

IN THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

ROSALIE BACON, individually and on behalf
of G.P., Z.P., J.B., J.B., M.B., D.B.,
and Z.H.; JOSEPH BARUFFI, individually
and on behalf of J.B.; ELIZABETH CULLEN,
individually and on behalf of T.C.; EDIE
RILEY, individually and on behalf of S.R.
ARNETTA RIDGEWAY and CHRISTOPHER GLASS,
individually and on behalf of J.G., F.G.,
and D.G.; COMMERCIAL, HAMMONTON, LITTLE
EGG HARBOR, MAURICE RIVER, OCEAN,
QUINTON, UPPER DEERFIELD, WALLINGTON,
BUENA REGIONAL, CLAYTON, EGG HARBOR CITY,
FAIRFIELD, LAKEHURST, LAKEWOOD, LAWRENCE
and WOODBINE school districts,

Plaintiffs/Appellants

v.

NEW JERSEY DEPARTMENT OF EDUCATION,

Defendant/Respondent

DOCKET NO. A-2452-14

CIVIL ACTION

ON APPEAL FROM
SUPERIOR COURT OF NEW
JERSEY, LAW DIVISION,
MERCER COUNTY

SAT BELOW
The Honorable Mary
Jacobson, A.J.S.C.

BRIEF AND APPENDIX (VOL I: 1a - 138a) ON BEHALF OF
PLAINTIFFS/APPELLANTS

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PRELIMINARY STATEMENT

This Court in Bacon v. New Jersey State Dep't of Educ., 398 N.J. Super. 600, 618 (App. Div. 2008) ("Bacon"), remanded to the Respondent Department of Education ("DOE" or "State") to determine whether the newly-enacted School Funding Reform Act ("SFRA") remedies the proven constitutional deficits found by the State Board of Education ("State Board") in Appellant districts ("Bacon districts"). In 2009, the DOE determined that the funding and preschool provided by SFRA affords Appellant students ("Bacon students") a thorough and efficient education.

Regrettably, delivery of the SFRA remedy was short-lived. The State does not -- and cannot -- dispute that it provided the Bacon districts with SFRA funding for two years, then, in 2010-11, cut those funds. Since then, the State has not restored the required funding nor provided preschool programs, effectively abandoning the SFRA remedy. The State's failures have consigned the Bacon students to endure the deprivation of a constitutional education found by the State Board almost a decade ago.

The DOE's 2009 determinations for the provision of SFRA funding and preschool to Bacon districts are clear and explicit. Yet the court below declined to enforce them. In the face of undisputed State non-compliance, the SFRA remedy is enforceable by this Court to vindicate, at long last, the Bacon students' entitlement to a constitutional education.

PROCEDURAL HISTORY

The Bacon students and districts incorporate herein the procedural history of the evidentiary hearing before the Office of Administrative Law ("OAL"), as set forth in Bacon, 398 N.J. Super. at 606-08.¹

On January 4, 2006, the State Board issued a final agency decision, concluding that the evidentiary record before the OAL demonstrated widespread and systemic deficiencies in the curriculum, course offerings, instructional programs, support services and academic outcomes in Bacon districts. Bacon, 398 N.J. Super. at 609-10. The State Board also found that students in the rural Bacon districts had special needs arising from intense poverty, similar to their counterparts in poorer urban districts ("Abbott districts"), and that the essential resources to address those unique needs were not available under the Comprehensive Education Improvement and Financing Act ("CEIFA"), the funding formula then in effect. Id. The State Board concluded that the Bacon students are not "receiving an adequate education" both "in terms of student performance or educational inputs" and that the CEIFA formula, as applied to the Bacon districts did not conform to the constitutional mandate of a

¹The remedial issues on this appeal arise from the prior appeal - - Docket No. A:2460-05T1 -- decided by this Court in Bacon, supra. The Bacon students and districts request that the Court take judicial notice of the record in those proceedings pursuant to N.J.R.E. 201(b)(4).

thorough and efficient education. Id. at 609-10 (describing State Board's determinations of severe educational deprivation). Despite these findings, the State Board declined to adopt the judicial funding remedies previously provided to Abbott districts. Id. at 610.

