
RAYMOND ARTHUR ABBOTT, et al.,

Plaintiffs,

v.

FRED G. BURKE, et al.,

Defendants.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

CIVIL ACTION

BRIEF OF AMICI CURIAE NEW JERSEY STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, THE
PATERSON BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, THE PATERSON EDUCATION FUND, NEW JERSEY
COMMUNITY DEVELOPMENT CORPORATION, THE AMERICAN CIVIL LIBERTIES
UNION OF NEW JERSEY, NEW JERSEY BLACK ISSUES CONVENTION, AND THE
NEWARK TEACHERS UNION

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PRELIMINARY STATEMENT

In Abbott v. Burke, 149 N.J. 145 (1997) ("Abbott IV") and 153 N.J. 480 (1998) ("Abbott V"), this Court continued its historic effort to vindicate the constitutional rights of students in New Jersey's poorest school districts (the "Abbott" districts) to a thorough and efficient education.¹ The Court held that a comprehensive set of remedies "must be implemented" by the State "in order to ensure that public school children from the poorest [] communities receive the educational entitlements that the Constitution guarantees them." Abbott V, 153 N.J. at 489; see also Abbott IV, 149 N.J. at 166. Those remedies are the culmination of a decades long struggle to ensure a constitutionally adequate education to which the disadvantaged students in Abbott districts are entitled. Abbott IV, supra, at 153-60 (discussing genesis of the Abbott litigation, beginning with Abbott I decision issued in 1985, 100 N.J. 269); Abbott V, supra, at 490-493 (same).

Specifically, the Abbott remedies, set forth in Abbott IV and Abbott V, supra, require that students in the Abbott districts be provided the following resources and programs:

¹ The pertinent history of the Abbott litigation is fully set forth in Abbott V, 153 N.J. at 490-94. In this brief, "Abbott" refers to the entire Abbott v. Burke litigation, unless a particular decision is referenced.

- (1) standards-based education supported by parity funding, Abbott IV, 145 N.J. at 161-62; Abbott V, 153 N.J. at 498;
- (2) supplemental programs, including comprehensive whole school reform in Abbott elementary schools, Abbott V, 153 N.J. at 494-502, and other programs of "particular importance" in Abbott middle and high schools, id. at 508-517; see also Abbott IV, 149 N.J. at 177-80;
- (3) needs-driven program planning, Abbott V, 153 N.J. at 511, 517-19;
- (4) adequate funding for all programs, Abbott V, 153 N.J. at 517-19, 525-26; and
- (5) safe and adequate facilities, Abbott IV, 145 N.J. at 188; Abbott V, 153 N.J. at 519-25.

In particular, supplemental programs, the very remedy that the State now seeks to eliminate, were specifically held by this Court to be integral to the provision of a thorough and efficient education. Indeed, in Abbott II, 119 N.J. 287 (1990), the Court recognized that "the educational needs of students in poorer urban districts vastly exceed those of others . . . " and held that "in order to achieve the constitutional standard . . . the totality of the [Abbott] districts' educational offering must contain elements over and above those found in the affluent [] districts." Id. at 302-03, 366-374, 385; accord Abbott III, 136 N.J. 444, 454-55 (1994) ; Abbott IV, supra, at

156-57, 179-200; Abbott V, supra, at 509-519 (ordering funding for supplemental programs to Abbott districts).²

Despite this Court's clear mandate that supplemental funding and programs are necessary in order to provide students in Abbott districts with the thorough and efficient education that New Jersey's Constitution demands, the State now moves this Court for relief from the continued implementation of the Abbott remedies. Specifically, on April 7, 2006, the State filed an "Application for Approval of the Governor's FY2007 Proposed Budget for School Aid to Abbott Districts, ("State's Br.") seeking to "flat" fund all school districts, i.e., to provide no increase in state aid over last year's budget. (State's Br. at 4) If granted, the State's proposal will deprive Abbott

² At least in part because of its trailblazing remedial structure, Abbott is considered to be "the most significant education case since the [United States] Supreme Court's [] ruling [in Brown v. Board of Education, 349 U.S. 294 (1955)] [] fifty years ago." A Truce in New Jersey's School War, NEW YORK TIMES, Feb. 9, 2002, at A18; see also, John Sullivan, McGreevy Seeks to Revamp Support for Poorest Schools, NEW YORK TIMES, Dec. 29, 2002, at 1 (describing Abbott as "groundbreaking" and "widely considered of national importance"). In September 2005, the Assistant Commissioner for Abbott Implementation himself characterized the Abbott remedies as "an unprecedented effort to close the achievement gap between rich and poor, black and white, Latino and Anglo." Closing the Achievement Gap: Two-Year Plan on Instructional Priorities Division of Abbott Implementation (New Jersey Department of Education) Sept. 22, 2005, at 1 (published by, and on file with, the New Jersey Department of Education), <http://www.state.nj.us/njed/abbotts/plan.pdf>.

districts of the resources necessary to fully implement the Abbott remedies, specifically the supplemental programs element, that are essential to ensuring that Abbott students are provided a constitutionally adequate education.

