

RAYMOND ARTHUR ABBOTT, et al.,

Plaintiffs,

v.

FRED G. BURKE, et al.,

Defendants.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 42,170

CIVIL ACTION

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION IN AID OF LITIGANTS' RIGHTS

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## PRELIMINARY STATEMENT

A year ago, this Court held that, with the School Funding Reform Act of 2008 ("SFRA"), the "legislative and executive branches...have enacted a funding formula that is designed to achieve a thorough and efficient education for every child, regardless of where he or she lives." Abbott v. Burke, 199 N.J. 140, 175 (2009) ("Abbott XX"). Declaring the constitutionality of the SFRA formula "is not an occurrence at a moment in time; it is a continuing obligation," the Court explicitly directed the State to provide school funding aid "at the levels required by SFRA's formula" and conduct a three-year review of formula's "full implementation." Id. at 146, 174. The Court also vowed to "require remediation of any deficiencies of a constitutional dimension, if such problems do emerge." Id. at 146.

The State has now indisputably violated its Abbott XX obligations: an over \$1 billion aid reduction for 2010-11 below the current (2009-10) level, causing severe cuts in teachers and programs that are at the heart of the SFRA, including those for at-risk students. The State's flagrant disregard of the SFRA and Abbott XX, and the ensuing devastation to New Jersey's school children, constitute the very "deficiencies of a constitutional dimension" that this Court warned it would promptly remediate. The time for that remediation has come.

## PROCEDURAL HISTORY

In March 2008, the State moved before this Court for a declaration that the School Funding Reform Act of 2008 ("SFRA") satisfied the requirements of the Thorough and Efficient Education Clause of the New Jersey Constitution, N.J. Const. art. VIII, §4, ¶1, and that the remedial orders that provided funding for poorer urban or "Abbott" districts were no longer necessary. In response, the Court remanded the matter to a special master "for development of an evidential record." Abbott v. Burke, 196 N.J. 544, 565 (2008) ("Abbott XIX").

After the development of that record,<sup>1</sup> and following briefs and oral argument, the Court, on May 28, 2009, granted the State's motion, finding the SFRA constitutional and allowing the formula to be applied statewide, including in Abbott districts. Abbott XX. The Court, however, expressly conditioned the constitutionality of the SFRA on the State (1) providing school funding aid "at the levels required by SFRA's formula each year" through 2011, and (2) conducting the "mandated review of the formula's weights and other operative parts" based on three years of "full implementation." Id. at 146, 174.

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<sup>1</sup> A trial conducted in February and March 2009 by the Honorable Peter S. Doyne, J.S.C. produced a record comprised of testimony from 29 witnesses, including numerous school finance and educational experts, and thousands of pages of exhibits.

On March 16, 2010, Governor Christie presented his FY11 State Budget, proposing to reduce state school funding aid for kindergarten through 12<sup>th</sup> grade ("K-12") by \$1.081 billion, thus reducing state aid by 13.6% below that provided under the SFRA formula in 2009-10. On March 19, 2010, the State notified school districts of their formula aid allocations at the reduced level; districts then prepared and adopted budgets for 2010-11 based on those aid reductions.

On March 22, 2010, in a letter to the Attorney General, Plaintiffs demanded that the State either revise school aid levels to comply with the SFRA formula, or move before this Court for appropriate relief from the Abbott XX mandates. Certification of David Sciarra ("Sciarra Cert.") ¶3. The Attorney General's response, dated April 15, 2010, while confirming the reduction in school aid, did not address the Abbott XX requirement that level funding be maintained; nor did the State express any intention to seek relief from this Court. Sciarra Cert. ¶4. Plaintiffs, on April 26, 2010, reiterated its demand that the State either revise the aid levels to comport with the SFRA or seek judicial relief. Sciarra Cert. ¶5. By letter dated May 5, 2010, the Attorney General responded, asserting that Abbott XX does "not...compe[l] any action by the State at this time." Sciarra Cert. ¶6, Ex. D.

Plaintiffs now file this Motion in Aid of Litigants' Rights seeking an order enjoining the State from providing school funding aid for 2010-11 that is less than the levels required by the SFRA formula. Given the immediate need for districts to finalize budgets and prepare for the 2010-11 school year, Plaintiffs seek an expedited briefing schedule and oral argument on the motion.

