RAYMOND ARTHUR ABBOTT, et al., Plaintiffs, v. FRED G. BURKE, et al., Defendants.	SUPREME COURT OF NEW JERSEY DOCKET NO. M-969/1372-07 CIVIL ACTION

PLAINTIFFS' EXCEPTIONS TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS

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PRELIMINARY STATEMENT

In the remand Report, the Special Master concluded that the School Funding Reform Act of 2008 ("SFRA") is unconstitutional as applied to the Abbott districts without continuation of the supplemental funding remedy, but that the statute is otherwise constitutional. The Special Master states that the interim parity remedy "no longer need be employed," (Report at 70), and that it would be "antithetical" to SFRA's goal of a "unified funding scheme" to fund supplemental programs, "particularly when the State has demonstrated there should be adequate funds for all necessary programs in all districts, including the Abbott districts." (Report at 77-78).

These conclusions rest on fundamental legal error and lack substantial credible evidence in the record. The Special Master only performed a statewide, facial review of SFRA's provisions for funding regular education and supplemental programs, focusing on the process of developing SFRA, the general statewide operation of the formula, and the appropriateness – in broad, general terms -- of SFRA's provisions. While perhaps germane to a facial challenge, these matters are irrelevant to the as applied analysis required to resolve the "limited" remand issue: "whether the State has overcome the deficiencies found in CEIFA's funding

provisions as applied to Abbott districts." Abbott v. Burke, 196 N.J. 544, 566 (2008)("Abbott XIX").

The Special Master also never made the requisite findings on whether SFRA overcomes the specific deficiencies identified in CEIFA's funding provisions. Even more telling, he does not address, as required by Abbott XIX, 196 N.J. at 568, the specific factual contentions and substantial credible – and largely undisputed – evidence presented by plaintiffs and amici curiae on SFRA's failure, as applied, to ensure adequate funding for plaintiffs to achieve a substantive thorough and efficient education.

Because the Report is based on a legally erroneous facial review, the Special Master relies extensively on the State's general assertions and irrelevant evidence proffered by the State's experts, rather than on a consideration of the extensive evidence on SFRA's devastating impact on the Abbott districts. When the record as a whole is examined independently, as this Court must do, the Court can only reach the conclusion that SFRA is unconstitutional as applied. Indeed, the record demonstrates that SFRA replicates, even exacerbates, CEIFA's deficiencies; dismantles the successful Abbott funding mandates; re-imposes funding disparities between Abbott and other districts, bringing back the "two-tiered" system the Abbott remedies had eliminated; and

repudiates this Court's longstanding and established precedents fashioned to ensure plaintiffs' constitutional entitlement.

The Court has long sought an appropriate State response to the constitutional defects in prior funding formulas as applied to plaintiffs and their remedial districts. Although SFRA is touted by the State, and now, to an extent, by the Special Master, as the appropriate response, this record shows it clearly is not. Upon proper analysis under the relevant Abbott standards, SFRA falls far short of the constitutional mark. Faced with deficient funding schemes in the past, "the Court has never abdicated its responsibilities to plaintiffs" and SFRA does not present the occasion to "do so now." Id. at 564.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

The relevant procedural history is described in Abbott XIX, 196 N.J. at 549. On remand, the Special Master conducted a hearing from February 9 through March 3, 2009. On March 24th, the Special Master issued his Opinion/Recommendations ("Report"). The relevant facts are described in Plaintiffs' Proposed Findings of Fact, Conclusions of Law and Recommendations submitted to the Special Master and in the specific exceptions below.

STANDARD OF REVIEW

In State v. Chun, 194 N.J. 54, 93 (2008), this Court recently recited the appropriate standards of review for assessing the findings and conclusions in a Special Master's Report. The Court accepts findings of fact "to the extent that they are supported by substantial credible evidence in the record." Id.(citation omitted). This factual review requires "consideration of the proofs as a whole; the appraisal is not simply confined to those offered" by one party. State v. Johnson, 42 N.J. 146, 162 (1964). The Court, however, "owe[s] no particular deference to the legal conclusions of the Special Master. State v. Chun, 194 N.J. at 93(citation omitted). These standards should guide this Court's review of the following exceptions to the Special Master's Report.

EXCEPTIONS TO SPECIAL MASTER'S REPORT

Exception No. 1: The Special Master Erred By Engaging In A Facial, Statewide And General Review Of SFRA Without Assessing The Formula As Applied To Abbott Districts

The Special Master, based on a general, statewide facial review of SFRA's provisions, concludes that the formula is "well-considered, even expansive," and "allow[s] for a thorough and efficient education for all children in the State," which, "by definition," includes plaintiff school children. (Report at 62). However, the Special Master, never assessed SFRA, as applied, with respect to the adequacy of funding for regular education and supplemental programs in the Abbott districts. Consequently, he failed to provide this Court with specific findings and conclusions on the limited issue on remand: whether SFRA "overcome[s] the deficiencies found in CEIFA's funding provisions as applied to the Abbott districts." Abbott v. Burke, 196 N.J. at 566. The Special Master's general facial review, and resulting failure to conduct the requisite as applied analysis, constitutes fundamental legal error and deprives this Court of the necessary findings and conclusions.

First, the Special Master failed to follow the legal standards that must guide the analysis of SFRA's

constitutionality as applied to the Abbott districts. This Court's prior Abbott decisions establish clear legal benchmarks for determining whether a new formula "should be permitted to replace the funding methodology previously ordered," id. at 552, so as to ensure plaintiffs can continue "to obtain a constitutionally sound, mandated educational program that is supported by a consistent level of State funding." Id. at 549. Specifically, this Court identified deficiencies in the prior CEIFA funding provisions for regular education and supplemental programs that must be "overcome" in order for SFRA to be constitutional as applied.[1]

To the extent the Special Master considered the impact of SFRA on funding in Abbott districts at all, he merely accepted the Department of Education's ("DOE") contention that, "as enacted, the funding formula adopted by SFRA provides more than sufficient money for a thorough and efficient education for the students within the Abbott districts, inclusive of the

[1] In Abbott XIX, this Court summarized the CEIFA deficiencies detailed in Abbott v. Burke, 149 N.J. 145 (1997)("Abbott IV") as follows: (1) funding for regular education was based on costs in a hypothetical school district that "did not account for the characteristics" of Abbott districts; and (2) funding directed to supplemental programs "also was not calculated based on study of the special needs of the high concentrations of poor students" in Abbott districts, and, as a result, "the State ha[d] not demonstrated an adequate basis for using the per-pupil funding amounts for supplemental programs." Abbott XIX, 196 N.J. at 562.

supplemental programs as mandated in Abbott V and X." (Report at 72). Relying on what the State "posits" will be the formula's effect, as applied, might be legally appropriate if this were a facial challenge to SFRA with the statute accorded judicial deference. However, this is an as applied challenge, and one where the State bears a heavy burden of proof because it is seeking to replace more than a decade of judicially-ordered funding remedies designed to ensure a constitutional education for students in an entire class of remedial districts. In this context, the validity of that DOE assumption must be tested by carefully weighing the formula's impact, as applied, on those remedial districts. The Special Master simply failed to perform that analysis and assessment.

Second, instead of following the proper standards under Abbott for assessing SFRA's constitutionality as applied, the Special Master limited his focus to a statewide facial review of the formula. Based on that inappropriate review, he concluded that SFRA would provide sufficient resources for all New Jersey children, including plaintiffs in the Abbott remedial districts. (Report at 62). However, the Special Master's conclusion regarding the funding that SFRA may provide on a statewide basis to all students is not legally sufficient, standing alone, to resolve SFRA's

constitutionality as applied, which is the issue squarely presented in these proceedings.

Nowhere is this legal error more evident than in the Special Master's extensive focus on the process by which SFRA was developed, without any analysis of substantial evidence regarding how the resulting provisions – SFRA's funding for regular education and supplemental programs – would affect the Abbott districts. (Report at 16-38). The Report's principal thrust is a review of DOE's process to develop SFRA, with the Special Master concluding that it was "fair" and represented the "first step" in constructing a constitutional formula "for all districts, include (sic) the Abbott districts." (Id. at 38). But the Special Master never took the critical next step of making findings and conclusions on the record as a whole – including evidence relating to the contentions of plaintiffs and amici curiae - as to SFRA's actual impact on funding for the Abbott remedial districts. Although the DOE process may be an appropriate first step in considering SFRA's provisions, the analysis required by Abbott XIX cannot end there.

Further, assessing process is not tantamount to assessing the SFRA formula as applied. A careful analysis of, and findings about, the actual substantive impact of the formula on the remedial districts is essential, and the Special Master failed to do that. Thus, the Special Master's acceptance of

the DOE process leading up to SFRA as "one step" in an attempt to construct a constitutional formula, (Report at 38), only begs analysis of the next, pivotal question in this case: whether the SFRA formula that emerged from the process, as applied, overcomes CEIFA's deficiencies, ensures constitutionally adequate funding for plaintiffs, and can replace the Abbott remedial funding measures.[2]

This failure to conduct the proper legal analysis is underscored by the Special Master's discussion of the Abbott remedial designation. He states that "Abbott districts were created based upon certain identified factors for districts that were urban," and "[d]istricts with all the necessary factors, which were not urban, were not so classified." (Report at 73). The Special Master then concludes: "under the current system, students in various DFG A or B districts may be deprived and may have been deprived of many of the benefits afforded to Abbott district children solely premised on the district not being sufficiently 'urban.'" (Ibid.).

