

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 42,170

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

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BRIEF IN SUPPORT OF THE STATE'S APPLICATION  
FOR APPROVAL OF THE GOVERNOR'S FY2007 PROPOSED BUDGET  
FOR SCHOOL AID TO ABBOTT DISTRICTS

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PRELIMINARY STATEMENT

Through this motion, the State is seeking relief from this Court to assist the new Governor in bringing fiscal integrity to the State budget and to provide the State with the time necessary to ensure the level of fiscal and programmatic accountability in Abbott school districts that both this Court and the public demands. Specifically, we are asking this Court to preclude requests from Abbott districts for additional Education Opportunity Aid in FY2007.

It is beyond dispute that the State faces a serious fiscal crisis and that for years recurring revenues have not matched the appropriations in the State Budget. The Governor began the difficult and painful steps to remedy that situation in the FY2007 budget by greatly reducing the reliance on non-recurring revenues and by making hard decisions as to where to reduce spending and constrain growth.

One of those difficult choices was to hold relatively flat State aid to school districts, including Abbott districts. The Governor did so mindful of the State's obligations under this Court's Abbott decisions, which include not only adequate funding to the Abbott districts but also accountability that will ensure

that money is well spent to support improved educational achievement.

While Abbott districts have become some of the highest spending school districts in the State -- a far different picture than when Abbott II was decided -- the fiscal accountability measures that are critical to ensuring the money is supporting educational improvement must be significantly enhanced. The State recognizes its responsibility to do so and the Governor has made a personal commitment to meet this goal. However, that simply cannot be accomplished in the next few months.

In light of the dire fiscal circumstances of the State and the high per-pupil spending already in existence in the Abbott districts, the Governor could not permit another year of open-ended increases for Abbott districts. Each year, spending requests for supplemental funding have gone up exponentially in Abbott districts. However, we have not seen a corresponding increase, or even a significant increase, in educational achievement.

Other school districts, almost all of which spend less per pupil than the Abbott districts and some of which have similar student populations, are receiving no increases in aid. In fact, it is this very problem that the Governor is committed to addressing through the adoption of a new funding formula -- a

formula that is child-focused rather than district focused. That too, however, will take time.

The State, therefore, is seeking this Court's approval of the funding proposal for Abbott districts as set forth in the Governor's FY2007 Budget Message and the corresponding regulations adopted by the Department of Education.



## STATEMENT OF FACTS

### I. Legal Background

In Robinson v. Cahill, 62 N.J. 473 (1973) ("Robinson I"), this Court held that the statutes establishing the method of financing public elementary and secondary schools in New Jersey violated the Thorough and Efficient Education clause of the New Jersey Constitution. The Court did so based on the "existing disparities in expenditures per pupil" and its acceptance of the proposition that "the quality of educational opportunity does depend in substantial measure upon the number of dollars invested." Id. at 481. Further, the Court viewed disparities in expenditures as the only viable criteria available to measure compliance with the constitutional mandate. "Indeed the State has never spelled out the content of the educational opportunity the Constitution requires." Id. at 516.

Subsequently, the State enacted a new funding formula, the Public School Education Act of 1975. That Act sought "to define the constitutional promise, identify the components of which it consists, establish a procedural mechanism for its implementation and afford the financial means necessary for its fulfillment." Robinson v. Cahill, 69 N.J. 449, 456 (1976) ("Robinson V"). This funding formula was facially upheld in

Robinson V, assuming it was fully funded. Id. at 467. The Court, however, noted "parenthetically," that "whether it may or may not pass constitutional muster as applied in the future to any particular school district at any particular time, must quite obviously await the event." Id. at 455.

Fourteen years later, this Court held that the Public School Education Act of 1975 was unconstitutional as applied to poorer urban districts. Abbott v. Burke, 119 N.J. 287 (1990) ("Abbott II"). In Abbott II, the plaintiffs proved that the funding and spending disparities between more affluent suburban districts and poorer urban districts had grown even wider than those existing at the time Robinson I was decided. Id. at 334. Comparing a group of richer and poorer districts, this Court found that the richer districts spent 40% more per pupil than poorer districts in 1984-85. Ibid.

The Court determined that the significant disparity in spending between poorer urban districts and more affluent suburban districts was relevant to its conclusion that the funding formula was unconstitutional. Accordingly, the Court ordered what is now commonly referred to as the "parity remedy" -- that any system for financing public schools must assure that "poorer urban districts have a budget per pupil that is approximately equal to the average

of the richer suburban districts." Id. at 388.

This Court later found that two subsequent legislative enactments were unconstitutional because they did not achieve the parity remedy it had ordered in Abbott II and failed to address the special needs of children in the Abbott districts. Abbott v. Burke, 149 N.J. 145 (1997) ("Abbott IV") (Comprehensive Educational Improvement and Financing Act or "CEIFA"); Abbott v. Burke, 136 N.J. 444 (1994) ("Abbott III") (Quality Education Act of 1990 or "QEA"). Thus, in Abbott IV, the Court ordered that parity be implemented in the next fiscal year. Moreover, the Court required that the Commissioner "use his statutory and regulatory authority to ensure that the increased funding that we have ordered today be put to optimal educational use." Id. at 194. Finally, the Court remanded the matter to determine the additional needs of the students in Abbott districts, the specific programs required to meet those needs and the costs associated with each of the programs as well as the facilities deficiencies and cost of correcting them. Id. at 200.

