

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 42,170

RAYMOND ARTHUR ABBOTT, et al.,)

Plaintiffs, )

Civil Action

v. )

FRED G. BURKE, et al., )

Defendants. )

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BRIEF IN SUPPORT OF STATE'S MOTION

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TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY STATEMENT . . . . .	1
STATEMENT OF THE CASE . . . . .	4
A.    Developing the Education Resource Model . . . . .	7
1.    New Jersey's PJP Process . . . . .	8
a.    Identifying the State Standards . . . . .	10
b.    Prototype Schools . . . . .	11
c.    Identifying the Educational Resources . . . . .	12
d.    Determining the Cost of the Educational Resources . . . . .	15
2.    Joint Legislative Hearings . . . . .	16
3.    Review of the Report on the Cost of Education . . . . .	18
a.    Public Hearings on the RCE . . . . .	18
b.    Expert Review of the RCE . . . . .	20
B.    Finalizing the Funding Formula . . . . .	24
1.    Selecting a Single Education Resource Model . . . . .	25
2.    Enhancements to the PJP Model . . . . .	27
3.    Adjustments to the RCE . . . . .	28
4.    Addressing Special Education Funding . . . . .	30
5.    Dramatic Expansion of Preschool Program . . . . .	32
6.    Determining State Aid . . . . .	35
C.    A Formula for Success: All Children, All Communities . . . . .	37
D.    School Funding Reform Act of 2008 . . . . .	41
E.    Accountability Measures . . . . .	45

LEGAL ARGUMENT

THE LEGISLATURE HAS ENACTED A SCHOOL FUNDING FORMULA THAT SUPPORTS A THOROUGH AND EFFICIENT SYSTEM OF EDUCATION FOR ALL CHILDREN IN NEW JERSEY. . . . . 54

A. The SFRA Affords Sufficient Financial Support for a Thorough and Efficient System of Education for All New Jersey Children. . . . . 56

B. The Legislature Has Enacted a Constitutional School Funding Formula and, Thus, the Court's Prior Remedial Orders are No Longer Necessary to Achieve the Constitutional Mandate. . . . . 64

1. The Provisional Remedy of Parity Has Now Become Obsolete and the SFRA Has Replaced it as a Means of Ensuring a Constitutionally Adequate Education in the Poorer Urban Districts. . . . . 67

2. Needs-based Supplemental Funding is Neither Practical Nor Necessary for a Constitutionally Adequate Funding Formula. . . . . 71

3. Given Changes in the Abbott Districts, the Court's Remedial Measures Are No Longer Necessary. . . . . 75

4. Enhanced Accountability Measures Will Ensure That Districts Are Providing Students with the Opportunity to Achieve State Standards. . . . . 78

C. The Legislature has Met its Constitutional Obligation to Provide for a Thorough and Efficient System of Free Public Schools Through its Adoption of the SFRA . . . . . 80

CONCLUSION . . . . . 81

TABLE OF AUTHORITIES

PAGE

CASES CITED

<u>Abbott v. Burke</u> , 119 N.J. 287 (1990) ( <u>Abbott II</u> ) . . . . .	4, 5, 32, 36, 39 40, 54-56, 64, 67-70, 75-80
<u>Abbott v. Burke</u> , 136 N.J. 444 (1994) ( <u>Abbott III</u> ) . . . . .	4
<u>Abbott v. Burke</u> , 149 N.J. 145 (1997) ( <u>Abbott IV</u> ) . . . . .	4-6, 11, 28, 54, 55, 57-59, 61, 62, 64, 65, 67, 71, 72
<u>Abbott v. Burke</u> , 153 N.J. 480 (1998) ( <u>Abbott V</u> ) . . . . .	6, 65, 71, 74
<u>Abbott v. Burke</u> , 163 N.J. 95 (2000) ( <u>Abbott VI</u> ) . . . . .	20
<u>Abbott v. Burke</u> , 172 N.J. 294 (2002) ( <u>Abbott IX</u> ) . . . . .	73
<u>Abbott v. Burke</u> , 177 N.J. 578 (2003) ( <u>Abbott X</u> ) . . . . .	40
<u>Abbott v. Burke</u> , 177 N.J. 596 (2003) ( <u>Abbott XI</u> ) . . . . .	73
<u>Abbott v. Burke</u> , 187 N.J. 191 (2006) ( <u>Abbott XV</u> ) . . . . .	73
<u>Abbott v. Burke</u> , 2006 N.J. Lexis 655 (May 22, 2006) . . . . .	72
<u>Abbott v. Burke</u> , 1989 S.L.D. 234 . . . . .	77
<u>Asbury Park Board of Education, Keansburg Board of Education, Passaic Board of Education, Phillipsburg Board of Education and Trenton Board of Education v. New Jersey Department of Education</u> , 180 N.J. 109 (2004)	73
<u>Asbury Park Board of Education, Keansburg Board of Education, Passaic Board of Education, Phillipsburg Board of Education and Trenton Board of Education v. New Jersey Department of Education</u> , 180 N.J. 113 (2004)	73
<u>Campbell County School District v. State</u> , 907 P.2d 1238 (Wyo. 1995) . . . . .	8
<u>Robinson v. Cahill</u> , 62 N.J. 473 (1973) ( <u>Robinson I</u> ) . . . . .	4, 56