[2] The Special Master devotes an additional 23 pages of the Report to a description of what funding is generated under the formula on a statewide basis and, as an example, in Paterson (Report at 39-62). But the Special Master never specifically addresses the evidence discussed in the following exceptions that the SFRA's provisions, as applied, do not provide constitutionally adequate funding for regular education and supplemental programs in Paterson or the other Abbott districts.

This discussion reflects a fundamental misunderstanding of this Court's precedents establishing the factual and legal conditions for the designation of the "poorer urban districts" as remedial districts. Abbott v. Burke, 119 N.J. 287, 386-87 ("Abbott II"); Abbott v. Burke, 164 N.J. 84, 88-90 (2000)("Abbott VII"). Further, the Special Master failed to conduct the appropriate as applied analysis of the Abbott designation. He disregarded the unrefuted testimony of plaintiffs' witnesses that the conditions leading to the remedial designation in the first place -– extreme poverty, racial isolation, educational inadequacy, and fiscal incapacity or municipal overburden -- still persist in the presently designated 31 remedial districts.[3] Goertz, 11T 86:17–87:1; P-3, ¶¶17-28; Goertz, 11T 82:25–84:19; P-5; P-6; P-8; P-9; P-24; Erickson, 14T 125:18-126:6; P-48; P-3, ¶¶63-68;[4] compare Abbott IV, 149 N.J. at 178 (1997)("Abbott IV")(finding "[v]iolence" as a "significant barrier to quality education in city schools") with Scott, 19T 120:3-20 (current

[3] The Special Master notes the Commissioner's testimony that there has been an increase in at-risk students outside the Abbott districts since Abbott II, (Report at 39), but ignores Dr. Goertz's evidence that the Abbott districts continue to remain in extreme poverty and are even more racially isolated than they were in 1990. P-3, ¶18(g).

[4] Citations to the transcript on remand are in the same format used by the Special Master: witness; transcript volume number, and page and line cites. See attached table.

Newark student testified to “four riots” during her freshman year, as well as “one of the biggest riots” last year)).

Similarly, the Special Master’s erroneous facial analysis is reflected in his extensive, if not exclusive, reliance on State experts who offered no testimony as to SFRA’s application to the Abbott districts. These experts -- Dean Monk, Dr. Picus and Dr. Loeb -- generally testified about the DOE process from 2003 through 2007, and the overall appropriateness of certain SFRA features, such as the weighted student formula, the use of at-risk and LEP weights, and the census-based method of funding special education. (Report at 19-20; 27-29; 39; 44-45; 48; 71-72). This expert testimony relates only to the general, statewide appropriateness of the formula, and is of no import to the as applied Abbott issues to be resolved in this matter. The remand record as a whole shows that these witnesses conceded on cross-examination that they never analyzed the actual application of SFRA’s funding provisions in Abbott districts and, therefore, could not offer any facts or opinions on whether, as applied, SFRA provides adequate funding and overcomes CEIFA’s deficiencies. Picus, 7T 96:18–97:4; Loeb, 9T 42:6-9; Monk, 12T 66:2-22. The significant weight accorded their general opinions underscores the Special Master’s failure to go beyond facial consideration

of the structure of SFRA to assess the formula's impact on Abbott districts.[5]

Furthermore, the facial review of the development and operation of SFRA statewide led the Special Master to give undue consideration to matters beyond the remand court's jurisdiction and otherwise irrelevant to the as applied challenge before this Court. These include the Special Master's consideration of "the interests of students in all districts" that are "not concretely before the court," (Report at 72), and "the full panoply of rights and expectations of all our students," (id. at 73); an "inequity," the State asserts SFRA addresses, caused by the application of this Court's remedial funding measures only to Abbott districts, (id. at 73-74); the "laudable" goals of equity, transparency and predictability the State contends will be advanced by SFRA, (id. at 39-40, 72); the State's "good faith" effort in constructing SFRA, (id. at 4, 71); and the endorsement of

[5] As discussed in the following exceptions, the Special Master's legal error also resulted in a lack of consideration of the evidence presented by plaintiffs' experts on the as applied effect of SFRA. This evidence was central to the factual contentions of plaintiffs and amici. Abbott XIX, 196 N.J. at 568(ordering development of "a full and complete evidential record that addresses the factual contentions raised by the parties and amici curiae before this Court"). This omission is striking because the record as a whole reveals plaintiffs' experts, amici's briefs and the district witnesses provided the only evidence on the actual impact of SFRA on Abbott districts.

SFRA's overall objectives by declaring that "[t]he time for reform is now." (Id. at 74). These concerns, largely in the policy realm, are simply immaterial or irrelevant to the as applied assessment of SFRA required under Abbott XIX.

Finally, and critically, because the incorrect legal standards were employed, the Special Master failed to make specific findings and conclusions required for resolution of the central remand question: does SFRA overcome the deficiencies in CEIFA's provisions with respect to funding for regular education and supplemental programs in the remedial districts? The substantial credible evidence on these as applied issues, which the Special Master failed to consider under proper Abbott standards, is discussed in plaintiffs' following exceptions to the Report.

In sum, by misapplying the legal standard, and by failing to analyze the relevant evidence on the limited remand issue, the Special Master's findings and conclusions end at the very point they should have begun.

Exception No. 2: The Special Master's Conclusion That Plaintiffs No Longer Need The Interim Parity Remedy Is Legally Erroneous And Not Supported By Substantial Credible Evidence

The Special Master concluded that the parity remedy for regular education in Abbott districts "no longer need be employed" because SFRA "was designed to exceed the

requirements necessary to provide a thorough and efficient education." (Report at 70). In reaching this conclusion, the Special Master relied on a facial analysis of SFRA's provisions and failed to assess SFRA's application under the proper Abbott standards for determining whether the formula provides adequate funding for regular education in the Abbott districts. When the record is analyzed under those standards, the Court should conclude that there is no substantial, credible evidence demonstrating that plaintiffs can achieve a substantive thorough and efficient education under the SFRA "base cost" for regular education -- the fundamental prerequisite that must be met to "effectively moot" and displace the interim parity remedy. Abbott XIX, 196 N.J. at 562; Abbott IV, 149 N.J. at 196.

Preliminarily, in Abbott IV, this Court identified specific deficiencies in the CEIFA formula relating to regular education funding that SFRA, under Abbott XIX, must "overcome" to constitutionally "accommodate" plaintiffs' resource needs to achieve substantive State education standards and replace the parity remedy. Id. at 566. While parity is an "interim" remedy, Abbott XIX, 196 N.J. at 563-64; Abbott IV, 149 N.J. at 196, this Court held that, if the State seeks to replace parity with a lower funding amount for regular education, as it seeks to do in SFRA, the following standards must be met:

(1) there must be a "convincing" demonstration that "a substantive thorough and efficient education" can be achieved in Abbott districts at the lower funding level, which may include evidence that the I&J district funding level is excessive or is no longer necessary to achieve State standards, Abbott XIX, 196 N.J. at 563; Abbott IV, 149 N.J. at 196;

(2) the establishment of needed supplemental programs to "overcome" plaintiffs' "grave disadvantages" that, when adequately funded and implemented, would become "more instrumental" in achieving a constitutional education for plaintiffs and would, in turn, lessen the "significance" of funding directed to regular education. Id. at 196-97.

In assessing SFRA's provisions for funding regular education, the Special Master did not follow the clear roadmap established by this Court. First, in reviewing SFRA's provisions relating to "base cost" for regular education, the Special Master did not consider or make findings on the effect of those provisions on the Abbott districts. While discussing the general operation of the SFRA formula statewide, and noting that the SFRA base cost is $9,649 per elementary pupil for all districts, (Report at 42), the Special Master never analyzed the actual impact of the base cost on the resources and funding needed by plaintiffs to achieve a substantive

constitutional education without the parity remedy. Without undertaking the appropriate analysis and making the requisite findings on this critical issue, the Report lacks any evidentiary or legal basis to support the Special Master's conclusion that the interim parity remedy "no longer need be employed" in the Abbott remedial districts. (Report at 70).

Second, when properly assessed in light of deficiencies in CEIFA's funding provisions, the substantial and uncontested evidence compels the conclusion that the SFRA base cost does not provide adequate funding of regular education for Abbott students to achieve substantive State standards. The undisputed record evidence shows that the crucial link between the model district and the Abbott districts was never established: "none" of the six hypothetical districts used in the PJP process "were premised upon information directly concerning the Abbott districts." (Report at 24). Furthermore, Dr. Baker testified, without contradiction, that the models "do not look like the Abbott districts"; that the models "failed to account for a high percentage population of students and families in poverty as those districts were outside of the hypothetical range of the six models," citing P-54 at 11, Figure 5; and that the "hypothetical districts did not adequately represent actual districts in New Jersey, particularly the Abbott districts and, as such, the per pupil

cost determined by the prototype as applied to the Abbott districts may be unnecessarily skewed." (Report at 37).[6] Dr. Goertz similarly criticized the use of a model district on the ground that it was "mismatched to any of the Abbott districts." (Report at 31). In short, as in CEIFA, "[t]he model district . . .was not based on the characteristics of the special needs districts." Abbott IV, 149 N.J. at 172.