To determine a remedy to provide a constitutional education to Bacon students, the State Board directed the DOE to promptly design a "needs assessment" and to submit a timetable for conducting the assessments by May 1, 2006. Bacon, 398 N.J. Super. at 611.

On January 17, 2006, the Bacon students and districts filed an appeal with this Court challenging the State Board's refusal to provide the Bacon districts with the Abbott district remedies for a thorough and efficient education. Bacon, 398 N.J. Super. at 602.

In May 2006, the DOE declined to conduct the Bacon district assessments, recommending to await legislative enactment of a proposed new school funding formula as a remedy for the constitutional deprivation in the districts. Bacon 398 N.J. Super. at 613.

On January 13, 2008, the SFRA, a new statewide funding formula, was signed into law, replacing the CEIFA formula. P.L. 2007, c.260; N.J.S.A. 18A:7F-43 to 63.

On March 13, 2008, the DOE filed a motion with this Court to dismiss the appeal as moot "in light of the enactment of SFRA," stating that "the SFRA addresses all of the concerns identified by the State Board." Pa58. One day later, on March 14, 2008, this Court issued the Bacon decision, accepting the State Board's finding of unconstitutional education in the Bacon districts and remanding to DOE to "determine" whether the "remedial measures" in the SFRA "afford" Bacon students the thorough and efficient education "to which they are constitutionally entitled." Bacon, 398 N.J. Super. at 618.

On September 15, 2008, the DOE filed a motion with this Court to extend the time to complete the assessments of the adequacy of the SFRA remedy for the Bacon districts. Pa61. The DOE requested six additional months to "determine whether the remedial measures in the SFRA afford students in those districts a thorough and efficient education." Pa64.

On September 14, 2009, the DOE issued the assessments on remand, determining that the funding and preschool provided by SFRA addresses the Bacon districts' needs and will remedy the violation of the Bacon students' right to a thorough and efficient education. Pa139-276.

On August 29, 2011, the Bacon students and districts filed a motion in aid of litigants' rights with this Court seeking to compel restoration of the State's 2010-11 cut in the SFRA

funding provided in 2008-09 and 2009-10, the first two years of formula implementation. On January 12, 2012, this Court denied the motion as beyond the purview of the Court's Bacon decision. The order also stated that "[t]o the extent movant seeks to enforce, or compel compliance with, any aspect of the September 14, 2009 administrative agency determinations," namely those in the DOE's remedial assessments, "their recourse is by way of summary proceeding pursuant to Rule 4:67-6." Pa26.

The Bacon students and districts sought review by the Supreme Court of this Court's January 12, 2012 denial of their motion in aid of litigants' rights. By order filed on May 9, 2012, the Supreme Court denied their petition for certification.

On July 28, 2014, the Bacon students and districts notified the DOE, through the Attorney General, of the State's non-compliance with the SFRA remedy and demanded immediate corrective action. Pa27-29.

On September 8, 2014, the Bacon students and districts filed a Verified Complaint and Order to Show Cause under R. 4:67-6 in the Superior Court, Law Division, to enforce the SFRA funding and preschool remedy. Pa1. On November 7, 2014, the DOE filed a motion to dismiss the complaint.

In an oral opinion on December 15, 2014, Judge Mary Jacobson, A.J.S.C., granted the DOE's motion to dismiss. Pa30-

46. On the same day, the court below issued an order dismissing the complaint with prejudice. Pa47-48.

On January 26, 2015, and amended on February 2, 2015, the Bacon students and districts filed a Notice of Appeal in this Court. Pa49-51.

STATEMENT OF FACTS

The Bacon students and districts incorporate herein the facts related to the adjudication before the OAL and the State Board's 2006 ruling on the severe deficiencies of a thorough and efficient education in the districts, as set forth by this Court in Bacon, 398 N.J. Super. at 606-12.

As the appeal of the State Board's ruling was pending before this Court, the Legislature enacted the SFRA formula, N.J.S.A. 18A:7F-43 to 63, to replace the CEIFA formula found inadequate to provide a constitutional education in the Bacon districts by the State Board. Bacon, 398 N.J. Super. at 613-15 (describing how, under SFRA, the DOE "will calculate how much it costs to meet the mandate of affording every student in this State a thorough and efficient education"). The SFRA is a "weighted" student formula that provides "base" aid for elementary, middle and high school students; additional aid through "weights" for poor ("at-risk") and Limited English Proficient ("LEP") students; special education aid; and categorical aids for preschool, security and other expenditures. See Abbott v. Burke, 199 N.J. 140, 153-56 (2009) ("Abbott XX") (upholding SFRA's constitutionality and detailing the formula's cost components, aid amounts and funding calculations based on the district's student demographics and enrollments).

