



Education Law Center

Standing Up for Public School Children

July 19, 2010

Mark Neary, Clerk
New Jersey Supreme Court
Richard J. Hughes Justice Complex
25 Market Street
Trenton, NJ 08625-0970

Re: Abbott v. Burke
Motion for Leave to File a
Reply Brief and Supplemental
Certification
Docket No. 42,170

Dear Mr. Neary:

Please accept this letter in lieu of a more formal brief in support of Plaintiffs' motion for leave to file a reply brief and supplemental certification in the above-captioned matter.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Plaintiffs rely on the Procedural History and Statement of Facts that are set forth at length in Plaintiffs' Brief in support of their pending Motion in Aid of Litigants' Rights. On July 12, 2008, Plaintiffs received Defendants' brief and supporting certifications in opposition to Plaintiffs' motion to enforce this Court's judgment in Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX"). Plaintiffs submit this Letter Brief in support of its request to file a reply brief and supplemental certification to respond to the factual and legal assertions raised in Defendants' opposition brief.

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ARGUMENT

GOOD CAUSE HAS BEEN SHOWN FOR GRANTING PLAINTIFFS'
MOTION TO FILE A REPLY BRIEF AND SUPPLEMENTAL
CERTIFICATION IN THIS MATTER

Pursuant to R. 2:8-1, "[e]very motion shall be accompanied by a brief." An opposing party is provided an opportunity to submit papers in opposition to a motion within ten days of service, R. 2:8-1; however, the rule provides that "[n]o other papers shall be filed by either party without leave of court." In this instance, the significance of the decision on this motion - ensuring adequate funding for the provision of a thorough and efficient education to public school children across New Jersey, including hundreds of thousands of at-risk students in high need districts - merits a relaxation of R. 2:8-1. Thus, the issues on this motion are of enormous public import and implicate Plaintiffs' fundamental constitutional right to a thorough and efficient education, N.J. Const. art. VIII, § 4, ¶ 1. In addition, relaxation of R. 2:8-1 is further justified given the critical separation of powers issue that this Court is required to address and resolve on this motion. Plaintiffs seek an opportunity to reply to the State's argument that any action by the Court in this matter would encroach on the powers of the Legislative and Executive branches.

In addition, Plaintiffs' should have the opportunity to reply to the un-weighted revenues per pupil data on which the State relies in its opposition brief, given the misleading nature of that data. Plaintiffs seek to present, through the Supplemental Certification of Melvin Wynn, revenues per pupil data that is calculated in accordance with the weights assigned by the School Funding Reform Act, since that weighted data more accurately captures the vast variations of student need that exist in New Jersey.

Accordingly, the Court should grant leave for the submission of a reply brief and supplemental certification so that the Court will have a complete and balanced understanding of the constitutional issues at stake.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that their motion for leave to file a reply brief and supplemental certification be granted.

Respectfully submitted,

EDUCATION LAW CENTER
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Attorney for Plaintiffs

Cc: Michelle Lyn Miller, Esq.
Counsel for Amicus Curiae