<u>Robinson v. Cahill</u> , 69 N.J. 449 ( <u>Robinson V</u> ) . . . . .	4
---	---

NEW JERSEY CONSTITUTION CITED

<u>N.J. Const.</u> Art. VIII, sec.4 . . . . .	54, 64
---	--------

FEDERAL STATUTES CITED

20 <u>U.S.C.</u> 6301 <u>et seq.</u> . . . . .	11, 46
--	--------

STATE STATUTES CITED

<u>L.</u> 1996, <u>c.</u> 138 . . . . .	44
<u>L.</u> 1997, <u>c.</u> 131 . . . . .	6
<u>L.</u> 1998, <u>c.</u> 45 . . . . .	6
<u>L.</u> 1999, <u>c.</u> 138 . . . . .	6
<u>L.</u> 2000, <u>c.</u> 53 . . . . .	6
<u>L.</u> 2001, <u>c.</u> 130 . . . . .	6
<u>L.</u> 2007, <u>c.</u> 53 . . . . .	26, 45, 49
<u>L.</u> 2007, <u>c.</u> 53, §1 . . . . .	50
<u>L.</u> 2007, <u>c.</u> 53, §5 . . . . .	50
<u>L.</u> 2007, <u>c.</u> 53, §6 . . . . .	50
<u>L.</u> 2007, <u>c.</u> 53, §14 . . . . .	50
<u>L.</u> 2007, <u>c.</u> 53, §15 . . . . .	50
<u>L.</u> 2007, <u>c.</u> 62 . . . . .	44, 70
<u>L.</u> 2007, <u>c.</u> 63 . . . . .	26, 46, 48
<u>L.</u> 2007, <u>c.</u> 63, §42 . . . . .	48
<u>L.</u> 2007, <u>c.</u> 63, §49 . . . . .	49
<u>L.</u> 2007, <u>c.</u> 260, §2b . . . . .	66
<u>L.</u> 2007, <u>c.</u> 260, §2f . . . . .	66

<u>L. 2007, c. 260, §2o</u> . . . . .	45, 46
<u>L. 2007, c. 260, §4</u> . . . . .	10, 64
<u>L. 2007, c. 260, §4b</u> . . . . .	43, 63
<u>L. 2007, c. 260, §9</u> . . . . .	62
<u>L. 2007, c. 260, §12</u> . . . . .	34, 62
<u>L. 2007, c. 260, §12c(4)</u> . . . . .	44
<u>L. 2007, c. 260, §13b</u> . . . . .	43
<u>L. 2007, c. 260, §13f</u> . . . . .	43
<u>L. 2007, c. 260, §16</u> . . . . .	40
<u>L. 2007, c. 260, §16b(4)</u> . . . . .	69
<u>L. 2007, c. 260, §17</u> . . . . .	44
<u>L. 2007, c. 260, §18</u> . . . . .	46, 50, 51
<u>L. 2007, c. 260, §21</u> . . . . .	44
<u>L. 2007, c. 260, §28b</u> . . . . .	69
<u>L. 2007, c. 260, §30</u> . . . . .	46
<u>L. 2007, c. 260, §30a</u> . . . . .	51
<u>L. 2007, c. 260, §30b</u> . . . . .	51
<u>L. 2007, c. 260, §37</u> . . . . .	45
<u>L. 2007, c. 260, §85</u> . . . . .	45
<u>N.J.S.A. 18A:7A-10 et seq.</u> . . . . .	46
<u>N.J.S.A. 18A:7A-14</u> . . . . .	48
<u>N.J.S.A. 18A:7A-54 et seq.</u> . . . . .	46
<u>N.J.S.A. 18A:7A-55(a)</u> . . . . .	48
<u>N.J.S.A. 18A:7A-55(b)</u> . . . . .	48

<u>N.J.S.A.</u> 18A:7F-4.2 . . . . .	57
<u>N.J.S.A.</u> 18A:7G-1 <u>et seq.</u> . . . . .	6, 58
(former) <u>N.J.S.A.</u> 18A:7D-16 . . . . .	36
(former) <u>N.J.S.A.</u> 18A:7D-20 . . . . .	36
(former) <u>N.J.S.A.</u> 18A:7D-21 . . . . .	36
(former) <u>N.J.S.A.</u> 18A:7F-4 . . . . .	11, 56
(former) <u>N.J.S.A.</u> 18A:7F-4.1(d) . . . . .	57
(former) <u>N.J.S.A.</u> 18A:7F-16 . . . . .	36
(former) <u>N.J.S.A.</u> 18A:7F-18 . . . . .	36
(former) <u>N.J.S.A.</u> 18A:7F-19 . . . . .	36
(former) <u>N.J.S.A.</u> 18A:7F-20 . . . . .	36

FEDERAL REGULATIONS CITED

34 <u>C.F.R.</u> 200.5 . . . . .	52
34 <u>C.F.R.</u> 200.13(b) (3) . . . . .	52
34 <u>C.F.R.</u> 200.13(b) (7) (ii) . . . . .	52
34 <u>C.F.R.</u> 200.15 . . . . .	52
34 <u>C.F.R.</u> 200.20 . . . . .	53
34 <u>C.F.R.</u> 200.21 . . . . .	52
34 <u>C.F.R.</u> 200.30 . . . . .	52
34 <u>C.F.R.</u> 200.32 . . . . .	53
34 <u>C.F.R.</u> 200.34 . . . . .	53
34 <u>C.F.R.</u> 200.42 . . . . .	53
34 <u>C.F.R.</u> 200.43 . . . . .	53
34 <u>C.F.R.</u> 200.44 . . . . .	53