In Abbott V, the Court adopted most of the elements of the Commissioner's proposal for the programs, positions and services necessary to meet the needs of the students in Abbott

districts and how to address the facilities issues.<sup>1</sup> Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V"). With regard to required programs, positions and services, the Commissioner concluded that, at parity, Abbott districts had sufficient funds to support them. The Commissioner, however, made "the clear commitment that if there is a need for additional funds, the needed funds will be provided or secured." Id. at 518. Accordingly, the Court concluded that

[i]f a school demonstrates the need for programs beyond those recommended by the Commissioner ... then the Commissioner shall approve such requests and, when necessary, shall seek appropriations to ensure the funding and resources necessary for their implementation.

[Ibid.]

While the former Commissioner envisioned a supplemental funding system that would allow districts to seek funding for a specific program or position, the protocols to effectuate this vision were never established. Instead, the Department created a system whereby districts included reverse priority lists in their

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<sup>1</sup> The one area where the Court expanded upon the Commissioner's recommendation was preschool. The Commissioner had recommended a half-day-program for four-year-old children, but the

budgets, delineating those programs that they would not be able to fund in the absence of supplemental funding. Rather than the revenue having a direct link to a specific program, position or service within the district budget, supplemental funding became a "hole-filler" or an anticipated revenue that the Abbott districts would include to balance their budgets. Certification of Lucille E. Davy ("Davy Certification"), ¶17.

## II. Abbott Expenditures

As a result of the Court's decisions in Abbott IV and Abbott V, the spending disparity between the poorer urban districts ("Abbott districts") and the more affluent suburban districts ("I&J districts") has been eliminated. Since FY1998, the Abbott districts have received parity aid, as required by Abbott IV, that ensures that Abbott districts can spend at the average per pupil spending of I&J districts. Moreover, State aid, above and beyond parity, which was designed to support programs to meet the special needs of students, as contemplated in Abbott V, has resulted in Abbott districts spending more per pupil than most of the districts in the State.<sup>2</sup> In fact, the three highest spending districts in the State are Abbott districts;

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Court ordered a half-day-program for three- and four-year-old children. Id. at 508.

<sup>2</sup> These two aid categories -- parity and supplemental funding -- are now combined as Education Opportunity Aid.

seven of the top ten highest spending districts are Abbott districts.<sup>3</sup> Davy Certification, ¶19, Exhibit S.

The increases in Abbott districts spending since FY1998 is extraordinary. In FY1998, the Abbott average comparative cost per pupil was \$8,438, the State average comparative cost per pupil was \$7,979, and the I&J average comparative cost per pupil was \$8,205. Id. at ¶19; Exhibit R. By FY2006, the Abbott average had grown 69% -- to \$14,287. Such an amount far exceeds the FY2006 State average comparative cost per pupil of \$11,056 and the I&J district average comparative cost per pupil of \$11,320. Ibid.

Abbott districts have spent at these high levels without any requirement to raise their local levy beyond the amount raised in FY1998. That has resulted in significant increases in per pupil spending in Abbott districts without any corresponding increase in local property taxes. As a result, the average equalized school tax rate of the Abbott districts is 0.639, a rate 36% below the State average of 0.998. Id. at ¶11. Translated into a measure of tax levy per pupil, Abbott districts have remained virtually flat, ranging from \$1,971 to \$2,037 per pupil. In contrast, the school tax levy per pupil in other District

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<sup>3</sup> Asbury Park, Hoboken and Newark rank as the three highest spending K-12 school districts in the State. Pemberton Township, Keansburg, East Orange and City of Orange comprise the

Factor Group A&B districts was \$4,792 in FY1998 and had grown to \$7,126 in FY2006. Over the same period, the state average per pupil levy climbed from \$5,330 in FY1998 to \$7,688 in FY2006.<sup>4</sup> Id. at Exhibit K. And, not only have school tax rates fallen well below the State average, total equalized tax rates (comprised of school, county and municipal tax rates) are also below the State average total equalized tax rate.

Despite the fiscal difficulties the State has been facing in the last few years, total state aid to the Abbott districts has grown more than 20% from \$3.45 billion in FY 2003 to \$4.18 billion in FY2006. Id. at ¶13, Exhibit N. With the anticipated appropriations as proposed by the Governor for FY2007 of \$4.25 billion, total aid to Abbott districts will have grown over a billion dollars since FY2003 alone. Ibid. This significant growth in State aid to Abbott districts is attributable to the large increases in Preschool Expansion Aid (increasing from \$113 million to \$286 million), parity aid (increasing from \$532 million to \$1.006 billion) and discretionary

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balance of the Abbott districts in the top ten. Davy Certification, Exhibit S.