In light of SFRA's enactment, this Court remanded to DOE to "determine" whether the funding provided by the formula "afford[s]" Bacon students the thorough and efficient education "to which they are constitutionally entitled." Id. at 618. The salient facts related to the DOE's determinations of SFRA's remedial adequacy are set forth below.

A. The 2009 Remedial Determinations

The DOE's assessments on remand from this Court evaluated particularized funding and resource needs in each Bacon district, given the district's unique student demographics and enrollment.² Based on that evaluation, the DOE determined that the funding for K-12 students and expanded preschool programs will address those needs, thereby providing a remedy for the violation of the Bacon students' right to a thorough and efficient education. Pa139-276.

1. The SFRA K-12 Funding Remedy

In its assessments, the DOE made specific findings of the amounts and categories of kindergarten to grade 12 ("K-12") funding received by each Bacon district in 2008-09 and 2009-10, the first two years of SFRA's implementation. The DOE also made

² In 2013-14, there were 19,278 K-12 students enrolled in the Bacon districts, of which 59.4% were low-income ("at-risk"); 7.9% were limited English proficient ("LEP"); and 17.9% were students with disabilities receiving special education services. See <http://www.state.nj.us/education/data/enr/> (last accessed on April 13, 2015).

findings related to the SFRA K-12 funding to be provided in subsequent years, based on the formula's cost calculations and each district's particular student needs. Pa139-276. Based on these findings, the DOE determined that the SFRA formula delivers adequate funding to provide the K-12 teachers, support staff, and other essential programs and resources to ensure a thorough and efficient education to Bacon students.

The DOE's determination that SFRA K-12 funding provides an adequate remedy for each Bacon district is typified in its assessment of the Hammonton district. Pa186-194. The DOE found that the district "received a 20% (\$2,127,052) increase in State aid...in FY08-09" and "will receive a 5% (\$634,248) increase in FY09-10." Pa192 emphasis added. The DOE further found that Hammonton had an SFRA "adequacy budget" that "includes an additional weight of .504 for each at-risk [poor] child, which amounted to a total of \$3,010,456 in FY08-09 and \$2,997,019 in FY09-10." Pa192. The DOE further found Hammonton's local property tax levy exceeded its local fair share - or the amount the district is expected to raise under SFRA -- and the district was spending below its SFRA adequacy budget. Id.³ Finally, the

³ The "core" of the SFRA formula is the "adequacy budget" that includes base aid for elementary, middle and high school students; the additional aid at-risk and LEP students; and two thirds of special education funding. Abbott XX, 199 N.J. at 153. The SFRA provides State "equalization aid" to support the K-12

DOE found that, in addition to K-12 funding to support the district's budget at the adequacy amount, the SFRA "also provides" Hammonton with additional aid for security, transportation and special education. Pa192.

Based on these findings, the DOE determined that Hammonton "will continue to receive increases in funding pursuant to the SFRA in future years." Pa192 emphasis added. The DOE further determined the increases in SFRA funding will enable Hammonton to provide essential resources, including funding for district-identified priorities such as full-day preschool and programs for LEP students. Pa193. The DOE also made clear that the needs of Hammonton's at-risk and LEP students are specifically addressed by the SFRA through the "additional weights for such students" which, in turn, determines the amount of funding the district will receive through formula implementation in future years. Pa188.

2. SFRA Preschool Determinations

The DOE also determined that, under the SFRA, the Bacon districts will receive funds to expand high quality, full-day preschool to serve all three- and four-year olds in the districts. The DOE's preschool determinations are exemplified by those in the Ocean Township district. Pa239-245. The DOE

educational program based on the DOE's annual calculation of a district's adequacy budget. Id. at 155.

found that Ocean Township only had funding to offer a half-day of preschool, and only to 4-year-olds. Pa241. The DOE also found that Ocean Township lacked the funding to provide high quality, full-day preschool for all three- and four-year olds in the district. Pa241. The DOE further found that, under the SFRA, funding to expand full-day, high quality preschool for all three-and four year olds is provided as an essential resource for a thorough and efficient education in Ocean Township. Pa243. Based on these findings, the DOE determined that SFRA "dramatically increases access to preschool education" in Ocean Township by providing the funding to enable the district to expand preschool programs to serve all eligible three- and four-year-olds within the district over a five-year timeframe, or by 2014-15.⁴ Pa243 emphasis added.

