott categories for funding purposes. N.J.S.A. 18A:7F-44(f).

B. The SFRA was designed to create a unitary system of distributing State school aid.

9. The SFRA is a weighted student formula developed through a Professional Judgment Panel (PJP) process. Abbott v. Burke, 199 N.J. 140, 152 (2009) (Abbott XX).

10. As a weighted student formula, the SFRA accounts for differences in student characteristics that may affect costs such as poverty and limited English proficiency (LEP). Id. at 154.

11. The SFRA is premised on a "model" school district designed through the PJP process and the cost of the inputs of that model is sufficient to provide the CCCS to the students in that district. Id. at 161-162.

12. Costing out methods like the PJP process are not scientific and do not provide estimates of the minimum cost because these methods incorporate inefficiencies into them. 6T84:4-9 (Hanushek).¹

¹"6T84:4-9 (Hanushek)" refers to the sixth hearing transcript, at page 84 and lines 4 to 9. The parenthetical identifies the witness whose testimony is cited. A table of the hearing transcripts correlated to the witnesses who testified and the date of the testimony is attached as an appendix.

13. The State has always taken the position that the SFRA exceeds the requirements necessary to provide the CCCS to the students in each district. Abbott XX, 199 N.J. at 164.

14. In debating the "appropriate level of resources, or costs, or weight, or scale to use" in the SFRA, the State purposely resolved those issues in a manner that would provide more generous aid. Id. at 170.

15. Under the SFRA, each district has an adequacy budget that is calculated for that district based on the district's student characteristics and the model, which was intentionally designed to be generous. N.J.S.A. 18A:7F-51. See also Abbott XX, 199 N.J. at 153-155.

16. The SFRA calculates a local fair share for each school district based on that district's property wealth and resident income. N.J.S.A. 18A:7F-52.

17. Equalization aid is calculated for each district under the SFRA by subtracting a district's local fair share from its adequacy budget. N.J.S.A. 18A:7F-53.

18. Other aid categories under the SFRA are not based on the local fair share or the adequacy budget. These include one third of the special education census calculation, i.e., Special Education categorical aid, and Security aid. Those two aid categories are combined with the adequacy budget to determine if a district is above or below adequacy. N.J.S.A. 18A:7F-55 (Special

Education categorical aid), N.J.S.A. 18A:7F-56 (Security categorical aid), and N.J.S.A. 18A:7F-47(d) (adequacy calculation).

19. The SFRA contains a State aid growth limit that caps a district's increase in aid from one year to the next. The State aid growth limit varies depending on whether the district is above or below adequacy. The statute provides the aid caps to be 10% for districts above adequacy and 20% for districts below adequacy. N.J.S.A. 18A:7F-47(d).

20. The calculation of whether a district is below or above adequacy is set forth in the SFRA (hereinafter referred to as SFRA definition of adequacy). Ibid.

21. Educational Adequacy Aid (EAA) is an aid category that is exempt from the aid cap. EAA is provided only to certain Abbott districts that were below adequacy. EAA is limited to below-adequacy Abbott districts that either failed to meet educational standards as determined by the Commissioner of Education (Commissioner) or had a local tax levy that exceeded certain statutory thresholds. The intent was to bring this subset of below-adequacy Abbott districts to the adequacy level within three years through a combination of increased local levy and additional State aid. N.J.S.A. 18A:7F-58(b).

22. Adjustment aid is a hold harmless aid category providing that for the first three years of the SFRA, no district would receive less than the amount of State school aid the district

received in school year 2007-08 increased by 2%. After that, the hold harmless level could decrease based on significant decreases in enrollment. N.J.S.A. 18A:7F-58(a).

23. Adjustment aid ensured that for the first year of the SFRA, every school district in the State received at least a 2% increase in State aid. N.J.S.A. 18A:7F-58(a)(1).

24. The adequacy budget does not represent a minimum level of spending for a district to be able to provide the CCCS. Given the generous levels of funding through the SFRA and the fact that districts may find efficiencies, districts do not need to be at or above adequacy to provide the CCCS. See e.g., 3T140-145 (Crowe discussion of whether Woodbridge could provide the CCCS in FY11); 2T85-19 to 86:5 (Copeland discussing that Piscataway can meet the CCCS with FY11 funding). See also 7T117:14-20; 7T35:12-13 (Kim conceding that Montgomery was able to provide CCCS in 2009-10 even though below adequacy and having \$1.8 million in aid withheld as a result of Executive Order 14); D-162 (even though below adequacy, Montgomery had over \$3 million surplus from 2008-09 and 2009-10 to budget as surplus in 2010-11); Corrected D-46 to D-49 (Ehrlichson charts showing districts above and below adequacy achieving at similar levels).