<sup>4</sup> The school tax levy per pupil in DFG A&B districts (exclusive of Abbott districts) was \$4,792 in FY1998 and had grown to \$7,126 in FY2006. Over the same period, per pupil levies in DFG CD to GH districts had increased from \$5,903 to \$8,622, and I&J districts saw an increase from \$7,953 to \$11,178. Davy

or supplemental funding (\$318 million to \$639 million) over this time period. Id. at ¶¶14-16.

### III. Educational Performance in the Abbott Districts

Although increases in state aid and per pupil spending in the Abbott districts have been dramatic, the goal of providing a thorough and efficient education eludes us in many of the Abbott districts, and work to ensure achievement of that goal is ongoing.

In the early years of CEIFA, after the development of the Core Curriculum Content Standards ("CCCS"), non-Abbott districts were aligning their curricula to the standards. Most Abbott districts, in contrast, were focused on implementing the specific mandates of Abbott V. In the few Abbott districts that did give close attention to curriculum alignment in the context of reviewing core areas of non-achievement on the State assessment, there have been noticeable gains in student outcomes as compared to the balance of the Abbott districts. The Department has targeted this basic curriculum work to be completed in each Abbott district, if it has not been completed already. Such curriculum development and alignment is district-specific work that cannot be corrected by a one-size-fits-all approach. Once the curricular elements of standards-based instruction are in place, however, the

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Certification, Exhibit K. The state average per pupil tax levy climbed from \$5,330 in FY1998 to \$7,688 in FY2006. Ibid.



district's work is still not done. From this foundation, the district must systematically and continuously review student work, school outcomes and what is taught by its teachers to make adjustments to the teaching/learning process that will consistently push student achievement levels upward. Davy Certification, ¶24.

Additionally, the Department has devoted significant effort on developing intensive early literacy programs in the Abbott districts. Academic success is inextricably related to being a strong reader, and specific attention must be paid to promoting and enhancing literacy in the early grades so that students are, at least, reading at grade level by the time they reach the third grade. The absence of dynamic literacy skills by this level is very likely to be an indicator of weak performance in comprehensive subject areas in later grades. To guide the development and implementation of effective literacy programs in the districts, the Department first adopted regulations for the 2002-2003 school year which require this program for all preschool to grade three students.<sup>5</sup> See also N.J.A.C. 6A:10A-3.1(e).

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<sup>5</sup> The Department has also mandated specific components of an effective early literacy program. Highlights include classes with no more than 21 students, emphasis on small group instruction in reading, writing and computers, a classroom library in all kindergarten to grade three classrooms, a comprehensive early literacy screening and assessment program, and professional

A likely outgrowth of this focus on standards-based education is the marked increase in assessment scores in the Abbott districts on the fourth grade assessment since 1999.<sup>6</sup> In 1999, the State average score of non-Abbott students on the ESPA for language arts was 24.5 points higher than the Abbott average. By 2005, that difference was reduced to 14.4 points. Similarly, in 1999, the State average score of non-Abbott students on the ESPA for mathematics was 29.8 points higher than the Abbott average. By 2005, that difference was reduced to 18.7 points. Davy Certification, Exhibit V.

While gains in achievement in Abbott districts are evident, and the achievement gap is decreasing, collectively Abbott districts are still lagging behind the State average passing rates on these assessments. None of the Abbott districts is passing the language arts portion of the NJASK4 at the State average passing rate<sup>7</sup> of 81.6%. Ibid. Only three Abbott districts, Garfield, Vineland and Union City, are exceeding the State average passing rate of 80.2% on the math portion of NJASK4.

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development in the elements of intensive early literacy. N.J.A.C. 6A:10A-3.1(e)1-13.

<sup>6</sup> In 1999, the fourth grade assessment was called the Elementary School Proficiency Assessment (ESPA). By 2005, the nomenclature of the assessment had changed to the NJASK4.

<sup>7</sup> Passing rate is calculated by adding the percentage of students achieving and "advanced proficient" (AP) score with the percentage of students achieving a "proficient" (P) score.

Ibid. At the eighth grade level, only Hoboken exceeds the State average passing rate on the assessment (GEPA) of language arts literacy -- notably with a 84.7% passing rate as compared to the State average of 72.3%. Ibid. On the math portion, Hoboken again betters the State average passing rate of 62.4%, as does West New York. Ibid. Similarly disappointing results are found at the high school level (HSPA), with only one district, Phillipsburg, passing the language arts assessment slightly ahead of the State average of 83.2% and no Abbott district achieving the State passing rate of 75.5% on the math portion. Ibid. Thus, while select Abbott districts are showing some success, collectively, the Abbott districts need to make substantial improvement in meeting the CCCS.