B. Implementation of the SFRA Remedy

The State provided Bacon districts the K-12 funding required by the SFRA formula in 2008-09 and 2009-10, consistent with the DOE's determination that such funding will remedy the constitutional violation of the Bacon students' right to a thorough and efficient education. In 2010-11, however, the State

⁴ SFRA expands preschool by requiring all districts with 40% and greater at-risk student enrollment - which includes the Bacon districts -- to offer high quality preschool programs to all three- and four-years over a five year time-frame beginning 2009-10. N.J.S.A. 18A:7F-54a; Abbott XX, 199 N.J. at 156(describing per pupil cost and funding for preschool expansion under SFRA).

cut SFRA K-12 funding, eliminating the increases provided in the first two years of SFRA's operation. Pa9.

Since 2010-11, the State has neither restored the K-12 funding cut from Bacon district budgets in that year, nor provided the increases required by the SFRA from 2011-12 through 2014-15. The State's funding cut and the absence of formula increases has resulted in a cumulative shortfall in the Bacon districts in 2014-15 of \$18.4 million in SFRA funding for K-12 teachers, curriculum, support staff, programs for at-risk and LEP students, and other essential services. Pa10.

The State also did not provide the Bacon districts with any of the funding required to expand preschool over the course of SFRA's operation since 2008-09. Pa11. As a result, the districts are not offering preschool to all three- and four-year old children consistent with the SFRA remedy. Pa11. There are currently an estimated 1900 three- and four-year olds in the Bacon districts collectively that have not had access to high quality preschool programs as a result of the State's failure to provide the required SFRA preschool funds. Pa10-11.

In 2009, the DOE determined that the Bacon districts had received - and will continue to receive -- adequate funding and necessary preschool programs under the SFRA formula to meet their unique student needs. Since making that determination, the State has not provided SFRA funding and preschool, resulting

in an ongoing failure to remedy the constitutional violation of the Bacon students' right to a thorough and efficient education. Pa10.

C. Enforcement of the SFRA Remedy

Following the State's SFRA funding cut in 2010-11, the Bacon students and districts sought enforcement of the SFRA remedy on motion to this Court. In January 2012, the Court denied the motion as not properly before the Appellate Division, along with the direction that judicial relief, if necessary, should initially be sought in the Superior Court, Law Division through an action to enforce administrative agency determinations under R. 4:67-6. Pa26.

On July 28, 2014, after the State again did not provide SFRA K-12 funding and preschool in the FY15 State Budget, the Bacon students and districts notified the DOE, through the Attorney General, of the failure to provide the SFRA remedy and demanded "prompt action" to provide K-12 funding and preschool to the Bacon districts "commencing in the 2014-15 school year." Pa27-28. The DOE did not respond to the July 2014 notice of non-compliance with the SFRA remedy. Consequently, the Bacon students and districts commenced an enforcement action in the Superior Court, Law Division under R. 4:67-6, as recommended by this Court. Pa26. When the court below dismissed the complaint, the within appeal was promptly filed seeking enforcement of the

SFRA remedy by this Court for the constitutional violation found by the State Board in 2006. Pa49.

ARGUMENT

THE DOE'S REMEDIAL DETERMINATIONS FOR SFRA FUNDING AND PRESCHOOL TO ENSURE A THOROUGH AND EFFICIENT EDUCATION IN THE BACON DISTRICTS ARE JUDICIALLY ENFORCIBLE IN THE FACE OF UNDISPUTED STATE NON-COMPLIANCE

In assessing the Bacon districts on remand from this Court, the DOE explicitly determined that the provision of K-12 funding and preschool programs under the SFRA is adequate to address the needs of the Bacon students for a thorough and efficient education. As explained below, in the face of the State's continuing - and undisputed - failure to deliver the requisite SFRA K-12 funding and preschool, the DOE's determinations are judicially enforceable by this Court to remedy the constitutional deprivation in the Bacon districts, as found by State Board in 2006. Bacon, 398 N.J. Super. at 610.