25. The SFRA does not require any district that was below adequacy to increase its local levy so that it will be at adequacy. N.J.S.A. 18A:7F-5(d).

26. A district in which the local levy is below its local fair share may not be at adequacy even at full State funding of the SFRA without any caps on aid growth. See generally N.J.S.A. 18A:7F-51 (calculation of adequacy budget); N.J.S.A. 18A:7F-52 and 53 (calculation of Equalization aid based upon local share); and N.J.S.A. 18A:7F-47(d) (calculation of whether a district is above or below adequacy).

27. The SFRA includes provisions for annual growth in State aid consistent with a Consumer Price Index (CPI) calculation. See N.J.S.A. 18A:7F-45 (definition of "CPI"). See, e.g., N.J.S.A. 18A:7F-48 (Equalization aid); N.J.S.A. 18A:7F-49 (base aid per pupil); N.J.S.A. 18A:7F-51 (speech only excess cost); N.J.S.A. 18A:7F-55 (Special Education categorical aid); N.J.S.A. 18A:7F-56 (Security categorical aid). In addition to the CPI increases, the State aid growth limits also result in increases to the amount of State aid required under the formula after the first year.

28. The required annual growth in the SFRA could only be sustained if State revenues continued to grow.

C. **The significant national recession, a fiscal crisis second only to the Great Depression, created a situation in which the SFRA could no longer be sustained at the statutory level.**

29. The SFRA was enacted in January 2008 during a period of significant annual revenue growth in New Jersey. L. 2007, c. 260, effective January 13, 2008; Joint Stipulation of Facts (JS) ¶¶2-3.

30. Between FY02 and FY08, State revenues increased by

approximately \$12 billion. JS ¶2.

31. The FY 2009 Appropriations Act, enacted in June 2008, fully funded the SFRA with aid growth caps of 10% for districts over adequacy and 20% for districts below adequacy. L. 2008, c. 35.

32. In fact, the FY 2009 Appropriations Act actually increased the level for reimbursement of Extraordinary Special Education aid beyond the SFRA statutory level. Compare L. 2008, c. 35 (Extraordinary Special Education Aid to be funded at 95% of excess above \$40,000 for in-district public school programs, 85% of excess above \$40,000 for separate public school programs and 85% of excess above \$55,000 for separate private schools) with N.J.S.A. 18A:7F-55(b) (90% of excess above \$40,000 for in-district public school programs, 75% of excess above \$40,000 for separate public school programs and 75% of excess above \$55,000 for separate private schools).

33. The trend of increasing revenues abruptly ended with the nationwide fiscal collapse that occurred in the Fall of 2008. JS ¶4.

34. The FY 2010 Appropriations Act made certain modifications to the statutory SFRA provisions. L. 2009, c. 68.

35. In addition, State Equalization aid under the FY10 modified formula was subsidized by \$1.057 billion of non-recurring federal SFSF aid pursuant to the American Recovery and Reinvestment Act (ARRA). JS ¶¶24, 47; L. 2009, c. 68.

36. The revenue projections contained in the FY 2010 Appropriations Act were significantly greater than actual revenues in FY10. JS ¶5.

37. By February 2010, the projected deficit for FY10 was \$2.2 billion. Executive Order No. 14 (2010). See also Perth Amboy v. Chris Christie, 413 N.J. Super. 590, 594 (App. Div. 2010) (detailing projected shortfall).

38. On February 11, 2010, the Governor signed Executive Order 14 requiring the Director of the Division of Budget and Accounting in the Department of the Treasury to place certain funds in reserve to ensure that the State would not end the budget year in a deficit. Those funds included State school aid for school districts that had available surplus funds. By reducing aid only to school districts with surplus funds, the Governor ensured that the mid-year reduction in State school aid would not negatively affect any district's ability to meet its educational obligations under the State Constitution or put a district into deficit. Ibid.

39. In February 2010, school districts had a total of \$906 million in surplus that included \$438 million in excess surplus from 2008-09, \$325 million in capital, maintenance and emergency reserve accounts and \$143 million in under-projected surplus that did not exceed the 2% permissible surplus. P-135.

40. The amount of State school aid that was initially put into reserve pursuant to Executive Order 14 was \$476 million. P-

135. A district could seek adjustments to the withheld amounts if they could demonstrate that its actual surplus balances were different than the amounts upon which the allocation had been based. Perth Amboy, supra, 413 N.J. Super. at 597.

41. Because the 2008-09 excess surplus was statutorily designated to be used in the 2010-11 school year, if a district, due to the State aid withholding, needed those funds to provide a thorough and efficient education in 2009-10, the district could seek approval from the Commissioner to use those surplus funds in 2009-10. Perth Amboy, supra, 413 N.J. Super. at 601-602.

