

SUPREME COURT OF NEW JERSEY
DOCKET NO. M-969/1372-07

RAYMOND ARTHUR ABBOTT, ET AL.,	:	Civil Action
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
	:	
FRED G. BURKE, ET AL.,	:	
	:	
Defendants.	:	

**DEFENDANTS' PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW**

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INTRODUCTION

The State has convincingly demonstrated that the School Funding Reform Act of 2008 ("SFRA"), N.J.S.A. 18A:7F-43 et seq., is an equitable funding formula that ensures Abbott districts have sufficient resources to enable them to provide a thorough and efficient education to all students. The SFRA employs a "weighted student formula" that bases funding on a per pupil amount and a school district's enrollment. The formula increases the per pupil amounts through the application of weights to account for the additional needs for students in poverty, or "at risk" students, and limited English proficient ("LEP") students. Because the SFRA's weighted student formula properly and adequately accounts for the increased costs associated with educating at-risk and LEP students, the SFRA provides adequate funding for the Abbott districts.

The weighted student formula in the SFRA was rigorously developed through a Professional Judgment Panel, or "PJP," process. The PJP process relies upon the knowledge and experience of professional educators to identify those particular resources, such as teachers, technology, and support staff, necessary to achieve a defined educational objective in a model district. Once the resources were identified, costs were applied to determine the total costs of the necessary resources. Those costs, in turn, were used to define a base per pupil amount and the weights necessary to

adjust the base amount to accommodate students with special needs, such as at-risk and LEP students.

Experts in the field of education policy and finance recognize the PJP process as an appropriate method to determine adequate school funding. The PJP process in New Jersey, moreover, was conducted by Augenblick, Palaich and Associates, Inc., the foremost experts in the nation in implementing PJP studies. The educational objective used in the New Jersey PJP process was the Core Curriculum Content Standards ("CCCS"), which the Supreme Court has recognized as a constitutionally acceptable definition of a thorough and efficient education. See Abbott v. Burke, 196 N.J. 544, 552-53 (2008) (Abbott XIX). The New Jersey PJP process was specifically designed to, among other things, identify the additional needs of at-risk and LEP students.

After the New Jersey PJP process was completed, the Department of Education (the "Department") subjected the work to full and open scrutiny by the public, stakeholders in the New Jersey educational community, and recognized experts in the field of education finance and policy. The experts determined that the resources identified through the New Jersey PJP process were more than adequate. Nonetheless, in response to comments from the public and the experts, the Department made a number of substantial enhancements to the resource model developed through the New Jersey PJP process. Those enhancements provided millions of dollars of additional

funding under the SFRA to the Abbott districts.

The ultimate result of this rigorous and lengthy process is remarkably generous funding for the Abbott districts. The SFRA affords to the Abbott districts per pupil revenues that are among the highest in the State and in the nation. For example, under the first year of the SFRA, the Abbott districts received an average revenue per pupil of \$17,325. D-62. The national average for per pupil spending in 2005-2006 was \$9,154. D-136. The funding under the SFRA will support all of the resources necessary for the Abbott districts to provide a thorough and efficient education to the their students.

This Court should therefore recommend to the Supreme Court that the funding for the Abbott districts under the SFRA is constitutionally satisfactory. Moreover, because the SFRA provides adequate funding to the Abbott districts, the special and peculiar remedies of parity funding and supplemental funding are no longer necessary.

**PROPOSED CONCLUSIONS OF
LAW AND FINDINGS OF FACT**

A. The SFRA Provides an Equitable, Transparent and Predictable Method for Funding Public Education in New Jersey.

1. A school funding system should have the characteristics of equity, transparency, and predictability. See, e.g., D-122, page 5, ¶12.

2. An "equitable" funding formula treats school districts that have similar needs similarly. "Equity" also means that the funding system affords a justification, based upon the identified objectives of the educational system, for treating districts that differ differently. See, e.g., D-122, page 5, ¶13.

3. Equity is an essential characteristic of a school funding formula because such a formula allocates public resources in order to achieve the important public policy objective of educating children. The distribution of limited resources that are derived through taxation should be based upon identifiable and justifiable objectives of the educational system. See, e.g., D-122, page 5, ¶14.

4. "Transparency" regarding a school funding method means that the method sufficiently defines the factors that affect school funding so that a stakeholder can readily determine the basis for funding outcomes. Transparency is important because school districts make a variety of decisions based, at least in part, upon the effects those decisions will have upon funding. If the funding system is transparent, each school district will know the funding consequences of its behavior and can choose behaviors that are most beneficial. See, e.g., D-122, page 6-7, ¶15-16 (Testimony Summary of Susanna Loeb).

5. "Predictability" means that stakeholders can readily predict the funding available under a funding method. The proper

design and implementation of many educational programs require predictability in funding so that educators can determine available resources and plan accordingly. See, e.g., D-122, page 7, ¶17.

6. The principal mechanism for educational funding under the SFRA is a weighted student formula. As such, funding under the SFRA is based upon a per pupil amount applied to a school district's enrollment. The per pupil amount is adjusted through the use of weights to account for student characteristics that affect costs, such as poverty and limited English proficiency. See, e.g., D-122, page 21-23, ¶¶37-39.

7. A weighted student formula, such as the formula used in the SFRA, treats similar districts similarly and, at the same time, permits differences in funding for school districts based upon student characteristics that are well-established as affecting the per pupil cost of education. As such, the SFRA is an equitable funding method. See, e.g., D-122, page 19-23, ¶¶35-38.

8. Funding under the SFRA is based on student enrollment, well-defined student characteristics, and established base costs and weights. Because the components of the formula are easily identified and the formula itself is a relatively simple mathematical calculation, stakeholders can ascertain how funding is determined. Hence, the SFRA establishes a transparent funding formula. See, e.g., D-122, page 19-23, ¶¶35-38.

9. Because funding under the SFRA is determined by a

relatively straight-forward formula, the SFRA's funding method is predictable. See, e.g., D-122, page 19-23, ¶¶35-38.

10. Funding under the SFRA is notably different than the funding under the Abbott parity and supplemental funding remedies. Only the Abbott districts enjoy these remedies. Yet, approximately 184,000 at-risk students, or about half of all at-risk students, are outside the Abbott districts. 1T99:16 to 1T101:21 (Davy)¹.

11. The parity remedy is dependent upon the funding that the District Factor Group I & J districts decide to implement in a relevant school year. The supplemental funding remedy is based upon specific applications by Abbott districts. See, generally, Abbott XIX, 196 N.J. at 562-4. That is, the supplemental funding remedy is an *ad hoc* and piecemeal means of determining funding. Consequently, the parity and supplemental funding remedies are neither transparent nor predictable methods of funding.

B. The Department of Education Developed the SFRA Through a Professional Judgment Panel Process, an Appropriate Method to Determine a School Funding Formula.

12. The Department employed a Professional Judgment Panel ("PJP") process to develop the funding formula contained in the

¹"1T99:16 (Davy)" refers to the first trial transcript, at page 99 and line 16. The parenthetical identifies the witness whose testimony is cited. A table of the trial transcripts correlated to the witnesses who testified and the date of the testimony is attached as an appendix.