Finally, success -- or lack thereof -- on the State assessments appears to have no correlation to the amount of money the district spends on a per pupil basis. By way of example, two of the highest spending Abbott districts -- Asbury Park at \$18,893 per pupil and Newark at \$16,351 per pupil -- are still performing well below State average passing rates and even below the Abbott average passing rates on the language arts portion of NJASK4. See id. at Exhibits R and V. Asbury Park has similar poor results on the language arts portion of the GEPA, while Newark is performing

slightly above the Abbott average passing yet still significantly below the State average. Id. at Exhibit V. In contrast, some of the lower spending Abbott districts are showing gains on the State assessments. Garfield, the lowest spending Abbott district at \$11,615 per pupil, is the highest Abbott performer on the language arts portion of NJASK4 and also achieves modest success on the GEPA. Id. at Exhibits R and V. Similarly, at approximately \$13,400 per pupil, Long Branch and West New York are spending below the Abbott average of \$14,287 but are among the higher performing Abbott districts on both the NJASK4 and GEPA language arts measure. Ibid.

#### IV. FY2007 Budget Message

On March 21, 2006, Governor Corzine presented his FY2007 Budget Message to the State Legislature. In it he recounted the recent history of revenue shortfalls in the State budget and the State's penchant for too long of addressing those shortfalls with non-recurring revenues, a practice that has exacerbated the growth of the structural deficit. The Governor made clear in his Message that he is committed to fixing "the mismatch" between revenues and expenditures. He proposed doing so through a combination of spending cuts, cost containment and new revenues while mitigating, to the extent possible, the impact of the cuts on the most

vulnerable people in our State.

With billions of mandated, legislated and inflated expenditures to address, the Governor has proposed a very austere budget that calls for shared sacrifice. The Budget Message detailed substantial spending reductions and growth constraints in Direct State Services, State Grants-in-Aid and State Aid. Certification of Bradley I. Abelow ("Abelow Certification"), ¶¶11-18, 25.

In the area of Direct State Services, the Governor has proposed to reduce the budget for Executive Branch Departments by approximately \$197 million, including the elimination of 1,000 staff positions, a recommendation that flowed from the Governor's meetings with the heads of each department, at which they reviewed their budgets line-by-line and focused on ways to reduce their spending. Id. at ¶12. In the area of State Grants-In-Aid, the Governor proposed the elimination of dozens of Grants-In-Aid and substantial reductions to numerous others. Id. at ¶14. The Governor also scaled back his goal of restoring Homestead Rebates to 2004 levels, which had been a core issue in his campaign and first-year agenda; instead, he has proposed a more modest increase in rebates. Id. at ¶15. In the area of State Aid, the Governor proposes that formula aid to the State's 566 municipalities be

maintained at FY2006 levels of \$1.7 billion.<sup>8</sup> Id. at ¶17.

The Governor's proposed budget requires \$1.8 billion in revenue enhancements, a burden that will be shared by all the people of this State. These enhancements include a one-percentage-point increase in the State sales tax rate, estimated to raise \$1.4 billion in new revenue, and a variety of tax increases and revenue initiatives estimated to raise another \$400 million. Id. at ¶¶29, 30.

Recognizing the importance of education, however, the Governor's proposed budget does not include any reduction in State aid to schools. To the contrary, in his Budget Message the Governor proposed an increase of over \$1 billion for school aid.<sup>9</sup> The majority of that increase however is for payments into the teacher's pension system for other mandated costs on behalf of

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<sup>8</sup> The Governor's proposed budget, however, recognizes the State's moral duty to help the most vulnerable members of our society by proposing targeted spending initiatives of \$50 million directed to the people and areas of our State most in need. These initiatives include new spending for special education, after-school activities, affordable housing, health insurance coverage for the uninsured, tuition assistance, food purchases for the poor and homeless, and programs combating violence in our homes and on our streets. Abelow Certification, ¶27.

<sup>9</sup> To keep the total increase to a minimum, the Governor has recommended reductions in various educational initiatives totaling \$12.4 million when compared to FY 2006 adjusted appropriations. Additionally, the Governor has recommended the elimination of some of the appropriations targeted to specific

teachers, and to pay for increased debt service on bonds issued for school construction. Id. at ¶¶19, 20.

The other significant State aid increases to schools, as in past years, are targeted to the Abbott districts. Unlike other school districts who receive aid pursuant to the aid categories in CEIFA, Abbott districts, as discussed supra, have three additional types of aid -- preschool expansion aid, parity aid and supplemental aid.<sup>10</sup> In his FY2007 budget, the Governor recommended \$243 million in preschool expansion aid, an increase of \$39 million over FY2006 appropriations. Abelow Certification, Exhibit A. In addition, the recommended budget includes more than \$1 billion in parity aid so that every Abbott district is at parity and more than \$500 million in supplemental aid, i.e. aid above parity. Id. at Exhibit A; Davy Certification, Exhibits O and P.