First, the DOE's 2009 assessments were not a theoretical exercise, but were conducted for the express purpose of determining whether the SFRA formula, enacted in 2008, remedies the deprivation of the Bacon students' right to a thorough and efficient education found by the State Board. N.J. Const. art. VIII, §4, ¶1; Bacon, 398 N.J. Super. at 615 (noting that the DOE did not challenge the State Board's determinations of an unconstitutional education before this Court). In light of SFRA's enactment, this Court remanded to the DOE to assess the formula's "remedial impact" on the Bacon students and districts.

Bacon, 398 N.J. Super. at 618. This Court specifically instructed the DOE on remand to "further determine" whether the newly-enacted SFRA fulfills its "promise" of providing adequate funding to meet the needs of the Bacon students, thus remediating the underlying constitutional violation in the districts:

Indeed, it would appear that a needs assessment of the Bacon districts is necessary to determine whether those needs identified by the Department will be met by the [SFRA's] new funding formula. Consequently, we direct the Commissioner to comply with the Board's final decision and proceed forthwith to design and perform a needs assessment of each of the Bacon districts, to be completed within six months, and based thereon, to further determine whether, in light of the proved educational deficits already found by the Board, the [SFRA's] remedial measures afford students in the Bacon districts the thorough and efficient education to which they are constitutionally entitled.

Id. at 618(emphasis added). Thus, as this Court made abundantly clear, the DOE's remand assessments were expressly undertaken to "further determine" whether the SFRA provides the resources to "afford" students in Bacon districts "the thorough and efficient education to which they are constitutionally entitled." Id. at 618-19.⁵

⁵ In asking for an extension of deadline to complete the assessments, the DOE left no doubt that it fully understood that the purpose of the remand from this Court was to "determine whether the remedial measures" in the SFRA "afford students in the Bacon districts a thorough and efficient education pursuant to this court's opinion dated March 14, 2008." Pa64.

Second, as the DOE was conducting the assessments on remand, the Supreme Court upheld the constitutionality of the SFRA, determining that the formula provided adequate funding for all students, including those in Bacon districts, to achieve the State's Core Curriculum Content Standards ("CCCS"), the substantive measure of a thorough and efficient education. Abbott v. Burke, 199 N.J. 140, 146 (2009)("Abbott XX"); see also Abbott v. Burke, 149 N.J. 145, 165 (1997)("Abbott IV")(finding the CCCS a "facially adequate" definition of a constitutional education). The Court placed considerable emphasis on SFRA's funding to address the needs of at-risk students regardless of the district in which they are enrolled. Id. at 172(finding SFRA "a fair and equitable means to fund the costs" of a constitutional education and the product of "considerable efforts" by the Legislature and Executive "to confront the difficult question of how to address the needs of at-risk pupils, no matter where those children attend school"). As the Court concluded, "the SFRA is designed to provide" all school districts -- including the Bacon districts -- "with adequate resources to provide the necessary educational programs consistent with state standards." Id. at 147; see also Bacon, 398 N.J. Super. at 618(underscoring the SFRA's "systemic remedy" for particularized student and district needs).

Third, as discussed supra at 8-12, the DOE explicitly concluded, based on its remand assessments, that the SFRA would have the "remedial impact" on the provision of adequate funding in the Bacon districts as intended by the Legislature, and anticipated by this Court and the Supreme Court. Bacon, 398 N.J. Super. at 618; Abbott XX, 199 N.J. at 168-69(choosing to give the State the "benefit of the doubt" "as it implements a new innovative approach to providing sufficient resources to at-risk pupils" wherever they attend school).⁶ In plain and unequivocal language, the DOE determined that the SFRA provides adequate funding to remedy the deprivation of essential K-12 staff, curriculum and programs -- and expands high quality preschool programs - to ensure the Bacon students a thorough and efficient education. After analyzing the provision of funding based on the unique student needs of each district, the DOE determined that the SFRA "provide[s] the tools" for Bacon districts to meet the "identified needs" of their students and "will permit" the districts to address educational deficiencies and "improve educational opportunities for its students." Pa223 (finding SFRA addresses Lawrence district's need for adequate