34	<u>C.F.R.</u> 200.45	53
34	<u>C.F.R.</u> 200.50	52, 53
34	<u>C.F.R.</u> 200.52	53
34	<u>C.F.R.</u> 200.53	53

NEW JERSEY REGULATIONS CITED

<u>N.J.A.C.</u> 6A:8-1.1	10
<u>N.J.A.C.</u> 6A:30, Appendix	46

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Frede, Jung and Barnett, " <u>The Abbott Preschool Program Longitudinal Effects Study</u> ," The National Institute for Early Education Research (Interim Report June 2007)	33
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PRELIMINARY STATEMENT

In January 2008, the Legislature enacted and the Governor signed a new school funding formula, the School Funding Reform Act of 2008 (SFRA or Act). That Act is the culmination of over five years of study and deliberation overseen by the Department of Education (DOE), with input from educators, experts, stakeholders and the public. It is designed to ensure that every school district has the fiscal resources available for all of its students to meet the State's educational standards as set forth in the Core Curriculum Content Standards (CCCS). In this motion, the State seeks a determination from the Court that the SFRA meets the requirements of the thorough and efficient clause of the New Jersey Constitution and that this Court's prior remedial orders entered on behalf of the Abbott districts are no longer necessary.

This Court has previously ruled that the CCCS, established in the Comprehensive Education Improvement and Financing Act (CEIFA), provide a constitutionally acceptable definition of a thorough and efficient education. The CCCS remain the foundation of the funding formula in the SFRA.

Moreover, the SFRA addresses the constitutional deficiencies the Court found in the funding provisions of CEIFA as applied to the Abbott districts. The SFRA incorporates an enhanced resource model developed by the DOE, with input from educators and experts, which is directly linked to the funding needed to achieve

the educational standards. Additionally, this enhanced model includes specific educational resources for meeting the special needs of disadvantaged students, particularly students in districts with high concentrations of disadvantaged students. The cost to provide these educational resources was determined and is provided for in the Act. By ensuring the fiscal resources to allow all students to achieve New Jersey's educational performance standards, the SFRA provides all New Jersey students with the opportunity to be productive citizens and compete as workers in the labor market.

The Act also ensures that these resources and costs stay current. Recognizing the need for a dynamic process, the Act requires that the educational resources and the cost of providing them are to be reviewed and updated every three years, with CPI adjustments in intervening years. The Act is also designed to work in conjunction with recently enacted State, as well as existing federal, educational and fiscal accountability legislation. The periodic review and adjustment of the resources called for in the SFRA, coupled with authority for State intervention in districts due to program or fiscal deficiencies, provides the most appropriate means of ensuring that current and future students will be provided the opportunity to achieve the CCCS.

In short, the SFRA embodies reasonable legislative determinations, grounded in sound educational policy and the current socio-economic and demographic landscape of New Jersey's

communities, that are designed to provide a thorough and efficient education to all students. These reasoned choices of the legislative and executive branches are entitled to significant deference and, hence, the State's motion should be granted.

## STATEMENT OF THE CASE

Over the past 35 years, this Court has reviewed the constitutional validity of several school funding formulas adopted by the Legislature. See Abbott v. Burke, 136 N.J. 444 (1994) (Abbott III) (challenge to the Quality Education Act); Abbott v. Burke, 119 N.J. 287 (1990) (Abbott II) (as-applied challenge to the Public School Education Act of 1975); Robinson v. Cahill, 69 N.J. 449 (Robinson V) (facial challenge to the Public School Education Act of 1975); Robinson v. Cahill, 62 N.J. 473 (1973) (Robinson I) (challenge to the State School Aid Incentive Equalization Aid Law, commonly known as the Bateman Act, and the State School Aid Law of 1954).

Most recently, this Court invalidated the Comprehensive Education Improvement and Financing Act (CEIFA) in Abbott v. Burke, 149 N.J. 145 (1997) (Abbott IV), as applied to the poorer urban districts, *i.e.*, Abbott districts. The Court noted that it had "previously held that in the absence of legislation that would assure a constitutionally adequate education, these school children are entitled to judicial relief directed toward the improvement of the educational opportunity available to them." Id. at 152. The Court, however, found that CEIFA did not meet this standard. Although the Court upheld the substantive definition adopted by CEIFA for a thorough and efficient education, *i.e.*, the Core Curriculum Content Standards (CCCS), the Court found the funding

provisions were inadequate to assure that students in the Abbott districts could meet those standards. Id. at 152-53. First, this Court concluded that CEIFA did not, "in any concrete way attempt to link the content standards to the actual funding needed to deliver that content . . . ." Id. at 169. Further, the Court found that the State failed to demonstrate that the formula appropriately addressed the special needs of disadvantaged students in these districts. Thus, the Court ordered that parity in spending be achieved between the wealthy suburban districts, i.e., the DFG I and J districts<sup>1</sup>, and the Abbott districts and that a study be conducted by the Commissioner of Education (Commissioner) to identify the special educational needs of students attending school in the Abbott districts, the programs required to address those needs and the cost of those programs. That study and the remedial orders emanating from that study were incorporated into this