#### STATEMENT OF FACTS

##### A. The State's Aid Reduction for 2010-11

For the 2010-11 school year, the State Budget would reduce K-12 school aid by \$1.081 billion statewide, to a level 13.6% below the aid levels provided to districts under the SFRA formula in 2009-10.<sup>2</sup> Certification of Melvin Wyns ("Wyns Cert.") ¶6. To achieve this \$1.081 billion aid cut, the Department of Education ("DOE") reduced State formula aid to every school district, implementing the reductions through a two step process. Wyns Cert. ¶¶8-9. First, the DOE altered the amount of K-12 aid under the SFRA formula for 2010-11 for each district by: (1) not increasing the total amount of statewide

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<sup>2</sup> The \$1.081 billion reduction for 2010-11 follows the State's failure in fact to provide the full level of aid required by the SFRA in the current year. In 2009-10, the State did not apply the SFRA's annual growth rates, resulting in a shortfall of \$302.9 million in K-12 formula aid statewide for that school year. Wyns Cert. ¶16.

equalization aid pursuant to the formula; (2) not inflating any of the formula aid parameters by the Consumer Price Index ("CPI"), as the formula requires; (3) not applying the statutory provisions in SFRA concerning the allowable annual growth in State aid; and (4) ignoring altogether the SFRA's requirements relating to Education Adequacy Aid. Wyns Cert. ¶9.

Second, the DOE reduced the altered amount of formula aid by 4.994% of each district's 2009-10 general fund budget. This 4.994% reduction -- which was less for the minority of districts in which K-12 State aid was below 4.994% of their 2009-10 general fund budget -- was then spread across various SFRA aid categories within the districts' budgets in a manner determined by DOE. Wyns Cert. ¶10.

When aggregated on a statewide basis, the State significantly reduced aid in several SFRA formula categories, including special education categorical aid (reduced by 42%, or over \$300 million), security aid (reduced by 59.6%, or over \$144 million), and adjustment aid (reduced by 39%, or \$291 million). Wyns Cert. ¶7.<sup>3</sup> Given that the SFRA formula represents the State's own determination of the funding required to achieve State academic standards, Abbott XX, 199 N.J. at 172, these

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<sup>3</sup> The State is increasing preschool education aid by 2.85% due to enrollment increases, but this does not include the annual CPI adjustment required by the SFRA, leaving preschool underfunded by \$9.8 million. Wyns Cert. ¶15.

substantial aid reductions in the formula's basic components deprive students of the resources deemed necessary for a thorough and efficient education. Wyns Cert. ¶22.

In analyzing the State's \$1.081 billion aid reduction, and the manner in which the reduction was apportioned to individual districts, the non-partisan Office of Legislative Services ("OLS") concluded that the State's 2010-11 school aid budget "departs significantly from the funding provisions of the School Funding Reform Act of 2008." Wyns Cert. ¶18; see also Allen T. Dupree, Educ. Sec. Of Office of Legislative Serv., Analysis of the New Jersey Budget, FY2010-11, Dep't of Educ. 5, (2010) available at [http://www.njleg.state.nj.us/legislativepub/budget\\_2011/education11.pdf](http://www.njleg.state.nj.us/legislativepub/budget_2011/education11.pdf) ("OLS Analysis").

While the K-12 aid reductions affect all districts statewide, the impact on districts with high concentrations of low-income or "at-risk" students is particularly significant. See Wyns Cert. ¶12, Ex. C (analyzing State aid reductions by district wealth classification). Thus, in districts with the highest concentration of at-risk students - more than 60% - the aid reduction is \$1,067 per pupil, ibid., and aid to Abbott districts is cut by \$255.9 million or \$1,066 per pupil. Wyns Cert. ¶12, Ex. B. The aid cut in the 93 districts classified by DOE as "high need school districts," see N.J.A.C. 6A:13-3.3,

totals \$362 million, or \$1,002 per pupil. Wyns Cert. ¶13, Exhibit D.