In the face of severe budget shortfalls and in an attempt to be fair and spread the pain, however, the Governor's budget proposal seeks some participation by the Abbott districts in solving the State's fiscal problem of the recurring structural budget crisis. Thus, he has recommended limiting the amount of

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school districts in the past, i.e., Wallington, Ewing, and Collingswood, to reduce education spending. Id. at ¶ 25.

above-parity aid; as a result, Abbott districts are unable to request additional Education Opportunity Aid in FY2007 beyond that recommended in the Governor's Budget. In addition, the Governor has recommended, as part of his FY2007 budget, that the Abbott districts that can afford to do so be required to raise their local tax levy. Davy Certification, ¶13. The Governor's proposed budget does not reduce the amount of Education Opportunity Aid by this increase in local contribution, but rather retains these funds for the purpose of addressing educational priorities for the Abbott districts as established by the Commissioner. Ibid.

Finally, the Governor has made clear his commitment to take on the difficult task of addressing the underlying inequities in the State system of funding education that have resulted from continuing State budget crises and to analyze the efficacy of the State's extraordinary investments in the Abbott districts. See Budget in Brief at 26.<sup>11</sup>

#### V. Steps to Improve Fiscal Accountability

As work on a new funding system is ongoing, the Department will institute various fiscal accountability measures

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<sup>10</sup> As previously noted, parity aid and supplemental aid are now combined in one line item in the State Budget as Education Opportunity Aid.

<sup>11</sup> The full text of the Governor's Budget in Brief may be accessed via the internet at <<<http://www.state.nj.us/treasury/>



that will ensure effective and efficient use of funds in the Abbott districts.

First, the Department will secure outside auditors through a formal procurement process to assist in the work of reviewing the Abbott districts' FY2007 budgets. Davy Certification, ¶22. The work of these auditors, in conjunction with Department staff, will help in finding efficiencies, available expenditure reductions and reallocations in this difficult fiscal year so that Abbott districts can deliver essential instruction and mandated programs within the scope of the appropriations proposed by the Governor. Id. at ¶22, Exhibit U.

Next, the Department will direct the implementation of comprehensive fiscal audits in the Abbott districts. This work will determine how each district is spending its money and the programs upon which the expenditures are based. These comprehensive audits will initially focus on Newark, Jersey City, Paterson and Camden. Id. at ¶22. Combined, these districts serve 40% of all Abbott students. See <<<http://www.state.nj.us/njded/data/enr/enr05/> (last visited April 6, 2006)>>. The comprehensive fiscal audits of these

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[omb/publications/07bib/pdf/bib.pdf](http://omb/publications/07bib/pdf/bib.pdf) (last visited March 31, 2006)>>.

districts, given their size, will likely yield recommendations for reductions, cost savings and reallocations of significant amounts.

Comprehensive reviews will continue on the program side of the Abbott districts' operations. Program and curriculum reviews will be conducted in the districts to ensure that revenues are supporting an education program that is properly aligned to the Core Curriculum Content Standards and all student supports work to improve student achievement. Id. at ¶24. The Department anticipates the use of outside consultants, as necessary to assist in this review. Ibid.

In sum, in preparation for and during FY2007, the Department intends to move aggressively to enhance both fiscal and program accountability in these districts.

## ARGUMENT

THIS COURT SHOULD GRANT THE RELIEF SOUGHT BY THE STATE BECAUSE OF THE SEVERE FISCAL CONDITIONS OF THE STATE AND THE HIGH LEVELS OF SPENDING ALREADY EXISTING IN THE ABBOTT DISTRICTS WITHOUT CORRESPONDING PERFORMANCE INCREASES AS WELL AS THE NEED FOR SUFFICIENT TIME TO ENHANCE FISCAL ACCOUNTABILITY AND ESTABLISH A MORE EQUITABLE SYSTEM OF STATE AID DISTRIBUTION.

By its application to this Court, the State is seeking the Court's imprimatur for the Governor's budget proposal that holds relatively flat State aid increases to Abbott districts in FY2007 while the new administration embarks on the difficult analytical process of determining what is happening financially and programmatically in these districts and how scarce resources can be redirected to provide a thorough and efficient education for our children. As the Governor recognizes, accountability is the touchstone, but accountability can be achieved only by application of discernable and recognizable outcome measures.

A. The Severe Fiscal Condition of the State for FY2007 Requires Some Limits Be Placed upon Abbott District Aid

Over the past few months, the new Governor has focused significant energy on putting the State back on sound financial footing. While in the past, one shot revenues and other financial devices were used to close the annually recurring budget gap, this

Governor has committed to managing the State's financial affairs in a different, and more financially sound, manner. Facing a gap in the billions of dollars between anticipated expenditures and revenues for FY2007, the Governor has recommended a budget that significantly reduces reliance on non-recurring revenues. He has done so by using a combination of substantial reductions and cost containment in direct state services, State grants-in-aid and state aid programs, and by recommending revenue raising measures, including an increase in the sales tax. See Abelow Certification, ¶¶9-11, 29, 30.