In disregarding plaintiffs' undisputed evidence that the single hypothetical model used in SFRA does not account for the characteristics of the Abbott districts, the Special Master assumed that were this Court "to have found utilization of a model district prohibited, as urged by Goertz, then logically there would be no need for a remand hearing as the utilization of a model district was clearly before the Court when it rendered" the Abbott XIX decision. (Report at 31-32). However, Abbott XIX did not approve the hypothetical model used in SFRA; rather, the Court expressly identified one of

[6] The Special Master qualified Dr. Baker as an expert in school finance and education costing methods, noting his extensive research and writing in these areas. (Report at 33). While describing Dr. Baker as a "magician" with statistics, (id. at 38), the Special Master makes no specific findings with respect to Dr. Baker's analysis to call into question his undisputed data or his findings and opinions relating to the hypothetical models or to other relevant issues on which he testified. Nor does he examine whether Dr. Baker's substantive "statistical analysis leads to a meaningful critique as contrasted to a mere statistic review of SFRA." (Report at 38)(stating that Dr. Baker's statistical analysis "must though be examined.")

the issues on remand to be whether SFRA's provisions "overcome" CEIFA's central flaw of relying on a hypothetical model that "did not account for the characteristics" of the Abbott districts. Id. at 562, 566. The Special Master, therefore, erred in assuming that consideration of the uncontested evidence on the failure of SFRA's model to reflect the characteristics, conditions, and "surrounding environment" of the Abbott districts, Abbott IV, 149 N.J. at 172-73, was somehow precluded by the Abbott XIX remand order.

Third, the undisputed record evidence also shows that SFRA's use of a hypothetical model unrelated to the characteristics and conditions of Abbott districts yields, as applied, a base cost amount for regular education lower than even the unconstitutional amount in CEIFA, and far lower than the I&J district average amount utilized in the parity remedy. Under SFRA, the base cost is $9,649 per elementary pupil, an amount that is $135 per pupil less than the constitutionally inadequate CEIFA T&E amount of $9,784 per elementary pupil, adjusted for inflation. Goertz, 11T 33:20–34:5.[7] Further, the

[7] In finding that Dr. Goertz's criticisms of the PJP process were "less than persuasive," the Special Master observes that she had testified for plaintiffs in prior Abbott proceedings and "wonder[s] whether [Dr. Goertz] has developed a vested interest in the issues presented thereby precluding a dispassionate review." (Report at 29). Putting aside the lack of evidence from her past expert testimony to assume bias in her opinions on the PJP process, there is no evidence or basis

SFRA average base cost of $10,281 per pupil for 2008-09 is 20% lower than the parity amount of $12,872 per pupil the Abbott districts received for regular education in 2007-08. P-3, ¶43; P-27, ¶¶13-14; P-28.

Moreover, the record contains uncontested evidence that, under the SFRA base cost, expenditures for regular education in Abbott district budgets in 2008-09, the first year of SFRA, are $1 billion, or 30%, below the level approved by the State in 2007-08, P-3, ¶47; and $1.24 billion, or 34%, below parity, i.e., the estimated I&J average, in 2008-09. P-3, ¶49; Goertz, 11T 44:20-45:2. Further, the evidence shows that this 34% reduction in regular education expenditures results in an estimated parity gap between Abbott districts and I&J districts of $4,503 per pupil under SFRA in 2008-09, and that this gap will inevitably widen in future years. Goertz, 11T 37:11-16; 11T 45:4-6; 11T 45:18–46:5; 11T 47:14-19.

Fourth, the record demonstrates that the substantial difference in regular education expenditures under the SFRA base cost – $1.24 billion, or $4,503 per pupil, lower than the expenditure level under parity in SFRA's first year – does not represent "genuine inefficiencies or excesses" and, therefore,

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in the record to support the Special Master's failure to accept, or even consider, Dr. Goertz's unrefuted data analysis of the impact of SFRA's base cost on Abbott districts. The State simply offered no evidence to contradict that analysis or support any contrary findings by the Special Master.

is not "truly unnecessary" to plaintiffs achievement of substantive State education standards. Abbott XIX, 196 N.J. at 562-63; Abbott IV, 149 N.J. at 196. As the Special Master found, the existence of inefficiencies in the Abbott districts "has not been sufficiently demonstrated" by the State in this proceeding. (Report at 82). While "undoubtedly" there are inefficiencies in the spending practices of Abbott districts, "as there are in all districts," Abbott IV, 149 N.J. at 171-72, it has not been shown on this record that the substantial reduction in regular education expenditures under SFRA represents inefficient spending not necessary for plaintiffs to achieve substantive State standards.[8]

Finally, the record evidence shows that, while SFRA increases resources in the "at-risk" category, this increase does not represent new or additional resources and funding for Abbott districts. Rather, it constitutes a shift of resources from the previously higher regular education funding to "at-risk" funding, which results from SFRA's use of a base cost far lower than parity. P-13; P-2, ¶14; P-3, ¶69(g). When

[8] Like CEIFA, SFRA permits I&J districts to raise additional regular education funds well in excess of the SFRA base cost, and allows 103 I&J districts to spend $345.9 million above "adequacy" under SFRA in 2008-09. P-27, ¶39; P-32. There were no findings by the Special Master to suggest that "the undeniably enhanced level of education in the successful [I&J] districts can be characterized as inefficient or redundant education." Abbott IV, 149 N.J. at 172.

SFRA and the Abbott remedial funding mechanisms are compared, the combined SFRA base, at-risk and Limited-English Proficiency (LEP) resources for Abbott districts represent an overall reduction of $734 per pupil in resources previously made available to provide plaintiffs a constitutional education under this Court's parity and supplemental program remedies. P-13; P-2, ¶14; P-3, ¶69(g).[9]

In sum, the record on remand lacks substantial credible evidence that the State has met its burden of convincingly demonstrating that SFRA overcomes the CEIFA deficiencies in regular education funding and that the interim parity remedy is no longer needed. As in CEIFA, SFRA relies on the same "fallacy in the use of a hypothetical model district" and the "unrealistic assumption" that "all school districts can be treated alike and in isolation from the realities of the surrounding environment." Abbott IV, 149 N.J. at 172. The record also shows that this flawed model results in resources and funding for regular education under SFRA that are not just lower than parity, but far lower, and even below the base

[9] In summarizing the State's evidence, the Special Master refers to a DOE unweighted per pupil calculation that Abbott districts have, in the first year of SFRA, higher per pupil revenues than the I&J districts. (Report at 63). Yet he ignores plaintiffs' contravening evidence that, when properly weighted for the extraordinary differences in poverty and other student needs, the Abbott districts actually have $903 less in per pupil revenue than the I&J districts. P-27, ¶¶55-56; P-37; Wyns, 13T 52:2-56:20.

amount found unconstitutional in CEIFA itself, without any evidence that the substantial reduction in regular education expenditures under SFRA represents inefficiencies or resources that Abbott students no longer need to achieve a substantive thorough and efficient education.

In 1997, the Court in Abbott IV found it "difficult to fathom" how, as applied to the Abbott districts, an $80 per pupil increase over the patently unconstitutional QEA foundation amount "could solve the constitutional problem." Id. at 174. It is even more difficult to comprehend how in 2009 SFRA's $135 per pupil decrease from the unconstitutional CEIFA T&E amount could serve as the basis for concluding that SFRA "solve[s] the constitutional problem" and could support a determination that "the interim parity remedy no longer need be employed." (Report at 70).[10]

Exception No. 3: The Special Master's Conclusion That The Abbott K-12 Supplemental Programs Should No Longer Be Funded Is Legally Erroneous And Not Supported By Substantial Credible Evidence

The Special Master recognizes that this Court's decisions in Abbott V and Abbott X require implementation of K-12 supplemental programs, services and reforms, based on the

[10] As discussed in the next exception, this substantial reduction in regular education funding occurs in conjunction with SFRA's failure to provide the required and demonstrably needed K-12 supplemental programs.

particularized needs of Abbott students and districts. (Report at 76). However, without any record evidence showing that the Abbott supplemental programs are no longer needed by plaintiffs, and, on a record of undisputed evidence that SFRA does not provide for any supplemental programs, the Special Master concluded that those Abbott supplemental programs should no longer be funded, stating that to continue this requirement would be "antithetical to the goal of a unified funding scheme." (Id. at 77). As explained below, this conclusion lacks substantial credible evidence, is legally erroneous, and should be rejected by this Court.

First, the Special Master made no findings, nor did the State present any evidence to suggest, let alone establish, that Abbott K-12 supplemental programs, as required under this Court's Abbott V and Abbott X decisions, are no longer necessary or needed to overcome plaintiffs' extreme social and economic disadvantages.

Second, although the Special Master alludes to a purported conflict on the issue, (Report at 76-77), there is no dispute in the record that the required Abbott K-12 supplemental programs, as mandated by this Court's prior decisions, have been, and continue to be, implemented based on the particularized needs of plaintiffs and the Abbott schools and districts, not as a "prescription" applied "rigidly" in

every district. Indeed, the requirement that "determination of need" guide the provision of the Abbott supplemental programs is explicitly stated in the Chart of Supplemental Programs, ordered by this Court in Abbott X and included in the State's Abbott regulations. (Report at 76); P-92 (defining "supplemental programs and services" in N.J.A.C. 6A:10-1.2 as those supported by "needs assessment").

Third, there is no dispute on the record that SFRA does not provide for the continuation of the Abbott K-12 supplemental programs, Belfield, 15T 63:14-20, P-27, ¶24, and the Special Master makes no finding to suggest otherwise. Moreover, it is undisputed that SFRA does not provide for the establishment and required implementation of any other K-12 supplemental programs, or any package of programs, demonstrably needed to address plaintiffs' special needs.

Fourth, it is also undisputed that SFRA does not require, designate, or otherwise direct that any of the funding made available to Abbott districts under SFRA be utilized to provide the Abbott K-12 supplemental programs to plaintiffs and their schools. Belfield, 15T 101:11-23; P-19, ¶59(a); P-27, ¶19; P-2, ¶16. Instead, SFRA blends the base cost for regular education, at-risk costs, costs for two-thirds of special education, and costs for LEP students into an overall district "adequacy budget" that generates a single, lump sum

of state "equalization" aid. (Report at 51). SFRA, therefore, leaves the provision of supplemental programs entirely to the discretion of local district officials without requiring any State protocols regarding the continuation of existing Abbott supplemental programs or the establishment of new, needed programs. (Id. at 77).

