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March 14, 2011

VIA HAND DELIVERY

Clerk, Superior Court of New Jersey
Law Division, Bergen County
Civil Part Filing Office
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10 Main Street, Room 415
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**Re: Abbott v. Burke, et al.
Supreme Court Docket No. M-1293-09
Our File No.: 101**

Dear Sir/Madam:

Enclosed please find an original and one (1) copy of the post-trial submissions of amicus curiae, Piscataway Board of Education, together with a proof of service in connection with the above-referenced matter. Kindly file same and return one (1) copy, with your filing endorsement stamped thereon, to the undersigned in the self-addressed stamped envelope provided herein.

If you have any questions, of course, please do not hesitate to contact us.

With kind regards, we are

Very truly yours,

FOGARTY & HARA, ESQS.

BY:

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RAYMOND ARTHUR ABBOTT, et al.,	:	SUPREME COURT OF NEW JERSEY
	:	
Plaintiffs,	:	DOCKET NO.: M-1293-09
	:	
v.	:	CIVIL ACTION
	:	
FRED G. BURKE, et al.,	:	ON REMAND BEFORE THE
	:	HON. PETER E. DOYNE, A.J.S.C.
Defendants.	:	

POST-TRIAL BRIEF OF AMICUS CURIAE
PISCATAWAY BOARD OF EDUCATION
ON REMAND TO THE SPECIAL MASTER

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PROCEDURAL HISTORY

On May 28, 2009, the Supreme Court upheld the constitutionality of the School Funding Reform Act of 2008 ("SFRA"), N.J.S.A. 18A:7F-43 to -63, finding it facially adequate to satisfy the Thorough and Efficient Education Clause of the New Jersey Constitution, N.J. Const. art. VIII, §4, ¶1. Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX"). In doing so, the Court expressly premised its holding on the directives that the State (1) continue to provide funding through 2010-2011 "at the levels required by SFRA's formula each year," and (2) conduct a mandated review of the formula's components after three years of implementation. Id at 146.

On March 16, 2010, the Governor presented the FY11 State Budget, in which he proposed a decrease of \$1.081 billion in state aid for K-12 education, thereby reducing state aid 13.6% below the amount provided under the SFRA formula in 2009-2010. On March 18, 2010, the New Jersey Department of Education ("DOE") notified school districts of their formula aid allocations for the 2010-2011 school year, in order to allow the districts to prepare and adopt budgets for 2010-2011 based on those reductions. The Piscataway Board of Education ("the Board") was notified of a reduction in state aid of approximately \$5 million, representing 28% less than the amount received in 2009-2010.

On or about June 8, 2010, the Education Law Center, acting on behalf of the Abbott Plaintiffs, filed a Motion in Aid of Litigants' Rights, under Rule 1:10-3, seeking an order enjoining the State Defendants from (1) providing state aid for 2010-2011 in amounts less

than the levels required by SFRA's funding formula, and (2) conducting the three-year review or making recommendations to the Legislature pursuant to N.J.S.A. 18A:7F-46(a) and (b), since the State proposed not to fully implement the formula as it was designed and enacted. On or about September 7, 2010, the Board filed a motion for leave to participate as amicus curiae in support of Plaintiffs' position. The Court subsequently granted the Board's motion to participate, in addition to those of various other amici.

By order of January 13, 2011, the Court remanded the case to Your Honor as Special Master. The Court directed that the State "bear the burden of demonstrating that the present level of school funding distributed through the SFRA formula can provide for a thorough and efficient education [{"T&E"}] as measured by the comprehensive core curriculum content standards [{"CCCS"}] in districts with high, medium, and low concentrations of disadvantaged pupils." On January 25, 2011, the State moved for an extension of time and for clarification of the Court's remand order to the effect that it be permitted to submit evidence of the State's fiscal condition. On February 1, 2011, the Court issued an order denying the motion. Thereafter, the remand proceedings were held, with testimony commencing on February 14, 2011 and concluding on March 2, 2011.