42. In all, only \$27 million of the \$438 million in excess surplus from the first year of SFRA were transferred pursuant to this process in the 2009-10 school year. D-162. School districts, therefore, had more than \$400 million from 2008-09 excess surplus to budget in 2010-11.

D. The use of all the available federal SFSF aid for education in the FY10 budget combined with projected revenues for FY11 prevented the State from being able to fund the SFRA in FY11 consistent with the statutory parameters.

43. The certified revenues for the FY 2011 Appropriations Act were at about the level of FY06 actual revenues and \$823 million lower than the FY10 certified revenues. JS ¶¶6, 29.

44. The Governor and Legislature had to make substantial spending cuts for FY11 as compared to the FY 2010 Appropriations Act given the projected level of revenues for FY11. JS ¶¶30-35.

45. State school aid comprises more than one-third of the State budget. JS ¶¶44-45.

46. In order to balance the budget in light of projected revenues, the Governor and Legislature had no choice but to reduce the amount of State school aid to be distributed pursuant to the SFRA.

47. The growth in K-12 formula aid under the SFRA would have required an increase of \$520 million for FY11. In addition, the federal SFSF aid for education that was available for FY10 and FY11 had all been expended in FY10. Merely maintaining school aid at the FY10 level would have required replacement of \$1.057 billion of the SFSF aid that had subsidized Equalization aid in FY10. JS ¶¶24, 47.

48. The FY 2011 Appropriations Act modified three factors in the SFRA formula. The aid growth caps were set at 0% for all districts. The CPI was calculated in accordance with the definition used for Consolidated Municipal Property Tax Relief Aid, resulting in a 0% CPI. EAA was maintained at the 2009-10 level. JS ¶¶51-56.

49. After the modified SFRA formula was run, the amount of State aid that each district would have received was reduced by an amount equal to the lesser of (a) 4.994% of the district's adopted general fund budget, or (b) the sum of its 2010-11 initial allocation of State school aid as determined by the modified

formula. JS ¶57.

50. A district's general fund budget includes both State and local resources but does not include federal aid. See, e.g., 3T:86-20 to 88-14 (Crowe discussing the general fund budget).

51. By considering both State and local resources supporting education in allocating the reduction in State aid, the State ensured that the reduction did not disproportionately affect those districts most reliant on State aid. See, e.g., D-94.

52. Fifty-nine districts received no formula aid in FY11. Forty-three of the fifty-nine districts that received no formula aid in FY11 were District Factor Group (DFG) I or J districts. D-97.

53. To determine the level of appropriation for each line item of formula aid in the FY 2011 Appropriations Act, the Commissioner was authorized to establish a hierarchy of the formula aid categories, and the 4.994% reduction of formula aid in each district was accomplished in accordance with this hierarchy. JS ¶60.

54. The hierarchy established by the Commissioner reduced a district's aid in the following order: (1) Adjustment aid, (2) Transportation aid, (3) Security aid, (4) Equalization aid, and (5) Special Education categorical aid. Each line item for formula aid in the State budget was reduced by the sum of the aid reductions for each district in that aid category. JS ¶¶61-62

55. The funds provided to districts through the formula aid line items that were included in the hierarchy are unrestricted general fund revenue. As such, reductions to each district in formula aid categories included in the hierarchy do not affect the manner in which the district may budget or expend those funds. JS ¶63-64.

56. State aid for FY11 was reduced by 13.6% as compared to State aid for FY10. D-96.

57. The difference between funding the SFRA pursuant to the parameters for K-12 State formula aid in N.J.S.A. 18A:7F-43 et seq. and the K-12 State formula aid provided through the FY 2011 Appropriations Act was \$1.601 billion or a 19% reduction. D-124.

E. A less than 5% reduction of each school district's general fund budget between FY10 and FY11 should not negatively affect the ability of the school district to deliver the CCCS.

58. There is no actual evidence of what effect aid reductions might have on student achievement because the nation has not seen education aid reductions since 1933. 6T21:8-13 (Hanushek).

59. Inferences can be drawn about the effects of aid reductions on student achievement by looking at whether increases in aid have improved achievement. 6T21:15-19 (Hanushek).

60. Between 1960 and 2007, national spending on education, adjusted for inflation, almost quadrupled. These funds went to support smaller class sizes and more qualified teachers in terms of masters degrees and years of experience. D-80; 6T22:15-23

(Hanushek).

61. NAEP Scores in math and reading for seventeen year olds over the same time period have not changed despite almost quadrupling our spending levels in real terms. D-81; D-82; 6T24:15-20 (Hanushek).

62. Simply put, on the national level, increases in aid have not done much to improve achievement. 6T21:1-4; 6T25:13-14 (Hanushek).

63. New Jersey spends more per pupil than any other state in the nation. D-163; 6T28:22-24 (Hanushek).

64. Increases in New Jersey's spending on education between 2000 and 2008 have been significantly larger than the national increases during that time period. D-83; 6T29:1-11; 6T31:8-12; 6T32:15-20 (Hanushek).