Moreover, the SFRA statute and Abbott XX require the State to review the initial three years of implementation of the formula, and make recommendations to the Legislature, by September 1, 2010. Wyns Cert. ¶21. The SFRA's effectiveness in assuring that students receive adequate resources to fulfill the State's academic standards, cannot be evaluated -- nor can any determinations be made concerning the adjustments to the formula that may be necessary for the following three years -- unless the State fully implements the formula by providing aid at the required SFRA levels. Ibid.

**B. Impact On Districts**

On March 19, 2010, the DOE notified districts of their State formula aid reductions, and directed districts to prepare and adopt 2010-11 budgets. Wyns Cert. ¶4. In April and May, the districts' budgets were finalized following review by the local municipal governing bodies. Id. at ¶19.

Based on data from a representative sample of high need districts, including Abbott districts, the districts responded to the State's K-12 formula aid reduction by making cuts in almost every program and support service area, including core instruction. See Certification of Dr. Danielle Farrie ¶¶12-19

("Farrie Cert.")(analyzing the program and expenditure cuts in budget submissions to DOE from 44 high need districts). In the basic areas of instruction and support services, districts cut expenditures by \$93 million and \$73 million, respectively, thus accounting together for 75% of the total budget reduction. The high need districts also made significant cuts in expenditures in other critical programs and services, including special and bilingual education, remedial and vocational instruction, and extracurricular activities. Farrie Cert. ¶14.

The districts also cut supplemental programs identified in the SFRA formula as necessary for at-risk students in high need districts, and included in the supplemental programs required under prior Abbott rulings. See Abbott XX, 199 N.J. at 168-69, 173, n. 15. These program cutbacks include before and after school programs (cut by 8%), health services (cut by 6%), and attendance and social work (cut by 17%). Farrie Cert. ¶19. The expenditure category for other supplemental programs for at-risk students, including small learning academies, tutoring, and reading improvement, was reduced by 67%. Ibid. (noting reductions in expenditures for guidance (11%), special education child study teams (4%), school libraries (7%), adult education (83%), summer school, (28%) and vocational education (15%)).

The high need districts also reduced staff positions in a range of program and support service areas, including regular and special education teachers, and staff providing supplemental programs for at-risk students, such as reading tutors, guidance counselors, and health services personnel. Farrie Cert. ¶¶20-23. Overall, the districts cut a total of 3,188 full-time equivalent ("FTE") positions, or 8% of their total staff, for the 2010-11 school year. Regular teacher positions were reduced by 1,355, or 7% of the total core instructional teaching workforce; 493 positions (9%) that would have provided for special education services to students with disabilities were likewise eliminated. The districts reduced guidance and social work staff by 168 or 12%, and cut 10% or 1,001 positions in other categories, including technology, health services, school and district operations and administration. Farrie Cert. ¶23.

While the reductions in specific program area and staff positions varied from district-to-district, most areas experienced cutbacks, including the instructional core curriculum. The breadth and depth of the reductions across instructional and supplemental program categories reflect the substantial size and scope of the State's K-12 formula reduction that each district was required to address in finalizing their 2010-11 budgets. Farrie Cert. ¶24(e).

The DOE placed no statutory and regulatory constraints on the programmatic use of K-12 state aid at the district levels, leaving each district to make its own decisions about which programs, staff and services to cut in order to fashion a budget at the reduced State K-12 aid level. Consequently, though the State made reductions in aid with respect to specific categories of the SFRA formula - special education aid, security aid, adjustment aid, transportation aid, etc. - the cuts made by districts were not confined to those program and service areas, but rather extended across the spectrum of instructional and support programs and services in the districts' adequacy budgets under the SFRA. Farrie Cert. ¶24(f).

The State's reduction in K-12 aid to levels far below that required by the SFRA formula has resulted in the adoption of 2010-11 budgets by high need districts, including Abbott districts, "that no longer contain adequate resources deemed essential for students to meet State academic standards under the formula." Farrie Cert. ¶24(g).