Fifth, the Special Master's conclusion that continued funding of the Abbott supplemental programs would be "antithetical to the goal of a unified funding scheme as enacted by SFRA" is legally irrelevant to the "limited," as applied issue on remand: namely, does SFRA assure the provision of needed supplemental programs to adequately address plaintiffs' grave disadvantages, thus overcoming the deficiencies in CEIFA. Abbott XIX, 196 N.J. at 562.[11]

Finally, the Special Master's consideration of the Abbott supplemental programs (Report at 74-78) evinces a fundamental misunderstanding of this Court's supplemental programs remedy.

[11] The Special Master additionally cites Dr. Belfield's testimony on educational costs "if all supplemental programs were deemed necessary." (Report at 77). However, Dr. Belfield did not testify that every Abbott supplemental program must be implemented in every Abbott district, and for every at-risk child throughout the State, regardless of need. While adverting to those irrelevant and speculative cost figures, the Special Master inexplicably disregards plaintiffs' contention, based on Dr. Belfield's relevant, uncontested testimony, that SFRA fails to require and adequately fund the Abbott supplemental programs, based on the particularized needs of students in the Abbott districts. (Report at 76-77).

A central issue on remand is whether SFRA provides for plaintiffs' supplemental program needs, and whether it ensures plaintiffs will actually receive and obtain the benefit of those programs in achieving a substantive thorough and efficient education. Abbott XIX, 196 N.J. at 563, 566. Whatever level of funding SFRA may provide to the Abbott districts, and regardless of the mechanism by which that funding is delivered, the statute is clearly unconstitutional as applied to the Abbott districts because it does not require that any funding be utilized to provide the Abbott K-12 supplemental programs determined to be needed in Abbott V and Abbott X.

In sum, this Court's Abbott V and Abbott X decisions require the provision of specific K-12 supplemental programs to meet plaintiffs' special needs and extreme disadvantages. The record does not provide any evidentiary basis to suggest that those specified programs are no longer needed, and does not provide any assurance that, under SFRA, those required and demonstrably needed supplemental programs will continue. Accordingly, to the extent the Special Master concluded that the Abbott supplemental programs should be discontinued, the substantial credible evidence does not support that determination; to the contrary, the record demonstrates that SFRA is unconstitutional as applied because it leaves the

provision of those programs, deemed "the indispensable foundation" of a "constitutionally adequate" education, to local discretion. Abbott XIX, 196 N.J. at 565; Abbott IV, 149 N.J. at 199.[12]

Exception No. 4: The Record Lacks Substantial Credible Evidence That SFRA Provides Adequate Funding For K-12 Supplemental Programs In Abbott Districts

The Special Master adopts as "preferred (sic)" the State's position that SFRA provides "more than ample funds" to Abbott districts "to provide whatever supplemental programs are needed." (Report at 77). However, on this issue as well, the Special Master failed to assess the SFRA "at-risk" cost against the proper Abbott standards for determining whether SFRA, as applied, adequately funds K-12 supplemental programs to address plaintiffs' extreme disadvantages. Abbott XIX, 196 N.J. at 562. When analyzed under the Abbott standards, the record does not contain substantial, credible evidence showing

[12] The record also unquestionably shows that SFRA adopts the very same CEIFA approach condemned in Abbott IV as lacking any assurance that "the most needed programs" will be provided and that the funding "will be sufficient to implement the needed programs." Id. at 182(finding the State "shirks" its constitutional obligation "under the guise of local autonomy" by delegating supplemental programs to district discretion). SFRA intensifies this constitutional flaw by leaving the decision to allocate blended SFRA funds to supplemental programs entirely to the districts, with no State oversight to ensure that those funds will not be used for, or diverted to support, regular education, special education or other district and student needs.

that the State met its burden of proving that the SFRA at-risk cost will be adequate to address the present and continuing special needs of Abbott students for supplemental programs.[13]

First, in concluding that SFRA provides "more than ample funds" for "whatever supplemental programs are needed," (Report at 77), the Special Master failed to consider, much less address, the undisputed evidence that SFRA's determinations were not grounded in any study of plaintiffs' special needs, including a study of the specific programs required to address those needs and the costs of providing those programs. Abbott XIX, 196 N.J. at 562. Although the State identified the "at-risk" costs generally, (Report at 43-45), the Special Master never addressed the State's failure to demonstrate that SFRA, as applied, generates adequate funding for the specific programs needed to address plaintiffs' special needs.

Second, when the record is assessed under the proper Abbott standards, it is evident there is not substantial, credible evidence that the SFRA at-risk cost "accommodate[s]" the special needs of Abbott students for supplemental programs. Abbott XIX, 196 N.J. at 566. In addition to the

[13] In determining preschool funding under SFRA, the DOE, in sharp contrast to the approach taken with K-12 supplemental programs, "used detailed actual cost data from the high quality Abbott preschool program." (Report at 55).

complete lack of any DOE empirical data or studies of plaintiffs' special needs for supplemental programs and the cost of those programs, the unrefuted record evidence establishes, as more fully discussed in Exception No. 2, supra, that "none of the hypothetical districts" used during the PJP process "were premised upon information directly concerning the Abbott districts." (Report at 24). Additionally, in developing the K-12 at-risk resources and costs, the Special Master confirmed:

> In New Jersey, the [PJP] panelists were not provided with information concerning the then existing funding system, any of the concerns expressed in the various Abbott decisions or the deficiencies found therein, the supplemental program standard determined to be constitutionally required in Abbott V or, for that matter, any specific information as to the Abbott districts.
>
> [(Report at 22)(emphasis added)].

Furthermore, SFRA caps at-risk costs at a student poverty concentration of 60% without accounting for educational needs for students in districts with poverty concentrations above that level. On this issue, the Special Master does discuss the record evidence of the impact on Abbott districts resulting from the 60% cap, finding that "24 of the 31 Abbott districts have an at-risk population exceeding that percentage and three have an at-risk population exceeding eighty percent." (Report at 33). Although the Special Master

recognizes that districts will "still receive the additional funding for each at-risk student" above 60%, (Report at 44), that finding fails to address plaintiffs' contention that per-student resource needs are greater in districts with over 60% poverty concentration, which includes most Abbott districts.

Moreover, the Special Master also finds Dr. Belfield's conclusion, which Dr. Baker also supports, that the PJP panels were provided with "insufficient data" concerning the intense poverty concentrations in Abbott districts "worthy of consideration." (Report at 33, 37, 82). Yet, while the Special Master concludes that "there is sufficient evidence in the record [that] leveling off at 60% was an appropriate funding decision" (Report at 45) – a consideration relevant to a facial, statewide analysis of SFRA – he never considered the impact of the cap, as applied to the funding of supplemental programs in Abbott districts, given the fact that most of them have poverty concentrations in excess of 60%. Nor did the Special Master ever assess Dr. Belfield's conclusion that the PJP panelists received "insufficient data" on the Abbott districts even after he deemed this evidence "worthy of consideration."

Third, it is also undisputed that the SFRA at-risk cost and weights are not based upon an assessment of actual costs derived from experience in implementing the Abbott V and

Abbott X supplemental programs since 1999. Belfield, 15T 19:4-7, 53:1-25; Davy, 2T 39:12-25, 41:16-42:1.[14] Indeed, the record is undisputed that the State has not conducted any evaluation or study of the Abbott K-12 supplemental programs and their costs over the 10-year course of their implementation. Ibid.

Finally, the record unequivocally establishes that the SFRA hypothetical model for at-risk resources and costs does not include resources for a number of the supplemental programs determined as needed in Abbott V and Abbott X, including early literacy reading blocks and assessments, community service coordinators in middle and high schools, drop-out prevention, and on-site social and health services. P-19, ¶41; Belfield, 15T 62:10-20. The at-risk cost model also does not include resources related to the required elementary Whole School Reform and Secondary Education

[14] The record shows that DOE also rejected the PJP recommendation of separate weights for at-risk and LEP students, and, instead, created a combined weight at a reduced level. This combined weight was based on general assumptions of "overlapping" resources, (Report at 46-47), not on any data or actual evidence of "overlapping" resources in Abbott districts, and the cost implications of any such resources. Ecks, 4T 133:3-136:3. Evidence that the combined weight reduced the levels of funding under SFRA, along with the evidence discussed in Exception 5, infra, regarding census-based funding for special education and the geographic cost index, directly contradicts the Special Master's assertion that "[t]here is no dispute" that "when the State had the option to choose an augmented [funding] amount it did so." (Report at 44, n.17).

Initiative. P-19, ¶42; Belfield, 15T 62:21-25. For those Abbott K-12 programs included in the SFRA at-risk model, the model contains staff, inputs, and other resources at levels, ratios and amounts that are derived neither from any study nor from data regarding conditions and experiences in the Abbott districts. Belfield, 15T 63:1-13; P-19, ¶43-44; D-12 at 37-38. Thus, SFRA's at-risk model, as in CEIFA, "assumes, as the basis for its resource allocations and cost projections, conditions that do not, and simply cannot exist" in the Abbott remedial districts. Abbott IV, 149 N.J. at 172-73.

