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September 7, 2010

VIA HAND DELIVERY

Mr. Mark Neary, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 West Market Street
8th Floor, North Wing
Trenton, NJ 08625

Re: Abbott v. Burke, et al.
Docket No. 42,170
Our File No. 120

Dear Mr. Neary:

Please be advised that this office the Piscataway Township Board of Education, who respectfully requests the Court's leave to participate as amicus curiae in the above-referenced matter in support of the Motion in Aid of Litigants' Rights filed by the Education Law Center on or about June 8, 2010. Enclosed herein please find an original and nine (9) copies of the following documents:

1. Notice of Motion for leave to appear as amicus curiae, pursuant to Rule 1:13-9;
2. Certification of Brian Delucia; and
3. Proof of Service.

Also enclosed please find a check in the amount of \$30 made payable to the Treasurer, State of New Jersey for the cost of filing this motion. Kindly file same, returning a "filed" copy

Mr. Mark Neary
September 7, 2010
Page 2

of each document to the undersigned in the stamped self-addressed stamped envelope provided.

Respectfully submitted,

FOGARTY & HARA

BY: 

STEPHEN R. FOGARTY

SRF:gh
Enc.

cc: Michelle Lyn Miller, Esq., SDAG w/enc. - via Hand Delivery
David G. Sciarra, Esq. w/enc. - via Fedex Express
Lawrence S. Lustberg, Esq. w/enc. - via Fedex Express
John D. Rue, Esq. w/enc. - via Fedex Express
Mary Ciccone, Esq. w/enc. - via Fedex Express
Avidan Y. Cover, Esq. w/enc. - via Fedex Express
Richard A. Friedman, Esq. w/enc. - via Fedex Express
Richard E. Shapiro, Esq. w/enc. - via Fedex Express

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Attorneys for Piscataway
Township Board of Education

RAYMOND ARTHUR ABBOTT, et al.,	:	SUPREME COURT OF NEW JERSEY
	:	
Plaintiffs,	:	DOCKET NO.: 42,170
	:	
v.	:	CIVIL ACTION
	:	
FRED G. BURKE, et al.,	:	
	:	NOTICE OF MOTION
Defendants.	:	

TO: David G. Sciarra, Esq.
Education Law Center
60 Park Place, Suite 300
Newark, New Jersey 07102

Michelle Lyn Miller, Esq.
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Richard E. Shapiro, Esq.
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5 Mapleton Road
Princeton, NJ 08540

COUNSELLORS:

PLEASE TAKE NOTICE that the Piscataway Township Board of Education hereby moves, pursuant to Rule 1:13-9, before the Supreme Court of New Jersey for an Order granting leave to appear as amicus curiae and to rely on the Brief simultaneously filed on behalf of the Montgomery Township Board of Education in the above-captioned matter together with factual certifications

in support thereof and submitted herewith, and to argue the cause before the Court.

In support of this motion, the undersigned shall rely upon the Certification of Brian Delucia, dated September 3, 2010.

FOGARTY & HARA, ESQS.
Attorneys for Piscataway Township
Board of Education

BY: 

STEPHEN R. FOGARTY

Dated: September 7, 2010

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Attorneys for Piscataway Township
Board of Education
Our File No.: 120

RAYMOND ARTHUR ABBOTT, et al.,	:	SUPREME COURT OF NEW JERSEY
Plaintiffs,	:	DOCKET NO.: 42,170
v.	:	CIVIL ACTION
FRED G. BURKE, et al.,	:	
Defendants.	:	CERTIFICATION OF
	:	BRIAN DELUCIA

1. I am the Secretary/School Business Administrator for the Piscataway Township Board of Education ("Piscataway"), and make this certification in support of leave for Piscataway to join in the brief and argument submitted on behalf of amicus curiae Montgomery Township Board of Education ("Montgomery").

2. I concur with the description of the Statewide implications of the current school funding arrangements in the certifications filed by Montgomery with this Court, and will focus on how the State's recent actions have impacted Piscataway specifically.

