

EDUCATION LAW CENTER

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RAYMOND ARTHUR ABBOTT, et al.

Plaintiffs,

v.

Fred G. Burke, et al.

Defendants

SUPREME COURT OF NEW JERSEY

DOCKET NO. 42,170

Civil Action

**CERTIFICATION OF
DR. MARGARET E. GOERTZ**

I, Margaret E. Goertz, hereby certify as follows:

1. I am a professor of education at the University of Pennsylvania and co-director of the Consortium for Policy Research in Education, also at the University of Pennsylvania. I am a past president of the American Education Finance Association. My resume is appended as Exhibit A.

2. I submit this certification in support of Plaintiffs' opposition to the Defendants' ("State") Motion to end the specific remedies ordered in this litigation to ensure Abbott

students a thorough and efficient education ("T&E). My particular focus is on the classification of poorer urban ("Abbott") districts, the parity remedy for regular education, and municipal overburden, and the State's request to replace those remedies with the recently enacted School Funding Reform Act of 2008 ("SFRA" or "Act"), P.L. 2007, c. 260 (January 13, 2008).

3. I have served as an expert on school finance for Plaintiffs throughout the course of this litigation. I testified in the 1987 Abbott trial before Judge Stephen Lefelt on the defects in the Public School Education Act of 1975, which led to this Court's Abbott II (1990) ruling declaring that Act unconstitutional as to poorer urban districts. I submitted expert reports and testified in the proceedings before this Court and on remand before Judge Paul Levy on the Quality Education Act of 1990 ("QEA"), which resulted in this Court's determination in Abbott III (1994) that QEA did not address the remedial mandates established in Abbott II. I submitted an expert certification to this Court on the failure of the Comprehensive Improvement and Financing Act of 1996 ("CEIFA") to meet the Abbott II and III remedial mandates, particularly the parity remedy for regular education, which resulted in the Abbott IV ruling and directives. Finally, I testified in the remand proceedings before Judge Michael Patrick King on the

remedy for supplemental programs -- focused on the cost of the recommended programs and reforms -- which formed the basis of this Court's Abbott V (1998) ruling and remedial mandates.

4. I have also written extensively on the impact of New Jersey's school finance system on education expenditures and revenues in Abbott districts. My analyses and conclusions are published in numerous reports and articles, reflecting the effort to achieve school funding equity through the Robinson and Abbott litigation. See Exhibit A.

5. Since 1999, I have closely followed and studied implementation of the "Abbott remedies" - regular education parity and needs-based supplemental programs -- established in Abbott IV and Abbott V. I have written and co-authored numerous articles and reports on Abbott implementation, whole school reform, and its effects on student achievement, including: Implementing Whole School Reform in New Jersey: Year Two (2001); Whole School Reform and School-Based Budgeting: Three Years of Implementation in New Jersey (2002); Comprehensive School Reform and the Cost of Instructional Improvement in New Jersey (2005); Money Order in the Court: The Promise and Pitfalls of Redistributing Educational Dollars through Court Mandates: The Case of New Jersey (2006); Educational Adequacy in New Jersey (2006); Assessing Success in School Finance Litigation: The Case of New Jersey (2007). See Exhibit A.

6. I am familiar with the work of the Department of Education ("DOE") since 2003 to develop a new funding formula. In December 2006, I analyzed for Plaintiffs the first report issued by DOE on education costs. See Report on the Cost of Education, Allen Dupree and John Augenblick (December 2006)("2006 Cost Report"). The report presented cost determinations from a process undertaken by DOE, with assistance from Mr. Augenblick, in 2003. My analysis of the Report, and critique of the 2003 process, is attached as Exhibit B.

7. For this motion, I have analyzed the impact of discontinuing the Abbott remedies, and replacing them with the SFRA formula. My analysis focuses on the following: (1) the elimination of the Abbott designation; 2) the impact on regular education by replacing the Abbott parity remedy with the SFRA "base per pupil amount" and "base cost;" and 3) the elimination of the "municipal overburden" limits on local revenue.