This uncontested evidence is further supported by the testimony and certifications of representative Abbott district witnesses, those education officials "in the best position to know the particularized needs" of their students. Abbott V, 153 N.J. at 522-23. The evidence from these witnesses demonstrates that the SFRA model fails to address numerous programs, services, and positions that those districts have demonstrated are needed to serve their students, including: community services coordinators in middle and high schools; school-to-work and college transition counselor(s)/programs; teacher tutors at elementary and middle schools; drop-out prevention and health/social service coordinators at middle and high schools; alternative education programs; vocational programs; substance awareness coordinators; student assistance

counselors; an enriched breakfast and lunch nutrition program; district attendance officers; school-based health and social services; K-8 gifted and talented programs; and special area supervisors for alternative education, nursing, staff development, home instruction, guidance, social studies, and fine and performing arts.[15] In addition to these glaring omissions from the SFRA model, the representative district witnesses also testified that their districts have particularized needs for security, social workers, parent liaisons, coaches, technology positions, and other programs and positions above the level of resources specified in the SFRA model. Gilson, 19T 146:15-154:17; Hoover, 25T 61:17-64:9; Schneider, 24T 152:16-153:6, 160:24-165:1; Chando, 21T 4:4-8:10; P-103, ¶¶14-15; P-106, ¶¶15-16; P-116, ¶¶15-16.

In sum, the record lacks substantial credible evidence to support the Special Master's conclusion that SFRA provides "ample funds" to Abbott districts to provide "whatever"

[15] Evidence from the district witnesses also demonstrated that the SFRA model does not account for "exemplary programs" for art, music and special education, areas particularly identified in Abbott V and Abbott X as requiring special protection. 153 N.J. at 518-19; Belfield, 15T 63:1-13. As discussed in Exception No. 5, infra, Abbott districts with special education classification rates above the statewide average used in SFRA's census-based funding method may be compelled to eliminate or reduce needed supplemental programs to fulfill federal and state special education mandates. P-103, ¶24; P-106, ¶26; P-116, ¶24; P-29; P-129.

supplemental programs are needed. (Report at 77).[16] The uncontested evidence also shows that the SFRA at-risk cost and funding mechanism, including the sliding at-risk scale fashioned by DOE, (Report at 44), is not based on any study of the special needs of the Abbott students for K-12 supplemental programs; is not based on the actual costs of providing those programs; and does not contain any mechanism for providing those programs, leaving implementation to the discretion of local districts. As applied, SFRA, like CEIFA, fails to provide adequate, let alone the "ample" funding suggested by the Special Master, for supplemental programs to address plaintiffs' demonstrable special needs.

[16] The Special Master relied on "calculations performed by the State" purporting to show that "the enhanced PJP model for resources for elementary, middle, and high school with concentration of 40% at-risk students exceeds those required by Abbott V." (Report at 44, n.18)(citation omitted). The undisputed evidence shows that the DOE proffered "Abbott V model" was not based on an analysis of the actual resources for regular education and supplemental programs in Abbott districts, or on prior Abbott decisions, but was instead derived from DOE-proposed "illustrative" school budgets submitted, but not adopted, in the Abbott V remand proceedings. Attwood, 6T 98:8–103:12. This "model" to "model" comparison is misleading and irrelevant as applied, particularly when it starkly contrasts with on-the-ground testimony of Abbott district witnesses.

Exception No. 5: The Special Master Erred In Facially Reviewing SFRA's Use of Census-Based Special Education Funding And A County-Based Geographic Cost Adjustment Without Analyzing The Impact Of Those Provisions As Applied To The Abbott Districts

In previous exceptions, plaintiffs have explained that the Special Master erroneously engaged in a facial assessment of SFRA's constitutionality, based on the State's evidence and claims, rather than assessing the extensive evidence on SFRA's application to the Abbott districts. The Special Master compounded those errors by: (1) conducting a facial review, rather than an as-applied analysis, of SFRA's census-based method of funding special education and of SFRA's county-based geographic cost adjustment ("GCA"); and (2) finding those provisions appropriate statewide, without considering the record evidence that those provisions, as applied to the Abbott districts, would diminish the overall level of resources in the Abbott districts' budgets. (Report at 47-49, 50-51).

A. Census-Based Special Education Funding

In reviewing DOE's decision to use a census-based method to fund special education rather than the special education weights developed in the PJP process, the Special Master exclusively relied on the testimony of State witnesses that "low cost special education tends to be distributed somewhat

evenly throughout districts"; that census-based funding can be beneficial by preventing "overclassification" of special education students; that overclassification "can result in stigma and slowed progress for a student"; and that New Jersey's special education classification rate is the highest in the country. (Report at 48-49). Although these general policy concerns might be appropriate in a facial constitutional challenge, they are insufficient to resolve the limited remand issue: whether these provisions, as applied, further diminish the availability of funding for regular education and supplemental programs in those Abbott districts with higher classification rates than the statewide average, resulting in an improper reallocation to meet special education needs not funded in districts' adequacy budgets. Cf. Abbott V, 153 N.J. at 518(prohibiting reallocations if that "will undermine or weaken either the school's foundational education program or already existing supplemental programs"); Millville BOE v. NJDOE, 183 N.J. 264, 279-80 (2005).

Yet the Special Master never addressed the evidence regarding the relevant as applied factual and legal issues raised by plaintiffs. Additionally, the Special Education Amici[17] filed a Post-Trial Brief describing the evidence on

[17] These amici include Disability Rights New Jersey, Alliance for the Betterment of Citizens with Disabilities, Brain Injury

remand and setting forth legal arguments to support the determination that SFRA's census-based special education provisions are unconstitutional. Those contentions, like those of plaintiffs' on this issue, were not considered by the Special Master, despite this Court's remand directive. Abbott XIX, 196 N.J. at 568.

With regard to the relevant as applied issues on remand, the testimony of both the State's and plaintiffs' experts demonstrates that the census-based funding method is only appropriate where the distribution of children with disabilities across the state is equal. Picus, 7T 98:21-24; Baker, 18T 94:7-95:7 Further, the record shows that the State never analyzed the actual distribution of children with disabilities, Baker, 18T 10:10-15; Gantwerk, 28T 73:15–74:10, and that there are "real variations" in the distribution of children with disabilities across New Jersey. Baker, 18T 95:11–96:8. The State presented no evidence to dispute Dr. Baker's findings that children with disabilities are "very unevenly distributed by location" within New Jersey, and are "geographically clustered," Baker, 18T 95:11–96:9; and that there is a "poverty association" that leads to a "correlation

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Association of New Jersey, New Jersey Special Education Practitioners, Special Education Clinic at Rutgers School of Law – Newark, and Special Education Leadership Council of New Jersey.

with a higher rate [of students with disabilities] in Abbott districts." Baker, 18T 96:10–97:21. It was also undisputed that 22 of the 31 Abbott districts have higher classification rates than the statewide average utilized for census-based funding in SFRA. P-27, ¶30, P-29; see also Post-Trial Brief of Special Education Amici, p.9, n.4, (citing to Office of Legislative Services, "Analysis of New Jersey Budget, Fiscal Year 2008-09," Department of Education, p. 67, figure 2, supporting the correlation between the socioeconomic status of school districts and classification rates). Insofar as the Special Master relied on the opinion of Dr. Loeb, the State's expert, that the census based method of funding is facially "appropriate, as low cost special education tends to be distributed somewhat evenly throughout districts," (Report at 48), his reliance was misplaced since the factual assumption for Dr. Loeb's opinion is belied by the actual evidence of an uneven distribution across New Jersey.

The evidence further demonstrated that, under SFRA's census-based method, the average Abbott district will not receive funding for 264 classified students, with under-funding of $2,877,072, while the average I&J district will receive funding for 81 students who are not classified, with over-funding of $882,738. Baker, 18T 9:20–10:5; P-54 at 24-25;

P-59, Figure 14.[18] Thus, not only will the change to census-based funding severely underfund children with disabilities in numerous Abbott districts, but, as the State's own witness, Dr. Picus, recognized, it will "likely" compel Abbott districts with higher classification rates to divert and reallocate funding needed for regular education, supplemental programs and other educational needs to provide mandated special education programs and services. Picus, 7T 98:21–99:17 and 105:1-6; see also Baker, 18T 6:20–10:2; P-29.[19] For these reasons, SFRA's census-based funding provision is clearly unconstitutional as applied to the Abbott districts. See also Post-Trial Brief of Special Education Amici at 11, n. 5(citing

[18] Dr. Baker succinctly opined: "moving to a Census based formula means choosing to knowingly fund at less than currently identified need, some school districts, and also to knowingly fund at greater than currently identified need, a roughly equal number of school districts." P-54 at 24.

[19] The State's overclassification claim was not substantiated by any study. See, e.g., Gantwerk, 28T 22:3-9(acknowledging DOE has "not conducted" any studies pertaining to whether students are "properly classified"). To the extent there was evidence on this issue, the 2003 Report of the NJ Special Education Expenditure Project ("NJSEEP") showed that New Jersey districts were actually misclassifying students to a lower cost tier, thereby reducing the funding to which they were entitled, not overclassifying them to obtain greater funding. D-78 at ii; P-54, at 15, P-59. Further, the Special Master overlooked the contention of Special Education Amici that census-based funding will lead to under-identifying and under-serving children with special education needs. Post-Trial Brief of Special Education Amici at 17.

cases that have found similar census-based funding formulas to violate the rights of children with disabilities).

B. SFRA's Geographic Cost Adjustment

In reviewing SFRA's geographic cost adjustment ("GCA"), the Special Master recounts the State's reasons for "alter[ing]" the regional groupings utilized in the nationally-recognized Taylor/Fowler methodology to a county-based calculation. (Report at 50-51). Although the State asserted that the differences between SFRA's GCA and the Taylor/Fowler GCA are insignificant, Attwood, 29T 113:12-17; D-133, the State never presented any evidence of the impact of this change, as applied to Abbott districts, to support that contention. Loeb, 9T 60:25–61:14; Monk, 12T 59:21-60:16; Picus, 7T 94:10–95:3.