## ARGUMENT

### I. THE STATE'S FAILURE TO IMPLEMENT THE SFRA FORMULA BY PROVIDING SCHOOL AID IN FY11 AT THE REQUIRED FORMULA LEVELS VIOLATES THE EXPLICIT MANDATES IN ABBOTT XX

In Abbott XX, the Court, on the basis of a complete record created on remand, including the Special Master's findings and recommendations, concluded that the School Funding Reform Act of 2008 ("SFRA") was constitutional and, therefore, "may be implemented as it was designed, as a state-wide unitary system of education funding" for all New Jersey school districts, including the Abbott districts. Abbott XX, supra, 199 N.J. at 147. The Court, however, "premised" its finding of constitutionality "on the expectation that the State will continue to provide school funding aid during this and the next two years at the levels required by SFRA's formula each year," and will conduct the statutory-mandated review of the formula "after three years of implementation." Id. at 146. Given this "premise" -- and the State's commitment which underlay it -- the State's failure to implement the SFRA by providing school aid in 2010-11 at the required formula levels can only be viewed as a patent violation of the explicit mandates in Abbott XX.

At the outset, there really is no dispute that the State seeks to provide aid to school districts, including Abbott districts, for 2010-11 in amounts that are wholly inconsistent

with the funding components of the SFRA.<sup>4</sup> See N.J.S.A. 18A:7F-52 to -58 (prescribing the SFRA aid categories that "shall be" provided annually to "each school district," including equalization aid, special education categorical aid, security aid, transportation aid, adjustment aid and preschool education aid); Abbott XX, 199 N.J. at 153-57 (analyzing formula's design and aid components). Moreover, the State concedes that it is reducing K-12 aid by "more than \$1 billion," or 13.6%, below the levels provided in 2009-10, a dramatic reduction that the non-partisan Office of Legislature Services concludes "departs significantly" from the SFRA formula. See Statement of Facts, supra at 6. Thus, without question, the State is not providing school aid in 2010-11 "at the levels required by SFRA's formula," as mandated by Abbott XX, 199 N.J. at 146.

The State's failure to implement the SFRA, by substantially reducing SFRA formula aid, strikes at the very heart of this Court's decision upholding the formula's constitutionality. First, as Abbott XX makes perfectly clear, the fundamental predicate for providing funding at the SFRA formula level is the assurance of the delivery of a constitutional education to all public school students, and particularly to "at-risk pupils

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<sup>4</sup> The Abbott XX mandate for State school aid at the SFRA formula level applies to the 2010-11 school year, the third year of implementation following enactment of the SFRA in January 2008. Abbott XX, 199 N.J. at 146.

wherever they happen to attend public school in New Jersey." Id. at 169. Based on the exhaustive record developed on remand, the Court found "that SFRA is designed to provide school districts in this state, including the Abbott districts, with adequate resources to provide the necessary educational programs consistent with state [academic and performance] standards." Id. at 147; see also id. at 172 (describing SFRA as "fair and equitable means designed to fund the costs of a thorough and efficient education, measured against the delivery of the [Core Curriculum Content Standards]"). While recognizing that there can be no "absolute guarantee" that the SFRA "will achieve the results desired by all," and that "the outcome cannot be assured," the Court concluded that the funding formula is "a constitutionally adequate scheme" deserving of "the chance to prove in practice that, as designed, it satisfies the requirements of our constitution." Id. at 175.

The Court's unequivocal directive that the "SFRA will remain constitutional only if the State is firmly committed" to ensuring the funding prescribed by the formula is, therefore, concretely linked to -- and a necessary precondition of -- the Court's determination that the SFRA "provides those resources necessary for the delivery of State education standards across the State." Id. at 170 (emphasis added). Satisfied that the

formula, at least pending the three-year review of implementation under N.J.S.A. 18A:7F-46, provides "constitutionally adequate" resources "to achieve a thorough and efficient education for every child, regardless of where he or she lives," Abbott XX, 199 N.J. at 175, the Court made clear that "full implementation" requires, at a minimum, calculating and providing school aid annually at the specific levels fixed by the formula's methodology. Id. at 146, 174. Indeed, the Court underscored that the SFRA's constitutionality "is not an occurrence in a moment in time; it is a continuing obligation". Id. at 146 (emphasis added). Thus, the State's action in reducing aid for 2010-11 to a level far below the SFRA's formulaic amount effectively deprives Plaintiffs and their peers statewide of the resources that the State itself determined were necessary to afford these students the opportunity to achieve the thorough and efficient education mandated by our Constitution.