8. For this analysis, I reviewed the Act and the following documents and data: Designation of Abbott Districts, Criteria and Process, Commissioner William Librera (June 2005)("Librera Report"); the 2006 Cost Report; the Reviews of 2006 Cost Report by Allan Odden, Lawrence Picus, and Joseph Olchefske, and a summary by Odden (January 2007); A Formula for Success: All Children, All Communities, NJDOE (December 2007)("2007 Cost Report"); the State Aid Simulations under SFRA

and Explanatory Notes, NJDOE (December 12, 2007); Fact Sheet for SFRA, NJDOE (December 2007); the 2007-2008 State Aid Payment File, NJDOE; 2008-2009 District State Aid Profiles, NJDOE (December 2007); 2008-2009 State Aid Summaries, NJDOE (February 28, 2008); 2007 Effective Tax Rates, Department of Treasury; 2006 Property Tax Information and Ratables Abstract, Department of Community Affairs; and 2007-2008 Final Abbott Parity Aid, NJDOE (February 29, 2008).

9. I have reviewed the State's pending Motion and its supporting brief and certifications. I have been assisted in preparing my analysis by Melvin Wyns and I am familiar with his certification comparing CEIFA and the Abbott remedies with SFRA, and the certification of Dr. Clive Belfield on supplemental programs, also submitted on Plaintiffs' behalf.

A. ELIMINATION OF ABBOTT DESIGNATION

10. In Abbott II, the Court determined that students in "poorer urban districts" were not receiving T&E, and ordered certain remedies to ensure a constitutional education in those districts, including parity funding in regular education and needs-based supplemental programs. Based on factors and criteria related to their "special needs" - concentrated poverty, poor fiscal condition, and inadequate educational performance -- the Court identified twenty-eight (28) urban districts as "poorer urban" whose students are entitled to the Abbott remedies. The

Court also directed the Legislature, the State Board of Education, and Commissioner of Education ("Commissioner") to make the decision on the specific districts entitled to the Abbott remedies.

11. The QEA and CEIFA funding formulas designated the twenty-eight (28) districts identified in Abbott II as "special needs" (QEA) and "Abbott" (CEIFA) districts. In addition, at various times, the Legislature added three more districts - Neptune, Plainfield and Salem City - for a present total of thirty-one (31) poorer urban or Abbott districts.

12. In Abbott VII (2000), the Court reaffirmed the authority of the Legislature, State Board and the Commissioner to add districts to the Abbott class. The Court also clarified that a district could be removed if it "no longer possesses the requisite characteristics for Abbott district status."

13. The Educational Facilities Construction and Financing Act ("EFCFA") of 2000 directed the Commissioner to analyze the criteria for Abbott designation and make recommendations for adding or removing districts. Commissioner William L. Librera issued a report establishing these criteria in June 2005. See <http://www.nj.gov/education/abbotts/regs/criteria2.pdf> ("Librera Report").

14. The Librera Report spelled out that the following socio-economic and fiscal criteria are necessary for Abbott

designation: 1) either District Factor Group ("DFG") A or B; 2) on the New Jersey Redevelopment Authority eligibility list; 3) a low-income student concentration of at least 40%, as measured by eligibility under the US Department of Agriculture free/reduced lunch program; 4) if the low-income concentration is less than 60 percent, an equalized value per capita at least 3 percent below the state average and equalized tax rate at least 30 percent greater than the state average; and 5) if the low-income concentration is at least 60 percent, an equalized value per capita of at least 3 percent below the state average.

15. The Librera Report also made clear that removal of districts from the Abbott class required an educational adequacy analysis demonstrating that the Abbott remedies are no longer needed. Drawing from the Abbott rulings, Commissioner Librera identified the following educational adequacy indicators requiring analysis: statutory monitoring results; course offering variety; teacher qualifications and experience; teacher/pupil ratios; student attendance; drop-out rates; reading levels at Grade 3; performance on state assessments; and other DOE-approved local achievement benchmarks.

16. SFRA eliminates the Abbott designation altogether and discontinues the Abbott remedies, except for facilities. I have reviewed SFRA to assess whether the socio-economic, fiscal and education adequacy criteria for Abbott designation, and for

discontinuing the Abbott remedies, were considered in making this determination.

17. I find no evidence in SFRA or in the development of the Act that the elimination of the Abbott class was based on any consideration of the Court-established criteria, or any analysis of the fiscal and educational conditions in current Abbott districts that would support a determination that the Abbott remedies are no longer necessary. I also can find no evidence that the Commissioner or DOE considered any of these fiscal or educational adequacy criteria at any point in the development of SFRA.