However, Dr. Baker, whose testimony on this issue was directly on point, but was not mentioned by the Special Master, provided specific data regarding the impact on Abbott districts. Dr. Baker testified that the use of counties in NJ's GCA, rather than the regional labor markets in the Taylor/Fowler index, disadvantages the Abbott districts while favoring more affluent districts that share the same labor market. Baker, 17T 22:13–33:10. As a result, the NJ GCA has the effect of widening funding disparities between Abbott districts and their wealthier counterparts in the same labor

market, negatively impacting on the ability of Abbott districts to attract and retain highly qualified teachers and staff. Baker, 17T 32:10–31:2); see also Post-Trial Brief of Amicus New Jersey Education Association at 6-12.

For example, use of the NJ GCA, instead of the Taylor/Fowler GCA, results in a reduction of almost $130,000,000, or $470 per pupil, in the Abbott districts' adequacy budgets under SFRA. D-133; D-21. The reduction resulting from use of the NJ GCA is particularly significant in Paterson (loss of $43,100,000 overall or $1,750 per pupil), Jersey City (loss of $31,900,000 overall or $1,080 per pupil), Passaic (loss of $21,100,000 or $1,820 per pupil), and Union City (loss of $11,500,000 overall or $1,197 per pupil). Calculated using D-133; D-21.

In conclusion, flowing again from the legally incorrect facial review, the Special Master gave no consideration to, nor made findings on the adverse impact on various Abbott districts from, the application of SFRA's census-based method of special education funding or of the NJ GCA. The uncontested record evidence demonstrates that those provisions, as applied, diminish the availability of funding for regular education and supplemental programs in the Abbott districts, and further disadvantage those remedial districts vis-a-vis more affluent districts.

Exception No. 6: Given The Finding That The Abbott Districts Continue To Experience Municipal Overburden, The Special Master Erred By Not Concluding That The SFRA Local Fair Share Is Unconstitutional As Applied

Under SFRA, the local fair share prescribed by the statute is deducted from a district's adequacy budget to determine the amount of state equalization aid. (Report at 51). While stating in cursory fashion that "SFRA considers" municipal overburden "in structuring local share and equalization aid," (id. at 64), the Special Master finds, with respect to the Abbott districts, that "municipal overburden is not expected to significantly improve," at least in the next few years. (Id. at 82). The record contains substantial credible evidence in support of this finding, but the Special Master erred in failing to then conclude that SFRA's local fair share ("LFS") provision is unconstitutional as applied.

First, it is undisputed in the record that SFRA requires a substantial increase in the local levy in Abbott districts to provide the LFS, as calculated under the Act. Under SFRA, the Abbott districts' LFS is $1.14 billion, which is 79.4%, or $507 million, above the $635.2 million in local revenue the districts actually provided in 2007-08. The SFRA LFS is also 73.5%, or $484.2 million, above the $658.7 million in local revenue the districts provided in 2008-09. P-27, ¶40; P-34.

The increase in the LFS is substantial in specific Abbott districts: $110 million in Jersey City, $39 million in Newark, $36 million in Paterson, and $35 million in Elizabeth. Many districts will have to double their present local fair share. P-34.

Second, the evidence is undisputed that municipal overburden is "still plaguing the Abbott districts." (Report at 64). Plaintiffs' expert, Dr. Erickson, presented extensive, uncontested testimony demonstrating that these remedial districts continue to experience the conditions that contribute to municipal overburden. Erickson, 14T 125:18–126:7; P-48; P-49; see also P-3, ¶¶63-68. This evidence includes: a smaller tax base per capita on which to raise local funds; an average equalized real estate value per capita that is half of the statewide average; and an average municipal non-school equalized tax rate that is double the statewide average. Erickson, 14T 97:18-93:3; P-49, Tables 1, 3. Further, Dr. Erickson testified that the Abbott districts remain intensely poor, with an average median household income in nine Abbott districts that is one-half the statewide average, with 23.4% of all Abbott residents having income below the federal poverty level, compared to 8.6% statewide. Erickson, 14T 122:4–124:2; P-51, Table 6. Dr. Erickson also testified that tax-exempt property in Abbott districts is more

than double the state average and that these districts are currently experiencing extremely high levels of subprime mortgages and rates of foreclosure. Erickson, 14T 98:16–100:5; P-48, ¶¶4,5; P-50, Table 2; Erickson, 14T 107:5–110:19; P-51, Table 4.[20]

Third, there is substantial, credible evidence demonstrating the significant reliance SFRA places on the capacity and willingness of Abbott municipalities to raise the LFS to support the districts' adequacy budgets under the formula. Yet, there is no evidence in the record that these municipalities have the capacity to do so given the continuing condition of municipal overburden "plaguing the Abbott districts." (Report at 64). Moreover, the factual data presented by the Urban Mayors further underscore the inability of these municipalities to raise the LFS under SFRA. See Brief of Urban Mayors' Association at 3-18.

In Abbott II, this Court held that a "funding mechanism. . . cannot depend on how much a poorer urban school district is willing to tax," 119 N.J. at 386, and determined that the

[20] The Brief of Amicus Curiae The New Jersey Urban Mayors' Association, filed in this Court, also provides extensive undisputed data showing that Abbott districts continue to experience conditions that contribute to municipal overburden, that they collect less tax revenue, and that they do not have the fiscal capacity to raise the LFS under SFRA. The Special Master does not mention or address the Urban Mayors' factual contentions.

Public School Education Act of 1975 "will never achieve a thorough and efficient education because it relies so heavily on a local property base already over-taxed to exhaustion," Id. at 357. The same conclusion is compelled on this record since it is undisputed that the "the required level of funding" for Abbott districts under SFRA similarly "`depend[s] on the ability of local school districts to tax.'" Abbott III, 136 N.J. at 451, citing Abbott II, 119 N.J. at 295. Indeed, there is uncontroverted evidence, not discussed in the Report, demonstrating that even if the Abbott municipalities consider raising local taxes for education and are able to do so, it would take years for the Abbott districts to reach the LFS and fund their SFRA adequacy budgets, given the 4% annual limit on local tax increases and the already significant fiscal burdens on those communities. P-3, ¶66; Goertz, 11T 35:12-37:6. As the Urban Mayors' cogently explain:

> . . . the effect of SFRA will be essentially to turn back the clock two decades – returning poorer urban municipalities to the pre-*Abbott II* days of forcing their residents to pay even higher taxes for lower-quality education. . . The residents of New Jersey's poorest cities cannot afford to pay higher taxes, nor can the State allow the children of these cities to fall so far behind again.
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> [Urban Mayors' Brief at 19].

In sum, there is substantial credible evidence to support the Special Master's finding that "municipal overburden is not

expected to improve" in the Abbott districts. However, the Special Master erred in failing to conclude, as compelled by this factual finding, that SFRA is unconstitutional as applied to the Abbott districts since SFRA's reliance on substantial increases in the LFS means that "we are no more likely ever to achieve thorough and efficient than we believed we could by relying on local taxation in Robinson I." Abbott II, 119 N.J. at 338.[21]

Exception No. 7: The Special Master Erred By Not Concluding That SFRA Fails To Require Continuation Of Essential Abbott Preschool Mandates

The Special Master recognizes the indisputable success of the Abbott preschool program, (Report at 55), yet renders no factual findings or conclusions respecting the impact of SFRA's provisions, as applied to the Abbott districts, on the high quality preschool program mandated by this Court's prior

[21] There is no dispute that SFRA does not mandate Abbott municipalities to raise the LFS to support the SFRA adequacy budget. Since wealthier districts have a demonstrated capacity to raise local taxes for education, and Abbott districts will be unable to do so because of municipal overburden, SFRA, like CEIFA, "will perpetuate a two-tier system in which students in the wealthier districts will have the resources necessary to meet or exceed the [State] standards, and in which the poorer urban districts will be asked to do the same or more with less." Abbott IV, 149 N.J. at 175.

decrees. (Id. at 55-57).[22] Instead, the Special Master erroneously focuses on a statewide application of SFRA's provisions to preschool, noting that SFRA expands preschool eligibility to children residing outside of the Abbott districts. (Id. at 56).[23] The substantial credible evidence in the record, not addressed by the Special Master, establishes that SFRA fails to require continuation of key components of the Abbott preschool remedy and, instead, reinstitutes deficiencies in CEIFA's Early Childhood Program Aid ("ECPA") provisions.

First, SFRA does not assure the implementation of this Court's detailed remedial mandates, fashioned to cure defects in CEIFA, regarding a "well-planned, high quality" preschool program. Belfield, 15T 91:15-24. These mandates include, among other things, teacher and classroom quality; substantive education standards; full enrollment and recruitment; temporary facilities; provider contracts; and needs-based assessment and program planning. See Abbott VI, 163 N.J. at

[22] See Abbott V, 153 N.J. at 506-08; Abbott v. Burke, 163 N.J. 95, 120-21 (2000)("Abbott VI"); Abbott v. Burke, 170 N.J. 537 (2002)("Abbott VIII").

[23] The Special Master finds that the State used Abbott districts actual preschool cost data to establish SFRA's per pupil formula amounts. (Report at 56). As discussed in Exception No. 4, supra, this stands in stark contrast to the development of SFRA's at-risk cost which was not derived from the cost of implementing the Abbott K-12 supplemental programs.

