



## Education Law Center

*Standing Up for Public School Children*

By Fax and Mail

November 12, 2007

Dr. Jacqueline Jones  
Director, Office Early Childhood Education  
Department of Education  
PO Box 500  
Trenton, NJ 08625-0500

Re: 2008-2009 Abbott Preschool Budgets

Dear Dr. Jones:

Education Law Center serves as legal counsel to the plaintiff class in the Abbott v. Burke case, which includes all three- and four-year old children attending or eligible for the Abbott preschool program. On behalf of our clients, I write to bring to your immediate attention several issues of concern regarding the Department of Education's ("the Department") regulations and guidelines for preparation and review of the 2008-09 preschool program budgets.

As you know, the annual budgeting process for the Abbott preschool program has been, since 2002, driven by the particularized needs of community providers, public schools and districts to deliver the program, based on actual costs for all quality program requirements and budget elements. Based on independent evaluations of program quality and outcomes, this unique "needs-based" process has been extremely successful.

In addition, the process was established in response to the Supreme Court's directives in the 2002 Abbott VIII decision, which addressed prior Departmental attempts to impose pre-set, arbitrary budgets and funding for provider and district programs. The Court made clear the standards by which budgets are to be developed by the providers and districts, and reviewed by the Department, as follows:

District budgetary requests must be developed and articulated with specificity, and, equally important, the DOE must respond with appropriate explanation. Formulaic decision-making neither assists the districts nor provides a basis for further review on appeal . . . Whatever nomenclature is used to describe the budget calculation, it must yield funding decisions based not on arbitrary, predetermined per-student amounts, but, rather, on a record containing funding allocations developed after a thorough assessment of actual needs. 170 N.J. 537, 559 (2002).

The regulations governing preparation of the 2008 preschool budgets, for the first time, permit districts to submit "presumptive" preschool budgets for all community and in-district programs. Specifically, the regulations define the presumptive budget as "the 2007-2008 preschool approved per pupil amount for in-district, district-wide, Head Start and other private provider programs, where applicable, increased by a cost-of-living adjustment of 2.89 percent." Further, if a district elects to submit a presumptive budget for its provider and in-district programs, those budgets will no longer be reviewed on a line-item basis, but will be reviewed by the Department only for completeness and to ensure "all educational components are funded." Programs that submit presumptive budgets "shall be afforded increased flexibility across line-item expenditures," but programs that do not, "will undergo the traditional intensive review by the Department." N.J.A.C. 6A:10A-(a)12.

These regulations raise significant concerns related to the Department's compliance with standards for needs-based, actual cost budgeting for the preschool budgets established by the Supreme Court in the Abbott rulings. These concerns include:

- 1) the use of the general "cost of living" amount of 2.89% percent for the annual increase to all provider and district budgets, an amount unrelated to the actual increases for teachers, staff and other expenditures in preschool programs;

- 2) the unavailability of any recourse for community providers that need an increase above the presumptive 2.89% level to maintain quality or meet new needs, when their district

decides to accept that increase for its programs and the overall district program;

3) the absence of "specificity" related to all program elements, including any increases, in those providers and districts submitting presumptive budgets;

4) the "formulaic" manner in which the Department will review presumptive budgets, particularly the lack of detailed explanation that would assist districts and allow review of the Department's decisions on those budgets; and

5) the dual-track standards of budget submission and review - "presumptive" and "traditional" -- that are clearly designed to discourage providers and districts from submitting budgets based on need and actual cost, when those budgets exceed the arbitrary 2.89% increase amount.

These are serious concerns that implicate the educational adequacy of the preschool program and, if not addressed, could undermine the quality of the program implemented in the Abbott districts in 2008. The Department's approach also raises substantial legal questions about compliance with the Court's mandates on preschool.

In light of these serious issues, and the absence of any prior discussion between the Department, ELC, and the districts about the unprecedented use of presumptive budgets for preschool, we request that you immediately extend the deadline for submission of the district's preschool budgets beyond November 15<sup>th</sup> until these concerns can be discussed in a collaborative manner and properly addressed. We further request that you promptly convene a meeting of representatives of the districts, Head Start and community providers to discuss these issues and develop appropriate solutions. The Abbott preschool program is nationally recognized for its needs-based approach and high quality. It would be a serious setback for our preschool age children if the quality of the program is weakened by the Department's efforts to place a fixed funding limit on the program without regard to actual need.

ELC, as the representative of the Abbott preschoolers, stands ready to assist you in ensuring the preschool program remains educationally sound, and is on solid legal footing. Thank you and I look forward to your prompt reply.

Sincerely,

David G. Sciarra/ea

David G. Sciarra  
Executive Director

cc: Lucille Davy, Commissioner  
Robert Gilson, Director, Div. of Law  
Michelle Miller, DAG  
Willa Spicer, Deputy Commissioner  
Rochelle Hendricks, Director of School Improvement  
James McBee, Office of Abbott Services  
Janellen Duffy, Governor's Policy Office  
Abbott District Superintendents  
Abbott District Business Administrators  
Abbott District Early Childhood Directors  
Cecilia Zalkind, Early Care and Education Coalition  
Daniel SantoPietro, Hispanic Directors Association