SFRA. The PJP process is a form of adequacy study that brings together panels of education practitioners to identify the resources necessary to educate students in a hypothetical school district to a specific educational standard. D-124, page 3, ¶6.

13. An "adequacy study" is a study that attempts to estimate the resources necessary to provide a quality education to all the children in the state with some reasonable assurance that all or almost all of the children have an opportunity to meet the state's proficiency standards. 7T7:16-21 (Picus); D-125, page 2, lines 22-40.

14. The "resources" developed through the PJP process are the personnel, supplies and materials, equipment, technology and other expenses appropriate to provide the services and programs needed to teach students. D-124, page 3, ¶6.

15. Susanna Loeb, Ph.D., David H. Monk, Ph.D. and Lawrence Picus, Ph.D., are experts who testified on behalf of the State. All opined that the PJP method is an appropriate method to develop a school funding formula. 7T23:23 to 7T24:15 (Picus); 9T27:19 to 9T29:24 (Loeb). See D-123, page 7, ¶17. Dr. Monk testified that the PJP method is the preferred approach to identifying the resource needs of students and is the most commonly used method. 12T17:12 to 12T20:6 (Monk); D-125, page 4, lines 2-7 and page 19, lines 6-14.

16. The "educational standard" provided to the panels during

the New Jersey PJP process was the "CCCS". 9T100:14 to 9T101:8 (Doolan). The CCCS provide the framework for what all children should learn in their thirteen years of public education. D-73, page 3, ¶7.

17. The CCCS have been accepted by the New Jersey Supreme Court as a reasonable definition of a constitutionally sufficient, thorough and efficient education. Abbott XIX, 196 N.J. at 552-53 (2008). This Court took judicial notice of the same. 1T13:3-12. Accordingly, the New Jersey PJP process identified the resources necessary to provide a thorough and efficient education to all New Jersey public school children.

18. Dr. Monk testified that APA are the preeminent experts that he would prefer to have conduct a PJP study. 12T22:6-16 (Monk). Dr. Monk further testified that John Augenblick, the founder of APA, is well regarded in the field of adequacy studies and has extensive experience in conducting PJP studies. 12T22:17 to 12T23:15 (Monk). Dr. Augenblick was the project leader for the New Jersey PJP process. 3T57:20 to 23 (Silverstein).

19. Dr. Goertz, one of Plaintiffs' expert witnesses, considers Dr. Augenblick an expert in conducting PJP studies. 11T96:6-12 (Goertz).

20. APA developed six model school districts that were appropriate for determining educational costs in New Jersey based upon data provided by the Department. D-124, page 10, ¶21; D-2 at

Table 4; D-124, page 12, ¶26.

21. The percentages of at-risk, LEP and special education students utilized in each of the model school districts were derived from the average percentages of students with those particular characteristics in each of the size categories in the districts. 3T24:11-17 (Silverstein).

22. The models that were developed did not mimic the characteristics of the Abbott districts, but rather were created based on a review of all of the districts in the State. 3T62:17-22 (Silverstein). The model districts were designed to provide a framework that accounted for all the factors that affect cost and that was sufficiently comparable to enough types of school districts in a system that panel members would have a working familiarity with the configurations. D-124, pages 9-10, ¶20.

23. The model districts embodied all of the characteristics of a weighted student model that would affect costs. Thus, the model districts included populations of at-risk, limited English proficiency and special education students. D-124, page 10, ¶22.

24. In the New Jersey PJP process, three rounds of panels met in early 2003, to determine the resources for all schools and all model districts. D-124, page 14-16, ¶¶36-39; 1T45:7-9 (Davy). The Department was charged with inviting appropriate professionals to participate in the panels based on the criteria for selecting panel members provided by APA. D-124, page 14, ¶34. A representative of

the Education Law Center, the organization that represents children in the Abbott districts, participated in the second round panel for the very large school district model. 3T109:15 to 20 (Silverstein).

25. The panels were not designed to reflect an exact proportional representation of New Jersey's various types of school districts. The primary objective was to staff the panels with members with experience sufficient to allow them to form sound professional judgments regarding the resources necessary to teach all students the defined educational objectives. D-124, pages 16-17, ¶44. Nonetheless, representatives from the Abbott districts and the Education Law Center participated in the New Jersey PJP process. 1T44:1 to 1T45:9 (Davy).

26. During the PJP process in New Jersey, the first panel of the three panels was composed of members of the Department. D-124, page 14, ¶36; see also D-2 at Appendix 6. Mr. Silverstein, of APA, testified that the first round panel's composition of Department employees did not in any way affect the validity of the work of the panel. 3T107:15 to 3T108:3 (Silverstein).

27. During the panel meetings, each panel was to reach consensus as to the resources that were needed using a collaborative, non-majoritarian process. D-124, page 14, ¶32.

28. Mr. Silverstein, the State Defendants' expert in PJP processes, testified that in his observation, the New Jersey panel

members had sufficient professional experience to be able to identify resources necessary to achieve the defined educational objectives. D-124, page 15, ¶37; see also D-2 at Appendix 7. Mr. Silverstein further testified that the panelists worked diligently and gave clear justifications for their conclusions. D-124, page 15, ¶37.

29. In New Jersey, the PJP panel members specifically evaluated the effects that concentrations of poverty would have on per pupil costs. D-124, page 11, ¶24; 4T97:8 to 4T98:6 (Ecks); see also D-12 at 37.

30. The at-risk percentages utilized during the PJP process were developed based on a review of the actual at-risk concentrations in New Jersey school districts. 3T43:10-21 and 3T101:7-18 (Silverstein).

31. The panelists who examined the Very Large K-12 District, one of the model districts, were asked to define the resources necessary to provide a thorough and efficient education to all students based on the effects of concentrations of at-risk students of 10%, 20%, 40% and 60%. D-124, page 11, ¶24; see also D-2 at Table 4.

32. The resources identified for at-risk students are in addition to the resources identified for all students and are based on specific concentrations of poverty. 4T98:25 to 4T99:7 (Ecks).

33. Examples of school level at-risk resources include social

workers, instructional aides, substitute teachers, reading specialists, parent liaisons, security guards, professional development, supplies and materials, after-school and summer school programming. D-12, page 37.

34. Each panel member at each level was given the same materials identifying the educational objectives and instructions as the other panels. 3T19:11-15 (Silverstein); D-124, page 13, ¶29; see also D-2 at Appendix 4.

35. The instructions stated, "Your job is to create a set of programs/curriculum designed to serves [sic] students with particular needs in such a way that the specified objectives are met. Use your experience and expertise to organize personnel, supplies and materials, and technology in any way you feel confident will produce the desired outcome." D-124, page 13, ¶29; see also D-2 at Appendix 4.

36. All panelists from each subsequent round were given the results of the work of the immediately prior round. Each panel was specifically instructed that they could make whatever changes, additions or deletions to resources they believed, based upon their professional judgement, were necessary to achieve the defined educational objectives. D-124, page 15, ¶39 and page 16, ¶43.

37. The New Jersey PJP process determined resources on the basis of collaborative, professional judgments and were sound, fair and reliable. D-124, page 17, ¶44.

C. The Plaintiffs' Criticisms of the New Jersey PJP Process Are Without Merit.

38. The Plaintiffs complain that several Abbott districts had enrollments that exceeded the enrollment of the largest model district used in the New Jersey PJP process. See, e.g., P-54, page 4, lines 31 to 40.