105-19; Abbott VIII, 170 N.J. at 546-62. SFRA relegates the adoption of preschool quality standards to DOE without any reference, let alone assurance, of the continuation of the Court-directed preschool standards. N.J.S.A. 18A:7F-54(g). SFRA's omission is particularly glaring in light of this Court's two prior rulings correcting DOE implementation of the Abbott preschool program when it did "not conform" to the Court's established quality and funding standards. Abbott VI, 163 N.J. at 105; Abbott VIII, 170 N.J. at 541 (providing course corrections after Abbott VI).

Second, the Special Master did not mention or address SFRA's elimination of the opportunity for Abbott districts to apply for and receive needs-based supplemental preschool funding. The substantial credible evidence in the record establishes that prior to SFRA, Abbott districts submitted, and DOE approved, "special requests" for necessary items that did not fit within the DOE's line item preschool budget template, or required funding beyond the line item amounts. Hugelmeyer, 20T 20:5-19; Malleo, 19T 50:2–51:9. This evidence shows that these special requests serve to address the particularized needs of the Abbott districts, such as a medical van and driver to provide medical screenings to all preschoolers, translators to provide appropriate information to parents in their native language, and school security.

Joye, 4T 55:20–57:8, Hugelmeyer, 20T 17:15–28:21, Malleo, 19T 51:4–52:9; P-78; P-83. Although the Special Master concluded that, in the absence of the opportunity to seek supplemental funding for K-12 supplemental programs, SFRA is unconstitutional as applied, (Report at 82), he erred by failing to make a similar finding with respect to the unavailability of supplemental funding for the Abbott preschool program.

Finally, the Special Master fails to address the constitutional deficiency in SFRA's provision that allows districts to reallocate preschool aid to K-12 programs, provided the district is complying with its preschool program plan. N.J.S.A. 18A:7F-54(f); Belfield, 15 T 94:13; P-19, ¶58. This provision is plainly contrary to this Court's prior rulings. See Abbott IV, 149 N.J. at 185(citing the "dilution" effect in CEIFA by allowing preschool aid to be used for regular education); Millville BOE v. NJDOE, 183 N.J. at 278-79(emphasizing State's burden under Abbott V to show reallocations will not "undermine or weaken" regular education or existing supplemental programs). As in CEIFA, SFRA's provision for reallocation of preschool funding will "dilute the ability" of Abbott districts "eventually to provide early-childhood education for all eligible students." Abbott IV, 149 N.J. at 185.

Exception No. 8: This Court Should Affirm The Special Master's Conclusion That SFRA Is Unconstitutional As Applied Without Continuation Of The Supplemental Funding Remedy, But Modify The Special Master's Recommendations To Ensure A Clear And Effective Funding Protocol For Preschool And K-12 Supplemental Programs

A. The Special Master's Conclusion that Abbott Supplemental Funding be Continued Should be Affirmed

After reciting the parties' respective positions on the supplemental funding remedy mandated by this Court's prior decisions,[24] the Special Master concluded that "given the burden imposed, I cannot find SFRA constitutional as applied if supplemental funding is not recognized, if only for the first three year period." (Report at 82, 83). The Special Master based this conclusion on evidence that "[t]he potential harm to the students in the Abbott districts outweighs the defendants' assertion that there shall be no need for

[24] See, e.g., Abbott II, 119 N.J. at 295(concluding that the "level of funding must also be adequate to provide for the special educational needs of these poorer urban districts in order to redress their extreme disadvantages"); Abbott V, 153 N.J. at 518-19; Abbott v. Burke, 172 N.J. 294, 297-98 (2002)("Abbott IX")(denying "DOE's request for authorization to preclude any district appeals seeking supplemental funding for 2002-2003"); Abbott v. Burke, 177 N.J. 596, 598-599 (2003)("Abbott XI")(authorizing appeals from maintenance budget determinations); Abbott v. Burke, 187 N.J. 191, 195 (2006)("Abbott XV")(ordering Abbott districts' right to appeal inadequate funding for demonstrably needed Abbott programs).

supplemental funding, at least until the realities of implementation are known." Id.

There is substantial credible evidence on the record that the Abbott supplemental funding remedy must be continued for SFRA to be constitutional as applied to the Abbott districts. First, it was undisputed that virtually all of the Abbott districts will be flat funded in future years, (Report at 65, 82); Goertz, 11T 125:23–126:2. Wyns, 13T 43:14–45:13; P-40; Lee, 27T 49:15-19, and will, as discussed in Exception No. 6, supra, continue to experience municipal overburden in future years. (Report at 82).[25]

Second, as the Special Master recognized: "[s]everal districts listed the various cuts and/or alterations they would need to make or have made to meet the SFRA limitations." (Report at 65). Testimony of those representative district witnesses established the need for the supplemental funding remedy since "stagnant funding and even funding adjusted using the CPI is akin to a reduction, as certain fixed costs increase approximately 4% per year, such as teacher salaries and benefits." (Ibid.); Malleo, 19T 40:6–41:12, 44:18-22;

[25] As discussed in Exception No. 4, supra, given the Special Master's finding of a lack of studies conclusively establishing that costs level off for at-risk students at 60% poverty concentration, and that 24 Abbott districts have poverty concentrations exceeding 60%, (Report at 33), there is a continued need for supplemental funding in light of the persistence of this condition.

Gilson, 19T 184:7-23; Hugelmeyer, 20T 67:2-17; Chando, 20T 38:4–40:13; Ottinger, 24T 27:17–28:1; Hoover, 25T 85:2-5; Lee, 27T 50:19-24; Wyns, 13T 41:24–43:3, 49:9-24; P-26, ¶12; P-27, ¶¶48-49.

Third, the record contains substantial credible evidence that Abbott districts have had to, and will have to, reduce or eliminate needed supplemental programs, services and positions under SFRA without a supplemental funding remedy. Representative Abbott superintendents testified that their districts had to cut critical supplemental programs and positions in the first year of SFRA's implementation. For example, the Vineland district cut all of its basic skills teachers and literacy coaches that supported its elementary language arts program, Ottinger, 24T 36:19–39:14; all twelve parent liaisons, six and a half substance abuse counselors, and five social workers, 24T 42:15–45:5; all eight teachers of gifted and talented students who provided instruction in the Learners of Exceptional Ability Program, 24T 45:14–46:22; all academic after school and summer school programs at the elementary, middle, and high school level, with the exception of the mandated special education summer school program and make-up program for high school students that need credit, 24T 47:3–48:50; three technology teachers, 24T 50:6–52:2; and virtually all of its elementary and middle school

extracurricular programs including the safety patrol, school play, choir, clubs, field trips and sports programs. 24T 54:4–54:25.

Millville's superintendent testified that the district has already been forced in 2008-09 to eliminate certain social workers and parent liaisons, Schneider, 25T 151:3-11; reduce its Advancement Via Individual Determination ("AVID") program, which targets low-achieving students with discipline and attendance problems and commits them to attending college, 25T 152:16-153:6, 162:16–163:3; eliminate all security personnel at all elementary schools, with the exception of a security officer at the Third Ward school, a gang infested area of the city, 25T 157:5-24; eliminate one kindergarten teacher and one kindergarten aide; eliminate three K-5 teachers and two Grades 1-5 teachers; eliminate three world language teachers; literacy coaches; librarians; eliminate two reading recovery teachers; and eliminate all enhanced art and music programs at the elementary level. 25T 160:24– 161:25. Millville anticipates even more drastic cuts under SFRA in the coming years. 25T 162:9–165:1; P-40.

In Phillipsburg, programs, positions, and services have already been eliminated, including discontinuation of the required Abbott X Secondary Education Initiative due to the cost of professional development and extra staffing needed to

establish "smaller learning communities" at Phillipsburg High. Chando, 21T 9:13–12:19. The Phillipsburg Assistant Superintendent also testified to the loss of 27 positions district-wide, including two teachers, two guidance counselors, two social workers, 3.4 aides, and one security guard. P-129, ¶21; Chando, 21T 26:18–30:5, 86:12-15.

Further, witnesses from other representative Abbott districts in Bridgeton, East Orange, Newark and Paterson testified that their districts have been, and will in the future, be unable to maintain required Abbott supplemental programs, services and positions needed by their students. Gilson, 19T 156:20–160:6; Hoover, 25T 61:17–64:9; Lee, 27T 65:11–69:8; P-148, Ex. B; Clancy, 26T 63:11-66:21.

In sum, there was overwhelming evidence that needed programs, services and positions -- established under the Abbott supplemental program remedy to overcome plaintiffs' grave disadvantages -- are either being eliminated or reduced under SFRA.[26] This Court, therefore, should affirm the Special

[26] The Special Master states that it is "unreasonable" to argue "there are no inefficiencies within a district." (Report at 65). He then characterizes some needs discussed by district witnesses as "overly aspirational," specifically "a digital camera for preschool classrooms" and "three field trips per-year" rather than two. (Id.). However, testimony on these items, not mentioned in the Report, explained that the digital camera was needed to document students' preschool work for an academic portfolio that follows the child to kindergarten, Hugelmeyer, 20 T 107:12-108:7, and that urban

Master's findings and conclusion that SFRA would be unconstitutional as applied without continuation of the supplemental funding remedy.

B. The Court Should Provide More Specific Directions and Guidance for a Clear and Effective Protocol To Ensure Ongoing Implementation of the Supplemental Funding Process

In concluding that SFRA would not be constitutional "if supplemental funding were not recognized, if only for the first three year period" of SFRA, the Special Master recommended that the Commissioner of Education ("Commissioner") promulgate new regulations for supplemental funding, utilizing "pre-school guidance and protocol as a model for any revised protocol given the successes achieved in that field." (Report at 83).