18. I have analyzed the most recent data related to the socio-economic and fiscal criteria for Abbott designation. See Exhibit C. My findings are as follows:

(a) Twenty (20) Abbott districts are currently classified as DFG A districts, and nine (9) are DFG B. Only two (2) districts - Hoboken and Neptune Township - are no longer in DFG A or B, see Exhibit C, Table 1;

(b) All districts are designated urban by the NJ Redevelopment Authority under N.J.S.A. 52:27D-178, see Exhibit C, Table 1;

(c) All districts have concentrations of student poverty over 40%; seven (7) are between 40% and 60%; and twenty-four (24) are over 60%, see Exhibit C, Table 1;

(d) Student mobility rates are almost twice as high (19.3%) as the state average (10.7%) and four times as high as the average rate (4.8%) in the affluent DFG I&J districts, see Exhibit C, Table 2;

(e) Equalized property value per capita is at least 3% below the state average in twenty-nine (29) districts, see Exhibit C, Table 1; and

(f) The total equalized tax rates for 15 districts remain above 120% of the state average, with nine above 130%. See Exhibit C, Table 1.

19. I have also examined the most recent data concerning educational adequacy in Abbott districts. See Exhibit D. My findings are set forth below.

20. Statewide Assessments: The data on the NJ ASK4 and GEPA test scores (fourth and eighth grade, respectively), which measure proficiency or achievement of the State's Core Curriculum Content Standards ("CCCS"), show the following:

(a) **Fourth Grade Math**: From 1999 to 2007, state-wide student scale scores increased significantly on the fourth grade math assessment, with the greatest increase in Abbott districts. During this period, there was significant closure in the achievement gap between Abbott districts and the rest of the state. In 1999, the gap between Abbott and other districts was

31 points. By 2007 the gap was down to 19 points. See Exhibit D, Table 1.

(b) **Fourth Grade Reading:** Average test scores in non-Abbott districts declined by 4 points between 2001 and 2007 on the fourth grade reading assessment, but Abbott districts had an increase of 3 points over that same time period. The gap between Abbott and other districts went from 22 points in 2001 to 15 points in 2007, a reduction of 7 points. See Exhibit D, Table 1.

(c) **Eighth Grade Math:** From 2000 to 2007, average test scores on the eighth grade math assessment in non-Abbott districts increased 5 points but went up 9 points in the Abbott districts, narrowing of the achievement gap by 4 points. Id.

(d) **Eighth Grade Reading:** The state-wide mean scores on the eighth grade language arts assessment remained relatively flat between 2000 and 2007. During this period, both Abbott and non-Abbott districts saw a 2 point increase in average scores. See Exhibit D, Table 1.

21. With the exception of the Abbott preschool program, I am unaware of any evaluation of Abbott regular education parity and/or K-12 supplemental programs and reforms analyzing the impact of these remedies on educational adequacy and student achievement. Even so, the data show solid achievement gains over the past several years, particularly at the elementary

level. These gains may reflect the emphasis in Abbott V on whole school reform and early grade literacy. The more modest gains at the middle school level may reflect the lack of emphasis, until recently, on specific reforms focused on the secondary level. In response to the Abbott X (2003) order, the DOE launched the Secondary Education Initiative ("SEI") by adopting regulations in November 2004 and by planning for implementation by September 2008. If that reform is sustained, I anticipate it will have a positive impact on achievement levels in Abbott middle and high schools.

22. Despite these gains, Abbott districts remain below the state average on most assessments measuring proficiency or achievement of the CCCS. In 2007, the most recent data available, Abbott students performed at least 10 points below the state average in both language arts and math in all seven tested grades. See Exhibit D, Table 2.

23. The performance in several districts is well below even the Abbott averages. For example, less than 40 percent of Asbury Park students scored at the proficient level or above on the language arts exam in grades six and eight and on the math exam in grades seven and eight. Less than 35 percent of Camden students scored at the proficient level or above in eighth grade language arts and seventh, eighth and high school math. See Exhibit D, Table 2.

24. Abbott performance also remains well below performance in I&J districts. Except for third grade math, fifth grade language arts and high school language arts, the average proficiency rate of Abbott students was at least 20 points below I&J students. On math in the seventh, eighth and high school exams, the average difference in proficiency rates is 40 points or more. See Exhibit D, Table 2.

25. SAT Scores: In 2007, the average SAT score in Abbott districts on all three sections – math, verbal and writing – was at least 90 points below the state average and 147 points or more below the I&J average. See Exhibit D, Table 3.