39. No evidence demonstrates that district sizes from approximately 5,000 to 50,000 students have any effect on per pupil costs. D-122, page 17, ¶29. Newark is the largest district in New Jersey, with an enrollment of 44,720 students. D-83, page AB00409. See, also, D-125, page 18, lines 11-12. This approximate size of enrollment is often cited as the most efficient district size, and hence such a district would not have additional costs based on size alone. D-125, page 18, lines 11-12. Furthermore, the Plaintiff's expert, Bruce Baker, Ph.D., admitted that the costs related to size alone do not increase significantly for districts between 2,000 and 50,000 students. 18T37:1 to 18T38:7 (Baker). Accordingly, the absence of a model district with an enrollment comparable to Newark or any other large Abbott district does not affect the validity of the New Jersey PJP process because such district sizes do not affect costs.

40. The Plaintiffs further claim that the poverty level of the model districts was less than the poverty level of many Abbott districts. P-54, page 4, lines 37-38. The literature is inconclusive as to whether increased concentrations of poverty

affect costs. See, e.g., D-122, page 40, ¶78; D-74, page 6. Dr. Monk, the State's expert, stated that economies of scale can exist if there are large numbers of at-risk students, and hence costs will not necessarily continue to increase with a rise in the concentration of at-risk students. D-123, page 20, ¶47. The Plaintiffs' expert Dr. Baker testified that many studies suggest costs escalate with increased concentrations of poverty. Yet, he was unable to state a conclusion as to whether increases in the concentration of poverty would affect at-risk weights or whether population density would affect costs. 18T39:13 to 18T40:2 (Baker).

41. Nonetheless, the New Jersey PJP process did investigate the effects of increased concentrations of poverty on pupil costs. D-124, page 11, ¶24. The panel members in the New Jersey PJP process developed resources for increasing concentrations of at-risk students. D-2, page 16, Table 8. Notably, the weight declined at an at-risk concentration of 60%. D-2, page 16, Table 8.

42. The lack of consensus among experts regarding the affect of increasing concentrations of poverty, and the actual results from the New Jersey PJP process regarding the effect of increasing concentrations of poverty, demonstrate that the inclusion of a model with concentrations of poverty greater than 60% was unnecessary.

43. The Plaintiffs have further suggested that changes in the CCCS that occurred after the New Jersey PJP process was completed invalidated the results of the process. There were no substantive changes in the CCCS, however, that would have affected the PJP panels' work. See 9T89:6 to 9T90:14 (Doolan); 1T45:14 to 1T46:8 (Davy).

44. The Plaintiffs asserted that the panelists in the New Jersey PJP process should have received descriptions of the "mandated" supplemental programs described in Abbott v. Burke, 177 N.J. 578 (2003) ("Abbott X"). See P-54, page 4, lines 12 to 18. Although the Supreme Court in Abbott X directed that Abbott districts should provide supplemental programs, the Court gave broad discretion to the districts as to the implementation of particular programs. Hence, the Court noted, on the chart appended to the Abbott X decision, "The determination of need must guide school and district plans and budgets in all program areas. Thus, where the Court established a baseline, schools must either provide the baseline or, ***depending on need, adjust it to provide none, less or more than the baseline, or an alternative design.***" Abbott X, 177 N.J. at 590 (emphasis added). The chart of programs in Abbott X is, therefore, not a rigid prescription of particular programs that must be provided to students in the Abbott districts.

45. Nonetheless, to the extent that any of the programs are established methods of assisting at-risk students to achieve

academic success, the panelists would have been aware of those programs. The panel members were experienced educators. See D-2, Appendices 6, 7 and 8. For example, Melinda F. Zangrillo, who was a member of the first panel, was, among other things, an English teacher and a basic skills resource teacher in the Elizabeth school system. Similarly, Bruce M. Greenfield, also a member of the first panel, had broad classroom and school administration experience in the Atlantic City School District. Exhibit D-88. The panel members, as experienced educators, would have known of programs and techniques to assist at-risk students. Therefore, the omission of a specific reference to the Abbott X chart of supplemental programs had no effect upon the validity of the New Jersey PJP process.

46. The Plaintiffs' expert Dr. Goertz also criticized the New Jersey PJP process. Dr. Goertz, however, testified that she was unable to offer an opinion as to whether the PJP process is an appropriate method to develop an adequacy formula. 11T55:22 to 11T56:6 (Goertz). She is, therefore, not qualified to offer any opinion as to the PJP process in general, or the New Jersey PJP process in particular.

47. The Plaintiffs also claim that the geographic cost adjustment used under the SFRA disadvantages the Abbott districts. This complaint, however, is based primarily upon a comparison of the average of the geographic cost adjustment under the SFRA with the average adjustment under the Taylor-Fowler index. P-54, pages

26-27. A county by county comparison of the two indices shows that there is a negligible difference in the effect of the two indices. D-133; 29T112:9 to 29T113:18 (Attwood Rebuttal).

D. Allan Odden, Ph.D. and Lawrence Picus, Ph.D. Validated the Resources Developed Under the New Jersey PJP Process.

48. Dr. Odden and Dr. Picus are well recognized as experts in education finance and are leaders in the field of adequacy studies. Together, Dr. Odden and Dr. Picus developed the Evidence Based method of conducting adequacy studies. 12T28:10 to 12T29:24 (Monk); D-5; D-6; 1T53:23 to 1T54:12 (Davy).

49. The Evidence Based method attempts to identify and estimate the educational programs that current research indicates are effective. The Evidence Based method estimates the cost of those resources, and determines the costs across all schools and school districts in a particular state. 7T21:21 to 7T22-4.

50. Dr. Odden and Dr. Picus analyzed the resources identified in the New Jersey PJP process through the Evidence Based method. They found that the PJP process resulted in model resources that met or exceeded the Evidence Based standards in all essential areas, including support staff, class size and number of teachers, books, materials and equipment, central office resources, student activities, and resources for limited English proficiency students. D-12; see also 1T62:17 to 1T64:3 (Davy); D-74, page 16.

51. For purposes of his comparison, Dr. Picus reviewed the resource results from the New Jersey PJP process against the resource results developed from an evidence based study he had conducted in Washington State. 7T25:2-5 (Picus). According to Dr. Picus, such a comparison was appropriate because the Washington Evidence Based study developed the necessary resources, such as teachers and principals for a school district, and those resources would not vary greatly from state to state. 7T29:6 to 7T30:21 (Picus).

52. In short, a comparison to the Evidence Based method demonstrated that the resources resulting from the New Jersey PJP process were adequate. 7T39:2 to 7T39:22 (Picus); 2T24:2-8 (Davy); D-125, page 16.

E. After the Conclusion of the PJP Process, the Department Implemented a Number of Significant Enhancements that Substantially Increased the Funding Available to the Abbott Districts.

