

EDUCATION LAW CENTER

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Filing fees waived under R. 1:13-2

EDUCATION LAW CENTER, on
behalf of ABBOTT V. BURKE
PLAINTIFF CHILDREN

Plaintiff,

v.

NEW JERSEY DEPARTMENT OF
EDUCATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:

MERCER COUNTY
DOCKET NUMBER:

Civil Action

VERIFIED COMPLAINT

Education Law Center, on behalf of Abbott v. Burke
Plaintiff school-age children, by way of Complaint against New
Jersey Department of Education ("DOE" or "Department"), states
as follows:

1. Plaintiff Education Law Center ("ELC") is a non-profit
legal services organization that provides legal assistance to
New Jersey's low-income public school children, and children
with special needs, in matters related to access to equal and
adequate education under state and federal laws. Specifically,
ELC has served, since 1981, as attorneys in the Abbott v. Burke
case for the plaintiff-class of over 300,000 children and
preschoolers who attend public schools and preschools in 31 poor
urban communities, commonly referred to as "Abbott districts."

As counsel for the Abbott plaintiff class, ELC represents the interests of the school children in Abbott districts. As class counsel, ELC continuously monitors implementation and State compliance with the remedies ordered by the New Jersey Supreme Court in Abbott v. Burke so as to ensure improvements in the quality of education received by the Abbott plaintiff class.

2. In the 1997 and 1998 Abbott rulings, the Supreme Court ordered implementation of programs and reforms designed to ensure a "thorough and efficient" education to the Abbott plaintiff class, as guaranteed under Article VIII, Section IV, ¶ 1 of the New Jersey Constitution.

3. The Abbott remedies include: (1) standards-based education, supported by foundation per-pupil funding equal to spending in successful suburban schools ("parity funding"); (2) universal, high quality preschool for all three- and four-year olds; (3) supplemental ("at-risk") programs to address student and school needs attributed to high-poverty, such as early literacy and drop-out prevention programs, and social and health services; (4) new and rehabilitated facilities to house all programs, relieve overcrowding, and eliminate safety violations; (5) school and district reforms to improve curriculum and instruction, and for the effective and efficient use of funds to enable students to achieve state standards; and (6) State

accountability for effective and timely implementation to ensure district and school progress in improving student achievement. Abbott v. Burke, 149 N.J. 145 (1997) ("Abbott IV"); Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V").

4. The Abbott rulings impose upon DOE the duty of effectively implementing the Abbott remedies to ensure district and school progress in improving student achievement. Abbott V, 153 N.J. at 528.

5. Specifically, in the Abbott V ruling, the Supreme Court directed the Commissioner to "implement as soon as feasible a comprehensive formal evaluation program" to determine whether the Abbott programs and reforms are being "implemented successfully" and are "resulting in the anticipated levels of improvement in the Abbott schools." See id. at 501-02. (Hereinafter referred to as "Abbott evaluation".) In addition, the Court directed the Commissioner of Education to develop a system of accountability that "would include the establishment of baseline data and the identification of progress benchmarks and standards that are linked to the Core Curriculum Content Standards" in order for the DOE to "make informed decisions about program improvement." See id. at 515. (Hereinafter referred to as "Abbott benchmarks".)

6. The Department failed to undertake the Abbott evaluation between 1998 and 2003.

7. In June 2003, ELC and the DOE entered into an agreement through mediation to facilitate the prompt design and launch of the Abbott program evaluation. The Supreme Court ordered this agreement in Abbott v. Burke, 177 N.J. 578, 589 (2003) ("Abbott X").

8. Under the terms of the Abbott X order, by September 1, 2003, the parties were to convene a workgroup to recommend a design for "the structure, content, scale and duration" of the evaluation, which was to include "a proposed schedule and probable costs" for undertaking the evaluation. See id.

9. In response to this order, a workgroup was convened, which worked diligently and provided evaluation design specifications to the Department in fall 2004.

10. On March 16, 2005, the Department issued a Request for Quotations (RFQ) to conduct the evaluation in accordance with these design recommendations. Proposals from prospective vendors were due April 14, 2005, with an announcement of a contract award in June.

11. On June 14, 2005, DOE decided to suspend the evaluation, citing "a difficult time getting approval for the evaluation", and a freeze in State discretionary spending. DOE gave no

indication about when it would reconvene the Abbott X workgroup to address the obstacles encountered in moving the RFQ to contract award, nor did it offer any timeframe or schedule for reissuing the RFQ.

