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	) SUPREME COURT OF NEW JERSEY
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RAYMOND ARTHUR BURKE, et al.,	) DOCKET NO.: 42,170
	)
Plaintiffs,	)
	) Civil Action
v.	)
	) CERTIFICATION
FRED G. BURKE, et al.	)
	)
Defendants.	)
	)

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Justin Ryan Silverstein, of full age, hereby certifies:

1. I am employed by the consultant firm Augenblick, Palaich & Associates (APA). I have worked at APA since 1997 and have held the title of Senior Associate at that firm since 2003. APA has been analyzing education systems and policies for more than twenty years in order to assist states in better understanding the level of resources needed to ensure all students in those states meet state and federal academic performance expectations. In that capacity, APA was retained by the New Jersey Department of Education (DOE) in 2002 to assist in developing a reasonable estimate of the total cost of education and the creation a new

funding formula for New Jersey's school districts.

2. During the course of my employment at APA, I have assisted a number of states in estimating the costs of an adequate education for their students, and have co-authored, with my colleagues at APA, several professional papers and reports documenting those efforts. Of particular relevance here, John Augenblick, APA's President, and I were responsible for assisting with the process through which New Jersey was able to create a new funding formula for providing a thorough and efficient education to its students.

3. I submit this certification in support of the State's application to determine the constitutionality of the School Funding Reform Act of 2008, and in response to the certification submitted by Dr. Margaret E. Goertz on behalf of plaintiffs. Many of Dr. Goertz's characterizations of the process employed in New Jersey are inaccurate and her conclusions with respect to the process are incorrect.

4. There are four well-established methods for conducting cost studies for education financing -- the Professional Judgment Panel (PJP) method, the Successful School District (SSD) model, the Evidence-Based (EB) model, and the Econometric or statistical model.

5. The PJP method, which was used in New Jersey, is the most popular model for adequacy studies. The other method considered in

New Jersey was the SSD model. The SSD approach, however, is more limited in its usefulness for application in New Jersey because it only measures basic expenditures. It does not identify specific educational resources and does not involve educators in the process.

6. The PJP process generally calls for panels of professionals with directly relevant experience to design an educational program and identify necessary resources to deliver a proper education to all students, including those with special needs. While APA did not choose specific panel members for any of the three levels, we did identify the general criteria for the panelists based on work experience and demographics.

7. The PJP process has five-steps: (1) the identification of performance standards, (2) the creation of hypothetical school districts, (3) the identification of resources needed to meet those standards, (4) the costing out of the identified resources, and (5) the development of a funding formula. APA worked with DOE on the first four steps. Dr. Goertz mischaracterizes the processes associated with a number of these steps.

8. In the first step, APA worked with the DOE to identify a set of desired performance standards from which the professional panels would work. APA works closely with the client in all states to create the state-specific standards. The Core Curriculum Content Standards (CCCS), which define what all students should

know by the time they graduate, proficiency rates on State assessments as required by the No Child Left Behind Act, graduation requirements and school day and year requirements were used in New Jersey to create the performance standards.

9. Dr. Goertz suggests that this process was flawed because the performance standards were out-of-date by the time the report was published in 2006. Her criticism is without merit. I am familiar with Commissioner Davy's supplemental certification and, in particular, her statement that any changes in the CCCS, State assessments and graduation requirements from what was provided to the PJP panels were minor. Moreover, in APA's experience, repeating the entire process to account for such changes would be difficult and time-consuming, and generally would result in only marginal changes. For example, Colorado repeated the entire process to include the requirements of the No Child Left Behind Act and there were only minor changes as a result. Indeed, to repeat the entire PJP process in order to include updated requirements was unnecessary here, particularly given that the independent reviews by Allan Odden, Lawrence Picus, and Joseph Olchefske, concluded that the resources identified by the panels were, with some minor modifications, sufficient.

10. The next step in the process required the creation of hypothetical school districts which was done by APA for the New Jersey study. The large number of actual districts and their

varying characteristics would have made it impossible to replicate the actual districts in New Jersey in this process. In addition, while the panelists should generally recognize the schools and school districts, you would not want to create a school or school district that looked exactly like any particular school or school district because the panelists should not identify resources based solely on their current practices.