53. After the issuance of the Report on the Cost of Education, the report that described the results of the New Jersey PJP process, the Department conducted public hearings regarding the results of the New Jersey PJP process. D-12, page 7; 1T52:19 to 1T53:7 (Davy). In addition, the Department retained three experts, Allan Odden, Ph.D., Lawrence Picus, Ph.D. and Joseph Olchefske, to analyze and comment upon the New Jersey PJP process. D-12, page 8; 1T53:23 to 1T55:24 (Davy). Dr. Odden, Dr. Picus and Mr. Olchefske are each experts in the area of education finance and policy. See

D-5 and D-6; 1T53:23 to 1T55:24 (Davy). The Department also retained three consultants, Thomas Corcoran, Susanna Loeb, Ph.D. and David Monk, Ph.D., to advise the Department regarding the development of a funding formula based on the New Jersey PJP process. D-12, page 9. Mr. Corcoran, Dr. Loeb and Dean Monk are each experts in the area of education policy and finance. See D-9, D-10, D-11 and D-91.

54. As a result of comments received during the public hearings and the advice and analysis from the experts, the Department implemented certain substantial enhancements to the funding formula. See, generally, D-12, pages 10-14. Those enhancements included, among other things:

a. The expansion of the definition of at-risk students to include students that are eligible for both free and reduced-priced lunches under the Title I Federal Free or Reduced Lunch Program.

b. The adoption of an at-risk weight sliding scale that increased the weight for at-risk students. Because the adoption of the sliding scale increased the weight for at-risk students, it necessarily increased the per pupil funding amount for at-risk students.

c. An increase in funding for security based upon the concentrations of at-risk students in a district.

d. The inclusion in the district resources of a line item for capital improvements at a rate of \$175 per pupil.

e. The addition of nine coach/facilitators at the district level for the model district.

f. An additional allocation of \$20,000 at the model district level for professional development.

g. The use of mean salaries instead of median salaries in determining the cost of personnel identified in the model school district.

See, generally, D-12, pages 11 to 14; 5T19:9 to 5T38:25 (Attwood).

55. The adoption of these enhancements produced substantial increases in the funding available to Abbott districts. For example, for the Abbott districts the change from the PJP at-risk weights to the sliding scale weights added from \$579 to \$1,242 per at-risk student, depending upon the concentration of at-risk students in the district and the grade level of those students. D-12, page 38. Examples of the incremental increase of funding for particular districts arising from the change from the PJP weights to the sliding scale weights are as follows:

a. East Orange: \$7,908,406. D-50.

b. Camden: \$13,445,890. D-49.

c. Elizabeth: \$15,625,242. D-51.

d. Newark: \$32,794,170. D-54.

e. Passaic: \$10,893,714. D-55.

f. Paterson: \$21,630,863. D-56.

See, generally, D-47 to D-61.

56. In addition, the inclusion of a line item for capital in the amount of \$175 per pupil would produce \$917,000 for a district with 5,240 students. Exhibit D-12, page 34. Each Abbott District would receive substantial funding based upon the capital line enhancement. For example, for each of the following districts, the capital line would produce the following increases in funding based upon the district's enrollment:

a. Newark (enrollment of 44,720 (D-83, page AB00409)): \$7,826,000.

b. Jersey City (enrollment of 29,545 (D-83, page AB00417)): \$5,170,375.

c. Paterson (enrollment of 24,624 (D-83, page AB00439)): \$4,309,200.

d. Camden (enrollment of 15,411 (D-83, page AB00395)): \$2,696,925.

e. Millville (enrollment of 5,256 (D-83, page AB00401)): \$919,800.

f. Vineland (enrollment of 9,961 (D-83, page AB00403)): \$1,743,175.

g. East Orange (enrollment of 9,982 (D-83, page AB00405)): \$1,746,850.

57. The increase in security aid also provided the Abbott Districts with substantial supplemental funding. The base amount for security under the SFRA is \$70 per pupil. D-12, page 14. The funding for security, however, increases sharply as the percentage of at-risk students in a district rises. Examples of the incremental increases in funding, over the base amount of \$70 per pupil, that particular districts will receive as a result of the enhanced security amounts are as follows:

- a. Camden: \$4,923,156. D-83, page AB00396.
- b. East Orange: \$2,893,562. D-83, page AB00406.
- c. Newark: \$11,959,542. D-83, page AB00410.
- d. Jersey City: \$8,233,274. D-83, page AB00418.
- e. Paterson: \$7,905,632. D-83, page AB00440.

58. Thus, the total effect of just the enhancements of the capital line, the adoption of the at-risk sliding scale and the security aid for particular districts are as follows:

- a. Newark: \$52,579,712.
- b. Paterson: \$33,845,695.
- c. Camden: \$21,065,971.
- d. East Orange: \$12,548,818.

59. All of these enhancements represent additions to the resources that were derived from the New Jersey PJP process. The enhancements, therefore, convincingly assure that the SFRA provides adequate funding for the Abbott districts.

F. The SFRA Provides Abbott Districts with Substantial Funding.

60. The SFRA provides funding that allows the Abbott districts to enjoy the highest revenues per pupil in both the State and the nation. Every Abbott district received an increase in per pupil revenues under the SFRA in the 2008-2009 fiscal year from the revenues for 2007-2008, the fiscal year immediately before the first year of implementation of the SFRA. See Exhibit D-62. The average revenue per pupil under the SFRA in 2008-2009 for the Abbott districts is \$17,325. The average per pupil revenue for the I & J districts is \$14,046. Bridgeton has the lowest per pupil revenue among the Abbott districts at \$14,361, an amount still appreciably above the I & J districts' average per pupil revenue of \$14,046. The highest per pupil revenue for an Abbott district is \$25,217 for Asbury Park. See Exhibit D-62.

61. For at least three years, all Abbott districts will receive no less than their State aid amounts for 2007-2008. N.J.S.A. 18A:7F-58; Exhibit D-12, page 25.

62. Several Abbott districts received considerable increases in State aid under the SFRA for the 2008-2009 fiscal year. For example, Garfield received a 19.8% increase, Union City obtained an 18.4% increase, and New Brunswick's increase was 12.2%. Exhibit D-32.

63. The total increase in State aid to the Abbott districts from 2007-2008 to 2008-2009 was \$209,132,753. Exhibit D-32.

64. New Jersey ranks third among all States in spending on education after adjusting for geographic cost differences. Exhibit D-136. For the school year 2005-2006, the New Jersey unadjusted per pupil expenditure was \$14,954, and the adjusted per pupil expenditure is \$13,238. The national average is \$9,154 per pupil. Exhibit D-136. The average per pupil revenue available to the Abbott districts under the SFRA are among the highest in the State. See Exhibit D-62. All of this information suggests that, under the SFRA, the Abbott districts have among the highest per pupil revenues in the nation.

65. The notably large amount of revenue available to the Abbott districts under the SFRA, compared to the revenues of the I & J districts, the spending in other States and the national average for educational spending, convincingly establishes that the SFRA provides more than adequate funding for the Abbott districts to provide a thorough and efficient education to their students.

G. The Sliding Scale for the At-Risk Student Weight in the SFRA Is Appropriate.

66. The SFRA employs an "At-risk Weight Sliding Scale" that varies the weight for at-risk students depending upon the concentrations of such students in a district. The weight is 0.47, but rises from 0.47 to 0.57 in a straight-line function as concentrations of at-risk students increase from 20% to 60%. As concentrations continue beyond 60%, the weight "levels off" at 0.57. D-12, page 12-13. Although the at-risk weight levels off at

60% concentrations of at-risk students, a district will still receive the addition funding generated by the at-risk weight for every at-risk student.

