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SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

RAYMOND ARTHUR ABBOTT, et al.,)

Plaintiffs,

)

Civil Action

v.

)

CERTIFICATION OF
LUCILLE E. DAVY

FRED G. BURKE, et al.,)

)

Defendants.

)

I, Lucille E. Davy, of full age, hereby certify that:

1. I am the Commissioner for the New Jersey Department of Education ("DOE") and have held this position since September 2005.

2. The School Funding Reform Act of 2008 (SFRA) is the culmination of over five years of work by the Executive and legislative branches to replace the funding components of the Comprehensive Education Improvement and Financing Act (CEIFA).

3. The SFRA identifies the educational resources needed to provide all children with the opportunity to succeed as workers and citizens in our society. The foundation of the SFRA is the work and outcomes of panels of practitioners -- as validated by experts

and enhanced by the Department - to determine the resources needed for all students, including those with disadvantages, to achieve the Core Curriculum Content Standards (CCCS). Those resources were costed out and an elementary per pupil amount, appropriate weights for middle and high school, and appropriate weights for at-risk and limited English proficient (LEP) concentrations, were derived. See SFRA, L. 2007, c. 260, §§7, 8.

The PJP and Costing Out Process

4. In November 2002, the DOE hired 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.

5. The DOE considered two separate methodologies for developing the funding formula, namely the Successful School District and Professional Judgment Panel (PJP) approaches, but ultimately decided to use the PJP process.

6. The PJP method was selected by the DOE because it identifies the needed resources and determines the cost of providing services to students that are disadvantaged as well as to those that are not disadvantaged. Moreover, the PJP process accounts for the different economies of scale experienced by districts of different sizes. Finally, the PJP process is based on input from educators that on a day-to-day basis are involved in ensuring students are able to meet the CCCS.

7. The PJP process requires the identification of a set of desired performance standards or outcomes that define the educational goals of the State; the creation of prototypical model school districts designed to reflect the characteristics of the State's school districts; the design of an educational resource model or models, including equipment, personnel and programs, that will provide an opportunity for all children to meet those goals; the costing out of the specified resources; and finally, development of a funding formula which is used to derive the cost to provide a thorough and efficient education in any school district.

8. The PJP process as it evolved in New Jersey included three rounds of practitioner panels. The first group met in January 2003 and included seven Department employees. The second round commenced in February 2003 with 40 panel members. The second group had the largest membership, most having been nominated by stakeholder groups such as the Education Law Center (ELC), New Jersey Education Association (NJEA) and New Jersey School Boards Association (NJSBA). This group included whole school reform facilitators, school business administrators, superintendents, principal, and teachers with wide cross sections of New Jersey's schools represented - including wealthy suburban and poorer urban districts. The 40 members were grouped into smaller panels, with each panel assigned to identify resources for a school district of

a particular size, i.e., very small to very large. The third and final group met the next month as a single panel comprised of eight members - five superintendents, a school board member, a school business administrator and a professor in Educational Leadership from Kean University.

9. At the time the panels met, the DOE was in the process of revising the CCCS. The panelists were provided with the latest draft of the proposed revised standards for purposes of developing the adequacy model. Ultimately, the CCCS that were adopted by the State Board had all of the same content standards as the proposed CCCS that were provided to the panels. The only differences between the proposed CCCS and those that were adopted are non-substantive changes to some of the standards that provided clarity and permitted the standards to be more concise.

10. After the panels completed their work, DOE undertook the task of costing out the resources identified in units rather than per pupil amounts. This required significant effort to refine the data sources utilized and ensure the most accurate determination of cost. DOE also updated per pupil costs identified by the panels and calculated the weights to be applied to the base elementary per pupil amount. Additionally, DOE considered various methods and scenarios for determining the State/local share allocation in a new funding formula.

11. On December 12, 2006, the DOE issued its "Report on the

Cost of Education" (RCE). The RCE was prepared by the DOE and APA and reflected the work done since 2002. 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. Provided herewith at Exhibit A is a true and complete copy of the RCE.

12. Also in December 2006, the Joint Legislative Committee on Public School Funding Reform issued its final report and recommendations. The Committee found that the "development of a predictable, transparent school funding formula is essential for school districts to plan effectively" and deliver a constitutionally sound education. The Joint Committee also recommended that "any new school funding formula must include mechanisms to control the taxing and spending behavior of school districts and to promote greater efficiencies in the delivery of education services...". Provided herewith at Exhibit B is a true and complete copy of the "Public School Funding Reform Final Report" (JLC Report).