More specifically, the Governor's budget recommends decreased spending for Executive Branch Departments totaling about \$197 million. This includes a reduction of over 1,000 staff positions; the elimination of dozens of Grants-In-Aid and the reduction of numerous others; the scaling back of the goal of restoring Homestead Rebates to 2004 levels; and maintaining the formula aid to the State's 566 municipalities at FY 2006 levels. Id. at ¶¶12, 14, 15, 17. The Governor's budget also recommends a one-percentage-point increase in the State sales tax rate, which is estimated to raise \$1.4 billion in new revenue, and a variety of tax increases and revenue initiatives estimated to raise another \$400 million. Id. at ¶¶29, 30. Given the reaction of the

rating agencies to the Governor's Budget Message, his efforts to restore fiscal integrity to the State budget have been largely successful. See id. at ¶32.

The Governor's recommendation that FY2007 aid for K-12 programs in Abbott districts remain relatively flat was based on four major considerations. First, spending in Abbott districts is well beyond parity. Second, Abbott districts have been spending at some of the highest levels in the State, and well beyond non-Abbott districts, with no discernable correlation to improved achievement. Cf. Davy Certification, Exhibit R with Exhibit V. Third, other state aid recipients, including non-Abbott school districts spending at much lower levels for FY2007, will not receive an increase in funding from FY2006 levels. Fourth, Abbott supplemental funding requests have skyrocketed in recent years, and today go beyond what the Court intended would be minimal additional funding for targeted programs and needs. While the State acknowledges and readily accepts the Constitutional right to an education, the Constitution does not provide a right to a 25% budget increase, as one district has requested, or to the average 9% budget increase. Id. at ¶4, Exhibit A.

In constructing his FY2007 budget, the Governor took significant steps toward guaranteeing that children in Abbott

districts will receive a thorough and efficient education. The Governor recommended an additional \$39 million in preschool expansion aid to support approved preschool programs and budgets for 2006-2007. To fortify the safety net for Abbott districts, the Governor also recommended that every Abbott district receive sufficient State aid to spend at parity. Finally, the Governor recommended approximately \$500 million to the Abbott districts for supplemental needs beyond parity, without requiring specific justifications from Abbott districts for special needs. This \$500 million amount is roughly equal to the supplemental funding received by Abbott districts during FY2006. Abelow Certification, Exhibit A; Davy Certification, Exhibit P. Therefore, given the State's fiscal condition and the need to restore integrity to the State budget, the Governor's recommendation for funding Abbott districts should be approved by this Court.

B. Significant Increases in Supplemental Funding Have Not Had Corresponding Increases in Achievement and Have Not Accomplished the Constitutionally Mandated Goal of Providing Children with a Thorough and Efficient Education; Accordingly, the State Must Be Given the Opportunity to Enhance Accountability in the Abbott Districts.

Educational deficiencies in the Abbott districts can no

longer be correlated with spending disparities. The State has clearly succeeded in closing the spending gap that this Court identified and ordered remedied in Abbott II. In fact, the State has been so successful in that regard that Abbott districts are now some of the highest spending districts in the State. Of the 25 highest spending K-12 districts, 17 are Abbott districts. Moreover, the three highest spending K-12 districts in the State are Abbott districts. Davy Certification, ¶19, Exhibit S.

However, as the Court has long recognized, money alone is not the solution and closing the spending gap is not a guarantee that students in the poorer districts will have the opportunity to close the learning gap. "Obviously, equality of dollar input will not assure equality in educational results." Robinson I, 62 N.J. at 481. As this Court has noted, the State's obligation extends beyond merely providing increased fiscal resources to these districts.

Experience has demonstrated that additional money will not, without more, solve the chronic problem of educating students in the [Abbott districts]. Equally important, if not more so, is the manner in which the money is spent.

[Abbott IV, 149 N.J. at 192].

See also Abbott III, 136 N.J. at 455 ("As we noted in Abbott [II] equality of money does not assure equality of education. Nor does

the grant of additional funds assure that they will be well spent.")

Critical tasks must be undertaken in order to determine what works, as we strive to meet the constitutional goal of providing all children with an education that will enable them to "perform their roles as citizens and competitors in ... society." Abbott II, 119 N.J. at 389. To perform these tasks properly will take more than the few months available before the districts' 2006-2007 budgets must be finalized. N.J.A.C. 6A:10A-9.8(a) (referencing the Court's May 2003 Order directing issuance of budget decisions on or before the last business day of May). Yet without the information that performance of these tasks will produce, the Governor could not, in light of the State budget crisis and the high levels of spending already existing in these districts, provide even higher levels of State aid for Abbott K-12 programs<sup>12</sup>.

For the FY2007 State budget, "every spending line and every program in the budget was examined and will be repeatedly reviewed and scrutinized on an ongoing basis through the course of the fiscal year." Budget in Brief at 38. Given the very substantial increases in State school aid in Abbott districts in

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<sup>12</sup> The Governor's proposal keeps all non-Abbott districts funded virtually at last year's level.



the past nine years, and the relative lack of evidence that such increases have produced the desired result of thoroughly and efficiently educating our children, the State has a responsibility to subject school districts to the same level of management oversight and fiscal discipline as the Governor has applied to the Executive Department. Simply put, New Jersey can no longer afford the open-ended process of annual supplemental requests that have led to the extraordinary growth in Abbott district spending, especially when we lack proof that the supplemental programs are working. Davy Certification, Exhibit V.