STATEMENT OF FACTS

The State's provision of school funding to the Piscataway School District ("Piscataway" or "the District") at levels far below those required by SFRA has severely diminished the Board's instructional programs and called into question its ability to fulfill the constitutional mandate to provide its students with T&E for the 2010-2011 school year. On the opening day of the remand trial, this court heard the testimony of the Board's superintendent, Robert Copeland², who was called as a witness by the State and testified substantially concerning the effect of the state aid reductions on the provision of educational services under the CCCS within Piscataway.

Under the SFRA formula, Piscataway³ should have received state aid in the amount of approximately \$35 or \$36 million for the 2010-2011 school year (1T129). Instead, due to the reduction in state aid, Piscataway received only about \$12 million in state funding for the 2010-2011 school year (1T129). Though Piscataway requires approximately \$4,500 per pupil in state aid under the adequacy⁴ model, it received only \$1,527 per

² As cited herein, "1T" refers to the transcript of Copeland's testimony on February 14, 2011 (morning session), while "2T" refers to the transcript of Copeland's testimony on February 14, 2011 (afternoon session). Citations to "3T" and "4T" refer to the transcript of the testimony of Earl T. Kim given on February 16, 2011 (afternoon session) and February 21, 2011 (morning session), respectively.

³ Piscataway serves approximately 7,200 students, with 28% of its student population being eligible for free or reduced price lunches (1T20).

⁴ Under the adequacy budget of SFRA, "[t]he per pupil amount is intended to represent the cost of educating an elementary school student, that is, of providing that student with the CCCS and extracurricular and co-curricular

pupil for the 2010-2011 school year, a significant reduction from the \$2,357 it received in per pupil state aid for the prior 2009-2010 school year (1T93; 1T129; D-6). Overall, Piscataway's 2010-2011 state aid allocation was reduced by approximately \$5 million, representing 5% of the District's budget (1T32; D-6).

Teacher Layoffs and the Effect on Class Sizes:

Due to the reduction in state aid, Piscataway was forced to eliminate 14 full-time equivalent ("FTE") teaching positions (1T59; 1T72; D-6). Copeland testified that Piscataway is woefully understaffed compared to the SFRA adequacy model (2T16-2T17). The reduction in teaching staff positions has resulted in increased class sizes throughout the District (1T72). For example, many third grade classes increased from 24 or 25 students per class to approximately 27 students per class (1T72). High school class sizes have increased from the mid-20s to 31 or 32 students per class in some subject areas (1T72).

Copeland referred in his testimony to the leading academic study, the Tennessee Star Study, which indicated that large class sizes negatively impact on student achievement, particularly at the primary and elementary levels (1T74-1T76).

activities necessary for a thorough and efficient education." Abbott XX, supra, 199 N.J. at 153. Once the base per pupil amount is determined, it is adjusted upward based on a number of factors, including increased weights for grade level, at-risk students, special needs students, and limited English proficiency students. Id. at 153-54.

In working to cope with the budgetary impact of the state aid reductions for 2010-2011, District administrators attempted to maintain smaller class sizes in the elementary grade levels, but were ultimately unable to do so because it would result in a disproportionate impact on class sizes in the higher grades (1T74-1T75). For example, Copeland testified that, in order to keep kindergarten class sizes at 15-16 students per class, the District would have been forced to increase class sizes in other grades to 40 students per class (1T75).

Piscataway is teaching to the CCCS but still experiencing great difficulty in enabling its students to meet proficiency in some areas of the CCCS during the 2010-2011 school year (1T83-1T84). Copeland stated that some high school teachers are teaching six classes instead of five, with well over 30 pupils in the class. He testified that these class sizes do not allow for the kind of individual instruction necessary for student achievement (1T85).

Reduction of Teachers in the Area of World Languages:

Due to the cuts in state aid, Piscataway was forced to lay off four elementary world language teachers, thereby eliminating all certified world language instruction at the K-3 grade levels (1T48; 1T49; D-6). Instead of direct instruction being given by properly certificated world language teachers, those classes are now conducted using DVDs played on television screens by

instructors who may not know and are not certified to teach the language (1T102). Copeland testified that the current method of instruction in foreign languages using DVDs will not deliver the CCCS as they relate to world languages (1T104). He further testified that reduction in elementary world language teachers has deprived the 2,000 affected students in grades K-3 of direct instruction in world languages, thereby rendering it incredibly difficult for those students to achieve proficiency under the CCCS in this subject area (1T99-1T101).