65. The rapid increases in education spending in New Jersey between 2000 and 2009 have had no significant influence on student achievement. D-84 to D-86; 6T31:7-25; 6T33:11-13 (Hanushek).

66. A reduction of district budgets in New Jersey of less than 5% from the prior year is marginal and should not affect the ability of the districts to deliver the CCCS. 6T19:17-21; 6T56:12-19 (Hanushek).

67. Even if the reduction is calculated by looking at what districts would have received using the statutory parameters of the SFRA, the school district budget reduction would be less than 8%.

Compare JS ¶57 and D-94 (\$1.081 billion reduction from FY10 to FY11 required a 4.994% reduction to districts' general fund budgets) to JS ¶57 (gap between actual FY11 funding and SFRA statutory parameters for FY11 is \$1.6 billion).

68. A reduction of 10% or less could be addressed without negatively affecting the ability of districts to deliver the CCCS. 6T79:7-8 (Hanushek noting that he could "with all confidence" say that a 5-10% reduction would not have an impact.).

69. The current level of funding is sufficient to permit school districts in New Jersey to deliver the CCCS. See paragraphs 65-67, supra.

F. New Jersey school districts had substantial surplus available to support their budgets in FY11 and minimize the effect of the State aid reductions.

70. In the first year of SFRA, districts accumulated excess surplus, i.e., surplus greater than 2% not projected to be available when the budget was approved, of \$430 million designated to be used in 2010-11. D-162.

71. The second year of the SFRA, after State aid withholdings of more than \$450 million pursuant to Executive Order 14, districts still had excess surplus of \$190 million that is designated to be used in 2011-12. Ibid.

72. Even after the State aid reduction in 2009-10 pursuant to Executive Order 14, only \$27 million of that excess surplus had to be used to support the 2009-10 budgets, leaving over \$400 million

in excess surplus available for 2010-11. In addition, districts had \$250 million projected as general fund balance at the end of the 2009-10 school year that was appropriated for the 2010-11 school year. Ibid.

73. In total, between 2008-09 excess surplus and 2009-10 projected general fund balances, districts were able to budget almost \$650 million in surplus to support their budgets for this year. Ibid.

G. Districts had traditional and stimulus-based federal revenues available to them in the current year and those funding streams should be considered when determining the amount of funds districts had to deliver the CCCS to their students.

74. Federal funds are annually made available to school districts to supplement State revenues and support programs for at-risk students as well as disabled students. These recurring federal funds derive from Title I grant programs under No Child Left Behind, 20 U.S.C. 6301 et seq., and Part B grants under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq.

75. In Abbott II, the Court determined that these traditional, recurring federal funds should not be considered in determining the constitutionality of the State funding formula or Court-ordered remedies. 119 N.J. at 330. That determination was premised on the targeted nature of the funds, i.e., to disadvantaged students, the presence of a disparity in State

funding between Abbott and I&J districts, the fluctuation of federal funds from year to year and that a district's State aid allocation could be influenced by the amount of federal aid received by the district. Id. at 330-31.

76. The conditions that caused the Court in Abbott II to reject the consideration of federal funds are not present here. First, any concerns regarding the fluctuation of federal support are of no moment given the focused review by the Court of the FY11 funding. Next, the gross disparities in funding of Abbott II no longer exist. Moreover, the amount of funding allocated to districts in the current year was based on a fair and equitable reduction of State aid. Finally, the impetus for the reduction was a national fiscal crisis and diminished State revenues. Thus, availability of State funds and equity were the bases of distributing limited State resources, not the presence of federal funds.

77. Title I funds are provided to districts and schools based upon poverty rates. JS ¶127; 20 U.S.C. 6313.

78. Title I funds provide financial assistance to districts and schools with high concentrations of at-risk children to help ensure that all children meet State academic standards. 20 U.S.C. 6301, 6314, 6315.

79. In FY11, \$291 million in Title I/School Improvement Allocations (SIA) funds are available to school districts in New

Jersey. JS ¶128.

80. Districts that receive Title I funds can use those funds for targeted assistance for at-risk students or, if a particular school has a high concentration of at-risk students and is designated a "schoolwide" Title I school, the funds can be used to the benefit of the entire school. 20 U.S.C. 6314, 6315.

81. For example, Clifton used Title I funds in FY11 for tutors, after-school programs and Saturday instructional programs. 13T10:12-14; 13T34:10-12 (Tardalo).

82. Piscataway used carryover Title I funds in FY11 to reinstate its summer academy. 2T71:11-22 (Copeland); D-2.

83. Federal funds are also allocated annually under the IDEA. These IDEA Part B funds are allocated to districts to support the provisions of special education and related services to students with disabilities. 20 U.S.C. 1400(d), 1411(a).