The Governor recognizes that the State must improve its accountability measures and fiscal management tools to ensure that all funds each Abbott district receives are used to maximize educational outcomes. Put simply, the State must prioritize educational outcomes and fiscal oversight.

At the Governor's direction, one of the first steps that the Department of Education will undertake to ensure effective use of State funds in improving student achievement is to conduct comprehensive fiscal audits in Newark, Jersey City, Camden and Paterson. Audit teams assembled for this task will undertake a complete and thorough review of the district budgets with the same level of detail and scrutiny as the Governor undertook with the

State's budget. This intensive review will result in concrete knowledge of how the districts are spending their resources and the efficacy of the programs that these expenditures support. Davy Certification, ¶23.

In addition, the Department will review the curriculum and programs in the Abbott districts. The curriculum review will assess whether the district has done the basic work of aligning its curriculum to the CCCS and, if so, whether programs, professional development, instructional materials and the like are aligned with the curriculum and therefore consistent with the CCCS. Id. at 24. The program review will assess the existing programs within a district so that program efficacy or redundancy with other programs may be determined. Ibid. These educational reviews will provide the Department and the district with a comprehensive rationale for current student outcomes, and will lay the groundwork for programmatic changes in the district that will lead to improved student achievement. They will also inform decisions to eliminate programs or other elements that are duplicative or have not demonstrated success in helping students achieve the CCCS. Ibid.

Not only must the State review how Abbott districts are spending their resources and ensure that the additional funding

the districts have been provided since Abbott IV "significantly enhances the likelihood that school children in those districts attain the constitutionally-prescribed quality of education to which they are entitled," but, as this Court contemplated, the State must also analyze how it might improve directing, regulating and monitoring the use of these funds. See e.g. Abbott IV, 149 N.J. at 194 ("we require that the Commissioner use his statutory and regulatory authority to ensure that the increased funding that we have ordered today be put to optimal educational use."); Abbott III, 136 N.J. at 452 ("We find inescapable the conclusion that the Legislature or the Department should ensure the uses of the additional funding available to the [Abbott] districts are supervised and regulated.") The State anticipates that such an undertaking will require structural changes within the Department as well as systemic changes in the way school district budgets are prepared, submitted and reviewed, so as to ensure that the fiscal and program oversight this Court has directed and the level of accountability the Governor is demanding are occurring. Because of this need for enhanced accountability in light of the extraordinary spending by the Abbott districts without collective success in student outcomes, the State's application should be granted.

C. The Court Intended Supplemental Funding to Specifically Address the Particularized Needs of Abbott Districts and Not as a Blank Check for Abbott Districts to Significantly Increase Funding Beyond Parity.

Although supplemental funding was originally designed to provide funding for specific Abbott district programs where districts were able to identify a particularized need, see Abbott V, 153 N.J. at 518, unfortunately, supplemental funding has neither been requested nor approved on that basis. Abbott districts have requested astonishing increases in supplemental funding and have utilized such requests to gain funding increases significantly beyond parity. Davy Certification, Exhibit P. The data clearly supports the conclusion that the Court's well-reasoned decision on a narrowly defined exception has overtaken the general rule of Abbott funding. Id. at Exhibits N and P.

The Abbott districts have not been required to exercise the fiscal discipline that the State and other school districts must undergo; instead they have been allowed to balance their budget through virtually unlimited supplemental funding requests. This year, like prior years, many Abbott districts have presented budgets with massive increases and have asked the State to fund the difference between their anticipated revenues and projected

expenditures.<sup>13</sup> Id. at ¶¶ 4,5, Exhibits A and B. However, it is notable that, thus far, three Abbott districts have come in with flat supplemental funding requests for FY07, demonstrating that Abbott districts can successfully operate on a restrained budget. Id. at Exhibit D.

The Abbott districts that have requested massive supplemental funding increases have placed the State in the difficult position of having to decline these astronomical supplemental funding requests. To do so, the State must determine which expenditures in the proposed budget can be eliminated or reduced. As the Abbott district supplemental funding requests have escalated, this task has become increasingly difficult. Id. at Exhibits A, B and P. To date, the process has not worked because the State has lacked the types of accountability measures that would enable it to fairly review supplemental funding requests. For these reasons, the Governor's proposal for funding the Abbott districts in FY2007 should be approved by this Court.

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<sup>13</sup> For example, prior to being notified of the Governor's recommendation for relatively level funding, Camden submitted a 2006-07 budget seeking an overall revenue increase of \$73 million, or a 23% increase over the 2005-2006 budget; Pleasantville sought an overall revenue increase of \$21 million, or a 25% increase. Davy Certification, ¶4.