3. The impoundment of State aid in the 2009-2010 school year was the first step toward destroying long term planning for the Piscataway Township School District. The State took the position that any excess surplus reported in the 2008-2009 audit,

coupled with certain reservations of fund balance, would be used to plug the State aid loss. However, the State failed to realize that excess surplus funds reported in the 2008-2009 audit are used as a revenue source for the 2010-2011 budget, and could not be used to plug the loss of State aid in 2009-2010. The District had knowingly built up surplus funds through a purchasing freeze because it anticipated that it would face a difficult budget development cycle in 2010-2011, but the impoundment of State aid wiped those funds away.

4. As a result of the impoundment, the District will be forced to plug a significant revenue gap anticipated for 2011-2012. The District will be unable to do so, however, because it will generate insufficient excess surplus funds through the 2009-2010 budget due to loss of state aid. Thus, the District anticipates a significant loss of programs and personnel beginning in 2011-2012, and it will be unable to provide its students with a thorough and efficient education as a result of the State's impoundment of aid in 2009-2010 and severe reduction in aid to the District in 2010-2011.

5. On May 28, 2009, this Court issued its decision in Abbott v. Burke, 199 N.J. 140, 145-46 (2009) (Abbott XX), in which the Court held that the school funding formula contained in the School Funding Reform Act of 2008 (SFRA), N.J.S.A. 18A:7F-43 to -63, satisfies the requirements of the thorough and efficient

education clause of the New Jersey Constitution. However, this Court premised its holding on two "caveats": (1) that the State would continue to provide school funding aid for the 2008-2009, 2009-2010, and 2010-2011 school years at the levels required by the SFRA's funding formula, and (2) that the State would conduct a mandated review of the formula after three years of implementation and make any necessary adjustments. Id. at 146. This Court stated: "With that understanding, SFRA may be implemented as it was designed, as a state-wide unitary system of education funding." Id. at 147.

6. As this Court explained in Abbott XX, the core of the SFRA's funding formula is the adequacy budget, which is based upon a community's wealth and ability to provide funding through local resources. Id. at 153. The adequacy budget is composed of four categories of aid: 1) a base aid amount for elementary, middle, and high school students, 2) additional weights for at-risk and limited English proficiency students, 3) two-thirds of costs for special education, and 4) all costs for speech only special education. Ibid. A district's local fair share is the amount the district is required to contribute to support its adequacy budget. Id. at 155.

7. The Piscataway Township School District (hereinafter referred to as the "District") is a kindergarten through 12th grade school district in Middlesex County. Based on various

socioeconomic factors, the New Jersey Department of Education (hereinafter referred to as "DOE") classified the District under District Factor Group (DFG) "GH".

8. Despite its classification under DFG "GH", the District has long been provided with State aid levels insufficient to meet the requirements of the SFRA funding formula. For the 2009-2010 school year, the State aid profile provided by the DOE's Division of Finance listed the Board's adequacy budget as \$94,029,063, its local fair share as \$62,670,194, and its equalization aid as \$31,358,869. According to the formula set forth in the SFRA, the District should have received State aid in the amount of \$38,544,515, but the amount of aid was initially capped at a 20% increase over the 2008-2009 State aid received. For the 2009-2010 school year, the District was to receive the capped amount of \$16,802,641 in State aid. Thus, the SFRA formula was underfunded in the amount of \$21,741,874 for the District.

9. The amount of the local tax levy for the District in 2009-2010 was \$75,955,122. When compared with the State's calculation of local fair share, this placed an over-reliance on the local taxpayers in the amount of \$13,284,928.

10. Comparing the local tax levy of \$75,955,122, along with the equalization aid amounting to \$9,616,995, with the adequacy budget of \$94,029,063, the District was \$8,456,946 under adequacy spending for 2009-2010. The District should have received, but

did not receive, an additional \$8,456,946 in equalization aid in order to meet the State's adequacy spending level.

11. In February 2010, the Governor impounded \$727,849 of the District's \$16,802,641 in budgeted state aid for the 2009-2010 school year. This action resulted in the District being even further underfunded, according to the formula, in the amount of \$17,530,490.

12. For the 2009-2010 school year, the DOE was to provide the District with \$16,802,641 in State aid. As a result, the District's local taxpayers would pay over their local fair share by \$13,284,928, as calculated by the SFRA formula. At the same time, the District spent at a level that was \$8,456,946 below its adequacy budget, as defined by the formula, for the 2009-2010 school year.