Moreover, Copeland testified that the effect of the state aid reduction in 2010-2011 on the ability to deliver the CCCS pertaining to world languages is not limited to elementary students (1T104). Piscataway was forced to increase the number of students in its high school and middle school world language classes, often beyond 30 students per class, as a result of a reduction in state aid (1T104). Copeland attested to the fact that these increases in the size of world language classes will demonstrably hurt student achievement in this area for middle school and high school students, and, more particularly, those students who do not have a strong aptitude for foreign languages (1T104-1T105).

Teacher Layoffs in the Areas of Practical Arts & Technology:

The Piscataway Board was also forced to lay off practical arts teachers as a result of the reduction in state funding,

which led to the elimination of the District's programs in home economics, consumer science, and industrial arts in the middle schools (1T53-1T54; D-6). Copeland testified that the industrial arts and home economics programs created valuable opportunities for students to apply and develop their mathematic skills (1T131). When it eliminated those programs, the District hoped to be able to find an alternative means of delivering the CCCS that had been addressed through the industrial arts and home economics curricula (1T130-1T131). As of the date of his testimony, however, Copeland was unable to state with any degree of certainty whether Piscataway could effectively replace the unique contributions these programs afforded students in terms of educational benefit under the CCCS (1T130-1T131).

Due to the reduction in state funding, Piscataway was also forced to eliminate four media specialists in the elementary schools (1T50-1T51; 1T106; D-6). Copeland testified that the loss of media specialists will directly affect the ability of elementary school students in Piscataway to achieve the CCCS in technology (1T106-1T107). Libraries for the District's K-3 schools are now staffed only with library aides due to the reductions in state aid, meaning the students no longer receive the instruction given to them by the media specialists (1T51). In addition, the elimination of these positions has added to the burden on classroom teachers at the elementary and middle school

levels, since those teachers must now provide services in the classroom to gifted and talented students that were previously provided by the media specialists (1T107). The specialty instruction provided to gifted and talented students, as well as the remedial instruction that was part of the "Before the Bell" program, have been partially infused during the school day (2T9), but classroom teachers have had difficulty providing differential instruction for these students (1T107-1T110).

The District also eliminated a technology teacher at the intermediate level, and it now has only one technology teacher serving two intermediate schools (1T54-1T55; D-6). As a result, the students in those schools are only halfway through the material in their technology curriculum, as compared to their progress last year (1T117-1T118). Copeland testified that he is concerned as to whether or not those students will be able to achieve the required proficiency levels under the CCCS for technology (1T118).

Reductions in the Area of Guidance:

Piscataway was forced to eliminate three guidance counselors from the K-5 guidance program due to the reduced state funding (1T58; D-6). As a result, the District can only allocate one guidance counselor for every two elementary schools (1T58; D-6). Copeland testified that some students are struggling significantly due to their lack of access to guidance

services, which have substantially decreased from the level of services offered prior to the current 2010-2011 school year (1T117; 1T120). Although guidance is not one of the nine CCCS, the implementation provisions for the CCCS require districts to develop a comprehensive guidance counseling program linked to the CCCS (1T121-1T122). Copeland testified that these provisions reflect the understanding that a failure to provide satisfactory and preventive support for students will impact a district's ability to deliver the CCCS (1T121-1T122). He further testified that, when a student is in crisis or experiencing trauma, lack of access to guidance counseling services detracts from that student's ability to learn (1T121). Thus, cuts to areas such as guidance and support counseling carry over to place students at an academic disadvantage inside the classroom as well (1T121).

The Elimination of Middle School Sports:

As a result of the severe budgetary constraints imposed by the state aid cuts, Piscataway was forced to eliminate its entire middle school after-school athletics program (1T64; D-6). Approximately 1,500 students are deprived of the opportunity to participate in after-school athletics in the 2010-2011 school year and now have nothing to do when the school day is finished (1T122). Copeland indicated that some students are struggling with the elimination of these extracurricular programs (1T117).