Second, the State's substantial reduction in aid runs directly counter to the fundamental intent, design and objectives of the SFRA formula. As the Court made clear, the State "painstakingly" constructed the SFRA "as a fair and equitable means" to "fund the costs of a thorough and efficient education, as measured against the delivery of the CCCS."

Abbott XX, 199 N.J. at 171-2. Further, and significantly, the SFRA's design, the Court wrote, would benefit "all districts" because of "the formula's insistence on predictability and transparency in budgeting, and accountability...." Id. at 173. The achievement of these core formula principles was emphasized by the Court:

The State asks to implement the SFRA as it was designed to gain the transparency, equity and predictability that everyone is interested in achieving: from the parents of school age children, to average taxpaying citizens, to the district next door looking at the resources of its neighbors, and to the State as regulator and as lawmaker. With this decision, full implementation shall proceed.  
[Id. at 174]

Instead of the "full implementation" anticipated by the Court, the State's provision of aid in amounts substantially below formula levels, and in a manner completely at odds with the formula's design, represents a crippling, if not lethal, blow to the new era that the SFRA was intended to usher in, namely, the provision of school funding from year-to-year in an equitable and predictable manner. Abbott XX, 199 N.J. at 171 (noting that the State's "previous indifference" to these fundamental prerequisites "started us down the Robinson/Abbott path"). As a practical matter, the State's aid reduction for 2010-11 shatters any -- and all -- semblance of equity and stability in the funding of public education, in violation of a

clear commitment of constitutional dimension at the heart of the SFRA that was made by the State to the school children, educators, parents, taxpayers, and, a year ago, to this Court.

Third, the State seeks to dramatically reduce funding in several SFRA formula categories which the Court has found to be essential to the ability of New Jersey students to meet this State's academic and performance standards. Specifically, the State is cutting special education categorical aid by over \$300 million, covering one-third of the cost of special education programs for students with disabilities, id. at 212; security categorical aid by over \$144 million, covering the cost of school safety and violence prevention for districts with high percentages of at-risk students, id. at 223; and adjustment aid by \$291 million, provided to enable certain school districts to transition to the SFRA formula and to address established problems of municipal overburden. Id. at 157, 165-166 (noting that the State "recognizes municipal overburden is a problem," but has provided adjustment aid as a "protective measur[e] to alleviate the initial stress" caused by SFRA's increase in local tax levies).

Moreover, these substantial reductions in SFRA formula aid have already resulted in the adoption of district budgets which include across-the-board cuts in essential programs, staff and

services, including the core instructional area and supplemental programs and services designed for at-risk students. See Statement of Facts, supra at 7-10 (describing the breadth and depth of program and staff cuts in high need districts, attributable to the magnitude of the State aid reduction and the absence of DOE guidance). Thus, the State's failure to provide aid at the SFRA formula levels not only devastates each district's SFRA "adequacy budget," which lies "[a]t the core of the formula," Abbott XX, 199 N.J. at 153 (describing the base aid, weights for at-risk students, and other elements in the adequacy budget), but also eviscerates the very structure of the "many moving parts" of the SFRA's weighted school funding formula, which the Court found, was a "fair and adequate funding system for use across the state." Id. at 170.

Fourth, the State's formula aid reductions significantly affect the funding available to support programs and services for low-income or "at-risk" students in high need districts, including (but not limited to) the Abbott districts. N.J.A.C. 6A:13-3.1 et seq. (classifying 93 districts as "high need" and directing implementation of class size limits, full-day kindergarten, and literacy programs in those districts). See Statement of Facts, supra at 6 (analyzing significant cuts in aid to poor districts and districts with high concentrations of

at-risk students, including Abbott districts). As the Court acknowledged, the State "made considerable efforts" in the design of the SFRA "to confront the difficult question of how to address the education needs of at-risk pupils, no matter where those children attend school." Abbott XX, 199 N.J. at 172. The State's aid reductions, however, wholly undermine the "impressive" effort made in the development of the SFRA formula to "identify and provide realistic education funding support to at-risk children whose severe educational challenges cause their programs to be the most costly." Ibid.<sup>5</sup>

