

David G. Sciarra, Esquire  
EDUCATION LAW CENTER  
60 Park Place  
Suite 300  
Newark, N.J. 07102  
(973) 624-1815

Attorneys for Plaintiffs-Movants

RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs-Movants

Vs.

FRED G. BURKE, ET AL.,

Defendants-Respondents

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 42,170

CIVIL ACTION

**CERTIFICATION OF DAVID SCIARRA**

David Sciarra, of full age, hereby certifies as follows:

1. I am Executive Director of Education Law Center ("ELC") and I serve as counsel to Plaintiffs in this matter. Plaintiffs are a certified class comprised of all children attending public schools and preschools in the thirty-one poorer urban or "Abbott" districts.

2. I make this certification to inform the Court of

Plaintiffs' efforts over the past two months, prior to filing this motion for relief in aid of litigants' rights, to seek to ensure the State Defendants ("State") comply with this Court's decision in Abbott XX.

3. On March 22, 2010, Plaintiffs informed the State Attorney General by letter sent via facsimile transmission and regular mail that the State school funding levels for 2010-11 are substantially below the levels required by the SFRA formula, and do not comply with the condition on constitutionality of the SFRA established in Abbott XX. Plaintiffs further advised that the State must either revise the aid levels in accordance with the SFRA formula or ask this Court for appropriate relief from the Abbott XX mandates. A true and correct copy of the letter dated March 22, 2010 is attached as Exhibit A.

4. By letter dated April 15, 2010, sent via facsimile transmission and regular mail, the Attorney General confirmed that the State is seeking to reduce state aid to New Jersey school districts in FY11 by over \$1 billion from the level provided in 2009-10 under the SFRA, but made no mention of the Abbott XX requirement for formula level funding or if the State intended to seek relief from this Court. A true and correct copy of the letter dated April 15, 2010 is attached as Exhibit B.

5. On April 26, 2010, Plaintiffs replied via facsimile transmission and regular mail, again advising the State to either

revise the aid levels to comport with the SFRA or seek judicial relief. A true and correct copy of the letter dated April 26, 2010 is attached as Exhibit C.

6. On May 5, 2010, the Attorney General sent a final letter by mail and facsimile transmission stating that the State is aware of the Abbott XX decision, but believes that it does not compel any action on their part. A true and correct copy of the letter dated May 5, 2010 is attached as Exhibit D.

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

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David G. Sciarra

June 7, 2010



## Education Law Center

*Standing Up for Public School Children*

By Fax and Regular Mail

March 22, 2010

Paula T. Dow, Esq.  
Attorney General of New Jersey  
Office of the Attorney General  
R.J. Hughes Justice Complex  
P.O. Box 080  
25 West Market St.  
Trenton, New Jersey 08625-0080

Re: Abbott v. Burke: FY11 State SFRA Formula Aid

Dear General Dow:

As counsel for the plaintiff schoolchildren in the above captioned matter, Education Law Center (ELC) writes to bring to your immediate attention serious legal issues concerning Governor Christopher Christie's March 16th proposal to reduce state school formula aid by \$1.06 billion in the FY11 State Budget. As we explain below, the Governor's proposal directly conflicts with the New Jersey Supreme Court's May 2009 ruling upholding the constitutionality of the School Funding Reform Act of 2008(SFRA), Abbott v. Burke, 199 N.J. 140 (2009)(Abbott XX), and, accordingly, should be rescinded and revised to comply with that ruling.

In the State defendants' presentation to the Supreme Court in support of the constitutionality of the SFRA last year, your predecessor, General Milgram, repeatedly represented to the Court the State's firm commitment to fully fund the SFRA formula each year. In Abbott XX, the Court found the SFRA to be constitutional, and granted the State's motion to be relieved from prior Abbott remedial orders, "premised 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." Id. at 146. To underscore this explicit directive, the Court stated that "SFRA will remain constitutional only if the State is firmly committed to ensuring that the formula provides those resources necessary for the delivery of State education standards across the State." Id. at 170. The Court further emphasized that it "remains committed to our 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.