26. Graduation rates: The average high school graduation rate in Abbott districts is 82.4%, well below the state average of 92.8% and the I&J average of 98.5%. Some districts are significantly below the Abbott average. For example, Asbury Park, Camden, Paterson and Passaic are graduating less than 70% of their students. These rates, however, likely understate the gap in high school graduation between Abbott and more affluent districts. The DOE calculates graduation rates using a method that does not measure graduation within four years. Evidence suggests a substantial drop-off in enrollments in Abbott high schools between ninth and twelfth grade when compared to suburban districts or the state average. For example, in 2007,

the drop-off rate was 30% in Abbott high schools compared to 8% in I&J high schools.

27. NCLB Status: under the Federal No Child Left Behind Act ("NCLB"), all schools must make adequate yearly progress on state assessments or they will be subject to State intervention and corrective action, including restructuring. Over half (54.7%) of the Abbott schools have failed to make adequate progress and have been labeled "schools in need of improvement" under NCLB. Only 14% of non-Abbott schools have not made adequate yearly progress. See Exhibit D, Table 5.

28. Based on my review of the socio-economic, fiscal and educational adequacy criteria for Abbott designation, I find that almost all Abbott districts continue to possess the unique characteristics of "poorer urban" districts established in Abbott II and reiterated in the Librera Report. Thus, the extreme disadvantages and special needs that gave rise to the Abbott class in 1990 continue to persist, as does the need for the Court remedies to ensure T&E to Abbott students.

II. THE SFRA REGULAR EDUCATION COST

29. In 2003, the DOE began work on a new school funding formula to replace CEIFA. At that time, DOE developed six hypothetical model school districts to establish the cost of regular education as a basis for the new formula. The models contain various levels of inputs -- teachers, staff, and other

resources -- with costs assigned to these inputs. These models were not publicly presented until December 2006. See 2006 Cost Report. My critique of these model districts, and of the process used by DOE to develop them, is set forth in Exhibit B.

30. To determine the cost of regular education in SFRA -- called the base cost -- the DOE did not use the six hypothetical district models developed in 2003 and later presented in the 2006 Cost Report. Instead, the DOE chose one of the six models -- the "large" K-12 district (the "SFRA model") -- as the basis for the regular education cost, the same method used to develop the regular education cost in CEIFA. The SFRA model district has a total of 5,240 students, with six elementary schools of 400 students each; two middle schools of 600 students each; and 1 high school with 1,640 students. 2007 Cost Report, page 9 and Appendix E, Tables 1 and 2.

31. I have prepared Tables that compare the SFRA model district to the characteristics of Abbott districts. See Exhibit E. My findings are as follows:

(a) Seven (7) districts have student populations that are at least two times the SFRA model. Of those, two (2) are five times larger and one (1) is nearly eight times larger, see Exhibit E, Table 1;

(b) Thirteen (13) districts have average elementary school enrollments that exceed the model by 100 students or more.

Eight (8) have average middle school enrollments that exceed the model by 100 students or more. See Exhibit E, Table 1. At the high school level, eight (8) districts have student enrollments greater than 2,000. Four (4) Abbott high schools have nearly 3,000 students and one, Elizabeth High, has over 5,000 students. See Exhibit E, Table 2.

(c) Nine (9) districts have ten or more elementary schools. Of those, five (5) have 20 or more elementary schools and two (2) have 30 or more. Five (5) districts have more than two middle schools and eight (8) have no middle schools. Seven (7) have more than one high school. See Exhibit E, Table 1.

(d) The grade configuration of Abbott schools is substantially different than the SFRA model. Only 36% of Abbott schools are configured as grades K-5, 6-8 or 9-12. There are 99 K-8 schools (22%), and a total of 31 other grade configurations including K-4, K-6, K-7, 3-8, 5-10, to name just a few. See Exhibit E, Table 3. Eight districts (8) have at least one combination school that includes both middle and high school students. See Exhibit E, Table 2.

32. The Abbott districts have significantly different enrollment levels, grade configurations, school types, and numbers and sizes of schools than the SFRA model district. Like the CEIFA model, the SFRA model is not representative of the actual size and configuration of Abbott districts and schools.

These variations are critically important since they are likely to generate different student and school needs; different staffing, resource and other input patterns; and different school and district-wide costs. This is also critical because there is no evidence that DOE validated the SFRA model through any study or analysis of actual Abbott districts and schools.