Finally, the Court's mandate for the provision of aid at the SFRA formula levels "during this and the next two years," id. at 146, is inextricably linked to the Court's other overarching condition precedent for SFRA's continuing constitutionality -- the directive for a thorough review of the initial three years of the formula's implementation:

Our finding that that approach is not constitutionally infirm is tethered to the State's commitment diligently to review the formula after its initial years of implementation and to adjust the formula as necessary based on the results of that review.  
[Id. at 169]

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<sup>5</sup> The SFRA formula is designed "to enable the Abbott districts to select and deliver" the supplemental programs identified in Abbott v. Burke, 177 N.J. 578, 590 (2003) ("Abbott X"). Abbott XX, 199 N.J. at 173, n. 15 (observing that "the State has never asked to eliminate" the Abbott X supplemental programs). The Abbott XX ruling does not relieve the State of the mandate to provide the Abbott X supplemental programs.

But, as the Court recognized, "until the formula has had time to function as intended, it will be impossible to know precisely what its effect will be." Ibid. The effectiveness of the formula in providing adequate resources for a constitutional education, therefore, cannot be properly examined unless the formula is made fully operational as intended and designed for the three-year period prior to the required statutory review. Conducting a meaningful assessment of SFRA's implementation so as "to know precisely what its effect will be," ibid., is impossible unless annual State aid is, in fact, provided at the levels required by the SFRA. Id. at 173 (concluding that for the formula "to achieve its beneficial results, it must be allowed to work as it was intended"). By substantially reducing K-12 aid in 2010-11, the SFRA formula will not be operating "as it was intended," thereby rendering the mandated "three-year look back" meaningless. Id. at 146, 174. As the Court concluded:

Today's holding issues in the good faith anticipation of a continued commitment by the Legislature and Executive to address whatever adjustments are necessary to keep SFRA operating at its optimal level. The three-year look back, and the State's adjustments based on that review, will provide more information about the efficacy of this funding formula. There should be no doubt that we would require remediation of any deficiencies of a constitutional dimension, if such problems do emerge. [Id. at 146]

In upholding the constitutionality of the SFRA, this Court expressly promised to "remai[n] committed to [its] role in

enforcing the constitutional rights of the children of this State should the formula prove ineffective or the required funding not be forthcoming." Id. at 169 (emphasis added). We now know, as a result of the State's aid notifications to the districts, that, in fact, the "required funding [is] not...forthcoming" for 2010-11. For the reasons set forth above, the State's proposed aid reduction engenders a grave constitutional deficiency that violates this Court's explicit directives and abandons the SFRA - a formula which the State promised this Court, and New Jersey's students and citizens, would serve as an ongoing mechanism to equitably and adequately fund public education. This betrayal compels the Court's immediate intervention. It must be enjoined.

II. **THIS COURT SHOULD IMMEDIATELY ENTER AN APPROPRIATE ORDER TO ENSURE STATE COMPLIANCE WITH ITS CONTINUING CONSTITUTIONAL OBLIGATION TO IMPLEMENT AND REVIEW THE SFRA FORMULA IN ACCORDANCE WITH THE ABBOTT XX MANDATES**

Plaintiffs are compelled to file this motion because the State seeks to drastically reduce school funding aid in 2010-11 below the levels required by the SFRA formula and in direct contravention of its continuing constitutional obligations under Abbott XX. The State has also refused to take corrective action by providing school aid at the requisite SFRA formula level or

even to seek this Court's approval for its unprecedented aid reductions. Thus, the Court is compelled to act.