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<sup>1</sup>DFGs or District Factor Groups were developed by the DOE in the 1970s to enable districts of certain socio-economic status to compare their performance against other districts similar to them. The DOE designated the districts as DFG A through DFG J, with A being the districts with the lowest socio-economic status and J the highest. Abbott II, 119 N.J. 287, 338. In Abbott II, the Court used the DFGs to identify "poor" school districts (DFG A and B) and wealthy suburban districts (DFG I and J). See generally, 119 N.J. 287. DFGs are updated based on the latest Decennial Census data and use various information available in the census data to determine the socio-economic status of the community. The most recent DFGs, based on the 2000 census data, were calculated based on six factors: (1) percent of adults with a high school diploma; (2) percent of adults with some college education; (3) occupational status; (4) unemployment rate; (5) percent of individuals in poverty; and (6) median family income. See <<[www.state.nj.us/education/finance/sf/dfg.shtml](http://www.state.nj.us/education/finance/sf/dfg.shtml) (last visited February 27, 2008)>>.

Court's decision in Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V).<sup>2</sup>

After this Court's decisions in Abbott IV and Abbott V, the State implemented the Court's fiscal remedial requirements through supplementing CEIFA's statutory aid provisions with appropriations act language that provided additional State aid to the Abbott districts. See L. 2001, c. 130; L. 2000, c. 53; L. 1999, c. 138; L. 1998, c. 45; L. 1997, c. 131. By the 2002-2003 school year, however, the fiscal situation in the State made it impossible to continue to implement the CEIFA formula for the remaining school districts given that the limited increase in State aid available for education had to be devoted almost exclusively to the Abbott districts. Accordingly, since 2002, CEIFA has not been used as the basis for providing State aid to any school districts in New Jersey. Certification of Katherine Attwood (Attwood Certification), ¶4; Davy Certification, ¶52.

In 2002, the State began work on a new school funding

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<sup>2</sup>In addition to the other deficiencies the Court identified in CEIFA, it also held that the formula failed to address the need for facilities improvement in the Abbott districts. Abbott IV, 149 N.J. at 186. As part of the remand ordered in Abbott IV, the Court directed the Commissioner to review the facilities needs in the Abbott districts and provide recommendations on how to address those needs. Id. at 224-225. After the Court's decision in Abbott V adopting the Commissioner's recommendations for facilities improvements, the Legislature enacted the Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 et seq., which has and will continue under the SFRA to address facilities issues in the Abbott districts. Thus, facilities are not an issue in assessing the constitutionality of the SFRA.

formula that would address the deficiencies this Court found in CEIFA as applied to the Abbott districts. The process of developing a new funding formula ultimately included: 1) identifying the State's educational standards; 2) developing a formula to provide sufficient resources so that all students could achieve those standards; 3) providing additional resources to meet the special needs of disadvantaged students; 4) determining the cost of providing those educational resources; 5) addressing special education funding; 6) expanding preschool programs; 7) allocating fiscal support between State aid and local revenues; 8) requiring accountability, while permitting local flexibility; and 9) allowing for future adjustments so that the formula is updated as the State gains experience. All of these steps were informed by the knowledge of educators and experts and guided by the decisions of this Court in the Robinson and Abbott cases.

A. Developing the Education Resource Model

Attempts by states to create a model funding formula to determine the cost of education began in the early 1980s. See Rebell, Michael A., "Professional Rigor, Public Engagement and Judicial Review: A Proposal for Enhancing the Validity of Education Adequacy Studies," (2006) at 4 <<[www.mitpressjournals.org/doi/abs/10.1162/edfp.2006.1.4.465](http://www.mitpressjournals.org/doi/abs/10.1162/edfp.2006.1.4.465) (last visited February 27, 2008)>>. The first model, the Resource Cost Model, was an input-oriented model that relied on organized panels of individuals in the

education field to develop a system of services. Ibid. That model evolved into the Professional Judgment Panel (PJP) process in the mid-1990s in response to an order of the Wyoming Supreme Court which directed that state "to calculate the cost of the 'basket of goods and services' needed to provide all students with a 'proper' education." Ibid. (citing Campbell County School District v. State, 907 P.2d 1238, 1279-80 (Wyo. 1995)).

1. New Jersey's PJP Process

In November 2002, the DOE retained the consultant firm Augenblick, Palaich and Associates (APA) to assist it in estimating the cost of providing an adequate education to all of New Jersey's students. See "Report on the Cost of Education" (RCE) at 1, New Jersey Department of Education (December 2007), Certification of Lucille Davy (Davy Certification), ¶4 and Exhibit A. The DOE considered two separate methodologies for developing the funding formula and ultimately decided to use the PJP process.<sup>3</sup> RCE at 1; Davy Certification, ¶5. This same process has been used to estimate the cost of education in at least thirteen other states. "A Formula for Success: All Children, All Communities" (Formula for

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<sup>3</sup>The other option considered was the Successful School District (SSD) methodology. The SSD looks at current base spending in districts deemed successful. The SSD methodology, however, cannot identify the additional costs associated with special needs students. RCE at 2. Moreover, it does not link spending to specific educational resources so it provides no guide on how those fiscal resources are used. Odden, Allen, "Final Report on the Reviews of the Report on the Cost of Education in New Jersey," (Final Expert Report) at 2, Davy Certification, Exhibit E.