According to Copeland, while after-school co-curricular activities are not a specific area of the CCCS, they are, nevertheless, still linked to the CCCS. He testified that there is research to show that students experience greater academic achievement during the season in which they participate in after-school athletics, as opposed to the off-season (1T123). He further testified that principals in Piscataway have provided him with anecdotal evidence to this effect after experiencing increased behavioral problems among middle school students since the elimination of the after-school athletic program in the 2010-2011 school year (1T123).

Loss of Supplemental Education Programs:

Due to the cuts in state aid, Piscataway was forced to eliminate its supplementary summer program for kindergarten and to reduce it for students in other grade levels (1T66). The District had to abandon its Saturday supplemental academic program (1T66-1T67; D-6). Moreover, the District was unable to provide additional remedial assistance to the Theodore Shore Middle School ("Theodore Shore"), which did not make adequate yearly progress last year, since its students are not meeting required proficiency levels under the CCCS (2T5-2T6; 2T9-2T10). Adequate yearly progress means that either students achieve proficiency at a particular rate prescribed by the State or the District is required to take certain measures under the No Child

Left Behind to ensure that the school makes sufficient improvement (2T5-2T6). Copeland testified that, at a minimum, Piscataway is required to provide supplemental educational services to certain subcategories of students at the school, but the District was unable to provide this additional remedial assistance due to the reductions in state aid (2T6-2T7).

The loss of remedial assistance for the 500 students at Theodore Shore will have a cascading impact on the school and the District (2T7). Currently, if the parents choose, they can require the District to pay for supplemental instruction for their children after the school day, which would be the exact same supplemental remedial instruction that the District would have been providing if not for the massive \$5 million reduction in its state aid for 2010-2011 (2T9). If the school continues to fail to make adequate yearly progress, it can be dissolved and the students offered the opportunity to attend a different school within the District (2T8). The services that had been provided to the students at Theodore Shore were in place to ensure that students would meet proficiency under the state assessments (2T10). Those services have been eliminated, and parents have been requiring the District to pay commercial providers to provide supplemental instruction (2T9).

Copeland expressed serious concerns that the current level of state funding is insufficient to deliver a constitutionally

adequate education to some students who cannot achieve proficiency under the CCCS, but who otherwise would have been able to do so under the prior levels of school funding (1T116; 2T11). Copeland drew attention to the fact that the constitutional imperative for the provision of T&E to New Jersey's school children does not speak in terms of some children or most children, but rather in terms of all children.

Additional Reductions to Support Staff, the Technology Budget, Supplies, and Staff Development:

The District made additional reductions to its administrative and support staff (1T51-1T57). One high school assistant principal was cut (1T57). Five FTE secretarial positions were also eliminated, representing three secretaries from the central office and two from the high school (1T51-1T53). The District eliminated the technology teacher who staffed the intermediate school computer labs and taught technology classes in grades four and five (1T54). The district technology coordinator, who had previously been in charge of the technology curriculum, coordination of all technology teachers, and the supervision of all librarians, was also eliminated (1T57).

In fact, the District reduced its technology budget by \$250,000, thereby preventing it from upgrading equipment during the current school year (1T68; D-6). Copeland testified that

the inability to replace equipment may affect students' ability to achieve proficiency in the CCCS, posing yet another hurdle for the District to overcome in attempting to provide for T&E (1T127). The District also reduced its budget for supplies in every department (1T69).

The reduction in state aid also forced substantial cuts in the area of staff development (1T68). The Board was able to recapture some funding in this area through an agreement with its teachers for two (2) furlough days and a substantial concession by the teachers on the District's contractual obligation for tuition reimbursement (1T70; D-2). In gaining such concessions, the District was able to save approximately \$505,000 (D-2).