84. In FY11, \$331 million in IDEA Part B funds are available to school districts in New Jersey. JS ¶136.

85. In contrast to the recurring federal funds received by school districts, ARRA provides stimulus funds to save and create jobs and to reform education through various funding streams including IDEA Basic and Preschool and Title I/SIA, as well as SFSF. ARRA, Public Law No. 111-5; JS ¶¶132, 139, 140. These ARRA programs were enacted as part of a larger stimulus program and designed to provide additional support during the national

recession to at-risk and special education students given the limited ability of states to maintain education funding at previous levels. 8T:104:1-5 (Dehmer).

86. As an example, Clifton used its ARRA Title I funds in the current year to support positions that would have otherwise been eliminated because of aid reductions. P-99.

87. Clifton used ARRA IDEA funds to open new classrooms for autistic preschoolers, allowing the district to bring these students back into the district for special education programs. 13T25:9-21 (Tardalo).

88. ARRA IDEA and Title I/SIA funding was awarded in 2009 for use in FY10 and FY11. JS ¶131, 138.

89. The Statewide ARRA Title I/SIA allocation is \$180 million. JS ¶131.

90. The Statewide ARRA IDEA and Preschool allocation is \$372 million. JS ¶138.

91. The Education Jobs Fund (Ed Jobs) is a federal program designed to retain, recall or rehire former employees or to hire new employees. JS ¶143. It was specifically designed to support public education during the current fiscal crisis in light of significant reductions nationally to State aid for school districts. 8T91:21 to 92:2; 8T104:1-5 (Dehmer).

92. Districts may use Ed Jobs funding in FY11 or reserve all or part of those funds for FY12. JS ¶148.

93. Ed Jobs funds were distributed to school districts consistent with the method for allocating State aid in FY11. P-59.

94. Some districts opted to use Ed Jobs funds to save positions in the current year, see, e.g., 5T102:14-21 (Bridgeton Superintendent testifying district used close to half the funds this year), while others made the decision to reserve the funding for the 2011-12 school year, see, e.g., 12T84:19 to 85:12; 3T49:11-23; 11T21:14 to 22:22 (Clifton, Woodbridge and Buena Regional superintendents testifying districts did not expend any Ed Jobs funds in this fiscal year).

95. \$262 million in Ed Jobs funds were allocated Statewide. JS ¶144.

96. In determining whether or not the current level of funding through the SFRA is sufficient for districts to deliver the CCCS, these federal revenues that are available and designed to augment State aid during this economic crisis must be considered. The remand order should not be read to preclude consideration of these stimulus revenues or recurring federal funds.

97. The fact that ARRA and Ed Jobs funds may not be available after FY12 does not affect the ability of districts to use these funds in the current year to support positions and programs in their budgets and deliver the CCCS.

H. The generous level of funding through the SFRA given the various enhancements supports the conclusion that the marginal decrease in education funding in FY11 can be accomplished without negatively affecting the ability of

districts to deliver the CCCS.

98. As noted above, in developing the SFRA, various enhancements were added to the results of the PJP process. D-125 at 10-14 (Formula for Success). The SFRA, therefore, provides for greater resources than the minimum level necessary to meet the constitutional standard.

99. The large surpluses generated in the first two years of the formula support a conclusion that the SFRA provides more than enough fiscal resources to school districts. See D-162.

100. Two of the enhancements to the PJP process were the weights for at-risk, LEP and combination students and creating a hold-harmless aid category of Adjustment aid. The Department of Education used these two enhancements in simulations to show the amount of additional SFRA funding necessary to support these enhancements. D-115 to D-123.

101. Due to time constraints, the Department was unable to run simulations detailing other enhancements to the PJP outcomes. These include adjustments to salary and benefits, adjustments to costs for inflation and geography, adjustments to the base cost amount including capital funds and professional development, increased security funding based on at-risk population and an expanded definition of at-risk from students eligible for free lunch to students eligible for free and reduced lunch. D-125 at 10-14 (Formula for Success).

102. Initially, a DOE simulation was done that ran the SFRA formula consistent with the statutory parameters (Simulation 1). D-114, D-115. 8T104:9-13; 9T5:8-15 (Dehmer).

103. A second DOE simulation (Simulation 2) was done in which the SFRA formula was run consistent with the statutory parameters except that the enhanced weights for at-risk, LEP and combination students were reduced to the original PJP weights. D-115; D-121; 9T5:19-23 (Dehmer). See also D-125 at 38 (Formula for Success reflecting weights prior to enhancement).