Success) at 5, Department of Education (December 18, 2007), Davy Certification, Exhibit G.

The PJP process begins with the identification of a set of desired performance standards or outcomes that define the educational goals of the State. RCE at 2. Then, prototypical model districts and schools are designed to reflect the characteristics of the State's school districts. After that, panels of educational practitioners are assembled to design an educational resource model or models, including equipment, personnel and programs, that will enable all children to meet those goals. Id. at Appendix 4. The panelists first are asked to recommend the necessary educational resources for a school district that has no students with special needs. Thereafter, the panelists are asked to identify the additional educational resources associated with providing programs and services to students who have special needs, i.e., at-risk, LEP or disabled students. Id. at 2. See also Rebell, supra, at 4.

Once all of the necessary components of the program are identified, the actual cost of obtaining those identified components is calculated. Formula for Success at 10-11. After the costs for the various educational resources identified by the panels are determined, a funding formula is then developed that can be used to estimate the cost to provide a thorough and efficient education in any school district. Importantly, resources for

students with special needs -- including at-risk and LEP -- are separately specified and the costs are therefore able to be separately determined. Id. at 12.

a. Identifying the State Standards

The first step in the PJP process requires identification of a set of desired performance standards for the panels. In New Jersey, the CCCS define what all students should know and be able to do by the time they graduate. The CCCS currently specify detailed expectations in nine content areas - Language Arts Literacy, Mathematics, Science, Social Studies, World Languages, Visual and Performing Arts, Comprehensive Health and Physical Education, Technological Literacy and Career Education and Life Skills.<sup>4</sup> N.J.A.C. 6A:8-1.1. These mandated standards are implemented by districts at every grade level and are supported by curriculum frameworks and professional development. Doolan Certification, ¶¶8-11, 18-20. The frameworks include sample teaching strategies, classroom activities, vignettes, adaptations, assessment ideas and background information relevant to each of the content areas. Id. at ¶8. Professional development is offered by the DOE through the website NJPEP, which supports the educational

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<sup>4</sup>The CCCS must be reviewed and updated by the State Board of Education every five years. L. 2007, c. 260, §4; (former) N.J.S.A. 18A:7F-4. The current CCCS are the same as those initially established pursuant to CEIFA, except that the five cross-content workplace readiness standards have been replaced by Technological Literacy and Career Education and Life Skills. Certification of Dr. Jay Doolan (Doolan Certification), ¶¶7, 13.

community in the understanding and implementation of the CCCS and their related statewide assessments. Id. at ¶20. All students must demonstrate proficiency on statewide assessments aligned to the standards.<sup>5</sup>

In Abbott IV, this Court upheld the validity of the CCCS "as a reasonable definition of a constitutional thorough and efficient education" and concluded that the definition strongly warranted judicial deference. 149 N.J. at 168. Thus, the PJP process used the CCCS as the primary basis for the desired performance standards for the panels.<sup>6</sup> RCE at 2 and Appendix 4.

b. Prototype Schools

The second step in the PJP process called for the creation of a set of prototypical model schools and districts that

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<sup>5</sup>Currently, the DOE statewide assessment program tests students in grades 3 through 8 and grade 11 in Mathematics and Language Arts Literacy. Additionally the standardized assessment of Science occurs in grades 4, 8 and 11. When the statewide assessment program was established concurrent with the CCCS, testing was expected to occur at three grade levels, in all of the standard areas. However, difficulties in implementation and subsequent requirements of the No Child Left Behind Act of 2001, 20 U.S.C. §6301 et seq., to test in each grade 3 to 8 required DOE to revise its plans for the assessment program. Aside from the Statewide assessments, school districts are required to locally test all CCCS areas annually at each grade and the monitoring system ensures that this is occurring. Doolan Certification, ¶¶22-29.

<sup>6</sup>In addition, the required proficiency rates on State assessments to ensure that all children are meeting state standards by 2013-2014 as required by the No Child Left Behind Act, other graduation requirements and school day and year requirements were provided to the panels as part of the State's performance standards. RCE, Appendix 4-11 and 4-12.

reflected the actual demographics of school districts in New Jersey. As noted by Dr. Allen Odden, a school finance expert, prototype schools are used "to show how the resource proposals would look in schools. The prototypes are used as a way to communicate the nature of all the recommendations, which if adopted, are then applied to the student numbers and specific demographics of each individual school and district in the state." Final Expert Report at 3 fn.2.

To develop the prototypes, the consultants gathered information on each school district in the State, including district size, grade span, and student characteristics such as the percentage of at-risk, LEP and special education students. After reviewing the characteristics of all New Jersey schools districts, APA created six model districts based on the identified demographics of school districts in the State. RCE at 7-8.

c. Identifying the Educational Resources

Once the performance standards were identified and the model school districts created, panel members were selected to identify the educational resources needed to meet those standards. In New Jersey, three rounds of panel meetings were conducted. All of the panelists were provided with the State's performance standards. The panelists were advised that they were to use their "experience and expertise to organize personnel, supplies and materials, and technology" and "create a set of

programs/curriculum" designed to provide students with the ability to meet the standards. They were further advised that they could base the "design on a 'whole-school approach' (such as Roots and Wings), a charter school approach (such as Edison), or any other philosophical basis (such as Montessori)" with which the panel member was familiar. Moreover, they were told not to be constrained by or concerned with the revenues needed to support the educational resources identified; however, they were cautioned that the exercise was to identify only those educational resources necessary to have all students, with and without special needs, meet the standards, not to create a "dream school." RCE, Appendix 4.