13. Additionally, the Joint Committee made specific recommendations regarding the development of a new school funding formula. These included utilizing the PJP model "to determine the base per pupil cost of a thorough and efficient education, as well

as the additional weights for special education, at-risk and limited English proficiency students" and that a district's share of state aid "should be based on up-to-date measures of a district's ability to pay." JLC Report at 2.

14. Immediately after the release of the RCE, the Department scheduled formal hearings to invite public comment on the RCE. A total of six hearings were scheduled in various locations throughout the State, with live Webcasts of each hearing available through the Department's Web site.

15. Testimony was presented or submitted by numerous individuals and organizations, including the ELC and other public interest advocacy groups, NJEA, NJSBA, New Jersey Association for School Administrators, New Jersey Principals and Supervisors Association, individual legislators, taxpayers, school district employees and board members.

16. The most commonly expressed concerns about the RCE raised by those who testified 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 which some believe to be outdated;
 7. Preschool programming should not be reduced in any new formula that is developed; and
 8. The Department should not have used its staff for the first level panel.

17. During this same time period, DOE worked with APA to update the cost figures to 2005 - 2006 and to modify the calculations based on the updated costs. Also, APA created additional tables to identify the final set of educational resources developed through the PJP process and discussed in the RCE. In so doing, APA did not alter any data or resources found in the RCE. The updated calculations were published on January 19, 2007 along with the resource charts as an Updated Appendix to the Report. Provided herewith at Exhibit C is a true and complete copy of the Updated Appendix to the Report.

18. While the public hearings were being conducted, the DOE also 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, to review and comment on the findings and methodology in the RCE. Provided herewith at Exhibit D are true and complete copies of the curricula vitae for each of these experts.

19. Although not part of the RCE, those experts were advised

that the DOE intended to recommend a high-quality preschool program meeting the standards currently in place for Abbott districts for all at-risk three- and four-year-old children and that they should take that into consideration in their review.

20. Dr. Odden and Dr. Picus reviewed the RCE utilizing their Evidenced Based approach which identifies school based programs and educational strategies that research has shown to improve student learning. Mr. Olchefske, who does work with weighted formulas, also provided independent input. The reviews were synthesized by Dr. Odden into one report which was issued on January 19, 2007. Provided herewith at Exhibit E is a true and complete copy of the "Final Report on the Reviews of the *Report on the Cost of Education in New Jersey*," (Final Expert Report). The Report comments on the resources that it found adequate, if not generous, including class size, central office resources, and instructional materials. It also provided specific areas in which it recommended the Department make adjustments, such as the use of median salary in the costing out process. The Final Expert Report also contained suggestions for DOE to review areas such as the per diem for substitutes, as well as general suggestions, such as conducting a resource allocation study.

21. After concluding the public hearings and receiving the Final Expert Report, 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 to assist in the development of a new funding formula. Provided herewith at Exhibit F are true and complete copies of the curricula vitae for each of these experts.

22. In addition to working with the Advisory Panel, the DOE conducted stakeholder and legislator meetings beginning in April 2007 and continuing into December 2007.

23. In response to the public comments and Final Expert Report and, in consultation with the Advisory Panel, the DOE made a number of changes to the funding proposal which were delineated in a final proposal of the Department. Provided herewith at Exhibit G is a true and complete copy of "A Formula for Success: All Children, All Communities" (Formula for Success), prepared by the DOE and issued on December 18, 2007.

24. Formula for Success is the foundation of the SFRA in that it sets forth the model district and educational resources that will enable all children to meet the CCCS. It sets forth the costs of those resources, yielding a base amount for a non-disadvantaged elementary school student, and appropriate weights for middle and high school students. Moreover it sets forth the additional educational resources, the costs of those resources and the resulting weights for students that are at-risk, LEP or both.

25. As stated above, the Department's proposal was informed

by stakeholder and public comment as well as the Final Expert Report. Thus, Formula for Success reflects a change over the RCE by utilizing one model district rather than six in order to simplify the formula. Moreover, maximizing efficiencies in school districts has been a legislative priority as articulated in the JLC Report in December 2006 to the enactment of CORE legislation in March and April 2007, L. 2007, c. 53, c. 62, and c. 63. Consistent with this theme, 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. It is also hoped that the use of a larger model as the base would provide an incentive for regionalization and the creation of larger, more efficient school districts.