67. The sliding scale was based upon the results of the PJP process and the recommendations of the experts who evaluated the PJP process. 29T30:4 to 29T35:6 (Attwood Rebuttal). See also, 1T84:8 to 1T87:16 (Davy). The at-risk weights that were calculated based upon the very large school district model in the PJP process increased from 0.46 for an at-risk concentration of 10%, to 0.47 for an at-risk concentration of 20%, to 0.51 for an at-risk concentration of 40%. The weight, however, declined to 0.37 as the at-risk population rose to 60%. D-2, Table 8, page 16. Thus, the New Jersey PJP study suggested that the per pupil costs for at-risk students did not increase as the concentrations of such students continued beyond 60%.

68. A decline in the weight for at-risk students at high concentrations of such students is a result that occurs in other PJP studies. 3T43:22 to 3T44:20 (Silverstein).

69. Dr. Picus opined that there was a debate in the scholarly literature as to whether the per pupil costs for at-risk students would increase with increasing concentrations of such students. Dr. Picus nonetheless opined that the at-risk weight should not be reduced as the concentration of at-risk students increases. D-74, page 6.

70. Dr. Odden recommended that the Department adopt one weight of 0.50 for at-risk students. Dr. Odden further opined that a weight of 0.50 would be among the highest weights for at-risk students used anywhere in the nation. 29T16:5-13 and 29T27:18 to 29T30:3 (Attwood Rebuttal).

71. Dr. Monk opined that capping the at-risk weight is appropriate because economies of scale can exist if a district has large numbers of children with similar needs. Accordingly, the per pupil costs of addressing those needs will not necessarily continue to increase. D-123, page 20, ¶47.

H. The Combination Weight Used for Students Who Are Both At-Risk and Limited English Proficient is Appropriate.

72. Students who are both at-risk and LEP receive the entire at-risk weight plus one quarter of the LEP weight. D-12, page 13. The combination weight recognizes that students who are both LEP and at-risk require additional resources, but that some of the resources for LEP students duplicate the resources for at-risk students. D-12, page 13; 1T32:19 to 1T33:7 (Davy).

73. To develop the combination weight, the Department compared the resources and costs provided for LEP students to those provided for at-risk students to determine the duplicated resources. D-119; 4T126:15 to 4T127:13 (Ecks). For example, both LEP students and at-risk students were provided with an after school program and a summer school program. D-119, 4T127:2 to

4T127:9. It was determined that these resources are overlapping because the same student cannot attend two after school programs at the same time. 4T127:2 to 4T127:9 (Ecks). Thus, the overlapping resources were eliminated from the LEP weight. 4T127:10 to 4T127:15 (Ecks). The non-overlapping resources were calculated to be 22.6% of the LEP weight. D-119; 4T129:23 to 4T130:1 (Ecks). Rather than using the 22.6% rate, the Department chose to use a slightly higher weight of 25%. 4T130:6 to 4T130:13. The 25% was then multiplied by the 0.5 LEP weight to produce a weight of 0.125 for students who were both at-risk and LEP. 4T130:6 to 4T130:13 and 4T120:13 to 4T120:15 (Ecks). This modified LEP weight is added to the at-risk weight for students who are both at-risk and LEP.

I. The Census-Based Method Used to Fund Special Education Under the SFRA is Appropriate.

74. The census based method determines funding for special education by applying a state-wide classification rate to the total student enrollment in the district receiving aid. Funding under the census based method is not determined by the special education classification rate in the district. D-12, pages 15-17; 9T32:3-10 (Loeb).

75. Dr. Loeb found that considerable research in education finance and education policy indicates that when funding is based on actual classification rates within districts, a substantially larger proportion of students are classified. Exhibit D-122, pages

34-35, ¶62. Further, "[a] plausible explanation of this result is that, because districts will receive more funding if more students are classified, districts have an incentive to over-classify." D-122, pages 34-35, ¶62.

76. Dr. Loeb further found that the census based method of funding special education eliminates the financial incentive to mis-classify or over-classify students. D-122, page 36. Dr. Loeb also testified that there is relatively strong empirical evidence that less students are classified as requiring special education under the census based method than when funding is provided based on classification. 9T32:18 to 9T32:24 (Loeb).

77. According to Dr. Monk, the census based method of funding special education is an appropriate, established practice that has been generally accepted and supported by research within the school finance field. D-123, page 16; 12T52:11-14 (Monk). According to Dr. Loeb, the census based method is a better approach for funding lower cost special education because it reduces the incentive for over-classification. 9T61:1-24 (Loeb).

78. Dr. Monk found that the census based method of funding special education in New Jersey is an appropriate method when considering all of its components. D-123, pages 16-17. Dr. Loeb found that the census based method, as used in New Jersey, "is appropriate, equitable, transparent, predictable, and flexible." D-122, pages 37-38, ¶71.

79. The SFRA funds general special education through the census based method at a State average classification rate of 14.69%. D-12, pages 20-21. Two-thirds of that funding is provided to districts through the wealth-equalized adequacy budget. D-12, pages 20-21. The remaining one-third of the funding provided through categorical aid. D-12, page 21.

80. In developing the census based method of funding for New Jersey, the Department determined the statewide average on special education funding. 8T7:21 to 8T8:1 (Pittman). The Department derived the costs for special education from the 2005-2006 district audited financial statements, which reflect the audited spending of the districts. The Department obtained the total number of students in special education from information that the districts report. 8T8:6 to 8T10:19; 8T13:9 to 8T13:12 (Pittman). From the state total costs for special education, speech funding and extraordinary aid were subtracted because they are separate funding categories. 8T18:15 to 8T18:22; 8T19:22 to 8T20:3; 8T20:1 to 8T20:3 (Pittman). The resulting number was then divided by the total number of special education students in the state. 8T17:7 to 8T17:10 (Pittman). This produced a statewide average of special education costs per student. 8T18:4 to 8T18:6 (Pittman).

81. The Department determined the state average classification rate by dividing the total number of student classified as requiring special education by the total number of

student enrollment throughout New Jersey. 8T26:8 to 8T26:14 (Pittman). That calculation resulted in 14.69%. 8T26:15 to 8T26:17 (Pittman).

82. The classification rate used under the SFRA is notably higher than the national average classification rate. See D-159, page 2. See, also, 12T57:2 to 17 (Monk).

83. The SFRA funds extraordinary costs for education as categorical aid. D-12, page 21. The SFRA provides funding for extraordinary aid by reimbursing districts 95% of the costs over the threshold amount for in-district programs for students that have extraordinary needs; 85% of the costs for separate public programs; and 85% of the costs of separate private programs. The threshold amount is \$40,000 for students placed in-district and \$55,000 for students placed in a separate facility. D-1, pages 15-16, ¶¶37.

84. Dr. Monk testified that the SFRA provides districts the needed funding for special education, "particularly in light of the fact that we're not talking about the students with the severe [sic] but that occasion the largest costs." 12T57:6 to 12T57:13 (Monk).

85. In discussing the SFRA categorical funding for extraordinary costs, Dr. Picus testified that the New Jersey system provides a "great deal of money in the special ed system." 7T107:4 to 7T107:14.