In the first round, educators employed by DOE met for three days in January 2003. The first round panel recommended the educational resources needed in the six prototype schools. RCE at 8 and Appendix 6-1.

The second round was comprised of panel members nominated by various stakeholder groups including the Education Law Center (ELC), Garden State Coalition of Schools, New Jersey Association of Supervision and Curriculum Development, New Jersey Association of School Administrators (NJASA), New Jersey Education Association (NJEA), New Jersey Principals and Supervisors Association (NJPSA), New Jersey School Boards Association (NJSBA) and the Public Education Institute. RCE, Appendix 5-1. The panels included a

representative from the ELC, two whole school reform facilitators from Abbott districts and three other Abbott district representatives, as well as 10 representatives from DFG I and J districts. The panels met for two days in February 2003 and reviewed and modified the educational resources identified in the first round. RCE at 8 and Appendix 7-1.

The third round was comprised of a single panel of eight district-level policy makers, three of whom (two superintendents and one business administrator) were from Abbott districts. One DFG I and J district was represented. RCE, Appendix 8-1. The third-round panel met for two days in March 2003 and reviewed and modified the educational resources identified by the Round 2 panels. Their recommendations resulted in the final set of educational resources used in preparing the RCE. RCE at 8, Davy Certification, ¶8.

The work of the PJP process culminated in the identification of a set of resources for an elementary, middle and high school in each of the model school districts. As an example, for students attending an elementary school in a large district, i.e., a district between 4,000 and 7,999 students, the educational resources included sufficient school teachers to have a class size of 18 students in K-5 or have class sizes of 15 in K-3 and then classes of 25 in grades 4-5. See RCE at 9; Final Expert Report at 4. The resources also included speciality teachers for classes

such as art, music and physical education. Additional certificated and non-certificated personnel were identified for children who are at-risk or LEP, including reading specialists, social workers, parent liaisons and instructional aides. RCE, Appendix 9-15. Moreover, summer school and after-school programs were also specified for 50% of the at-risk and LEP students. RCE, Appendix 9-16.

d. Determining the Cost of the Educational Resources

The next phase in the PJP process required a determination of the cost of the educational resources specified by the panelists. In that phase, the DOE applied actual cost data from 2004-2005 to the identified educational resources and created a base per pupil amount for general education, as well as the additional cost of providing services to students with special needs. RCE, Appendix 10. In certain instances, the panel members identified specific fiscal resources, such as instructional supplies and materials; those amounts were used in the costing out. In other instances, the panel members identified positions in terms of full time equivalents (FTEs). Salaries for positions that require certification were calculated based on actual salaries for the individual type of position in DOE's Certificated Staff Data. For non-certification positions, salary data for the calculation was obtained from the Department of Labor, State Occupational Employment and Wage Estimates. RCE at 10-11 and Appendix 10.

After the costs were applied to the different models, APA developed formulas the DOE could apply to estimate adequate costs for all districts in the State, accounting for demographic, size and configuration differences and weights to be applied to the base cost to support the educational resources identified for students with special needs. RCE at 12-17. Adjustments were also made using the Geographic Cost of Education Index to account for district-level differences in cost of living and difficulties in hiring and retaining teachers.<sup>7</sup> RCE at 17.

## 2. Joint Legislative Hearings

In July 2006, the Legislature adopted a Concurrent Resolution establishing four joint legislative committees to make recommendations on how to address the State's high property taxes. Assembly Concurrent Resolution No. 3. One of those committees was the Joint Legislative Committee on Public School Funding Reform; it was charged with "reviewing and formulating proposals that address the manner in which government provides for the maintenance and support of a system of free public schools for the instruction of the children of this State." Id. at §3a; see also "Public School Funding Reform Final Report" (JLC Report) at 1 (December 2006), Davy Certification, Exhibit B. The Committee held hearings between

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<sup>7</sup>The Geographic Cost of Education Index (GCEI) was created by Dr. Jay Chambers in 1998 for the National Center for Education Statistics (NCES) to measure the differential salary requirements across districts. RCE at 17.



August and December 2006. During those hearings the Committee heard from stakeholders, DOE staff and education finance experts. In October 2006, the DOE and APA presented a general outline of its study in testimony before the Committee. JLC Report at 43-48.

The Committee issued its final report dated December 2006. The report made various recommendations including:

1. the formula should be developed based on a PJP process and should include a geographic cost index;
2. State aid should be based on the characteristics of the student population and the individual district's ability to pay;
3. aid calculations should be simplified and multiple aid categories eliminated;
4. ability to pay should be based equally upon a district's relative property wealth and income;
5. there should be a hold harmless provision;
6. high quality preschool should be provided for all children in DFG A and B districts and for children eligible for free and reduced price meals in all other districts; and
7. support should be provided for full-day kindergarten in all districts.

[See JLC Report at 2-5].

The JLC Report specifically discussed the unfairness of the current funding framework in which the gap between State support for the Abbott districts and for all other districts has grown. In addition, it noted that the "prevailing statutory design, continues to foster protracted negotiations, litigation and unpredictable funding for all districts, including the Abbott districts." JLC

Report at 63. Moreover, it recommended "elimination of the Abbott designation" to ensure that "all children, irrespective of their address, have the financial support to achieve success when measured by the core curriculum content standards and the standards of a society that demands excellence of its youth." JLC Report at 64.