26. The DOE also decided to enhance the resources in that chosen single model in a variety of ways. Additional staffing was added for maintenance and grounds employees, \$175 per pupil was added for annual capital improvements, funds for the annual audit were included and the inflation rate for utilities was adjusted to reflect the increases in energy costs that exceeded the CPI. Resources for professional development were also expanded to permit a facilitator/coach for each school and additional district-level funds for professional development that would be available for enhanced professional development for secondary initiatives. Instructional aides were also increased for at-risk populations of

over 40% to ensure an aide for each kindergarten class.

27. One of the concerns noted in the public testimony was that the PJP resources for security guards appeared inadequate, particularly for high at-risk populations. The PJP education resource model provided for no security guards at the elementary level, 1 for every 600 students at the middle school level and 1 for every 234 students at the high school level. Security was enhanced in the new funding proposal so that for a district with 40% or more at-risk students, there can be 1 security guard for every 400 students at the elementary school level, 1 for every 200 students at the middle school level and 1 for every 174 students at the high school level.

28. Another change, as recommended by the Final Expert Report as well as public comments, is that the at-risk definition was expanded for all purposes to include both free- and reduced price-lunch students. This represents a departure from prior formulas, including those in CEIFA, which provided aid that was based on percentages of low-income students using only those students eligible for free lunch.

29. As developed by the PJP process and enhanced by the Department, the resource models are extremely generous. In fact, enhanced PJP model resources for elementary, middle and high schools with a concentration of 40% at-risk students exceed those required by Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V).

Indeed, should an Abbott district choose to continue the programs, positions, and services previously mandated by Abbott V, the district could easily do so. Provided herewith at Exhibit H are Comparative Charts demonstrating this conclusion. At the elementary, middle and high school, the enhanced PJP model is compared to the resources set forth in the Department's Study of Supplemental Programs and Recommendations for the Abbott Districts - the resources that were accepted by the Court in Abbott V. Because school enrollments in the enhanced PJP and Abbott V models differ, the enhanced PJP model was prorated for an accurate comparison. Upon comparison, there is no question that the enhanced PJP model exceeds the resources necessary for a district to implement the Abbott V model. However, the resources are flexible and will permit local decision-makers to select and allocate their resources in a manner that they believe will best suit the unique needs of their students.

30. With specific regard to the costing out process, the Department made other adjustments to the RCE based on public comments and the Final Expert Report. These cost adjustments include updated salaries (using actual 2006-2007 data for certificated staff, inflated by the CPI for two years and using actual May 2006 data for non-certificated staff, inflated by the CPI for three years) and other unit costs, use of the mean rather than median for salaries, calculation of benefits based on actual

costs rather than percentage of salary, and a substantial increase in the weight for vocational schools based on actual cost data.

31. The Final Expert Report commented that the per diem rate for substitutes established by the RCE - \$100 per day - seemed "low" in that it was the same as recommended in another state where overall salary levels were much lower than in New Jersey. Thus the Report recommended that the DOE review that rate for sufficiency. As recommended, the DOE reexamined the substitute per diem and ultimately determined that the substitute rate of \$100 per day was appropriate. Thus, the Department did not revise the amount, but did update the amount by the CPI.

32. The at-risk weights were adjusted by the use of a sliding scale added to the at-risk weight in recognition of the additional challenges faced by districts with higher concentrations of at-risk children. Additionally, after consulting with the Advisory Panel, the LEP and LEP/at-risk combination weights were adjusted upward. Charts of the weights, along with the ranges the weights generate, can be found at Appendix C and Appendix E of Formula for Success. These weights all exceed the weight needed to support the educational resources identified through the PJP process.

33. Also adjusted was the cost index that was utilized in the RCE to account for geographic impacts on educational costs. As set forth in Formula for Success, the previous index was criticized for being "outdated". Thus, the Department looked to an alternative

index by Lori Taylor and William Fowler Jr. that was published in May 2006. The Taylor/Fowler method is a "comparable wage approach" that is a regional index based on 2000 census data. The DOE replicated Taylor/Fowler's methods to create an index unique to New Jersey -- a current county-specific geographical cost adjustment scale using 2000 and 2005 census data (Geographic Cost Adjustment)

34. A major revision to the RCE was also made in the area of special education funding by moving to a census-based methodology to calculate the additional resources for every special education student. This decision was based, in part, on a study by the Center for Special Education Finance which noted significantly above-average expenditures in New Jersey as compared to the national average and a substantial misunderstanding by school districts regarding the category or "tier" in which to place a disabled student for state aid classification.