Summary of the Impact of the Reduction in 2010-2011 State Aid:

When the District submitted its preliminary budget to the Middlesex County Executive County Superintendent ("ECS") prior to the 28% reduction in state aid, the ECS did not make any recommendations for further efficiencies and was, in fact, complimentary of the budget (1T96). Copeland testified that he signed the letter of transmittal to permit the budget to be sent for review by the ECS (1T88). The letter of transmittal is a form document with a statement that the proposed budget contains

sufficient funding to enable all students to achieve the CCCS (D-3; D-26).⁵

Copeland was not aware of what the consequences of his refusal to sign the transmittal letter might be, aside from an awareness that the ECS would not accept or approve the District's budget without his signature on the budget statement (1T88). He testified that, at the time he signed the letter of transmittal forwarding the budget for the 2010-2011 school year to the ECS, he could not possibly have known whether the reduction in state aid would enable the students of the District to achieve proficiency in the CCCS, since the state assessment tests for the CCCS are not completed until late April or early May (1T98). Further, of the nine CCCS, only literacy, math, and science are tested through the state assessment (2T26). The State does not test for student proficiency in social studies, world languages, visual and performing arts, comprehensive health and physical education, technology, career education, and consumer family life and skills (2T26-2T27), which further highlights the need to assess the provision of T&E under the CCCS through more than a quick glance at student test scores.

⁵ In later testimony held on February 21, 2011, following the submission of a memorandum of law concerning the "issue of certification," the parties and the court concurred that the letter of transmittal was not a "certification" in the usual legal sense, and there is no statute or regulation indicating that the letter is anything but a budget statement (4T4-4T7).

Copeland's testimony provides the substantive insight into the reductions that have been made in Piscataway which is required to enable this court to assess the District's ability to provide a T&E education commensurate with the CCCS under the current level of state funding. He testified that, with the present level of funding, Piscataway is struggling to meet the CCCS in literacy, mathematics, social studies, and science (1T112), a struggle which has become more apparent as the 2010-2011 school year progresses (1T114).

The net result of all of the above budgetary cuts, which resulted from the reduction in state aid, was that Piscataway has offered an educational program that can only be said to provide the requirements of the CCCS for the 2010-2011 school year in the most basic sense (1T86). The District is unable to deliver the CCCS in the areas of world languages and technology (1T104; 1T106-1T107). Further, Copeland expressed serious concerns that, due to the reduction in aid, the District cannot meet its constitutional mandate to provide a T&E education to all children in the District as measured by the CCCS, since many students will be significantly impacted by the District's reductions in programming, and some who otherwise might have been able to meet the standards will not be able to do so (1T116).

LEGAL ARGUMENT

I. THE STATE HAS FAILED TO SUSTAIN ITS BURDEN OF DEMONSTRATING THAT THE CURRENT LEVELS OF STATE SCHOOL FUNDING ARE SUFFICIENT TO ENABLE PISCATAWAY TO PROVIDE A THOROUGH AND EFFICIENT EDUCATION FOR THE 2010-2011 SCHOOL YEAR, AS MEASURED BY THE CORE CURRICULUM CONTENT STANDARDS.

In assessing the constitutionality of the Comprehensive Educational Improvement and Financing Act ("CEIFA"), N.J.S.A. 18A:7F-1 to -34 (repealed), the Court upheld the CCCS as "facially adequate as a reasonable legislative definition of a constitutional thorough and efficient education." Abbott v. Burke, 149 N.J. 145, 168 (1997) ("Abbott IV"). The Court struck down as unconstitutional the funding mechanism contained in CEIFA, in large part because CEIFA did not "in any concrete way" link the CCCS to the funding actually needed to implement the content required. Id. at 169. In upholding SFRA, this Court found a formula capable of providing the link between actual funding and the objective CCCS that was lacking in CEIFA. Abbott XX, supra, 199 N.J. at 172. The Court emphasized that the delivery of a constitutionally adequate education depended upon the link remaining viable through the State's continued commitment to fund the formula at the required levels. Id. at 170. As with the CCCS's definition of constitutionally adequate educational content, the Court recognized that SFRA's formula for constitutionally adequate funding levels should be implemented, as it was designed, to achieve T&E "for every child, regardless of where he or she lives." Id. at 175.