11. Dr. Goertz's claim that there is no discernable nexus between the hypothetical school district ultimately used by New Jersey is also unfounded. In order to create the hypothetical districts, we gathered information on each school district in the State. We looked at district size, grade span, and student characteristics such as the percentage of at-risk, limited English proficiency (LEP), and special education students. Six hypothetical districts were created based on the identified demographics of actual school districts in New Jersey. The characteristics of the six hypothetical districts could be applied to any school in the State, including Abbott districts. Her suggestion that accepted PJP methodology was not used because the second level panelists were not given the opportunity to "independently develop model configurations" is inaccurate because that was not the role of the panelists. APA develops the hypothetical districts for each study in a similar way before any panel meetings are held.

12. Dr. Goertz's claim that the special needs of Abbott districts were not fully accounted for in creating the hypothetical districts is also unfounded. The six hypothetical districts represented the school districts in the State. Within each hypothetical a number of levels of at-risk were examined. In our experience, there is a saturation point in districts with very high concentrations of poverty such that less fiscal resources are needed to provide the necessary services. While this result seems counter-intuitive, the finding has been documented in several of our studies. This was borne out by the New Jersey study where the results of the PJP process set forth in the Report on the Cost of Education reflected a weight in a very large district of .51 for concentrations of poverty between forty percent and sixty percent and a weight of .37 for concentrations of poverty of sixty percent and above.

13. The third step in the PJP process calls for convening panels of professionals to review the stated performance standards and identify the resources needed to accomplish those standards. APA acted as facilitators in the process. Our role in facilitating the panels was limited to answering questions, helping to get the discussions going, helping the panel reach consensus, and ensuring that the panelists stayed on task.

14. The first group of panelists is tasked with doing the initial work -- in New Jersey, the first group of panelists was

made up of DOE employees, all of whom had specific experiences -- teachers, administrators, superintendents, and teachers involved with at-risk or special education students.

15. Dr. Goertz's complaint that the process was flawed because the first set of panelists were DOE staff is misplaced. APA was comfortable using DOE staff for the first panel. The individuals who made up the first panel were well-qualified and had experience working in different size districts and schools throughout the State. The first level panelists did not have an agenda or try to control the process in any way. In fact, it would have been difficult to try to manipulate the process during this stage because the task was only to identify an initial set of resources.

16. The first group of panelists were instructed to identify the resources needed to meet the standard for each of the six hypothetical districts without regard to cost. They were cautioned, however, that their recommendations should be limited to only what was necessary to meet identified performance standards and that they should not look to create a "dream" school. The group met over the course of three full days. The panelists were asked first to identify resources needed without consideration of students with special needs. Next, they were asked what resources should be added for special needs students.

17. Once the panelists identified the resources for each

hypothetical district, the information was compiled so that a second group of panelists could review the resources identified and make any modifications they believed necessary. Participation in this stage of the process was sought from various education and advocate groups. The make-up of this second panel was unusual from APA's perspective in that there were panelists from advocacy groups, including the Education Law Center, New Jersey School Board Association, and the New Jersey Education Association. APA does not generally include these types of advocacy groups in their panels.

18. Forty individuals were nominated to participate in the second level work. This group of panelists met over the course of two days. Dr. Goertz's claim that the group only met for "an extremely brief period" is inaccurate. In fact, this is longer than many second level panels meet.

19. The panelists were divided into groups with each group assigned to a different hypothetical district. The groups were each tasked with the responsibility of reviewing and making modifications to the work of the first panel, and identifying necessary district level resources. The second level panels fully reviewed the work of the first panel and were instructed that they could make any changes to the resources identified by the first panel. Thus, Dr. Goertz's suggestion that the second level panelists were not given an opportunity to "determine the types and



level of resources" and that the stakeholders were only allowed to "provide feedback" or "react" to the foundation work is not accurate.

20. The third panel was responsible for reviewing the work of the second level panels. Unlike the earlier levels, for this level of review APA guided the discussion. Prior to that meeting, APA had made preliminary calculations and the conversation was focused on any inconsistencies we had noted in the earlier work.