35. Aid under the census method is based on the average classification rate in the State and the average excess cost of educating special education students statewide. The DOE used actual costs in the State for special education students except for students that only receive speech services. With regard to actual speech-only costs, those could not be separately identified because they did not need to be accounted for as special education expenditures in a district's budget. As a result, the PJP resource model was used to determine speech-only costs. The excess cost for

general special education was determined to be \$10,898; an amount far in excess of all but the highest tier, i.e., CEIFA's Tier IV, which includes those classified pupils receiving intensive services. Under CEIFA, speech only students did not generate additional funds. Utilizing the PJP process to determine speech-only costs, the excess cost for this category is \$1,082.

36. Although the RCE recommended that special education aid be wealth-equalized, i.e., provided to districts based on the districts' relative wealth, the final DOE proposal recommended that only two-thirds of the excess costs be wealth equalized; the remainder was to be provided as a categorical aid (aid provided to districts regardless of wealth).

37. Additionally, extraordinary aid, which supports per-pupil special education cost over a certain threshold, is also considered categorical aid under the Department's proposal. However, this aid is projected and is ultimately distributed to districts as a reimbursement for extraordinarily high costs of special education placements. As provided in the SFRA, the reimbursement is 90% of the costs for direct instructional and support services over \$40,000 for in-district placements, and 75% of the costs for direct instructional and support services over \$40,000 for public placements. SFRA further provides that 75% of tuition costs over \$55,000 for private out-of-district programs will be reimbursed. However, the Governor, in his Budget for Fiscal Year 2009, has

modified the reimbursement formula to provide reimbursement of 95% of the costs over \$40,000 for in-district programs, 85% of the costs over \$40,000 for separate public programs and 85% of the costs over \$55,000 for separate private school programs.

38. After the final educational resources and the cost for providing those resources -- including the application of the Geographic Cost Adjustment, see ¶33, and the weights to be used for grade level, at-risk and LEP -- are determined, an Adequacy Budget can be generated for each school district. This budget will reflect the particular demographics of that school district and the fiscal resources needed to provide the educational resources in the PJP model as well as the additional fiscal resources provided for at-risk and LEP students.

39. Almost all aid in SFRA is wealth-equalized, i.e., determined by each district's ability to raise enough local revenue to support their individual budget. Four categories comprise the wealth-equalized portion of the formula and constitute the Adequacy Budget: (1) the base amount for elementary, middle and high school students; (2) the additional weights for at-risk and LEP students, and vocational districts; (3) two-thirds of the census-based cost for general special education; and (4) all of the census-based costs for speech.

40. The formula to determine a district's contribution to the Adequacy Budget, i.e., a district's local fair share considers

equally both a community's property wealth and aggregate income indexed by statewide multipliers to ensure an equalized local tax effort. This portion of the funding formula is applied uniformly to all districts across the State, with aid distributed based on each community's ability to pay relative to others in the State. The amount of the Adequacy Budget that the formula determines can be raised through the local levy is designated as the local fair share; the difference between the local fair share and the Adequacy Budget is provided through Equalization Aid.

41. Categorical aid is provided in addition to Equalization Aid and is allocated regardless of a district's ability to raise local revenue, with the amount of aid generally determined by multiplying the cost factor for a particular aid category by the number of students eligible for the aid. Categorical aid includes: (1) one-third of the census-based cost for general special education; (2) Security Aid; (3) Preschool Aid; and (4) Extraordinary Aid for special education.

42. The new funding formula also provides for transportation aid, choice aid and debt service aid in a similar manner as had been previously provided under CEIFA. The categorical aid for transportation is funded at the same level Statewide as in 2007-2008, but will be prorated and distributed based on the District Report for Transported Students (DRTRS) mileage data of October 2007. Under the SFRA, each executive county superintendent must

study pupil transportation in their district to determine ways to provide the service in a more cost-effective and efficient manner. The studies must be completed 18 months after the enactment of SFRA and transmitted to the Commissioner and the Legislature at that time. The DOE intends to review all of the pupil transportation studies and thereafter propose adjustments to transportation aid. Choice aid is provided to support the inter-district public school choice program and is distributed to the receiving district of a choice student. Debt service aid is provided to support the capital investment in school facilities for districts other than Abbott districts, and is distributed based upon a determination of preliminary eligible costs by the Commissioner. Finally, the State continues to pay the full cost of pension and FICA payments for certificated staff members.

43. In calculating aid to school districts, the DOE proposal recommended certain aid adjustments to assist in the transition to a new school funding formula. Adjustment Aid will be provided in the first year of the formula, with every district to receive a minimum of a 2% increase over State-aid amounts for 2007-2008. A second aid adjustment was made to limit one-year aid increases to school districts, capped at 20% for districts spending below their Adequacy Budget and at 10% for districts spending above their Adequacy Budget. These caps will ensure that districts are able to incorporate large increases in state aid in an effective and

efficient manner, with appropriate planning over time, while still permitting immediate growth, particularly for those districts that are spending below their Adequacy Budget.