33. Using the SFRA model, the DOE determined a regular education cost per pupil, or "base per pupil amount." For 2008-09, the base per pupil amount is \$9,649 for an elementary student. The DOE also set weights, or a percentage of the base amount, of 1.04 and 1.17 for middle and high school students, respectively. These weights yield a \$10,035 base amount for middle school students and \$11,289 for high school students, or an average amount of \$10,281 per pupil.

34. The base amount of \$10,281 per pupil represents the cost in SFRA of the resources necessary for Abbott students to achieve the CCCS.

35. The base amount, weighted for enrollment, is used to calculate the base cost, which is the budget amount for each Abbott district deemed "adequate" to provide the CCCS.

36. The DOE used the same hypothetical school district approach to determining the regular education cost in both the SFRA and CEIFA formulas.

37. I have compared the base amount derived from the SFRA and CEIFA models. The CEIFA base amount for an elementary student - called the "T&E amount" - would be \$9,784 per pupil in 2008-09, adjusted for inflation. Using the weights in CEIFA, the T&E amount for middle and high school students is \$10,175 and \$10,860 per pupil, or an average of \$10,273 per pupil. See Wyns Cert., ¶ 13.

38. The CEIFA T&E amount of \$9,784 per pupil is \$135 per pupil higher than the base amount in SFRA. Thus, the base amount in SFRA is actually below the CEIFA T&E amount found inadequate for Abbott students to achieve the CCCS ten years ago in Abbott IV.

III. REPLACING THE ABBOTT PARITY REMEDY

39. The Abbott parity remedy is mandated to assure sufficient funding for regular education to enable Abbott students to achieve the CCCS. The parity remedy, first ordered in Abbott II (1990), directs the State to assure a funding level for regular education in Abbott district budgets equivalent to the average per pupil expenditure in the educationally successful, more affluent districts in DFG I&J.

40. In Abbott IV, the Court refused to replace the Abbott parity remedy with the CEIFA T&E amount for two basic reasons: the CEIFA model did not reflect the actual realities, characteristics and conditions of Abbott districts and schools,

and the State had failed to demonstrate that regular education expenditures in I&J districts -- substantially higher than the CEIFA T&E amount -- represented excesses or inefficiencies not needed to provide T&E in those districts. As a result, Abbott IV directed the Abbott parity remedy remain in place and that the State, by 1997-98, provide the aid necessary to equalize expenditures with I&J districts.

41. From 1997-98 to the present, the I&J average expenditure - or parity amount -- has served as the cost of regular education to ensure Abbott students the resources to achieve the CCCS. Each year, the DOE projects the I&J average, then provides additional state aid above CEIFA to maintain parity in Abbott districts' budgets.

42. SFRA replaces parity with the base amount in the formula as the cost of regular education for Abbott students.

43. The current (2007-08) parity amount is \$12,872 per pupil, and the SFRA base amount is \$10,281 per pupil for 2008-09, 20% below Abbott parity, and represents a significant reduction in resources to provide the CCCS to Abbott students. See Wyns Cert., ¶¶13-14.

44. Under the Abbott parity remedy, Abbott districts have a current (2007-08) regular education cost budget of \$3.45 billion, based on the parity amount of \$12,872 per pupil. In 2008-09, SFRA establishes a "base cost" budget of \$2.83 billion

for Abbott districts, using the base amount of \$10,281 per pupil. As a result, the SFRA-defined cost of providing the CCCS to Abbott students is \$621 million or 18% below the cost of the Abbott parity remedy. Put differently, SFRA establishes a regular education cost for Abbott students to achieve the CCCS that is \$2,591 per pupil less than the Abbott parity remedy. See Exhibit F, Table 1.

45. The actual level of expenditures for regular education in Abbott district budgets, however, will be significantly below the SFRA base cost. I calculate that the Abbott districts' actual "base" expenditure budget for regular education in 2008-09 will be \$2.42 billion, or \$409 million less than districts' base cost budget of \$2.83 billion. See Exhibit F, Table 2.

46. The difference between the base cost and the base expenditure budgets reflects the increase in the local fair share under SFRA, which is the amount of local revenue Abbott districts are expected to contribute to the education budget. Abbott districts' local fair share under SFRA is \$1.14 billion, while the current revenue raised from the local tax levy is \$635 million. See Wyns Cert., ¶40. Because the local revenue actually available to Abbott districts is significantly below the local fair share, the districts will not have enough revenue to support the base cost necessary for T&E under SFRA.