⁶ By the time the DOE conducted the remand assessments, the SFRA formula was in its second year of operation. Consequently, the DOE evaluated SFRA's "remedial impact" not just on an anticipatory basis, Bacon, 398 N.J. at 617, but also by examining the funding received by the Bacon districts in the first two years of the formula's implementation.

funding)(emphasis added); see e.g. Pa157 (finding that the SFRA “will provide the necessary resources” for the Clayton district “to continue to improve the educational opportunities available to its students” (emphasis added); and Pa230. (finding SFRA will provide dramatically increased access to preschool education in Little Egg Harbor School District).

Fourth, the State does not - and cannot -- dispute its continuing failure since 2010-11 to provide the SFRA funding and preschool programs deemed adequate to remedy the constitutional violation in the Bacon districts. As discussed supra at 11-12, the State, through a combination of funding cuts in 2010-11 and the absence of aid increases from 2011-12 to 2014-15 - along with no additional preschool funds over the course of SFRA’s operation -- has reneged on SFRA’s “promise” of “remedial measures” to “afford students in the Bacon districts a thorough and efficient education” since SFRA’s enactment in 2008. Bacon, 398 N.J. Super. at 617-18. It is also uncontroverted that this failure has resulted in an aggregate \$18.4 million gap in SFRA funding in Bacon district budgets in the 2014-15 school year.⁷ Further, the failure to provide SFRA preschool has left an

⁷ The Executive’s proposed FY16 State Budget, if adopted by the Legislature, again fails to provide the Bacon districts with K-12 and preschool funding required by the SFRA remedy. See <http://www.state.nj.us/treasury/omb/publications/16bib/BIB.pdf> (last accessed on April 13, 2015).

estimated 1900 three- and four-year old at-risk children in the Bacon districts deprived of the opportunity for kindergarten and school readiness through enrollment in high quality preschool programs. See Abbott v. Burke, 153 N.J. 480, 506-07 (1998) ("Abbott V")(finding that high quality preschool for three- and four-year olds "will have a significant and substantial positive impact on academic achievement in both early and later school years").

Fifth, in the face of undisputed non-compliance with the DOE's explicit determinations for the provision of SFRA K-12 funding and preschool, those determinations are, without question, judicially enforceable to remedy the violation of the Bacon students' right to a thorough and efficient education. It is well-established that our courts serve as "the designated last resort guarantor of the Constitution's command" for a thorough and efficient education, Robinson v. Cahill, 69 N.J. 133, 154 (1975)("Robinson V"), and have the authority to effectuate remediation of such constitutional violations. Id. at 147(holding that the judicial branch must provide an appropriate remedy where the fundamental right to education is at stake); Abbott v. Burke, 149 N.J. 145, 198 (1997)("Abbott IV")(directing relief to avoid further delay in remediating the "profound deprivation" of a constitutional education in Abbott districts); Abbott V, 153 N.J. at 489 (1998)(directing implementation of

"remedial measures" to ensure a thorough and efficient education in Abbott districts); see also In Re Adoption of N.J.A.C. 5:96, 2015 WL 1015065 (N.J. 2015)(ordering judicial relief to vindicate constitutional right to affordable housing). As this Court recognized in remanding to the DOE for the determination of SFRA's "remedial impact" on the Bacon districts, the judicial branch role to ensure timely remediation of the violation of the Bacon students' fundamental right to a thorough and efficient education is the "very least our constitutional duty demands." Bacon, 398 N.J. Super. at 618. Similarly, the Supreme Court, in allowing the SFRA to be implemented statewide, reaffirmed the Court's commitment to "our role in enforcing the constitutional rights" of all school children "should the formula prove ineffective or the required funding not be forthcoming." Abbott XX, 199 N.J. at 169(emphasis added).