44. With specific regard to Abbott districts, SFRA has provisions to assist their transition into a unified funding formula. If an Abbott district is spending below its Adequacy Budget, it may be eligible for additional State aid to bring it to adequacy within three years.

45. An Abbott district is eligible for Education Adequacy Aid (EAA) if it received Education Opportunity Aid in 2007-08 and either fails to meet educational adequacy standards as defined by the Commissioner or is municipally overburdened. For this purpose, a district is considered not meeting educational adequacy standards if, as of January 2008, it is deemed a District In Need of Improvement (DINI), consistent with the No Child Left Behind Act. A district is considered municipally overburdened if it is located in a municipality with an equalized total tax rate that is greater than 130% of the Statewide average equalized total tax rate or the district has an equalized school tax rate that is greater than 110% of the Statewide average equalized school tax rate and is located in a municipality with an equalized total tax rate that is greater than 120% of the Statewide average equalized total tax rate.

46. Moreover, as most Abbott districts have not had to raise their local school tax levy between FY 1998 and 2007, the levies

are well below their local fair share and the State average. However, the DOE concluded that it would not be reasonable to expect Abbott districts spending below the level of their Adequacy Budget to increase their local levy to their local fair share without additional State assistance. Thus, for these districts, annual increases in local contribution toward the local fair share will be required; the remainder of the local fair share necessary to reach adequacy within three years, however, will be funded through EAA.

47. As enacted, the SFRA includes some provisions that were not reflected in the Department's Formula For Success, but that nonetheless were supported by the DOE, such as the preparation of the Educational Adequacy Report, the required study of the special education census methodology, and the required study of the local levy growth limitation. L. 2007, c. 260, §§4, 13f, and 17.

Changing Landscape of At-Risk and Minority Students in the State

48. The SFRA reflects a concerted effort to ensure that all disadvantaged students, regardless of where they live, will receive the supports necessary for them to achieve the CCCS.

49. To this end, it is important to note that 49% of the more than 375,000 at-risk students (defined as those eligible for free- and reduced-price lunch) reported by districts as of February 19, 2008 attend schools in non-Abbott districts.

50. Of the approximately 473,000 minority (Hispanic and

African American) students attending school in a public school district, 54% do so in a non-Abbott district.

51. The demographic landscape has shifted over the last decade, and certainly since the Court's ruling in Abbott II, yet the largest portion of the State's education resources has been focused on the Abbott districts, to the exclusion of other districts.

52. At the core of this inequity are the two types of aid - parity and supplemental funding - that were provided to Abbott districts outside of CEIFA formula aid. Parity aid was provided to equalize spending between the wealthier, district factor group (DFG) I and J districts and the Abbott districts. As more fully set forth in the Certification of Katherine Attwood, parity aid to Abbott districts grew from \$216 million to \$1.04 billion between 1998 and 2008. Supplemental funding was first provided in FY2000 to bridge the funding gap between parity and district need for additional funds. This funding increased approximately 726% over 8 years to an extraordinary \$676 million projected in FY2008. Where State fiscal resources are limited, as they have been in recent years, these mandated aid categories required the majority of State aid increases to education to be used to support the Abbott districts.

53. Moreover, the supplemental funding process by which Abbott districts could seek funding, over parity levels, is

inherently problematic. Supplemental funding was initially intended to support specific supplemental programs, positions and services that could not be supported by the blended revenue streams in a particular district. As set forth in Abbott V, needed supplemental funding would be sought from the legislature as a "supplementary appropriation" to support a specific program. 153 N.J. at 518. As ultimately implemented, however, the supplemental funding process did not work to support specific supplemental programs, positions or services, but rather as a "hole-filler" by which the Abbott districts would balance their budgets after a review of potential reallocations and reductions. Moreover, this process of annual requests for additional funding created uncertainty at both the State and district level. Further, given limited State resources, repeated requests to the Court to constrain growth in this funding category were required. Finally, the supplemental funding process has resulted in an adversarial relationship between the Department and Abbott districts. This adversarial relations has negatively affected the ability of the DOE to assist districts in using funds in an effective manner to improve student achievement.

54. In contrast to the manner of distributing State aid in recent years, the SFRA provides the opportunity to direct State aid to at-risk children statewide. Such resources will support high-quality preschool programs, after- and summer-school programs, and

sufficient levels of certificated staff to support small class sizes.