47. As noted above, the current regular education budget under the Abbott parity remedy is \$3.45 billion, which is supported by CEIFA regular education aid, the available local levy and parity remedy aid of \$1.03 billion. When the current parity remedy budget is compared to the SFRA base expenditure budget of \$2.42 billion, Abbott districts will have \$1.03 billion less in 2008-09 to expend to enable Abbott students to achieve the CCCS, a reduction equivalent to the current amount of Abbott parity aid. Thus, the Abbott districts will have 30% or \$3,547 per pupil less in actual expenditures for regular education in 2008-09 under SFRA than was available under the Abbott parity remedy in 2007-08. See Exhibit F, Table 3.

48. I have also analyzed regular education expenditures in I&J districts under SFRA for 2008-09, and compared this expenditure level to project the parity gap. I calculate that I&J districts will have a total base expenditure budget of \$3.87 billion, well above the SFRA base cost budget of \$3.04 billion. Under SFRA, I&J districts will continue to expend resources on regular education well above the base cost because, like the CEIFA T&E budget, the base cost is well below the actual I&J expenditure level. In addition, I&J districts can continue to raise local revenue in excess of the SFRA local fair share, subject to the 4% annual tax cap. See Exhibit F, Table 4.

49. Based on a budget of \$3.87 billion, I project the I&J average expenditure at \$12,612 per pupil in 2008-09. Using this amount, I project the expenditure gap between I&J and Abbott districts at \$1.25 billion, or 34%. This means I&J districts will have \$4,311 per pupil on average more to provide their students with the CCCS than Abbott students. See Exhibit F, Table 5.

50. Because of several factors, the parity gap in regular education expenditures will unquestionably widen in 2009-10 and beyond. As noted above, I&J districts are able to raise additional local revenue given their community wealth, taxing capacity, and the substantial amount of local revenue already in the budgets. In addition, many Abbott districts, especially those with budgets over the defined "adequacy" limits under SFRA, will have to reduce budgetary expenditures over time in light of their low taxing capacity. Finally, for the many Abbott districts receiving "off formula" adjustment aid, the stress on the budgets will grow as this aid decreases and state aid remains flat over the coming years. See Wyns Cert., ¶¶42-43.

III. SFRA COSTING OUT PROCESS

51. The State asserts that inputs obtained from outside stakeholders on the DOE hypothetical district models in early 2003, create a "link" - missing in CEIFA -- between the models

and the resources necessary for students to achieve the CCCS. Although the DOE elected not to utilize the six models developed in 2003 in the SFRA formula, because the State relies so heavily on the 2003 process and later expert reviews to support the final SFRA model and formula, I provide further analysis and findings below.

52. The State characterizes its costing out work in 2003 as a Professional Judgment Panel ("PJP") approach. The PJP is a well-established method for determining education costs that uses groups of experienced educators to identify the programs and resources schools need to achieve state performance standards. The groupings or "panels" are composed of a large and diverse set of individuals from school sites because they are best able to determine the specific resources and programs needed to meet state standards. The panels, not state education department staff, develop school- and district-level resource models, and are typically given substantial time, data and other support to undertake and complete this painstaking work.

53. Further, the PJP process also includes convening separate panels by grade level and/or by state regions to ensure that the diverse and unique characteristics and needs of districts - for example, large urban, small city, rural - are thoroughly addressed. In some cases, such as the Pennsylvania cost study recently completed by John Augenblick -- the DOE

consultant in 2003 -- distinct panels are convened specifically to focus on the resources required for special needs districts, like Philadelphia, and student populations. See Costing Out the Resources Needed to Meet Pennsylvania's Public Education Goals, Augenblick, Palaich and Associates, Inc. (Dec. 2007), available at <http://www.apaconsulting.net/uploads/reports/6.pdf>.

54. I am familiar with accepted PJP standards and procedures and, based upon my review of the available documentation, the DOE clearly did not follow this methodology in 2003. While I raised my concerns about these flaws in January 2007, see Exhibit B, other advocates, education associations and stakeholders did so as well at public hearings on the December 2006 cost study and legislative hearings on the SFRA.