While the record supports the Special Master's overall recommendation, there is substantial credible evidence of the need for the Court to provide more specific guidance for the promulgation of new regulations. Such modifications would ensure, based on a decade of experience with the supplemental funding process, a "clear and effective" funding protocol, and facilitate "full administrative and judicial protection in

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youngsters benefit from additional field trips given limited opportunities to visit museums and other venues, experiences taken for granted in more affluent communities. Hugelmeyer, 20T 57:5–58:2.

seeking the demonstrably-needed programs, facilities, and funding necessary to provide the level of education required by [] the Constitution." Abbott V, 153 N.J. at 518, 527.

First, this Court should clarify that the sole purpose of the supplemental funding process is to support the continuation and provision of demonstrably needed Abbott K-12 supplemental programs, consistent with the express purpose of the process, as established in Abbott V. Id. at 518(finding that "underlying" the provision of whole school reform, high quality preschool, and supplemental programs "is the clear commitment that if there is a need for additional funds, the needed funds will be provided or secured"). Put simply, supplemental funding should remain linked to continuing Abbott supplemental programs, which provide the constitutional moorings for the funding remedy. Further, as Assistant Commissioner Attwood testified, and the district witnesses confirmed, the supplemental funding process has been "evolving" and "improving" as a method to provide demonstrably needed K-12 supplemental programs and the required elementary and secondary school reform efforts. (Report at 83); Attwood, 29T 45:19-48:25. The Special Master's recommendations for new regulations afford the opportunity, based on experience, to make the supplemental funding process an even more effective means of ensuring supplemental programs that are "the

indispensable foundation" of a constitutional education and a "fundamental prerequisite" to fulfillment of the State's obligation to plaintiffs. Abbott IV, 149 N.J. at 199.

Second, as discussed in Exception No. 7, supra, the Special Master did not explicitly recommend continuation of supplemental funding for the Abbott preschool program, although he did recognize the success of the preschool "guidance and protocol." (Report at 83). There is no legal or logical reason for the Court to not also mandate that supplemental funding remain available for preschool in order to maintain the needs-based, high quality program that has become a national model and conform to the Abbott preschool mandates. See Abbott VIII, 170 N.J. at 559(holding that preschool funding decisions cannot be based "on arbitrary, predetermined per-student amounts, but, rather, on a record containing funding allocations developed after a thorough assessment of actual needs").

Third, the record provides no basis for limiting the supplemental funding remedy to "at least" the "first three years" or some other unspecified "transitional" period under SFRA. (Report at 82, 83). Both plaintiffs' experts and district witnesses testified, and the Special Master found, that Abbott districts will receive "flat funding" under SFRA -- i.e., no increase in state aid -- and will experience

resulting budgetary shortfalls, not just during the first three years under the formula, but well beyond that period into future years. (Report at 65)(emphasis added). The record further demonstrates that municipal overburden, which persists, is unlikely to "improve" by 2010-11, nor will there be any diminution of the burden on districts' budgets resulting from non-discretionary cost drivers. (Report at 82). Most importantly, as discussed in Exception No. 3, supra, there is no factual or legal basis to suggest that plaintiffs will no longer need the Abbott K-12 supplemental programs and preschool program to achieve a constitutional education beyond the 2010-11 school year.[27]

Consequently, on this record, it would be premature, and clearly erroneous, to limit the time period for the supplemental funding remedy. This Court should, therefore, require continuation of supplemental funding until the State can demonstrate and obtain Court approval, on the basis of an

[27] Defendants fail to overcome the simple logic that "if the SFRA will provide the needed funding, as the State claims, to continue all of the programs, services and positions to address the special disadvantages of [Abbott] students, then there would be few, if any appeals." However, "if the SFRA fails to provide that funding, then the effect of the statute is to deprive the District[s] and [their] students of the fundamental right to seek additional funding to meet those needs." P-103, ¶8; P-106, ¶8; P-116, ¶8.

evidentiary record, that supplemental funding will no longer be needed and the remedy can constitutionally be eliminated.

Fourth, building upon the Special Master's recommendation, (Report at 83), and to advance the recognized improvements in the evolving supplemental funding process, the Court should also require the new regulations to include, at a minimum: (1) an explicit link, as in the preschool process, between requests for supplemental funding and the specific supplemental programs, services and positions that the funding supports; (2) an expedited schedule on all aspects of the process to ensure timely administrative and judicial decision-making as early in the budgeting cycle as possible, and well in advance of the start of the school year, to enable Abbott districts to make appropriate decisions for the school year in question; and (3) DOE K-12 decisions that, as with preschool, include "a list of each proposed program and expenditure not approved by the Department, with specific reasons for denying the program or expenditure." P-91 at N.J.A.C. 6A:10A-8.7(a)(2); P-92 at N.J.A.C. 6A:10-3.7(a)(2). There is ample evidence, particularly from district witnesses, that these regulatory changes would result in a clearer, and more effective, process that would inure to the benefit the DOE, plaintiffs, and districts.

Relevant provisions addressing these issues are in the preschool guidance and protocol, which the Special Master recommended should serve as a "model" for a revised protocol for K-12 supplemental programs. (Report at 83). Experience has shown, and the record demonstrates, that this workable, collaborative process ensures that DOE obtains the necessary documentation from districts in a timely fashion, without imposing on districts onerous production and fiscal monitoring requirements that deter them from seeking needed supplemental funding altogether. Jones, 28T 130:16–131:10, 135:3-15; Joye, 4T 55:20–60:22.

Fifth, the Court should foster a collaborative process for developing the new regulations by directing that representatives of the DOE, plaintiffs, and the districts participate in their formulation.

Sixth, to ensure the regulations are developed in a timely fashion, and to resolve any disputes that might arise, a mediator or the Special Master should oversee the process to provide guidance to the parties, facilitate the collaborative resolution of issues and assist, if necessary, in the development of an appropriate protocol. The Court should also require that the new regulations be developed and finalized within 30 days of the issuance of this Court's decision in this proceeding. Finally, there needs to be a regulatory

mechanism to ensure implementation of the accountability system mandated in Abbott V, 153 N.J. at 515-16, for K-12 supplemental programs. As even Dr. Loeb acknowledged (Loeb, 9T 59:10-60:24), DOE should be required to collect, analyze and publish detailed program and cost data for approved supplemental programs for all districts. This would ensure public transparency and would build a record for future adjustments to the adequacy budget's at-risk resources and costs, as is required under SFRA. Furthermore, DOE should evaluate the effectiveness of any supplemental programs on a regular basis to provide Abbott districts with data on what supplemental programs have proven effective, the reasons for their effectiveness, and any changes needed to make those supplemental programs more effective.

In sum, the Court should adopt the Special Master's determination that SFRA is unconstitutional as applied to the Abbott districts without the supplemental funding remedy. Continuation of the supplemental funding remedy with plaintiffs' proposed modifications is essential to ensure that the needs, rights and interests of Abbott students under the New Jersey Constitution "remain prominent, paramount, and fully protected." Abbott V, 153 N.J. at 528.

CONCLUSION

For the reasons stated above, plaintiffs respectfully submit that the Court should grant plaintiffs' exceptions and modify the Special Master's report in accordance with those exceptions. The Court should deny the State's motion seeking declarations that SFRA satisfies the requirements of the thorough and efficient education clause of the New Jersey Constitution and that the formula should be permitted to replace this Court's prior Abbott mandates.

Respectfully submitted,

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Education Law Center
Counsel for Plaintiffs

Dated: April 13, 2009

Abbott v. Burke
Trial Transcripts

Number	Date and Time	Witnesses
1T	02/09/2009 AM	Lucille E. Davy
2T	02/09/2009 PM	Lucille E. Davy
3T	02/10/2009 AM	Justin Ryan Silverstein
4T	02/10/2009 PM	David Joye Susan Ecks
5T	02/11/2009 AM	Katherine P. Attwood
6T	02/11/2009 PM	Katherine P. Attwood
7T	02/12/2009 AM	Lawrence O. Picus, Ph.D.
8T	02/12/2009 PM	David Pittman
9T	02/13/2009 AM	Susanna Loeb, Ph.D. Edward Jay Doolan, Ph.D.
10T	02/16/2009 AM	Joan Saylor
11T	02/16/2009 PM	Margaret E. Goertz, Ph.D.
12T	02/17/2009 AM	David H. Monk, Ph.D. Melvin Wyns
13T	02/17/2009 PM	Melvin Wyns
14T	02/18/2009	Ernest C. Reock, Jr., Ph.D. Jon Karl Erickson, Ph.D.
15T	02/19/2009 AM	Clive R. Belfield, Ph.D.
16T	02/19/2009 PM	Clive R. Belfield, Ph.D.
17T	02/20/2009 AM	Bruce D. Baker, Ph.D.
18T	02/20/2009 PM	Bruce D. Baker, Ph.D.
19T	02/21/2009	Colleen La Rocca Malleo Victoria Scott Harry Victor Gilson, Ph.D.
20T	02/23/2009 AM	Olga Hugelmeyer George M. Chando
21T	02/23/2009 PM	George M. Chando

Abbott v. Burke
Trial Transcripts

Number	Date and Time	Witnesses
22T	02/24/2009 AM	Patrick J. Fletcher Roy R. Montesano
23T	02/24/2009 PM	Roy R. Montesano
24T	02/25/2009 AM	Charles Ottinger Shelly Schneider
25T	02/25/2009 PM	Shelly Schneider Clarence Hoover
26T	02/26/09 AM	Dennis Clancy
27T	02/26/09 PM	Ron Lee
28T	02/27/09 AM	Barbara Gantwerk Jacqueline Jones, Ph.D.
29T	02/27/09 PM	Katherine P. Attwood