Preschool

55. The DOE proposal to dramatically expand its very successful preschool program warrants additional explanation. Under the SFRA, a high-quality preschool program will be phased in over a period of six years. All at-risk three- and four- year olds in the State will be eligible for full-day preschool notwithstanding the concentration of low income students in their district. Moreover, in recognition of the additional challenges facing districts with high concentrations of low-income children, all DFG A and B districts as well as any DFG CD districts with a concentration of 40% or more at-risk children will be required to offer full-day preschool to all three- and four-year-old children in that district.

56. The preschool programs may be offered by the district directly or by contracting with community providers, neighboring school districts or other regional entities. However, they must meet the standards of quality currently in place in Abbott districts, e.g., class size, certificated teachers. In all, this proposal is projected to increase the number of children eligible for full-day, high-quality preschool by approximately 30,000 students.

57. The DOE was able to use actual cost data derived from the

individual Abbott district and provider plans/budgets to determine appropriate per-pupil amounts for the preschool program. For the 2008-2009 school year, the per-pupil amount for students served within the district is \$11,506; for students served by private providers, the amount is \$12,934. For students served in Head Start programs, which are funded with federal dollars, every pupil will generate \$7,146 in state preschool aid so that the programs can meet New Jersey's standards for high quality preschool. The Geographic Cost Adjustment will be applied to each of these per pupil amounts prior to the distribution of Preschool Aid.

58. Abbott districts' per pupil amounts, however, will be calculated differently than those for the balance of the State. For 2008-2009, the Abbott districts' preschool programs will be governed by the individualized 2008-2009 early childhood decisions and budgets issued by the Department on January 15, 2008. In future years, these districts will receive the greater of the per-pupil allocation in the SFRA, see ¶56 above, the district's per-pupil allocation in its approved 2008-2009 early childhood plan, or the district's total 2008-2009 Preschool Aid amount.

59. Additionally, any non-Abbott district that received early childhood program aid (ECPA) in 2007-2008 will continue their preschool program in the next school year. For 2008-2009, these non-Abbott ECPA districts will generate Preschool Aid at an amount that is the higher of ECPA received in FY2008 for preschool and

inflated by the CPI or the district's FY2008 per pupil allocation of ECPA, inflated by the CPI, and multiplied by the projected preschool enrollment. These districts are also permitted to expand their preschool program if they can demonstrate, through a required plan, that they meet the standards currently in place for Abbott districts.

Accountability

60. The SFRA was designed to work in conjunction with other key accountability measures -- both State and federal -- that have been enacted in recent years to promote greater oversight, transparency, and efficiency in the delivery of educational services. These mechanisms permit heightened intervention in a district (or school) by the DOE so that deficiencies can be corrected and barriers to the achievement of the CCCS can be removed.

61. First, the New Jersey Quality Single Accountability Continuum (NJQSAC), L. 2005, c. 235, represents a uniform, Statewide system "for the purpose of evaluating the thoroughness and efficiency of all public schools of the State." N.J.S.A. 18A:7A-10.

62. NJQSAC requires the Department to assess district capacity every three years in five key components of school district effectiveness - Instruction and Program, Personnel, Fiscal Management, Operations and Governance. All districts in the State

are assessed on the same measures, assuring consistency of review and assessment among districts. The District Performance Reviews (DPRs) are appropriately distinct in the type and scope of indicators within each key component, given the varying proficiencies a district must possess in order to demonstrate high performance in each area.

63. The DPR indicators provide a range and depth of assessment that elevate this process from a typical paper review. For example, in the Instruction and Program DPR, the breadth of curriculum and program offerings are judged against the CCCS. A district must demonstrate that it has a curriculum that is aligned with each of the nine CCCS. The District must verify that the curricula are fully implemented at all grade levels and are articulated among all grades, content areas and schools, and that there are benchmarks and interim assessments at each grade level.

64. The DPRs also review and yield conclusions about governance of the district by the board of education separately from the administrative and day-to-day control of the Superintendent. Cf. Governance DPR, Section G3 (assessing that the board approves appointments, transfers, removals and renewals consistent with statute) with Personnel DPR (assessing the Chief School Administrator's day-to-day handling of personnel matters).

65. If a district satisfies 80 to 100 percent of the quality performance indicators in each of the five key components, that

district is recognized as "high performing" and is certified for a period of three years as providing a thorough and efficient system of education, contingent on continued progress in meeting the quality performance indicators. For any district that does not achieve this status, remedial action is required, including the development of improvement plans that are submitted to and approved by the Commissioner.