D. The Present System Is Inequitable and the Governor Is Committed to Establishing a New System to Provide Children with a Thorough and Efficient Education.

The Governor believes that a new approach to school funding is needed -- one based on the needs of all children with similar disadvantages rather than on the geographic accident of where they happen to reside. The present Abbott funding process has resulted in a significant funding inequity. Many children in non-Abbott districts suffer the same types of disadvantages as the children in the Abbott districts. However, because over the past four years increases in school aid have been restricted by shortfalls in the State budget, the distribution of our limited increases has been disproportionately weighted toward Abbott districts. Thus, in FY2003, of the \$203 million increase in State aid, Abbott districts received \$201 million or 99.1% of the increase. In FY2004, of the \$245 million increase, Abbott districts received \$196 million, or 80%. In FY2005, the total increase was \$456 million, with Abbott districts receiving \$365 million, or 80%. And this year, FY2006, Abbott districts received \$172 million of the \$221 million increase, or 78%. This inequity

has reached the point where non-Abbott districts are willing to argue that they are failing their students just so they too can receive the fiscal benefits afforded to Abbott districts. Bacon, et al. v. Department of Education, State Board Docket No. 4-03 (February 21, 2006) <<<http://www.nj.gov/njded/legal> (last visited March 31, 2006)>>, appeal pending, A-2460-05T1; Carteret Borough Board of Education v. Department of Education, Agency Docket No. 191-5/04; Medford Township Board of Education, et al. v. Department of Education, Agency Docket No. 98-4/05.

To remedy this unfair disparity, the Governor proposes moving away from a funding system that focuses on districts rather than on children. As previously noted, some non-Abbott districts have large populations of disadvantaged children who, under the existing funding formula, are not receiving the level of funding or providing the corresponding programs and services that children in the Abbott districts receive. And, because of changes in population and other circumstances, some Abbott districts do not have the high concentrations of disadvantaged students that might be expected. Davy Certification, ¶27, Exhibit W.

CEIFA provides the formula to be used to calculate State aid each year for school districts. Although the Court declared the Act unconstitutional as applied to the Abbott districts in

Abbott IV, it remains the substantive statutory mechanism for the calculation of State school aid and the required local contribution for the other school districts. That Act, however, has not been used to determine State school aid since FY02. Appropriations Act for FY 2006, L.2005, c.132; Appropriations Act for FY 2005, L.2004, c.71; Appropriations Act for FY 2004, L.2003, c.122; Appropriations Act for FY 2003, L.2002, c.38; Appropriations Act for FY 2002, L.2001, c.130.

Each year, the total amount and the distribution of State school aid are established in the annual Appropriations Act, and are significantly influenced by the annual budget crisis. This process does not allow school districts the ability to predict with reasonable certainty what their allocations will be. It also hampers effective budget planning at the State and district levels. In sum, the new administration recognizes that much is left to be done in Abbott districts, and in other districts serving disadvantaged children, in order to give all of our children the opportunity to succeed. These efforts, to which the Governor is strongly committed, should result in significant changes to the way Abbott districts, other school districts, and the State do business.

As this Court has observed, what is needed in education



is not a static but an evolving understanding. "[W]hat seems sufficient today may be proved inadequate tomorrow, and even more importantly ... only in the light of experience can one ever come to know whether a particular program is achieving the desired end." Robinson V, 69 N.J. at 458. The State needs the ability to make shifts in educational program requirements consistent with sound educational practice.

Rather than focusing on a laundry list of mandated programs that may not be effective in some districts, the Abbott districts must focus on those programs that have been proven effective, i.e., literacy programs, aligning curriculum to the CCCS, and ensuring instructional materials, classroom software and professional development are consistent with an aligned curriculum. After completing program and curriculum reviews in the districts, as well as more traditional fiscal audits, the Department will be in a better position to make a recommendation to the Court on modifications of Abbott V that will enhance achievement of the constitutional goals and will improve fiscal accountability. The State anticipates that it will come again before this Court before the end of the calendar year to report on its efforts in this regard and to seek appropriate modifications.

"The primary concern, the goal, of the Department, the

Legislature and indeed the public, is the actual achievement of educational success" of our children, Abbott III, 136 N.J. at 454, and achievement of that goal will not occur simply by providing additional funds. Rather, the State must establish the management structures and oversight protocols that will assure those funds are "efficiently used and applied to maximize educational benefits." Abbott IV, 149 N.J. at 189. The new administration is not in the position to do so for FY2007, and yet the State cannot afford another year of unchecked increases to the Abbott districts without appropriate controls in place.

Accordingly, the State is requesting that the Court approve the Governor's proposed budget limiting growth in State aid to Abbott districts in FY2007 while the administration undertakes the challenging work necessary to ensure that "every child in New Jersey has the opportunity to achieve." Id. at 198.

CONCLUSION

For the foregoing reasons, this Court should grant the State's application for approval of the Governor's FY2007 proposed budget for school aid in Abbott districts.

Respectfully submitted,

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