21. At each stage of the process, the panel members were able to, and did, make whatever changes they saw fit. For example, the first panel determined that, for the very large high school model, there should be 93.5 teachers. The final results called for 109 teachers, an increase of 16.67%. Similarly, the large elementary model had a ten percent increase in teachers, and the large middle school saw a 13.2% increase in the number of teachers by the time the final resources were identified.

22. Because the changes made by each panel replaced the earlier panels' work, the third panel's results identified the final resources to which the costs were applied in the next phase of the project.

23. Dr. Goertz's criticism that there was not enough school-level representation or representation from Abbott schools on the panels is misinformed. In our view, teachers are not necessarily the best group to identify what a school (rather than what an

individual class) requires in order to meet a certain standard. Moreover, the third level panel was primarily focused on district-wide resources and therefore district-wide personnel were most appropriate.

24. Dr. Goertz is also incorrect when she claims that there were only four outside stakeholders representing the Abbott districts in the second and third level work. In fact, there were more than twice as many stakeholders representing the interests of the Abbott districts than she claims. There are thirty-one Abbott districts among more than six-hundred school districts State-wide. The Abbott districts serve twenty-three percent of New Jersey's student population. Fifteen percent of the second-level panelists and thirty-seven percent of the third level panel members were available to present the specific needs of Abbott districts. Thus, the make-up of the panels was representative of the make-up of New Jersey's school districts.

25. Dr. Goertz also suggests that the process was flawed because the panel members were not provided with the Abbott remedies and information specifically regarding the needs of Abbott students. As previously noted, the Abbott districts were well-represented on the panels and particularly on the final panel where they comprised thirty-seven percent of the panel members. Thus, their experience was brought to bear on the resource models. More significantly, the focus of a PJP process is not to satisfy prior

court decisions for a select group of districts. The goal of the PJP process is to create a unitary equitable funding formula applicable to all districts based on size, regional costs and the characteristics of the district. APA's work in New Jersey was able to meet that goal.

26. Further, it is incorrect to suggest that the PJP process should have included convening separate panels based on "the diverse and unique characteristics and needs of districts" as suggested by Dr. Goertz. The hypotheticals do represent the varied characteristics of districts around the State. APA has never run a panel based on the "large urban, small city, rural" breakdown suggested in her certification.

27. Dr. Goertz's comparison of the New Jersey study and its Abbott districts to the more recent study in Pennsylvania and its Philadelphia school district is unhelpful. APA did, in fact, convene a separate panel to focus on the Philadelphia district but not for the reason Dr. Goertz suggests. The Pennsylvania study included a separate panel to examine the resource differences unique to the Philadelphia district based solely on its size. The Philadelphia school district is more than six times as large as the next largest district in the entire Commonwealth. See Costing Out the Resources Needed to Meet Pennsylvania's Public Education Goals, 12 (Augenblick, Palaich and Associates, Inc. (Dec. 2007)) at <<<http://www.apaconsulting.net/uploads/reports.6.pdf>>>. Thus, in

circumstances where a district is so different based on size alone, like the Philadelphia school district, it makes sense to convene a separate panel. APA's work in Nevada, where a separate panel was not convened for Clark County (a district with over 250,000 students) led us to create the Philadelphia-specific panel. This type of panel was not required in New Jersey because no school district was comparably that much larger than others.

28. The fourth step in the PJP process requires that costs be applied to the final set of identified resources. The resources identified by the panels were organized by APA and provided to the DOE who was responsible for attaching prices to the identified resources. There is nothing inappropriate about DOE's participation in this part of the process -- it involves simple mathematics and there is transparency in the process. APA worked closely with DOE during every stage of the process and was very comfortable with DOE's involvement.

29. After the costs were obtained for all of the identified resources, APA created the weights and equations to be applied in every district in the State for the costing out process.

30. The methodology developed through the PJP process ultimately produces results that are as applicable in Abbott districts as in non-Abbott districts. There is no reason to draw a distinction between the two. To the extent an Abbott district has a higher proportion of at-risk, special education, or LEP

students, the methodology is able to accurately estimate the cost to provide those students with the opportunity to achieve the required by the performance standards.

I certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 6/6/08

Justin Ryan Silverstein  
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