66. In addition to the submission and approval of improvement plans, see supra, ¶64, for districts that satisfy 50 to 79 percent of the quality performance indicators in any of the five key components, one or more highly skilled professionals may be identified for the district to provide technical assistance in areas where it has not achieved 80 percent of the performance indicators. If the district implements its improvement plan and is able to achieve 80 percent or higher in all of the key components, it will be designated as high performing and thereafter certified for three years.

67. If a district fails to satisfy 50 percent of the quality performance indicators in one or more of the key components, the Commissioner has a wide continuum of remedial action that can be ordered. Based on the number of key components not satisfied and the corrective action necessary, intervention may range from the provision of technical assistance by a Highly Skilled Professional (HSP-TA), placing the district in partial intervention with an HSP

empowered with direct oversight of the district in the key component(s) not met as well as authority to veto action of the board of education in those areas (HSP-DO), or placing the district in full intervention with an HSP-DO or State-district superintendent and the board of education becoming an advisory board.

68. An HSP providing technical assistance may be a department employee or other expert and that person assists the district to increase its local capacity in the areas of low performance. The cost of the HSP-TA is a shared cost between the district and the Department, unless the HSP-TA is a Department employee, in which case there is no cost to the district. An HSP with direct oversight of the district is an appointed position, with the individual holding a contract for an established term with a salary fixed by the Commissioner. That cost is also a shared cost of the between the district and the Department. An HSP-DO can only be appointed in a district placed in partial or full intervention.

69. Because there is an assessment in each of the five areas, the Commissioner can direct resources and remedies specific to the area, such as the provision of an HSP-TA to assist with curriculum development, or an HSP-DO where the district has failed personnel.

70. Finally, where a district has been placed in full intervention, in addition to the appointment of a HSP-DO, or a State-District Superintendent, other remedial actions are

available. Such actions may include the abolition of administrative positions and/or offices and the creation a Capital Project Control Board. Lastly, in full-intervention, the board of education becomes an advisory board increased by up to three members appointed by the Commissioner with State Board approval.

71. In 2007, all of the Level II, Level III and State-operated school districts, as well as districts then in third year DINI status, were subjected to a full review by independent experts and have been placed on the performance continuum.

72. Next, the School District Fiscal Accountability Act (SDFAA), N.J.S.A. 18A:7F-55 et seq., addresses the increasing problem of school districts failing to correct serious deficiencies identified in their annual financial audits. The SDFAA gives the Commissioner the authority to appoint a monitor where certain severe fiscal circumstances apply to the district. The Monitor provides direct oversight of a district's business operations and personnel matters and has the authority to overturn Board of Education or chief school administrator action.

73. I have exercised my appointment authority on seven occasions since the SDFAA became effective in April 2006. Currently, monitors are in place in Asbury Park, Beverly City, Camden, Irvington, Pleasantville, Paterson, and Willingboro.

74. Next, the SFRA makes specific reference to accountability legislation that was enacted in early 2007. Often referred to as

CORE legislation, it directs various fiscal and programmatic activities by the districts and the Department.

75. In March 2007, L. 2007, c. 53 was enacted which requires as a condition of receiving state aid, that districts undertake efficiencies such as reviewing options for insurance and participating in the most cost effective plans, maximizing participation in E-rate and telecommunications programs, participating in the Alliance for Competitive Energy Services Program (unless it receives services at a cost less than the cost of ACES), maximizing reimbursements under the Special Education Medicaid Initiative and refinancing all outstanding debt for which a 3% net present value saving is achievable.

76. That same law also requires districts to put the public on notice of contract action for district employees such as superintendents and business administrators, and hold a public hearings on that contract action. Additionally, the law requires Commissioner approval of any agreement for early termination of an employment contract of a superintendent, restrictions and parameters placed on district employee and board member travel, and the ability of the Commissioner to order a compliance audit upon determination that a district is not spending state funds consistent with statute and regulation.

77. In April 2007, L. 2007, c. 63 was enacted. This law directs a shared services and consolidation program and

substantively revises the office of County Superintendent of Schools. The shared services provisions expands the scope of local units with which a district may share services, goods and positions, thereby increasing opportunities for cost savings.

78. Additionally, the law changes the title and duties of county superintendents of schools. Under L. 2007, c. 63, this position is now Executive County Superintendent - a position appointed by the Governor. Along with that enhanced title are increased powers and duties. Executive County Superintendents must review and submit a plan to the Commissioner concerning the elimination of any non-operating district in the county, recommend to the Commissioner the elimination of laws deemed to be unnecessary mandates, and recommend to the Commissioner a plan to regionalize all districts that are not configured as K-12 districts.