### 3. Review of the Report on the Cost of Education

On December 12, 2006, the DOE issued its Report on the Cost of Education. The RCE was prepared by the DOE and APA and reflected the work done since 2002 on a new school funding formula. It described the various methods for determining the cost of education including the SSD and PJP approach, it explained the PJP process in New Jersey and the education resource models developed through that process and it discussed the costing-out of those educational resources and the final result of the costing-out process.

#### a. Public Hearings on the RCE

Immediately after the release of the RCE, the DOE scheduled formal hearings to invite public comment on the RCE. A total of six hearings were scheduled in various locations throughout the State. Moreover, a live Webcast of each hearing was made available through the DOE's web site. See link at <<www.state.nj.us/education/sff/background.htm (last visited February 27, 2008)>>.

Testimony was presented or submitted by numerous individuals and organizations, including the ELC and other public interest advocacy groups, NJEA, NJASA, NJSBA, NJPSA, individual legislators, taxpayers, school district employees and board members. The most commonly expressed concerns regarding the Report on the Cost of Education were:

1. Salary figures should be updated and the mean rather than the median salary should be used to calculate personnel costs;
2. The cost for benefits should reflect accurate spending patterns and actual benefit rates for all staff rather than a percentage of salary;
3. The definition of at-risk students should be expanded to include students eligible for a free lunch and those eligible for a reduced price lunch;
4. The calculations contained too few security guards;
5. The actual cost of special education should be studied;
6. Cost of living adjustments should be based on more current data than the Chambers Geographic Cost of Education Index;
7. Preschool programming should not be reduced in any new formula; and
8. The DOE should not have used its staff for the first-level panel.

During this same time period, the DOE worked with APA to update the cost figures to 2005 - 2006 and to modify the calculations based on the updated costs. The updated calculations were published on January 19, 2007 as an Addendum to the Report. Updated Appendix on Report of the Cost of Education, Davy Certification, Exhibit C.

b. Expert Review of the RCE

In addition, while the public hearings were being conducted, the DOE retained three experts in the field of school finance -- Allen Odden from the University of Wisconsin, Lawrence Picus from the University of Southern California, and Joseph Olchefske from the American Institutes for Research.<sup>6</sup> These experts were asked to review and comment on the findings and methodology in the Report.

Two of the experts, Dr. Odden and Dr. Picus, assessed the adequacy of the educational resources identified by the PJP process using a third school finance methodology developed by them -- the Evidence-Based approach. Final Expert Report at 1. The Evidence-Based approach identifies school-based programs and educational

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<sup>6</sup>Dr. Allen Odden is a professor of Education Leadership and Policy Analysis at the University of Wisconsin-Madison. He is also the Co-director of the Consortium for Policy Research in Education. Dr. Odden holds a Ph.D. from Columbia University. Having participated in the Abbott IV remand proceedings as the consultant to Judge King, the Court recognized his expertise as "focus[ing] on education policy, finance and resource allocation." Abbott v. Burke, 163 N.J. 95, 103 fn3 (2000) (Abbott VI). Currently, Dr. Odden is a Principal Partner with Lawrence O. Picus and Associates. Dr. Picus holds a Ph.D. in Public Policy Analysis from the RAND Graduate School. In addition to his consulting work, he is a professor at the Rossier School of Education, University of Southern California and has been the Director of the Center for Research in Education Finance since 1993. He also specializes in education finance, including the adequacy, equity and distribution of funds to local districts. Mr. Olchefske is a national expert in student-based funding systems. He is the Managing Director of the American Institutes of Research, School District Consulting Practice and former Superintendent of Schools in Seattle. Davy Certification, Exhibit D.

strategies that research has shown to be effective in improving student learning. "Although the rigor of the evidence supporting the effectiveness for each recommendation varies, this approach only includes recommendations that are supported by either solid research evidence or best practices." Id. at 3.

Focusing on the resource model for the large district, the experts compared the PJP resources to the Evidence-Based resources in all areas including class size, core teachers, specialist teachers, substitute teachers, other certificated staff such as librarians, technology specialists, principals, assistant principals and guidance counselors. They further compared areas of professional development, teacher salary and benefits, central office costs, books, instructional materials, equipment, technology and student activities. Finally, they reviewed the additional resources for at-risk and LEP children.<sup>9</sup> See generally, Final Expert Report.

The experts identified only one area for which they believed additional educational resources should be added to the

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<sup>9</sup>Although not part of the RCE, the experts were advised that the DOE intended to recommend preschool for all at-risk three- and four-year-old children. The Report opined that this would be the "best state-supported preschool program in the country and should provide a sound, high quality set of experiences designed to have all students ready for school when entering kindergarten." Final Expert Report at 10. In fact, as discussed in detail, *infra*, at 32, the SFRA has a preschool program that is even more expansive.

model -- professional development. Id. at 7. They also recommended two areas in the costing-out process that should be adjusted. First, with respect to the calculations for at-risk students, the experts recommended that the definition of at-risk be expanded to include both students eligible for a reduced-price lunch and those eligible for a free lunch. Id. at 12. Second, the experts advised that mean or average salary data was more commonly used in adequacy studies and, therefore, mean, rather than median, salary data should be used by the DOE in its calculations. Id. at 8.