13. On March 16, 2010, the Governor announced State levels for the 2010-2011 school year, and, on March 19, 2010, the DOE issued notifications of State aid levels to individual districts to assist them in preparing and adopting their 2010-2011 budgets. According to the State aid levels issued by the DOE, the District will receive \$12,704,543 in State aid for the 2010-2011 school year, a reduction from the previous year's State aid in the amount of \$4,098,098 or approximately twenty four percent (24%), and a per pupil reduction of approximately \$573.

14. To further compound the February 2010 impoundment of

State Aid, the Governor assessed an additional reduction of State Aid equivalent to 15% of our District's proportionate share of the required interest and principal payments in fiscal 2011 on the bonds issued by the New Jersey Economic Development Authority (NJEDA) which benefited Piscataway in the form of a NJEDA construction grants. It should be clearly understood that this impoundment represented what the State of New Jersey owed on bonds it purchased. The District having already met its obligation was now supplementing what rightfully and legally was due and owed by the State. This additional assessment amounted to an additional State aid reduction of \$180,319 for a total impoundment of our State Aid of \$908,168.

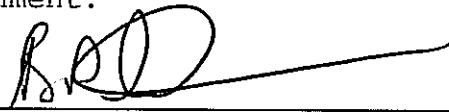
15. Under the District's budget proposal, the DOE's proposed state aid for the 2010-2011 school year, would have placed the District over its local fair share by approximately \$14,728,076 and under its adequacy budget by approximately \$9,515,163. The District continues to receive state aid at levels that overburden its taxpayers.

16. In the initial SFRA formula, Piscataway was found to have been receiving less than half of the State-established formula aid, and was spending \$8,456,946 below adequacy. In succeeding years, the ability to meet Thorough and Efficient guidelines (adequacy) has now dropped to a point where the District is spending \$9,515,163 below adequacy. The result has

forced the District to spend \$14,728,076 over its local fair share. Without negating the real impact this has had on instructional programs, the concomitant impact on the unfair burden to the taxpayer is plain.

17. In the initial SFRA, the Corzine administration made no attempt to equalize the burden on taxpayers even while illustrating in clear and compelling documentation that unfairness was rampant in the state. The DOE chose to mitigate the impact of unfair aid distribution by offering a promise of increasing aid over a period of seven years. That promise was never fulfilled. If the Court does not redress this unfairness, a decade of past ills will translate into another decade of future ills. A generation of reckless neglect will ensue. If the State's inability to fully fund the formula is sustained, the Court should require that districts be funded equally by ratio of their formula aid.

18. I certify that the statements made by me herein are true. I understand that if any of these statements are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read 'B. Delucia', is written over a horizontal line.

BRIAN DELUCIA

Dated: September 3, 2010

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Board of Education

	:	SUPREME COURT OF NEW JERSEY
RAYMOND ARTHUR ABBOTT, et al.,	:	
	:	DOCKET NO.: 42,170
Plaintiffs,	:	
	:	
v.	:	CIVIL ACTION
	:	
FRED G. BURKE, et al.,	:	
	:	PROOF OF SERVICE
Defendants.	:	

I certify that an original and nine (9) copies of a Notice of Motion and the Certification of Brian Delucia were forwarded for filing to Mark Neary, Clerk of the Supreme Court of New Jersey, Hughes Justice Complex, 25 West State Street, 8th Floor, North Wing, Trenton, NJ 08625 via hand delivery.

I further certify that two (2) copies of the aforementioned documents served, via hand delivery, upon:

Michelle Lyn Miller, Esq.
Senior Deputy Attorney General
Office of the Attorney General
Department of Law and Public Safety
Division of Law
Hughes Justice Complex
8th Floor, West Wing
25 West Market Street
Trenton, New Jersey 08625

I further certify that two (2) copies of the aforementioned documents were forwarded to the following individuals via Fedex Express:

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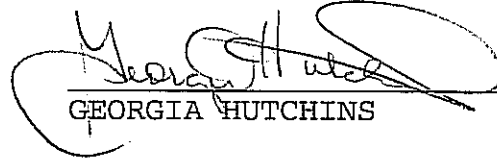
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Princeton, NJ 08540

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I am aware that if any of the foregoing statements made by me
are willfully false, I am subject to punishment.



GEORGIA HUTCHINS

DATED: September 7, 2010