In implementing its FY11 state budget, the State reduced Piscataway's allotment of state aid for the 2010-2011 school year by \$5 million, without regard to whether or not the District would be

able to absorb the budgetary impact. The expenditure disparity the Court identified in 1990 has changed substantially, with Abbott districts now spending on average more per pupil wealthier districts. See Special Master's Report to Abbott XX, supra, 199 N.J. at 241. Therefore, the facts simply do not support the blind assumption that Piscataway's state aid can be more heavily reduced because, as a wealthier district, it does not have to rely on those funds. With an adequacy level calculated at \$4,500 per pupil and actual spending of only \$1,520 per pupil (1T93; 1T129), Piscataway remains well below SFRA's adequacy budget, the objective measure of the amount of funding required to meet the CCCS and provide T&E. As the "core of the formula," the adequacy budget is a calculation based on weighted per-pupil costs, done on a sliding scale such that it is, to use the Court's words, already "wealth equalized." Abbott XX, supra, 199 N.J. at 153-54.

The budgetary impact of the State's reductions have impacted nearly every area of Piscataway's budget, with far reaching consequences to students district-wide. The reduction of 14 FTE teaching positions has resulted in class size increases of up to 27 students per class in the elementary school and 30-31 students per class at the high school level (1T72). Copeland testified that such large class sizes are insufficient to provide the individualized instruction necessary for students to achieve proficiency under the CCCS (1T85). Later in the trial, this court heard expert testimony from Earl T. Kim that students in large class sizes of 18 or more have been found, on average, to lose the equivalent of one-tenth of the

school year in educational benefit, as compared to students in smaller class sizes of 17 or less (3T115). Kim also testified that the studies in the area show that the effect is greater upon economically disadvantaged pupils (3T110). Copeland testified that the difficulties associated with such large class sizes will make it extremely difficult for Piscataway students to achieve proficiency in some areas of the CCCS for the 2010-2011 school year (1T84).

The District laid off four elementary world language teachers, with a drastic effect on the provision of instruction to elementary school students in the area of world languages (1T48-1T49), which is a core field of study required by the CCCS. N.J.S.A. 7F-4.1d; see N.J.A.C. 6A:8-1.1. As a result, the world language curriculum is now delivered through DVDs administered by teachers who may not have any knowledge of the language being presented, a method that Copeland testified is insufficient for the delivery of the CCCS as they pertain to world languages (1T104). The chances that elementary students will now be able to achieve the required levels of proficiency under the CCCS for world languages through the current method of instruction are minimal at best, especially for students who do not have a strong aptitude for language skills. Moreover, because elementary-aged children are still young enough to internalize language in a way that is more difficult for older children to do, these cuts have likely diminished the ability of the 2,000 affected students to even develop such an aptitude early on in their educational lives (see 3T123). Therefore, the current level of state funding to Piscataway is

insufficient to deliver the CCCS as they relate to world languages for elementary school students.

Beyond the reduction of 14 FTE teaching staff members, the District eliminated four media specialists, one technology teacher, the District technology coordinator, three guidance counselors, one assistant principal, and five FTE secretaries in the central office and high school (1T50-1T58). The cuts have had a negative impact upon the delivery of CCCS in the area of technology, as illustrated by the fact that, in February, students in the intermediate schools were only halfway through the technology curriculum as compared to their progress from last year. Reductions in the area of guidance will undoubtedly carry over into the classroom for students who are in need of counseling but no longer have access to such services (1T121). Further, while the District was able to gain concessions from its teachers in the area of professional development (1T70), lesser tuition reimbursement discourages the type of professional development that the agreement with the teachers intended to promote, all to the detriment of the students, who will not enjoy the added educational benefit of being taught by more highly trained teachers.

The \$5 million reduction in state aid caused Piscataway to completely eliminate its practical arts programs in home economics, industrial arts, and computer science, areas that are also part of the state mandated CCCS (1T130-1T131). Piscataway eliminated its entire middle school athletic program, thereby dissolving important after-

school sports programs that would have provided approximately 1,500 middle school students with self-esteem building, exposure to positive adult role models, and an opportunity for interaction with school staff in an educational setting that is less artificial than a classroom environment. Further, some middle school students are experiencing behavioral problems which Copeland attributed to the dismantling of the after-school sports program (1T123).

Piscataway had to cut a range of supplementary education programs designed to provide increased exposure or academic support to children in need of remedial assistance, many of which were unable to be restored. For example, Piscataway could not recover its supplementary summer program for kindergarten students or its Saturday supplemental academic program, both of which were cut due to the reduction in state funding for 2010-2011 (2T10). The specialty instruction provided to gifted and talented students as well as the remedial instruction that was part of the "Before the Bell" program have been partially infused during the school day (2T9). However, it has been difficult for classroom teachers to provide differential instruction for these students, effectively depriving them of these services (1T107-1T110).