55. The school finance experts hired by DOE to review the 2006 Cost Study – Allan Odden from the University of Wisconsin-Madison, Lawrence Picus from the University of Southern California, and Joseph Olchefske from the American Institutes for Research – also raised similar concerns in their reviews. Each expert wrote an individual review, and Allan Odden produced a final report. These three individual reports, which the State did not include in its motion, can be found at <http://www.nj.gov/education/sff/reports/odden.pdf> (“Odden Report”);

<http://www.nj.gov/education/sff/reports/picus.pdf> ("Picus Report"); and

<http://www.nj.gov/education/sff/reports/olchefske.pdf>

56. With regard to the 2003 process, I find:

(a) The DOE played the central role, which runs counter to accepted PJP methodology, and likely impacted the results. The first assembled group consisted entirely of DOE staff, and the two groups of outside stakeholders were brought together for an extremely brief period - one two-day meeting - to provide feedback on the DOE models, and not to independently develop the model configurations and determine the types and level of resources, as is standard PJP procedure. As Odden notes, he is "not familiar with any PJP study that used State Department of Education personnel as the sole individuals on any panel." Odden Report, page 3. Picus also finds the DOE role particularly problematic because the first group, consisting entirely of DOE staff, was charged with developing initial staffing ratios and resource allocations, and only given to stakeholders for reaction. Picus Report, page 5.

(b) The two stakeholder groups that met in early 2003 did not have enough school-level representation in general, and almost no representation from Abbott schools and districts. As Picus notes, of the forty (40) invited participants to the second meeting, only two (2) appear to be classroom teachers,

and the final panel of eight (8) had no school level personnel at all. Picus Report, page 5. Further, out of the forty-eight (48) outside stakeholders, only four (4) were from Abbott districts. These are critical omissions because school site personnel have the most direct knowledge of how resources are used and are most familiar with student needs. I concur with Odden that, because of the paucity of participation by Abbott educators and other school and district staff, whatever input DOE may have obtained "lacked the focus needed for designing a school strategy that can work in schools with high concentrations of low income, ELL and minority students." Odden Report, page 3.

(c) The outside participants received no information about the Abbott remedies, especially the supplemental programs and reforms, and no data concerning the unique needs of Abbott students and schools.

(d) The work performed by DOE in 2003 remained "on the shelf" for several years and, when finally made public almost four years later, was out-of-date. Picus notes the considerable changes in the policy environment since early 2003 that could significantly impact resource needs. Picus Report, page 5. For example, while the stakeholders were given the CCCS to guide their input, those standards were significantly revised in 2004, and will be revised again this year. In addition, between early

2003 when the stakeholders met and late 2006 when the Cost Report was finally released, new statewide assessment exams were developed; new programs and reforms were enacted, such as gifted and talented programs and the Abbott secondary reform (SEI); the Abbott X order on WSR and supplemental programs was issued; and changes were made in high school graduation requirements, specifically in the Abbott districts. All of these changes impact on school and district level resources.

57. The State also suggests that the DOE models presented in the 2006 Cost Report were validated by Odden and Picus using a different type of costing out method known as the Evidence Based ("EB") approach. EB relies on an expert review of the latest educational research to identify strategies that are the most likely to produce desired student outcomes. The strategies are then examined, modified and approved by panels of diverse stakeholders, similar to the professional judgment process, to ensure the resource models meet the specific needs and requirements of the particular state, regions and students.

58. In their review, Odden and Picus make clear that they did not undertake the EB method in New Jersey, a complex and time consuming process. Instead, they identified common educational strategies based on their EB work in other states for comparison purposes only. Both acknowledge that if the EB method had actually been used, the final recommendations could

vary from the numbers used in their reviews. As Picus states, "[a]bsent the conduct of a full EB study in New Jersey, it is impossible to know exactly what the final recommendations of such a study would be and how they would compare to the findings from this PJP analysis." Picus Report, page 12.

59. After releasing the 2006 Cost Study, the State held six public hearings to allow stakeholders to comment on the results. At these hearings, advocates and stakeholders from organizations such as the NJ Education Association, the NJ Principals and Supervisors Association, and the NJ School Boards Association voiced similar concerns to those outlined above.

60. In June 2007, the State convened yet another panel of experts - Thomas Corcoran from Columbia University, Susanna Loeb from Stanford University, and David Monk from Pennsylvania State University -- to assist in "analyzing and revising the formula proposal." 2007 Report, page 12. I am unaware of any information about the research, data or materials considered by these experts, or their recommendations or conclusions.

61. I find that the neither the limited effort to obtain input from stakeholders in 2003, nor the summary expert reviews of the 2006 Cost Study, resolve the underlying deficiency with the SFRA resource models - the lack of any discernible connection or nexus between the hypothetical school district

developed by DOE and used in SFRA and the resources and programs required and needed for Abbott students to achieve the CCCS.