79. Executive County Superintendents must also review and approve all employment contracts for superintendents, assistant superintendents and business administrator in the district in addition to reviewing all school budgets. Also notable are the obligations to track the types and capacities of district special education programs, track special education students in out-of-district placements, and serve as a reference for districts to seek appropriate placements in other school districts rather than in out-of-district placements. To this end, the Executive County

Superintendent must report regularly on the progress to ensure all special education students are being served in the least restrictive environment.

80. To date, 11 Executive County Superintendents have been appointed by the Governor and confirmed by the Senate. These Executive County Superintendents can be found in Bergen, Burlington, Cape May, Gloucester, Hudson, Hunterdon, Middlesex, Monmouth, Ocean, Somerset and Union.

81. In addition to acknowledging the various accountability statutes that pre-existed its enactment, the SFRA contains additional directives in this area. Under the SFRA, the Commissioner has the obligation to ensure that all state aid to New Jersey's public schools is being "spent effectively and efficiently in order to enable students to achieve the core curriculum content standards." L. 2007, c. 260, §18.

82. One of the ways that I will meet this obligation is through the adoption of regulations that will guide program requirements. For example, all Abbott school districts must implement Secondary Education Initiatives -- personalized learning environments for students in grades six through 12 designed to strengthen relationships among students, teaching staff members and families -- in 2008-2009, with the balance of the State's districts planning for those initiatives in 2008-2009 and implementing same in 2009-2010. Additionally, all at-risk districts (those with a

concentration of 40% or more free- and reduced-price lunch students) will be subject to restrictions on class size, i.e., not exceed an average of 21 students in kindergarten and first grade and an average of 25 students in grades three through eight in core academic content areas. Moreover, a district with a concentration of 40% or more students receiving free- and reduced-price lunch and that is not achieving proficiency on State assessments will be required to implement programs such as intensive literacy and mathematic literacy to assist students in meeting the CCCS. All Abbott districts meet this criteria with the exception of five Abbott districts that have achieved proficiency on the High School Proficiency Assessment and therefore will not be required to implement an intensive literacy program at the high school.

83. Review of effective resource allocation will be another element in my review to determine whether funds are being spent effectively and efficiently. To this end, the Department will utilize the outcomes of a resource allocation study currently underway.

84. In August 2007, the Department entered a Memorandum of Understanding (MOU) between the New Jersey Department of Education and Rutgers, the State University to conduct a study of resource allocation in public schools. Provided herewith at Exhibit I is a true and complete copy of the MOU. Headed by Dr. W. Steven Barnett, Dr. Jennifer Bausmith and Claudia Burzichelli, the study

is looking at a total of 90 highly successful schools and less successful schools to determine whether there are certain staffing structures, instructional strategies, professional development activities and/or other uses of school resources that can be linked to enhanced student achievement. Visits to all 90 schools have been completed. Data was taken from teacher and principal surveys, principal interviews, and school staffing and data forms and that data is now being analyzed.

85. Additionally, under the MOU, a state-wide efficiency analysis is being conducted using data provided by the Department to determine characteristics of more and less efficient schools as related to staffing and funding allocations. Similarities between this analysis and the school sample analysis will be explored.

86. A final report will be submitted to the Department 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. L. 2007, c. 260, §4.

87. Finally, New Jersey is also subject to the stringent accountability mechanisms of the federal No Child Left Behind Act. Currently, New Jersey has 18 districts in DINI status which requires corrective action, i.e., districts in DINI status for 3 or more years. As mentioned in ¶70, the unique DINI status subjects these districts to additional rigors under the NJQSAC rubric.

Specifically, outside experts have and will continue to participate in the evaluations and corrective actions of these DINI districts. Currently, these districts, with the assistance of DOE and outside experts, are engaged in intensive planning efforts to identify and overcome barriers to students achievement. In addition, the DOE is providing these DINI districts with consultative assistance, as needed, on governance issues.

88. Additionally, there are 505 schools in "schools in need of improvement" (SINI) status. DOE is overseeing the corrective action for 337 schools that have been in SINI status for three or more years. The DOE's program to assist these schools, known as Collaborative Assessment and Planning for Achievement (CAPA), includes a comprehensive review and needs assessment of all facets of a school's operations and development of a plan of action using scientifically-based research models. CAPA teams continue to support these schools by conducting three annual Benchmark Assessments with schools in Years 4-7 of SINI status and assisting with implementation of the recommendations for improvement.

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



Lucille E. Davy

Dated: March 12, 2008