While not finding any specific deficiency, the experts also proposed that the DOE undertake further review in the areas of substitute pay and employee benefits. Id. at 6, 8. Further, they suggested that the DOE consider using a newer geographic cost adjustment. Id. at 8. Moreover, their Report made some recommendations to simplify the formula including combining the base amounts for moderate, large and very large districts into a single base amount for all three and using a common at-risk weight for all K-12 and for all K-8 districts. Id. at 15.

The Final Expert Report concluded that, with the recommended adjustments, the resources identified were sufficient to meet:

- All of the resources in the evidence-based approach to adequacy ... ;
- All of the resources in the "illustrative" school budgets [from Abbott v. Burke, 153 N.J. 480 (1998)]

(Abbott V)];

- Enhanced versions of all the comprehensive school designs that were part of the New American Schools or created since then ...; [and]
- The Knowledge is Power Program (KIPP), which is an urban focused comprehensive school design... .

[Final Expert Review at 16].

Finally, the Report recommended that the State consider a resource allocation study of successful and unsuccessful schools and districts in New Jersey in an attempt to identify what are effective and successful instructional improvement strategies. Such a study would assist in recalibrating the education resource models in the future. Id. at 16-17.

A comparable study is currently under way. In August 2007, a Memorandum of Understanding between DOE and Rutgers University was executed. Under the MOU, experts at Rutgers, led by Dr. Steven Barnett, are conducting a study that examines resource allocation in highly successful schools, as well as unsuccessful schools, in order to ascertain whether there are certain staffing structures, instructional strategies, professional development activities and/or other uses of school resources that can be linked to successful outcomes in the form of enhanced student achievement. Davy Certification, ¶¶ 84, 85 and Exhibit I. Under the terms of the MOU, a final report will be submitted to the DOE by June 30, 2008. It is anticipated that the report will identify promising

strategies, that with further systemic examination, ultimately may inform the review of the resources in the adequacy budget as required by the SFRA. Id. at ¶86.

B. Finalizing the Funding Formula

After concluding the public hearings and receiving the Final Expert Report, the DOE began the process of considering all of the comments and recommendations. The DOE invited three additional experts in the field -- Thomas Corcoran from Columbia University, Susanna Loeb from Stanford University, and David Monk from Pennsylvania State University, to form an Advisory Panel and assist in the development of a new funding formula. Davy Certification, ¶21.

The panelists each brought a unique perspective to the school funding issues that were being addressed and the process was aided by the particular areas of expertise of each member. Thomas Corcoran is a Senior Research Investigator and Co-Director of the Consortium for Policy Research in Education (CPRE) at Columbia University. Prior to joining CPRE, he served as policy advisor for education to Governor Florio. His work in education policy issues has focused on topics such as systemic reform in urban schools, instructional improvement and evidence based practices. Susanna Loeb holds a Ph.D. in Economics and is an Associate Professor of Education and Business. She is widely published on education topics such as retention of high-quality teachers, school



improvement programs and early childhood. A recent policy brief co-authored by Dr. Loeb, "A Plan to Improve the Quality of Teaching in American Schools," published by the Brookings Institution in Spring 2007, was highlighted in the January 10, 2008 Quality Counts publication issued by Education Week. Finally, David Monk, Dean of the College of Education at the Pennsylvania State University, is a Professor of Educational Administration and holds a Ph.D. in Education Administration. His area of expertise is education finance and he has authored numerous publications in that area. Davy Certification, Exhibit F.

In addition to working with the Advisory Panel, the DOE conducted stakeholder and legislator meetings beginning in April 2007 and continuing into December 2007. In response to the public comments, expert review and in consultation with the Advisory Panel, the DOE made a number of changes to the funding proposal.

1. Selecting a Single Education Resource Model

First, to simplify the formula, the DOE decided to select one model district rather than six. As a policy matter, the DOE concluded that small school districts have inefficiencies that are a product of the lack of economies of scale and that the adequacy model should reflect efficient use of resources. Moreover, the use of a larger model as the base would hopefully provide an incentive for regionalization and the creation of larger, more efficient school districts. Davy Certification, ¶25. The goal of district

consolidation is consistent with recent legislative enactments looking to increase efficiency in the State's system of education. L. 2007, c. 63 (providing for efficiency through shared services, regionalization and consolidation); L. 2007, c. 53 (directing fiscal efficiencies, i.e., maximize participation in Special Education Medicaid Initiative Program reimbursement, participation in E-rate, energy and telecommunications cost-saving plans).

As the Final Expert Report noted, the moderate, large and very large districts were very close in base spending per pupil. Final Expert Report at 15. The base amount for the moderate district was slightly higher and the base amount for the very large district slightly lower than the large district. RCE at 11. All three had the same resource model for the elementary and middle school with slight differences at the high school level. Id. at Appendix 9-16, 9-17.

Moreover, the large and very large model had the highest proportions of at-risk students so those models would have likely been designed with the most emphasis on overcoming the disadvantages of at-risk students. RCE at 9. Given that the large model had a higher base cost than the very large model and had enrollment characteristics reflective of more districts, the large district was selected as the base model for the formula. Formula for Success at 10. With regard to the Abbott districts, 11 Abbott districts would have been within the very large model, 12 were