12. Between July 2005 and November 2005, ELC wrote several letters to DOE and the Attorney General regarding the status of the Abbott evaluation and requesting that DOE set a timeframe for moving it forward.

13. DOE finally reconvened the evaluation workgroup on December 15, 2005. DOE stated that it would draft a new RFQ and send it to the work group members for review but failed to set a date for circulating it to or for reconvening the workgroup thereafter to finalize the design.

14. In January and February 2006, ELC wrote to the State renewing the request for DOE to move the Abbott evaluation forward.

15. In April and May 2006, in an application to the Supreme Court by the Commissioner concerning FY2007 Abbott district budgets, ELC asked the Court on a cross motion to order DOE to promptly commence the Abbott evaluation. In an order issued on May 9, 2006, the Court noted Plaintiff's request, but did not directly address it. However, the Court did order the Commissioner to follow through on the fiscal and programmatic audits of Abbott districts previously planned by DOE. Abbott v.

Burke, 187 N.J. 191, 194 (2006).

16. The FY2007 State Appropriations Bill, adopted on July 8 2007, required DOE to prepare a plan for the Abbott evaluation and the Abbott benchmarks by October 2006. Specifically, the Legislature directed the DOE to "prepare a plan for evaluating the Abbott programs and reforms, for implementation of a student-level database, and for establishment of baseline data and progress benchmarks for each Abbott district linked to State curriculum standards" within 90 days. (P.L 2006, c. 45).

17. In October 2006, the DOE released a two-part Plan for the Evaluation of the Abbott Investment. The first step required that NJ SMART, a student level database and warehouse, be implemented "to facilitate the evaluation of Abbott student performance prospectively" in order to determine "what works and why/how/under what conditions does it work best?" The second step required DOE "to examine opportunities for a retrospective evaluation of Abbott." See

(http://www.nj.gov/education/abbotts/budget/evaluation_plan.pdf)

For this segment of work, the Plan included a list of possible research topics that DOE claimed it would vet with the workgroup and decide on by late winter 2006-07.

18. Also in October 2006, DOE released a Plan for Abbott District Benchmarks and Progress Indicators. DOE assembled a group of stakeholders to develop benchmarks and indicators

around student achievement, early literacy, professional development and qualified teachers. These indicators were to be "phased in beginning this year with baseline student achievement data." See,

<http://www.nj.gov/education/abbotts/budget/benchmarks.pdf>

19. Since the Plans were issued in October 2006, the Plaintiff's are unaware of any other action taken by DOE to commence the Abbott evaluation and establish the Abbott benchmarks.

COUNT ONE

20. Plaintiff repeats and incorporates fully herein the allegations set forth in paragraphs 1 through 21.

21. DOE has failed to comply with its mandatory obligation under Abbott V, Abbott X and the FY2007 Appropriations Act to conduct and complete the Abbott evaluation.

COUNT TWO

22. Plaintiff repeats and incorporates fully herein the allegations set forth in paragraphs 1 through 21.

23. DOE has failed to comply with its mandatory duty under Abbott V and the FY2007 Appropriations Act to establish the Abbott benchmarks.

WHEREFORE, Plaintiff demands preliminary and permanent relief against Defendant in the form of an Order

A. Requiring the DOE, within 60 days, to:

1. Prepare a detailed workplan and schedule for undertaking and completing the Abbott evaluation;

2. Complete and adopt the Abbott benchmarks;

B. That this Court retain jurisdiction to monitor and ensure that DOE completes A1 and A2;

C. Such other relief as the Court may deem appropriate and just; and

D. Pay plaintiffs attorney fees in this matter.

EDUCATION LAW CENTER

By: _____
Theresa Luhm, ESQ.

DATED: June 29, 2007

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is advised that Theresa Luhm is hereby designated as trial counsel.

Education Law Center

Theresa Luhm, Esq.,

Dated: June 29, 2007

CERTIFICATION

Pursuant to Rule 4:5-1, to Plaintiff's knowledge the matter in controversy is not the subject of any other action pending in any Court or arbitration proceedings.

I certify that the foregoing statements made by me are true and that if willfully false, I am subject to punishment.

Education Law Center

Theresa Luhm, Esq.

Dated: June 29, 2007