There is nothing in the SFRA formula that would permit the reduction in FY11 state formula aid proposed by the Governor. To the contrary, the SFRA formula requires that state school aid, at a minimum, be provided at the FY10 levels for many districts, while other districts would receive a small aid increase over FY10. The Governor's proposal to cut school formula aid by \$1.06 billion, or 12.5% of the total amount required under the SFRA for FY11, is not authorized by the SFRA formula and directly conflicts with the clear directives in the Abbott XX ruling.

Accordingly, it is imperative that the Governor take immediate steps to bring his budgetary proposal for state school aid for FY11 into full compliance with the SFRA formula and the Abbott XX mandates.

The Governor's failure to propose school funding aid consistent with the SFRA formula and Abbott XX implicates the right of hundreds of thousands of school children to a constitutional education, as adjudicated in this litigation, not only in poorer urban districts, but also statewide. It is critical, therefore, that these issues be immediately addressed by the Office of the Attorney General and the Governor.

Plaintiffs' counsel stands ready to assist you in ensuring the State proceeds in a manner that is consistent with the Court's mandates. In the event the State proposes to pursue a course of action that deviates from those requirements, the State must obtain appropriate relief from the Court prior to reducing aid under the SFRA formula.

Please contact me if you need additional information or wish to discuss further our substantial legal concerns about the Governor's proposed reductions in state school funding. Thank you for your prompt attention to this matter.

Respectfully yours,



David G. Sciarra, Esq.  
Counsel for Plaintiffs

cc: Jeffrey S. Chiesa, Esq., Chief Counsel to the Governor



*State of New Jersey*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF LAW  
25 MARKET STREET  
PO Box 112  
TRENTON, NJ 08625-0112

PAULA T. DOW  
*Attorney General*

ROBERT M. HANNA  
*Director*

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

April 15, 2010

Mr. David G. Sciarra, Esq.  
EDUCATION LAW CENTER  
60 Park Place  
Suite 300  
Newark, NJ 07102

Re: School Facilities Projects / SDA Districts

Dear Mr. Sciarra:

I am writing in response to your February 23, 2010 letter to Attorney General Paula Dow regarding school facilities projects in the SDA districts. More specifically, in that letter, you advise the Attorney General that the Department of Education and the Schools Development Authority have still not adopted regulations authorizing the delegation of the management of school facilities projects to the SDA districts.

The Attorney General has been briefed on this issue and has requested that the Division of Law work with both the Schools Development Authority and the Department of Education so that appropriate regulations can be proposed as expeditiously as possible. As you are probably aware, the new administration is undertaking a comprehensive review of existing and proposed regulations and the regulatory process. See Governor Christie's Executive Orders Nos. 1, 2 and 3. Thus, any proposal or adoption would need to be accomplished in coordination with those efforts.

Finally, the Attorney General is also in receipt of your letter of March 22, 2010 regarding the Governor's proposal for State school aid for the 2010-2011 school year. While we certainly



April 15, 2010

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understand the concerns you raise in that letter, I am sure you are aware of the very difficult decisions that had to be made given that the State is facing a deficit for FY 2011 of nearly \$11 billion and that more than \$1 billion of State school aid in FY 2010 was from federal stimulus funds that are not available for FY 2011. In light of these circumstances, the Governor's FY 2011 Budget proposal attempts to find an equitable means of allocating the State's limited resources available for education funding by ensuring that no school district in New Jersey will face a reduction in State aid that is greater than 5% of their school budget.

Thank you for bringing these issues to the attention of the Attorney General.