Of course, the Court unquestionably has the authority to do so, notwithstanding the budgetary implications of such action. In Robinson v. Cahill, 69 N.J. 133 (1975) ("Robinson IV"), the Court held:

If there remains a theoretical conflict between the strictures of the Appropriations Clause and the mandate of the Education Clause, we hold the latter to be controlling in these circumstances.... The interest here at stake transcends that of an ordinary individual claimant against the State. It is that of all the school children of the State, guaranteed by the constitutional voice of the sovereign people: equality of educational opportunity.  
[Id. at 154]

See also New Jersey Div. of Youth and Family Serv. v. D.C., 118 N.J. 388, 400 (1990) (finding principle that judiciary will not interfere with discretion of the Legislature or Governor on whether to appropriate funds inapplicable "when funds are constitutionally mandated")(citing Robinson v. Cahill, 67 N.J. 333, 354-55 (1975)).

Indeed, this Court has not hesitated to fashion an appropriate remedial order where, as here, there is a clear failure to provide the funding necessary to vindicate the constitutional right to a thorough and efficient education or to comply with this Court's remedial mandates. In Robinson v. Cahill, 69 N.J. 449 (1976) ("Robinson V"), for example, the Court

found the Public School Education Act of 1975 facially constitutional if fully funded and ordered the Legislature to enact a provision for the full funding of the State Aid provisions of the Act. Id. at 467-68. More recently, in Abbott IV, the Court ordered the Legislature to fund an increase in per-pupil spending in Abbott districts for the 1997-98 school year. Abbott v. Burke, 149 N.J. 145, 197-98 (1997) ("Abbott IV").

Further, in Abbott V, the Court underscored the bedrock principle established in this litigation that the State's provision of adequate funding "will be the measure of the State's constitutional obligation to provide a thorough and efficient education..." Abbott v. Burke, 153 N.J. 480, 519 (1998) ("Abbott V"); see also Abbott v. Burke, 172 N.J. 294 (2002) ("Abbott IX"); Abbott v. Burke, 177 N.J. 596 (2003) ("Abbott XI"); Abbott v. Burke, 187 N.J. 191 (2006) ("Abbott XV") (modifications of Abbott V to ensure adequate State funds to maintain core curriculum and supplemental programs in annual budgets). Now, there is an urgent and compelling need for judicial action to remedy the clear violation of this Court's most recent Abbott XX decree to ensure equitable, adequate and predictable school funding under the SFRA formula.

Immediate judicial intervention is especially necessary to ensure the delivery of State school aid in 2010-11 at levels that comport with the Abbott XX mandates. As discussed supra at 19, in granting the State's motion to be relieved of the specific funding remedies for the Abbott districts, the Court anticipated the State's "good faith" commitment "to keep SFRA operating at its optimal level." Abbott XX, 199 N.J. at 146. The State's disregard of the SFRA's funding provisions and the express conditions in the Abbott XX decree for continuing constitutionality, not only renders the SFRA formula inoperative, but also repudiates the State's own commitment to full, "good faith" implementation of the SFRA. Without prompt judicial intervention and appropriate relief, the Court's Abbott XX holding -- and the continuing constitutional requirements that undergird the SFRA formula -- will be rendered completely hollow. Simply put, the funding necessary to provide a constitutional education to Plaintiffs and their peers across the state will not, as anticipated and required by the Court, be "forthcoming." Id. at 169. As this Court held in Robinson IV, over thirty-five years ago:

If then, the right of children to a thorough and efficient system of education is a fundamental right guaranteed by the Constitution, as we have already determined, it follows that the court must 'afford an appropriate remedy to redress a violation of those rights. To find otherwise would be to say that our

Constitution embodies rights in a vacuum, existing only on paper.'"

[Robinson IV, supra, at 147, quoting Cooper v. Nutley Sun Printing Co., Inc., 36 N.J. 189, 197 (1961)]

In light of the State's undisputed failure to fully implement the SFRA by providing school funding aid in conformance with the formula, as mandated by Abbott XX, and the urgent necessity for such funding to ensure public school children a constitutional education, the need for prompt remedial action is both essential and compelling. The State's school funding cuts must be enjoined.

**CONCLUSION**

To effectuate the State's continuing constitutional obligations under Abbott XX, the Court should enter an order enjoining the State from (1) providing school funding aid below the levels required by the SFRA formula and, (2) conducting the required three-year review of the formula, and making recommendations to the Legislature, until such time as the State can demonstrate that the formula has been fully implemented as intended, designed and enacted.

Respectfully submitted,

EDUCATION LAW CENTER



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