86. The Plaintiffs complain that the classification rate in the Abbott districts is higher than the 14.69% used under the SFRA to fund special education. However, historic classification rates do not serve as an accurate indicator of costs for special education because there are variances in costs within classifications and variances in costs across classification rates. 28T13:1 to 28T14:4 (Gantwerk).

87. Costs within classifications vary depending on each individual student's needs, the services the student receives, the manner in which the student's school provides the services, the location where the student receives services and the number of services the student receives. 28T13:1 to 28T13:10 (Gantwerk). There is also a range in costs for children classified in the same area. 28T13:11 to 28T13:19 (Gantwerk).

88. Costs across classifications vary because all students in all categories have a variety of services available to them, receive different levels of services and are placed in different settings. 28T13:20 to 28T14:22 (Gantwerk).

89. Accordingly, that the Abbott districts may have classification rates higher than the 14.69% used for funding under SFRA does not establish that special education in the Abbott districts will be underfunded.

J. The SFRA Provides Adequate Funding for a High Quality Preschool Program.

90. The SFRA provides funding for a high quality preschool program based upon the Abbott preschool program. D-12, pages 17-18. The Department adopted regulations that specified the components of the Abbott preschool program, such as small class size, master teachers, research-based curriculum, and parent and community involvement specialists. D-12, page 17; 4T8:18 to 4T10:11 (Joye). The National Institute for Early Education Research ("NIEER") is an national organization that evaluates preschool programs throughout the nation. 4T10:12 to 4T11:7 (Joye). NIEER has evaluated New Jersey's Abbott preschool program as having achieved nine out of ten quality bench marks, a "very good rating overall in the country." 4T12:11 to 22 (Joye). See, also, D-89.

91. The Department used actual budget data from the Abbott preschool programs to determine a per pupil cost for preschool. 4T15:4 to 4T21:13 (Joye); D-12, page 17-18. Preschool funding under the SFRA is base upon a per pupil amount that is applied to a district's enrollment. D-12, pages 17-18.

92. The SFRA expands preschool to all at-risk children in the State. In addition, preschool would also be available to any child, regardless of income, who lives in a district with a District Factor Group designation "A" or "B." Preschool is also

available to all children in a "C" or "D" district that has an at-risk concentration of at least 40%. D-12, pages 17-18.

93. The SFRA provides three funding options for the Abbott districts to assure sufficient funding for preschool programs in those districts. An Abbott district can receive the funding based upon the per pupil amount under the SFRA. As an alternative, an Abbott district can receive the total dollar amount approved in 2008-2009, after an enrollment adjustment. Finally, an Abbott district can accept the per pupil amount derived from the 2008-2009 approved budget. 4T29:22 to 4T30:10 (Joye).

K. The Plaintiffs Failed to Establish that the SFRA Provides to Any Particular Abbott District Funding Insufficient to Provide a Thorough and Efficient Education.

94. The Plaintiffs presented a number of witnesses who were administrators in Abbott districts. Several of those witnesses offered testimony that the funding under SFRA required their respective districts to reduce programs and personnel. See, e.g., P-143, page 19-20, ¶¶15-16; P-145, page 13-14, ¶¶27 and 29; P-148, ¶8. None of the district witnesses offered any detailed explanation of why the eliminated programs and personnel were necessary to provide a thorough and efficient education, nor did they opine that the reductions would prevent the districts from providing a thorough and efficient education. Indeed Dr. Chando, the assistant superintendent of the Phillipsburg School District,

admitted that, despite reductions in spending, the district continued to provide a thorough and efficient education to its students. 21T61:13-16 and 21T79:19 to 25 (Chando). Thus, the district witnesses suggested that the mere fact they had provided such programs or had spent such sums in the past established that those programs and spending were necessary for a thorough and efficient education.

95. Moreover, even though the SFRA model resources provided sufficient funding for an adequate number of personnel in specific positions, the district witnesses claimed that they had to eliminate those positions. For example, Dr. Hoover, the Superintendent of the East Orange School District, testified that he intended to cut a number of positions, including classroom teachers and a dropout prevention officer. P-145, page 11. Similarly, Dr. Ottinger, the superintendent of the Vineland School District intended to eliminate, among other positions, literacy coaches, guidance counselors and social workers. P-143, page 20. Also, Dr. Lee, the chief financial officer of the Newark district, stated that Newark intended to eliminate, among others, literacy and math coaches, social workers and security guards. D-148, ¶8. The SFRA model specifically contains these particular positions and provides adequate funding to East Orange, Vineland and Newark to maintain adequate staffing in these positions. See, e.g., D-50; D-54 and D-61. None of these district witnesses offered an

explanation as to why, even though the SFRA model provided sufficient resources to maintain adequate numbers of these positions, the district nonetheless eliminated the positions. See, e.g., 27T80:1 to 20 (Lee).

96. Several of the witnesses were from districts that were spending far in excess of the "Adequacy Budget" under the SFRA. The "Adequacy Budget" is the amount that the SFRA determines to be adequate to support a thorough and efficient education in any particular district. See D-12, page 19-24. For example, Newark spent \$30.6 million in excess of its Adequacy Budget of approximately \$754.5 million. D-83, page AB00410. East Orange spent \$23 million over its adequacy budget of \$171 million. D-83, page AB00406. Vineland exceeded its Adequacy Budget of \$135.7 million by \$16 million. D-83, page AB00404. Millville had spending of \$2.9 million in excess of an Adequacy Budget of \$71.4 million. D-83, page AB00402.

97. Yet, none of the witnesses from Newark, Vineland, Millville or East Orange offered any meaningful explanation as to why their districts needed funds in excess of the more than adequate amounts provided under the SFRA.

98. The amounts of actual past spending are not an accurate measure of the funds necessary to provide a thorough and efficient education. Expenditures are a measure of what school districts are spending, and are not proof of the need for or efficiency of the

programs or resources that the district is using. D-123, page 8, ¶18.

99. Several of the district witnesses, moreover, understood "thorough and efficient" to be something different than the definition that the New Jersey Supreme Court employs. Patrick J. Fletcher, the superintendent of the River Dell Regional School District, testified that his district's budget was necessary to support a thorough and efficient education, and that the efficient operation of his district allowed few reductions in spending without affecting the quality of education. 22T32:3-13 (Fletcher). River Dell is a District Factor Grouping I district. See P-130, ¶3. Doubtless, the Plaintiffs hoped that Mr. Fletcher would establish that the high level of spending in an I district such as River Dell was necessary to a thorough and efficient education. Mr. Fletcher, however, testified that the primary consideration in developing the budget for the district is "what the community thinks is valuable in an education." 22T73:2-6 (Fletcher). Mr. Fletcher further testified, among other things, that he believes the district must furnish every high school student with a laptop computer in order to provide a thorough and efficient education. 22T87:12-18 (Fletcher). Similarly, Mr. Fletcher claimed a press box at the football stadium, constructed at a cost of \$250,000, was also necessary for a thorough and efficient education. 22T84:10 to 22T85:3 (Fletcher). Mr. Fletcher's understanding of the requisites

for a thorough and efficient education is notably at odds with the standard that the Supreme Court has enunciated.