Sincerely yours,

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By: Nancy Kaplan  
Nancy Kaplan  
Assistant Attorney General

ejc



## Education Law Center

*Standing Up for Public School Children*

By Fax and Regular Mail

April 26, 2010

Paula T. Dow, Esq.  
Attorney General of New Jersey  
Office of the Attorney General  
P.O. Box 080  
25 West Market St.  
Trenton, New Jersey 08625-0080

Re: Abbott v. Burke XX: FY11 School SFRA Formula Aid

Dear General Dow:

I write in response to the April 15, 2010 letter from your Office in reply to the concerns set forth in our March 22 correspondence regarding the Governor's proposal for state school aid in the FY11 State Budget. Your Office, in this letter, confirms that the State is seeking to cut state aid to New Jersey school districts in FY11 by over \$1 billion from the level provided in FY10 under the School Funding Reform Act of 2008 (SFRA).

Surprisingly, the letter makes no mention of the May 2009 Supreme Court decision in Abbott XX. Abbott v. Burke, 199 N.J. 140 (2009) (Abbott XX). As we explained in our March 22 correspondence, the Supreme Court's decision explicitly mandates the State to "provide school funding aid" in FY11 "at the levels required by the SFRA's formula." 199 N.J. at 146. In issuing this decree, the Court was well aware of budgetary pressures arising from "difficult economic times," id. at 172, and the availability in FY10 of federal stimulus funds, id. at 173-4. Nonetheless, the Court, in declaring the SFRA constitutional and authorizing its statewide implementation, explicitly and unconditionally directed the State to provide school aid at the levels required by the SFRA formula in FY11.

It is abundantly clear that, consistent with the Executive Branch's constitutional obligation to faithfully execute the laws, N.J. Const. Art. V, §1, ¶ 11, and the Separation of Powers clause of the New Jersey Constitution, N.J. Const. Art. III, §1, the Governor must either revise the budget to conform to the Supreme Court's mandate in Abbott XX or seek appropriate relief

from this mandate from the Court. We know of no legal authority or precedent that permits the Executive Branch to ignore an explicit Court decree, particularly where, as here, that decree involves the fundamental rights of public school children to a "thorough and efficient" education under the Education clause. N.J. Const. Art. VIII, §4, ¶ 1.

Accordingly, we fully anticipate that the State will take prompt action either to revise the FY11 state aid proposal to fully conform to the SFRA formula, or to seek appropriate relief from the Supreme Court. Please advise immediately as to which course of action the State will take with respect to the provision of state school aid in the FY11 Budget.

Thank you for your prompt attention to this matter.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "David Sciarra".

David G. Sciarra, Esq.

cc: Jeffrey S. Chiesa, Esq., Chief Counsel to the Governor



*State of New Jersey*

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DEPARTMENT OF LAW AND PUBLIC SAFETY  
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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

PAULA T. DOW  
*Attorney General*

ROBERT M. HANNA  
*Director*

May 5, 2010

David G. Sciarra, Esq.  
EDUCATION LAW CENTER  
60 Park Place  
Suite 300  
Newark, NJ 07102

Re: Delegation of School Construction Projects

Dear Mr. Sciarra:

My office is in receipt of your letter of April 23, 2010 to Attorney General Dow regarding the promulgation of regulations implementing the delegation of school construction project to SDA districts. In that letter, you request that the Attorney General provide "a definitive schedule for the rulemaking process."

As you point out, the Legislature contemplated that these regulations would be adopted by August 2008. Unfortunately, the prior administration failed to meet that statutory time-frame and was unable to promulgate those regulations in the 1½ years to follow. Please be advised, however, that over the first four months of the new administration, the Attorney General's Office has worked with the School Development Authority and the Department of Education with an eye towards completing these regulations. Factoring in many competing priorities, including addressing the fiscal crisis currently facing the State, it is difficult to provide a definitive schedule necessary for a thorough and comprehensive rulemaking process.

Finally, my office is also in receipt of your letter of April 26, 2010 regarding school aid for FY11. We are certainly

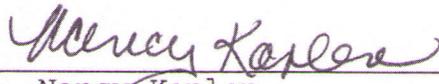


May 5, 2010  
Page 2

aware of the Supreme Court's decision in Abbott v. Burke, 199 N.J. 140 (2009) (Abbott XX) but do not believe that decision compels any action by the State at this time.

Sincerely yours,

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By:   
Nancy Kaplen  
Assistant Attorney General

NK/b