The \$5 million reduction in aid inhibited the District's ability to comply with the CCCS for 2010-2011 to such a degree that Copeland testified that if Piscataway is providing its students with an education capable of meeting the CCCS, it is doing so only in the most basic way. Further, it is unacceptable that, while some students in the District may still be able to achieve proficiency, other students are still not afforded the opportunity to obtain an education that

delivers to them the CCCS (2T11). Nowhere is this point better illustrated than with the situation facing students at Theodore Shore. The State cannot be heard to contend that its funding levels are sufficient for the provision of T&E in Piscataway, when the reductions in aid have forced the District to abandon supplemental remedial instruction to its most disadvantaged students who are not making adequate yearly progress. Copeland expressed serious concerns that, due to the reductions in state aid, students at Theodore Shore were not receiving the required level of educational programming and services to enable them to meet proficiency under the CCCS. These students were deprived of supplemental services, including Saturday academics and services provided under the disbanded "Before the Bell" program (2T9). Notably, since the District has had to eliminate these supplemental services, students are entitled to and have availed themselves of outside services at the District's expense (2T9). Thus, the current levels of state funding to Piscataway are constitutionally deficient to the extent that they do not afford the opportunity for the delivery of T&E as measured by the CCCS to all students in the District.

The State called Copeland as its own witness. As set forth above, Copeland testified substantially concerning the detrimental impact on T&E for each of the cuts sustained in Piscataway as a result of the reduction in state aid for 2010-2011. The only testimony the State was able to elicit from Copeland regarding Piscataway's ability to meet T&E concerned his signature on the letter of transmittal for the proposed budget (1T87). However, there was extensive testimony

from Copeland as well as other witnesses with regard to the letter of transmittal to the ECS, with the parties and the court concurring that the letter of transmittal is not a "certification" in the legal sense (4T4-4T7). Nor is the one line on that form document to be taken as a definitive statement on whether an education can be delivered under the budgeted funding level that is commensurate with the provision of the CCCS to all students in the District. Rather, substantive analysis of the actual impact of the cuts in state aid upon the school district in question is the benchmark for determining whether the state funding level is capable of delivering a T&E education.

The Board respectfully submits that the State has failed to meet its burden on remand to demonstrate that its current levels of funding in 2010-2011 are sufficient to permit T&E as measured by the CCCS in districts with high, medium, and low concentrations of disadvantaged students. The Board further asserts that the testimony of Copeland has presented this court with sufficient, credible evidence to support the opposite finding, that the 2010-2011 state aid levels are insufficient to support the provision of a T&E education commensurate with the CCCS.

CONCLUSION

For the above reasons, amicus curiae, the Piscataway Board of Education, respectfully requests that the Special Master recommend that the Supreme Court grant Plaintiffs' Motion in Aid of Litigants' Rights and enjoin the State Defendants from providing state aid to any New Jersey school districts for 2010-2011, on a statewide basis, in amounts less than the aid levels required by the provisions of the SFRA, as mandated by this Court's ruling in Abbott XX.

Respectfully submitted,

FOGARTY & HARR, ESQS.

By: _____

Stephen R. Fogarty

Dated: March 14, 2011

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

I, Jenna Olson, hereby certify that on March 14, 2011, an original and one (1) copy of the post-trial submissions of amicus curiae, Piscataway Board of Education, together with Proof of Service, were delivered for filing to the Clerk of the Superior Court of New Jersey, Law Division, Bergen County, Civil Part Filing Office, Bergen County Justice Center, 10 Main Street, Room 415, Hackensack, NJ 07601 via Hand Delivery.

I further certify that one (1) copy of the aforementioned documents served, via e-mail and Hand Delivery, upon:

Honorable Peter E. Doyne, A.J.S.C.
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I further certify that the statements made by me are true.
I am aware that if any of the foregoing statements made by me
are willfully false, I am subject to punishment.


JENNA OLSON

DATED: March 14, 2011