104. When aid under Simulation 2 is compared to Simulation 1, Simulation 2 resulted in a decrease in Equalization aid of \$130.7 million and in EAA of \$1 million. Because of the SFRA requirement that all districts be held harmless at the 2007-08 level increased by 2%, an additional \$75.6 million was needed in Adjustment aid in Simulation 2. The total reduction in State aid under Simulation 2 was \$72 million. D-115. 9T7:13-17; 9T8:22 to 9:4 (Dehmer).

105. In a third DOE simulation (Simulation 3), the SFRA was run consistent with the statutory parameters except that districts that were over adequacy were not held harmless through Adjustment aid. Under Simulation 3, Adjustment aid decreased by \$524 million. D-115; D-122; 9T10:2 to 12:8 (Dehmer).

106. The final simulation (Simulation 4) combined the parameters of Simulations 2 and 3. The State aid required under Simulation 4 was \$826 million less than unmodified SFRA funding

(Simulation 1). D-115; D-123; 9T11:24 to 12:8 (Dehmer).

107. Accordingly, if the SFRA was modified to eliminate just these two enhancements in FY11, the State aid growth of \$520 million would be more than offset by the \$826 million reduction. Compare JS ¶47 with D-115.

108. Plaintiffs' expert, Mel Wyns, concluded that even after the FY11 State aid reduction, there was over \$1 billion in what he characterized as "excess spending in districts over adequacy." 14T108:18 to 109:1; 15T36:4 to 37:7 (Wyns).

I. The State aid reductions to Abbott districts in FY11 were smaller relative to other districts and Abbott districts had other revenue sources available to mitigate the effects of the aid reduction on their ability to deliver the CCCS.

109. State school aid in FY11 totaled \$6.8 billion. Of that amount, \$3.9 billion or 57% was allocated to Abbott districts. If Preschool Education aid is included, the total amount of aid rises to \$7.5 billion with Abbott districts receiving \$4.5 billion or 60.2% of the aid. D-95.

110. FY11 State school aid was reduced a total of \$1.081 billion or 13.6% as compared with FY10 State aid. D-96.

111. The Abbott districts' State school aid was reduced by \$256 million in FY11 when compared to FY10 or an average reduction of 6.1%. D-94.

112. Non-Abbott districts had average reductions ranging from 12.5% for DFG A districts to 84.2% for DFG J districts. D-94.

113. When districts are sorted by the percent aid difference between FY10 and FY11, the twelve districts with the smallest percentage of reductions were all Abbott districts, ranging from 5.4% to 5.9%. Of the thirty districts with the smallest percentage of reductions, twenty-five were Abbott districts. D-97.

114. The loss of State school aid by Abbott districts was primarily comprised of hold-harmless Adjustment aid. Of the \$256 million in State aid reduction, \$179.4 million was in Adjustment aid. D-99.

115. Revenues per pupil includes State school aid (except for transportation, preschool and debt service aid) and local levy. It does not include other available revenues such as budgeted surplus, miscellaneous revenues or federal funds. D-101.

116. Even with the State school aid reductions, the average revenues per pupil for Abbott districts was \$16,393. This exceeds the State average revenues per pupil of \$14,198 by \$2,195 per pupil and the I&J average of \$14,642 by \$1,751. Only four Abbott districts are below the I&J average and only two of those districts are below the State average. Ibid.

117. Abbott districts have some of the highest revenues per pupil for K-12 districts in FY11. Of the top thirty K-12 districts in terms of revenues per pupil, half are Abbott districts. Asbury Park's revenues per pupil are \$6,718 more than Park Ridge Boro., the highest spending K-12 I&J district. In fact, seven of the

Abbott districts have higher revenues per pupil than Park Ridge Boro: Asbury Park at \$24,676, Keansburg at \$20,244, Pemberton at \$19,571, Hoboken at \$18,771, East Orange at \$18,259, Camden at \$18,236 and Pleasantville City at \$18,014. D-103.

118. Abbott districts had a total of \$139 million in Ed Jobs Funds available to use in FY11 to prevent reductions of school level staff. D-108; JS ¶¶143, 148.

119. Of their approximately \$113 million two-year allocation, Abbott districts had \$83 million in ARRA Title I & SIA funds remaining as of June 30, 2010. JS¶¶ 131,134; D-110.

120. Of their approximately \$90 million two-year allocation, Abbott districts had almost \$75 million in ARRA IDEA Basic and Preschool funds remaining as of June 30, 2010. JS¶¶ 138, 142; D-110.

121. Abbott districts had \$145 million in Title I funds for FY11. D-161.

122. Abbott districts had \$76 million in IDEA funds for FY11. Ibid.

123. If the SFRA had been funded consistent with the statutory parameters in FY11, the Abbott districts would have received an additional \$146 million in State school aid. D-116.

124. The total amount of federal aid that Abbott districts had in FY11 more than offset the \$256 million aid reduction as well as the additional \$146 million in school aid the districts would have

been provided if the SFRA had been funded consistent with the statutory parameters in FY11. See paragraphs 118 to 123, supra.