V. ELIMINATION OF MUNICIPAL OVERBURDEN

62. Since 1990, the local revenue in Abbott districts' budgets has been governed by the determination in Abbott II that the districts were in "municipal overburden," meaning that excessive total tax levies effectively prevent them from increasing revenue for public education. Abbott II generally defined municipal overburden as a total equalized tax rate "well above" the state average. In 2006-07 and 2007-08, the DOE more precisely defined municipal overburden as a total equalized tax rate of 110% and 120% or greater of the statewide average.

63. In 2007-08, DOE determined that fifteen (15) Abbott districts had total equalized tax rates of less than 120% of the state average. These districts were then mandated to raise additional local revenue, with a \$125 per household limit.

64. SFRA eliminates the limits placed on Abbott districts by municipal overburden. Instead, SFRA calculates a "local fair share" ("LFS") for Abbott districts through a formula based on total equalized property valuation and aggregate community income, the same formula as in CEIFA. This formula represents the State's expectation of what each district should contribute to the education budget. See Wyns Cert., ¶¶15, 16.

65. I have analyzed the table showing the calculation of local revenue raised by Abbott districts under the limits imposed by municipal overburden and the LFS under SFRA. See Wynn Cert., Exhibit E. This table shows:

(a) Abbott districts were required to raise \$635.2 million in local revenue for their budgets in 2007-08;

(b) The districts are expected to raise \$1.14 billion in local revenue based on their LFS under the SFRA calculation;

(c) The LFS represents an increase of \$507.3 million in local revenue from the current level under municipal overburden;

66. Because of a 4% cap on the annual tax levy increase, and because only two (2) districts are presently taxing at the LFS level, it will take many years before most Abbott districts can raise the school tax levy to the LFS level. By 2020-21, only nine (9) districts will be able to raise a school tax levy equivalent to the LFS, and only one-third of the overall LFS increase of \$507.3 million will be raised by that time;

67. In addition, Abbott total tax rates would rise to \$2.15 on average, a 22.9% increase, if districts were able to raise the LFS required by SFRA. All but nine (9) districts would have a total equalized tax rate above 120% of the statewide average, the current definition of municipal overburden. This impact does not account for other likely increases in the total tax

rate to fund other municipal expenses such as police, fire and other social services. See Exhibit G.

68. By ignoring municipal overburden, and total tax rates, SFRA imposes a LFS that has no relationship to the capacity and ability of Abbott districts to actually provide that level of local revenue. SFRA also does not mandate any increase in the local tax levy, thereby providing no assurance of the funding necessary to support Abbott districts' budgets and enable Abbott students to achieve the CCCS.

VI. CONCLUSION

69. In summary, I conclude:

(a) The regular education base cost under SFRA is derived from a hypothetical K-12 district, developed by DOE, that is unrelated to actual Abbott districts and schools, and not supported or verified by any study, research or other evidence of the resources necessary for students in either Abbott or I&J districts to achieve the CCCS, the very same flaw in CEIFA;

(b) The DOE 2003 process suffered from serious deficiencies, including limited input from outside stakeholders; a failure to address the Abbott remedies and the unique needs of Abbott districts and schools; the failure to follow accepted standards for the professional judgment cost method; and the use of academic standards and program requirements now long out-of-date. Consequently, the 2003 process creates no discernible

link between the SFRA model selected by DOE in 2007 and the resources necessary for Abbott students to achieve the CCCS;

(c) The SFRA base cost is 18% below the current (2007-08) Abbott parity amount, and causes a substantial reduction in expenditures to provide regular education to Abbott students;

(d) Regular education expenditures in Abbott districts under SFRA will be 34% below the I&J level in 2008-09, immediately reinstating the disparity in regular education eliminated in 1997-98 by the Abbott parity remedy, and this gap will widen further in future years;

(e) I am unaware of any study, research or other evidence to show that the current (2007-08) parity level expenditures in Abbott or I&J districts represent excess, waste or genuine inefficiencies, and is not needed to enable students in those districts to achieve the CCCS; and

(f) By dramatically increasing the local fair share, and by eliminating municipal overburden, SFRA lacks any assurance of adequate funding for regular education and other essential programs in Abbott district budgets, thereby depriving Abbott students of resources vital to provide T&E.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements

made by me are willfully false, I am subject to punishment.

MARGARET E. GOERTZ, Ph.D.

DATED: April 25, 2008