Further, the DOE's remedial determinations for SFRA funding in the Bacon districts mirror those judicially enforced by the Supreme Court when confronted with uncontroverted State non-compliance in the Abbott districts. In Abbott XX, the Court upheld the constitutionality of the SFRA premised on the condition that the State "will continue to provide" SFRA funding "to keep SFRA operating at its optimal level." Id. at 146(emphasis added). The Court also made clear that the constitutionality of the SFRA formula "is a continuing

obligation" and vowed to "require remediation of any deficiencies of a constitutional dimension, if such problems do emerge". Id. In Abbott v. Burke, 206 N.J. 332 (2012) ("Abbott XXI"), the Court enforced this clear directive when the State "failed to act consistent with its representations concerning the manner it claimed it would fulfill" the remedial mandates in the Abbott districts. Id. at 359. Similarly, the Bacon students before this Court seek enforcement to address the State's uncontroverted failure to "act consistent with" its determinations to provide SFRA funding to remediate a demonstrated "constitutional deprivation" in the Bacon districts. Bacon, 398 N.J. Super. at 615. Moreover, the State's repudiation of its "ongoing responsibilities and obligations" to the Bacon students and districts arises, in part, from the same "conscious and calculated decision" to cut SFRA funding in 2010-11 that triggered the Supreme Court's enforcement relief for the Abbott students and districts. Abbott XXI, 206 N.J. at 359-60.

Sixth, to effectuate a remedy for the constitutional deprivation in this litigation, the Bacon students and districts seek a judicial directive that the DOE calculate and provide the requisite SFRA K-12 funding and preschool in the current and subsequent school years. Pa13. Such relief will directly address the State's undisputed and continuing non-compliance with the SFRA remedy for the Bacon districts. It is also wholly

consistent with the approach taken by our courts when confronted with similar instances of State failure to properly remediate a violation of the fundamental right of public school children to a thorough and efficient education. Abbott IV, 149 N.J. at 153; Abbott V, 153 N.J. at 527; Abbott v. Burke, 163 N.J. 95, 104-05 (2000) ("Abbott VI") (ordering course corrections to address State failure to implement preschool in conformance with prior remedial determinations); Abbott v. Burke, 170 N.J. 537, 541 (2007) ("Abbott VIII") (further enforcement of preschool remedy for Abbott districts). Indeed, the relief now sought by the Bacon students and districts - the calculation and provision of SFRA funding -- is precisely that entered by the Supreme Court in Abbott XXI to address the State's "conscious and calculated" failure to implement the SFRA formula to remediate the constitutional violation in the Abbott districts. Id. at 332, 359-60.⁸

Finally, the severe educational deprivations in the Bacon districts have yet to be remedied nearly a decade after the

⁸ The Supreme Court limited its remedial directive for State restoration of the 2010-11 SFRA funding cut to the Abbott district students, the litigants in the Abbott litigation. Abbott XX, 206 N.J. at 370. However, the Court noted the "importance of a predictable stream of education funding for any school district" and recognized that "substandard educational conditions" of "constitutional dimension" may exist in districts other than Abbott districts. Id. at 371. As this Court found in 2008, Bacon, 398 N.J. Super. at 615, such conditions do exist in the Bacon districts, which now necessitates further judicial relief to ensure remediation.

State Board found Appellants' right to a thorough and efficient education had been violated. The State's cut to SFRA funding in 2009-10, and the failure to provide such funding since then, has effectively deprived the Bacon districts of the SFRA remedy for the entire period of the formula's operation. As this Court made clear when remanding to determine SFRA's remedial adequacy in 2008, constitutional violations of a thorough and efficient education "must be remedied in a timely fashion." Bacon, 398 N.J. Super at 618. Put bluntly, since this Court's decision eight years ago, far too many Bacon students have been deprived of the demonstrable educational benefits from adequate SFRA funding and preschool programs. Only prompt judicial enforcement of the SFRA remedy can prevent yet "another generation of children" from "pay[ing] the price" of further delay. Abbott VI, 163 N.J. at 102. It is, therefore, essential that this Court - as it did in 2008 - enter appropriate relief to ensure the Bacon students' fundamental right to a thorough and efficient education "remain prominent, paramount and fully protected." Abbott V, 153 N.J. at 527-58.

CONCLUSION

For the reasons stated above, the Bacon students and districts respectfully request that this Court enter an order directing the DOE to immediately 1) calculate and provide to the Bacon districts K-12 funding under the SFRA formula for 2014-15 and subsequent school years; and 2) provide funding as necessary to implement high quality preschool programs for all three- and four-year olds in the Bacon districts commencing in the 2015-16 school year, as required by the SFRA formula.

Respectfully submitted,

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