125. Abbott districts budgeted \$162.5 million in surplus in FY11. D-113, D-162.

126. If only federal aid from ARRA Title I, ARRA IDEA and Ed Jobs, i.e., federal aid specifically designed to make up for reductions in State aid due to the national recession, are considered and are combined with the Abbott districts' budgeted surpluses, the total of these additional revenues more than offsets the \$256 million reduction in aid as well as the \$146 million increase that would have been provided if the SFRA had been funded consistent with the statutory parameters in FY11. See paragraphs 118 to 120, 123, supra.

127. The enhancements to the weights for at-risk, LEP, and combination students generate \$196 million in Equalization aid and \$16.8 million in EAA for Abbott districts using SFRA statutory parameters in FY11. Compare D-116 with D-117.

128. Providing Adjustment aid to Abbott districts over adequacy generates \$306 million in Adjustment aid for Abbott districts using SFRA statutory parameters in FY11. Compare D-116 with D-118.

129. If Adjustment aid for Abbott districts over adequacy and the enhancements for the at-risk, LEP and combination students were both eliminated from the SFRA for FY11, the Abbott districts would

have received \$3.7 billion in State aid. D-119. This amount is \$658 million less than the full parameters of SFRA would have provided. Compare D-116 to D-119. Moreover, it is \$256 million less than the Abbott districts actually received in FY11. Compare D-119 with D-95.

J. Districts could have accommodated the State aid reductions in FY11 without having a discernible effect on student achievement by increasing class size.

130. Nationally, pupil/teacher ratios have significantly dropped between 1960 and 2007. 6T22:7-9 (Hanushek).

131. Achievement over the same period has not changed. 6T24:15-20 (Hanushek).

132. There have been an enormous number of studies in the area of class size. 6T37:21-23 (Hanushek). The majority of studies find no impact resulting from reduced class size, and there are an evenly balanced number of studies finding losses and gains in student achievement as the result of reduced class size. 6T37:21-25 (Hanushek). The research as a whole demonstrates that reducing class size does not have an appreciable impact on student achievement. 6T37:25 to 38:1; 6T34:17 to 35:2; 6T26:1-6 (Hanushek).

133. No studies show that class size makes a difference past the third grade. 6T37:12-14 (Hanushek).

134. The Star Study or Project Star was a true experiment in class size differences conducted in the mid-1980s in Tennessee. The experiment took kindergarten through third grade students and

randomly assigned them to classes of either 15 students or 23 to 25 students. Interpreted in the best light, the Star Study demonstrated that a one-third reduction in class size in kindergarten to third grade results in small increases in student achievement. When looked at in more detail, it appears that all of the effect is in kindergarten and first grade and there is no effect in second and third grade. 6T35:15 to 36:16 (Hanushek); 6T37:8-11 (Hanushek).

135. Moreover, the Star Study suffered methodological flaws, including a lack of proper documentation and significant rates of attrition among participating students. The small increases in student achievement suggested by the study would require dramatic reductions in class size, at tremendous expense. 6T36:7-21 (Hanushek).

136. Teachers do not change their behavior to account for the movement of one or two students in their class. 6T35:6-9 (Hanushek). Thus, student achievement remains the same. Reducing class size by one or two students would have no noticeable impact on student achievement. 6T34:17-23; 6T35:6-9 (Hanushek).

137. Indeed, class size in any grade from kindergarten through twelfth grade could be increased by five students per class without negatively impacting performance. 6T53:23 to 54:7 (Hanushek).

138. Teacher effectiveness is far more determinative of student achievement than class size. 6T35:3-6 (Hanushek).

139. Modestly increasing class size while removing the five to eight percent of the least effective teachers would result in an increase in student achievement. 6T44:6-12 (Hanushek). Modestly increasing class size while removing teachers based on seniority would have no affect on student performance. 6T38:14-18 (Hanushek).

140. New Jersey districts can deliver a thorough and efficient education with a slight increase in class size resulting from a five percent reduction in State aid, even if the teachers removed were those most recently hired. 6T48:3-20 (Hanushek).

141. The percentage change in overall spending is generally the same percentage change in class size, assuming that the spending reductions are evenly distributed between classroom instruction and non-instructional areas of the budget. 6T49:17-24 (Hanushek). Thus, a five percent budget reduction would translate into a five percent increase in class size. 6T49:24 to 50:1 (Hanushek). As a result, a class size of 20 would increase on average to a class size of 21. 6T49:24 to 50:4 (Hanushek). This increased class size would have no effect on student achievement. 6T49:24 to 50:4 (Hanushek).