100. Similarly, Dr. Montessano, the superintendent of the Ramsey Public School District testified that all of the expenditures of the Ramsey district were necessary for a thorough and efficient education. See, e.g., 22T152:24 to 22T153:10 (Montessano). Yet, Dr. Montessano stated that the community's expectations define "thorough and efficient" as applied in the Ramsey. Dr. Montessano further testified that his district's standard for a thorough and efficient education is of a higher quality than might be found in other school districts. 23T7:12-20 (Montessano). Moreover, the Ramsey district offers programs and courses beyond what typically would be needed to satisfy the CCCS. 23T9:6-15 (Montessano). Hence, Dr. Montessano's understanding of the requirements of a thorough and efficient education vary considerably from the Supreme Court's definition.

L. A Parity Remedy and Supplemental Funding Remedy in Addition to the Funding Under the SFRA is Both Unnecessary and Inappropriate.

101. At the time the Supreme Court first implemented the parity and supplemental funding remedies, there was no reliable determination of the resources necessary to provide a thorough and efficient education. "The parity order was chosen because of the absence of any other 'measuring stick' by which to gauge the necessary educational resources for the CCCS to be provided in

districts having large concentrations of poor children within their pupil population." Abbott XIX, 196 N.J. at 563-64. The Supreme Court has consistently stated that a thorough and efficient education may be provided with funding less than the parity remedy. See, e.g., Abbott XIX, 196 N.J. at 563-64.

102. The State has now convincingly demonstrated what resources are necessary for a thorough and efficient education in all districts, including districts with large numbers of at-risk students. The Department undertook a rigorous and thorough PJP process, a recognized method for determining adequate school funding. That process identified the resources necessary to provide a thorough and efficient education to all school children in New Jersey, including the at-risk and LEP students in New Jersey. Independent experts confirmed the adequacy of the resources that the New Jersey PJP process identified. The Department then added several enhancements to the resources that substantially increased the funding under the SFRA, especially to the Abbott districts. In short, the State has now convincingly demonstrated the resources necessary for the Abbott districts to provide a thorough and efficient education and has made those resources available to the Abbott districts under the funding formula in the SFRA.

103. The financial resources available to the Abbott districts at the time the Supreme Court implemented the parity and

supplemental funding remedies are considerably different than the resources presently available to the Abbott districts. In 1990, the time when Abbott II was decided, the Abbott districts spent between 70% and 75% of the I & J districts' expenditures. Abbott v. Burke, 149 N.J. 145, 190-91 (1997) (Abbott IV). The court in Abbott IV noted that, in 1997, the Abbott districts spent 89% of the amount the I & J districts were spending at that time. Abbott IV, 149 N.J. at 190-91. The level of funding available to the Abbott districts under the SFRA is quite different. The SFRA provides to the Abbott districts among the highest per pupil revenues in the State and in the nation. Moreover, under the SFRA the average per pupil revenue for the Abbott districts is \$17,325, while the average per pupil revenue for the I & J districts is \$14,046. See ¶¶60-65, supra. That is, the average per pupil revenue available to the Abbott districts under the SFRA is **23.3% higher** than the revenues in the I & J districts.

104. The Department, moreover, adopted the at-risk sliding scale so that districts with high concentrations of at-risk students could meet any particularized needs in that school district. The additional funds available through the at-risk sliding scale are substantial. The per pupil incremental increases for the Abbott districts range from \$579 to \$1,242 per pupil. D-12, page 38. Similarly, the incremental increases in funding to particular districts resulting from the at-risk sliding scale are

notable. See D-47 through D-61. For example, Newark will receive an additional \$32,794,170 as a result of change to the at-risk sliding scale. D-54. Thus, the funds under the SFRA are not only adequate to provide a thorough and efficient education, but they also provide the resources with which districts can address particularized needs.

105. Given that the SFRA's weighted student formula provides adequate funding for the increased costs associated with educating at-risk and LEP students, the SFRA provides the funding for supplemental programs, positions and services in the Abbott districts. Accordingly, the need for a supplemental funding remedy is no longer necessary. Nonetheless, the Abbott districts still have a safety net. In particular, the Abbott districts have access to considerable federal funding that already supplements the funding under the SFRA. 29T100:24 to 29T110:19 (Attwood); D-131; D-132; D-53 through D-61. Indeed, these federal funds are expressly designed to meet the supplemental needs of at-risk and LEP students.

106. The Abbott districts received a total of \$150,440,370 in federal Title 1 funding in fiscal year 2008-2009. D-131. The Abbott districts have also received, and will continue to receive, federal "IDEA" funding. 29T100:24 to 29T110:19 (Attwood); D-132. The total amount of federal IDEA funding that the Abbott districts received in fiscal year 2008-2009 is \$74,502,566. D-132.

107. In addition, the federal American Recovery and Reinvestment Act of 2009, the federal "Stimulus Package," will provide additional funds to the Abbott districts in the form of increased Title 1 and IDEA funding. 29T100:24 to 29T110:19 (Attwood); D-131; D-132. Under current estimates, the Abbott districts will receive in fiscal year 2009-2010 an additional \$65,885,000 in Title 1 funds and an additional \$48,194,000 in IDEA funds under the Stimulus Package. D-131; D-132. These amounts are in addition to the Title 1 and IDEA funds that the Abbott districts would otherwise receive.

108. The total amount of federal funding available to the Abbott districts under Title 1 and the IDEA, including the estimated augmentation under the federal Stimulus Package, is \$339,021,936. D-131 and D-132. This federal funding ranges from an estimated \$1,741,127 for Salem City to \$59,256,308 for Newark. D-131 and D-132.

109. The combined resources from federal funding and the incremental increase from the at-risk sliding scale for Newark is \$92,050,475, which represents an additional \$2,058 for every student in the district. D-131; D-132; D-54. Similarly, the combination of federal funding and the incremental increase from the at-risk sliding scale for Millville is \$7,063,660, or \$1,344 per student. This calculation includes only the increase in at-risk funding that arises from the increase in weights from the PJP

model to the at-risk sliding scale. That is, the calculation only measure the **additional** funding that the enhancement of the weights produces.

110. The adequacy of the funding under the SFRA, moreover, is subject to review every three years. The SFRA requires the Governor, after consultation with the Commissioner, to provide the Legislature with an Educational Adequacy Report every three years that addresses appropriate adjustments to be made to the base per-pupil amount, the per-pupil amounts for full-day preschool, the weights for grade level, at-risk pupils, LEP pupils and combination pupils, and other components of the SFRA. N.J.S.A. 18A:7F-46(b). Thus, after two more budget years, the adequacy of the SFRA will be reassessed. This mechanism permits the SFRA to be adjusted to account for changed circumstances. For example, several district witnesses testified that teacher salaries are increasing at a rate greater than the cost of living adjustment. See, e.g., P-143 at Exhibit A, page 19, ¶15. The SFRA currently provides more than adequate resources to accommodate such increases in costs. Nonetheless, if increases in teacher salaries over time appear to affect the ability of districts to provide particular programs, this circumstance can be addressed during the reassessment.

111. Because the SFRA provides constitutionally sufficient funding for the Abbott districts to provide a thorough and

efficient education to their students, the parity remedy is also no longer necessary.