By motion dated April 17, 2006, amici curiae sought leave to participate in this matter. Amici are the New Jersey State Conference of the National Association for the Advancement of Colored People, the Paterson Branch of the National Association for the Advancement of Colored People, the Paterson Education Fund, New Jersey Community Development Corporation, the American Civil Liberties Union of New Jersey, New Jersey Black Issues Convention, and the Newark Teachers Union. Amici appear in this matter in order to advise the Court that continued enforcement of the full Abbott remedies is essential to ensuring that a thorough and efficient education is provided to New Jersey's most disadvantaged students, especially those students in poor and highly segregated schools. First, amici will demonstrate that, contrary to the State's assertions, where the Abbott remedies have been implemented, there have been significant gains in educational achievement, and that where the State has failed to implement or fund such remedies, schools have failed to improve and students have failed to see significant gains. Second, amici will argue that while there have been significant

gains, there is still a great deal of progress that must be made in the Abbott districts in order for those districts to provide a thorough and efficient education, and that if the State's motion for relief is granted, many of the Abbott districts will not make this progress. Third, amici will demonstrate that the State's assertion that the Abbott remedies do not reach the students who are most in need is specious, and that, to the contrary, the Abbott districts are both extremely poor and, as a result of segregation in the state, are composed of a predominantly minority student population. Fourth and finally, amici will demonstrate that the enforcement of the constitutional right to a thorough and efficient education may not be made contingent upon the state's budgetary allocations and constraints. Amici respectfully request that this Court deny the State's application requesting relief from the continued implementation of the remedies found by this Court to be an integral element of a constitutionally adequate education for the state's most disadvantaged students.

ARGUMENT

I. **CONTINUED IMPLEMENTATION OF THE ABBOTT REMEDIES IS ESSENTIAL TO ENSURING THAT A THOROUGH AND EFFICIENT EDUCATION IS PROVIDED TO DISADVANTAGED SCHOOL CHILDREN IN NEW JERSEY.**

The State's application for relief relies on an underlying assumption that is fundamentally flawed: that implementation of

the Abbott remedial structure has "not seen a corresponding increase, or even a significant increase, in educational achievement." State's Br. at 5) In fact, as will be discussed in detail below, when the State implements the Abbott remedies, as it has at the preschool and elementary school levels, the quality of education offered Abbott students improves measurably. In contrast, where the State has failed to implement those remedies, as in the case of Abbott secondary schools, the lack of progress is notable. That the State seeks to blame the Abbott districts and, by implication, the Abbott school children themselves, for any lack of progress is thus ironic - for it is the State's historic inaction at the secondary school level that is, in fact, blameworthy.

A. Implementation of the Abbott Remedies Has Markedly Improved Academic Performance at Pre-school and Elementary School Levels.

The available empirical evidence, including studies sponsored by the Department of Education, demonstrates that when the State invests in the implementation of the Abbott remedies, Abbott students' academic achievement increases markedly. The State, despite its repeated protests to the contrary, appears to concede that truth, recognizing, that "gains in achievement in Abbott districts are evident, and the achievement gap is decreasing." State's Br. at 16. As will be discussed in detail

below, the available evidence demonstrates that implementation of the Abbott remedies does, in fact, produce tangible results and is essential for ensuring that Abbott students are provided a constitutionally adequate education.

As a result of the historic Abbott V mandate, implementation of the Abbott remedies has really begun in earnest only over the last several years, albeit almost exclusively at the elementary education level. The State's investment in high quality pre-school and elementary school programs in the early grades was spurred by the 1998 decision in Abbott V, in which the Court concluded that "if at-risk children are to have any chance of achieving educational success, they must be education-ready" in the early years. Abbott V, supra, at 461. In keeping with that conclusion, the Court ordered implementation of a host of specific supplemental programs, including, inter alia, pre-school for three and four-year olds, full day kindergarten, early reading and math literacy programs, limitations on class size, and provisions for social and health services. Id. at 461-67, 512-18; see also 177 N.J. 578 (2003) (Abbott X). That investment has produced tangible results. Empirical evidence gathered by recent studies and reports, which sought to measure the effect that the Abbott remedies have had on academic achievement, demonstrate that once sustained resources and programs are brought to bear, the quality of

education afforded the youngest Abbott students improves markedly.

For example, one study conducted by the National Institute for Early Education Research at Rutgers University captures gains in school readiness skills for children who participate in the Abbott pre-school program. See Cynthia Lamy, W. Steven Barnett, and Kwanghee Jang, The Effects of New Jersey's Abbott Preschool Program on Young Children's School Readiness, National Institute for Early Education Research, Rutgers University (Dec. 2005), <http://nieer.org/resources/research/multistate/nj.pdf> (the "Rutgers study"). The Rutgers study concludes that attendance at "Abbott Preschool program[s] has statistically significant and meaningful impacts on children's language, literacy, and mathematical development." Id. Specifically, the study determined that attending Abbott preschool programs:

- increases students' vocabulary scores by 26% - a particularly significant finding, since vocabulary scores are strongly predictive of general cognitive abilities;
- increases scores on measures of early math skills by 24%; and
- increases print awareness scores by 61% - thus significantly improving children's knowledge of letters and letter-sound associations, and familiarity with words and book concepts upon entering kindergarten.

Id. (emphasis added).

Another study conducted by the Department of Education, in partnership with seven New Jersey colleges and universities, concluded that implementation of the Abbott preschool program has resulted in "sustained and dramatic improvement in the quality of Abbott preschool education and indicates substantial effects" in the performance of [Abbott] students at the early childhood level. See Giant Steps for the Littlest Children: Progress in the Sixth Year of the Abbott Preschool Program, Early Learning Improvement Consortium (2005), <http://www.state.nj.us/njded/ece/abbott/giantsteps/>.

And, a recent report issued by the Education Law Center determined that implementation of the Abbott remedies, including high quality pre-school, improved teacher qualifications and small class size, has had a similarly beneficial effect on the performance of Abbott students at the fourth grade level. That study concluded that the achievement gap between Abbott and non-Abbott fourth graders has been cut in half in the areas of language arts, literacy, and math as a result of implementation of the Abbott early childhood remedies. See The Abbott Districts in 2005-2006: Progress and Challenges, Education Law Center (Spring 2006), http://www.edlawcenter.org/ELCPublic/elcnews_060313_AbbottIndicatorsReport_2005_06.pdf. The studies and report discussed here thus illustrate that the sustained, increased investment of