142. If, instead of spreading the budget reduction across all areas of the budget, the spending reduction was accomplished solely through a reduction in the number of classroom teachers, the reduction would translate into a class size increase from 20

students to 22 students. This is based on an assumption that half of all spending is generally in the classroom and half of all spending is generally outside of the classroom. 6T51:13 to 52:15 (Hanushek).

143. For these reasons, when making adjustments due to budgetary constraints, school districts should first modestly augment class sizes. 6T41:18-24 (Hanushek).

144. In FY10, the average class sizes in New Jersey were just under 20 students for all grades except third through sixth. JS ¶170. In third through sixth grades the average New Jersey class size for each grade was less than 21 students. Ibid.

145. The State average percentage of classroom teacher salaries and benefits as compared to the average comparative total expenditures (including classroom instructional costs, support services, administrative costs, operations/maintenance of plant, food services and extracurricular costs) was 55% in FY10, D-140, D-164 - D-170, and has remained fairly constant over time, 7T19:2-20 (Kim). Thus, on average, the five percent budget reduction for New Jersey school districts would correspond to an increase in class size of one to two students. This modest increase in class size should have no affect on student performance.

K. Delivery of the CCCS in World Languages does not require dedicated World Language Teachers in the elementary grades.

146. N.J.A.C. 6A:8-5.1 sets forth the graduation requirements

for students to receive a State-endorsed diploma.

147. In order to meet the graduation requirement in World Languages, students must take at least 5 credits of World Languages or demonstrate a Novice-High level of proficiency. N.J.A.C. 6A:8-5.1(a) (1) (viii); N.J.A.C. 6A:8-5.1(a) (2) (ii) (2).

148. The CCCS for World Languages are benchmarked by proficiency level, rather than grade levels. P-10. This is a unique feature of the World Language CCCS. Ibid.

149. There are six World Languages proficiency levels: (1) Novice-Mid Level; (2) Novice-High Level; (3) Intermediate-Low Level; (4) Intermediate-Mid Level; (5) Intermediate-High Level; and (6) Advanced-Low Level. Ibid.

150. In addition to the graduation requirements imposed by regulation, the CCCS provide "Realistic Grade-Level Targets for Benchmarked Proficiency Levels," with the understanding that language learners will move through levels of proficiency at different rates. Ibid.

151. The World Language CCCS does not require that districts provide students the opportunity to achieve any specific level of proficiency in the elementary grades.

152. Pursuant to the Realistic Grade Level Targets for Benchmarked Proficiency students receiving 30 minutes of instruction three times a week beginning in kindergarten will meet the Novice-High level of proficiency by the end of the fifth grade.

153. There are several paths for districts to implement the CCCS and for students to achieve the graduation requirement. According to the American Council on the Teaching of Foreign Languages (ACTFL), students can achieve Novice-High level of proficiency if they are provided foreign language instruction from kindergarten through eighth grade, seventh through twelfth grade or ninth through twelfth grade. Ibid.

154. While maximizing the ability of each student to achieve higher levels of proficiency in World Languages, or the other content areas, is an admirable goal, it is not the constitutional standard.

L. There is not a strong correlation between districts spending above or below adequacy and student achievement on State assessments.

155. The DOE created graphs, referred to as scattergrams, that reference districts against one axis (the Y-axis) indicating whether a district is above or below adequacy and against a second axis (the X-axis) indicating how a district performed on a State assessment. 4T18:2 to 19:11 (Ehrlichson). As a point of reference, the Y-axis creates two quadrants, one for districts spending over adequacy and one for districts spending below adequacy. The X-axis also creates two quadrants, one for districts performing better than the State passage rate for the assessment and one for districts scoring less than the State passage rate for the

assessment. Corrected D-46, D-47, D-48, D-49 (with the exception of p1 of D-49).

156. Scattergrams were created for the Language Arts Literacy (LAL) and Mathematics assessments based on performance on the Spring 2010 NJASK 4 (the fourth grade assessment), NJASK 8 (the eighth grade assessment) and the NJHSPA (the assessment administered to eleventh and twelfth grade students as a graduation requirement). Corrected D-46, D-47, D-48, D-49 (with the exception of p1 of D-49).

157. The number of students in a district who tested as proficient or advanced proficient on any of these assessments has no strong correlation to whether the district is spending above or below adequacy. For example, of the four <20% at-risk districts achieving 100% proficiency on the NJASK4 LAL, two were spending above adequacy and two are spending below adequacy. Similarly, of the two lowest performing <20% at-risk districts, the lowest performer with approximately 35% of its students testing as proficient, was spending above adequacy and the district with slightly less than 40% of its students passing the assessment was spending below adequacy. Corrected D-46.

158. Districts spending above adequacy are not more likely than those spending below adequacy to meet the passage rate. In fact, while 73% of over-adequacy districts exceeded the State passage rate on the NJASK8 LAL compared to 68.1% of the below-