112. In any event, the evidence in the case showed that the amounts that the I & J districts spend on education is far in excess of the funds necessary to provide a thorough and efficient education. The Plaintiffs called two witnesses from I & J districts, Mr. Fletcher and Dr. Montesano. Both witnesses testified that community expectations, rather than the Supreme Court's definition of thorough and efficient, dictate the spending levels in those districts. 22T73:2-6 (Fletcher); 23T7:12-20 (Montessano). Both witnesses also testified that the funding in their respective districts supported programs that were in excess of the items necessary for a thorough and efficient education. 23T7:12-20 and 23T9:6-15 (Montessano); 22T74:5 to 22T75:15 (Fletcher). In addition, Dr. Baker, one of the Plaintiffs' experts, testified that a cost function analysis that he performed indicated that the I & J districts were less efficient than the C & D districts. Similarly, he found that the Abbott districts were less efficient than the C & D districts. 18T60:4 to 18T61:11 (Baker). All of this evidence shows that the I & J districts are spending in excess of the amounts necessary to provide a thorough and efficient education. The spending levels in the I & J districts, therefore, are not a proper measure of the funding needed for a thorough and efficient education. The essential

premise of the parity remedy, that the spending of the I & J districts is a fair measure of the funding necessary for a thorough and efficient education, is flawed. Nonetheless, the SFRA's base amount and weights for at-risk and LEP students can support per pupil spending amounts well in excess of the I & J's per pupil average spending. The Act, therefore, effectively accounts for both parity and supplemental programs, positions and services needed for at-risk and LEP students.

113. Because the SFRA provides more than sufficient funding to support a thorough and efficient education in every district, including every Abbott district, the parity and supplemental funding remedies are unnecessary.

114. In addition, a supplemental funding remedy is corrosive to the essential purposes of the SFRA. The SFRA is intended to provide an equitable, transparent and predictable method of providing State aid for education. Supplemental funding is contrary to each of these purposes of the SFRA.

115. The SFRA seeks to provide the additional resources necessary for all at-risk students in all districts. That objective is crucial because, at present, approximately 184,000 at-risk students, or about half of all at-risk students, are outside the Abbott districts. 1T99:16 to 1T101:21 (Davy).

116. The creation of a supplemental funding remedy would grant to the Abbott districts an unnecessary source of funding that is

not available to at-risk students outside the Abbott districts. Such a remedy is inherently inequitable. The inequity of supplemental funding is exacerbated by the stark reality that the State has finite resources with which to fund education.

117. A supplemental funding remedy would, moreover, substantially lessen the predictability of educational funding in New Jersey. The SFRA provides funding through a readily discernable formula and hence affords predictability. See 9T18:23 to 9T19:11 (Loeb); D-122, page 21-23, ¶¶37-38. Such predictability is an essential element of a sound school funding mechanism because it allows school districts to better plan, design and implement programs. D-122, page 7, ¶17; 9T15:9 to 9T16:2 (Loeb).

118. Funding under a supplemental remedy would be based on idiosyncratic and piecemeal applications. The State would be unable to determine its responsibilities for funding in advance, and the district would be unable to plan over a long period of time. See, e.g., 13T73:7 to 13T74:5 (Wyns). If the aggregate amounts devoted to supplemental funding were substantial, the State would further be unable to determine in advance the resources it could allocate elsewhere.

119. If a supplemental remedy also included some type of appeal or other litigation process, additional cost, delay and unpredictability would attend the process. See, e.g., 13T73:7 to

13T74:5 (Wyns). The process would, by its very nature, become adversarial. D-1, page 21-22, ¶53.

120. A supplemental funding remedy would, moreover, severely lessen the incentives for fiscal discipline. In the past, several Abbott districts used the supplemental remedy as a "budget filler." That is, the district determined its revenues and decided on its expenditures. If the planned expenditures exceeded the anticipated revenues, the district would then submit a supplemental funding application to the state to fill the "gap." See, e.g., 1T100:7 to 1T101:4 (Davy); 5T91:10-22 (Attwood); 24T116:15 to 24T117:14 (Schneider); 25T41:17 to 25T42:14 (Hoover); 10T78:18 to 10T79:6 (Saylor); 21T50:6-20 (Chando).

121. Because a district could rely upon supplemental funding to at least partially fill a budget gap, the district had less incentive to achieve efficiencies by eliminating unnecessary programs or reallocating resources. Indeed, several district witnesses testified that, when confronted with the adequacy budget under the SFRA, they implemented efficiencies to reduce costs. See, e.g., 25T61:10 to 25T63:3 (Hoover); 21T47:18-23 (Chando). If supplemental funding were available, these districts would not have implemented the reductions or, if reductions had been implemented, would have restored the positions. See, e.g., 21T47:18-23 (Chando). If districts are faced with a typical budget with fiscal constraints, they will most likely implement efficiencies to

balance the budget. If districts are provided supplemental funding, they will most likely use State aid to balance the budget.

122. There can be no practical limitation on the scope of supplemental funding requests. Even if such requests were limited to "necessary" programs, districts would still submit requests for a broad range of items not required for a thorough and efficient education. For example, Olga Hugelmeyer, the director of Elizabeth's preschool program, insisted that a digital camera was a necessary element for a quality preschool program. 20T107:4 to 20T108:7 (Hugelmeyer). Similarly, Dr. Fletcher believed that a press box at a football stadium was necessary for a thorough and efficient education. 22T84:10 to 22T85:3 (Fletcher). District officials may genuinely believe that the funding they seek is necessary for their students. Those officials may, however, deem as necessary any service or program that provides a marginal benefit to their students. Such an understanding is at variance with the constitutional definition of a thorough and efficient education.

CONCLUSION

The SFRA establishes an equitable, transparent and predictable method of funding education in New Jersey. The weighted student formula in the SFRA permits each district in the State to obtain the funding necessary for students to achieve the Core Curriculum Content Standards, which the Supreme Court has recognized as the measure of a thorough and efficient education. The funding each district receives varies depending upon the relevant characteristics and needs of its student population. Hence, the SFRA specifically accommodates the needs of the at-risk and LEP students in the Abbott districts. The ultimate result of the Department's efforts to fashion a adequate formula is remarkably generous funding that allows the Abbott districts to enjoy among the highest per pupil revenues of any school districts in the State and in the nation.

The SFRA thus is an equitable funding formula that provides the Abbott districts with sufficient resources to offer a thorough and efficient education to their students. As such, the funding approach under the SFRA is constitutional as applied to the Abbott districts.

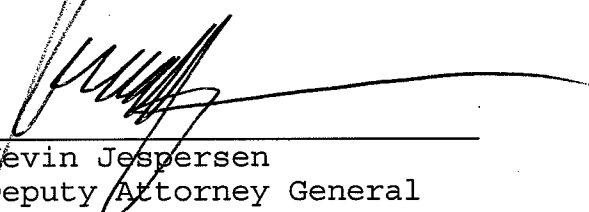
Because the Abbott districts will obtain demonstrably adequate funding under the SFRA, the parity and supplemental funding remedies are no longer necessary. This Court should therefore recommend to the Supreme Court that the SFRA is constitutional as

applied to the Abbott districts and that the parity and supplemental funding remedies should be eliminated as they are no longer necessary.

Respectfully submitted,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By:



Kevin Jespersen
Deputy Attorney General

Dated: March 9, 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