

SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

RAYMOND ARTHUR ABBOTT, et al,
Plaintiffs,

vs.

FRED G. BURKE et al,
Defendants.

CIVIL ACTION

**POST-TRIAL SUBMISSION BY AMICUS CURIAE
DOLLAR\$ AND SENSE**

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INTRODUCTION

Dollar\$ and Sense (D & S), an association of approximately 40 historically high achievement school districts, files this post-trial submission as amicus curiae. This document is intended to supplement its previously filed pre-trial brief. It therefore focuses on the evidence presented at trial and the findings of fact and conclusions of law justified by that evidence.

In Abbott v. Burke, 119 N.J. 287 (1990) (Abbott II), this Court held that, in the absence of a statutory school finance scheme that otherwise assured all children in poor, urban school districts (since known as "Abbott districts") the "thorough and efficient" education mandated by N.J. Const. art. VIII, §4, ¶1, those districts must be assured at least parity in spending with the so-called DFG I and J districts, the most affluent and historically high achieving school districts. Abbott II, 119 N.J. at 384-86. The Court reaffirmed this standard in Abbott v. Burke, 136 N.J. 444 (1994) (Abbott III) (striking down the so-called Quality Education Act), and again in Abbott v. Burke, 149 N.J. 145 (1997) (Abbott IV) (striking down the so-called Comprehensive Educational Improvement and Financing Act).

In Abbott IV, this Court established the standard that the State must meet to demonstrate that a statutory school finance

scheme that does not assure this parity satisfies the State's constitutional obligations:

We acknowledged in Abbott II, supra, that the Legislature may choose "to equalize expenditures per pupil for all districts in the State at any level that it believes will achieve a thorough and efficient education, and that level need not necessarily be today's average of the affluent suburban districts." 119 N.J. at 387, 575 A.2d 359; see supra at 156-157, 693 A.2d at 422-423. Thus, if it can be convincingly demonstrated under CEIFA or by amendatory legislation or administrative regulation that a substantive thorough and efficient education can be achieved in the SNDs by expenditures that are lower than parity with the most successful districts, that would effectively moot parity as a remedy. Moreover, if the State could, as implicitly authorized by CEIFA, specifically identify those elements of DFG I & J budgets that represent genuine inefficiencies or excesses and demonstrate that they are truly unnecessary to the achievement of a thorough and efficient education, as evidenced by student performance and achievement of the content standards, it then may consider those expenditures in the funding calculation. [Abbott IV, 149 N.J. at 196.]

In its most recent decision, the Supreme Court reaffirmed these holdings, but re-emphasized that "our prior decisions and orders did not preclude experimentation and consideration of alternative approaches to an equitable and constitutional funding approach," provided that it satisfies the constitutional standards enunciated in those decisions. Abbott v. Burke, 196 N.J. 544, 564 (2008).

In its most recent decision, the Court held that it could not determine whether the School Funding Reform Act of 2008 ("SFRA"), L. 2007 c. 260 (codified primarily at N.J.S.A. 18A:7F-

44 et seq.), meets this constitutional standard. It remanded this matter to this Court, sitting as special master, to:

conduct a plenary hearing to develop a full and complete evidential record that addresses the factual contentions raised by the parties and amici curiae before this Court. [Abbott, 196 N.J. at 568.]

It further directed this Court, as special master, to "file a report on his factual findings and conclusions." Abbott, 196 N.J. at 569.

In this proceeding, the Supreme Court placed on the State the burden of proving

[T]hat SFRA's funding formula provides sufficient resources to enable the Abbott districts, with their special needs in respect of the at-risk pupils entrusted to their care, to deliver a thorough and efficient education, as defined by the Core Curriculum Content Standards. [Abbott, 196 N.J. at 568.]

As outlined above, the Court has held that the State can meet this burden in at least two ways. It can seek to demonstrate by "convincing" evidence that a substantive thorough and efficient education can be achieved in the SNDs by expenditures that are lower than parity with the most successful districts and that the SFRA assures that those expenditures are made in the Abbott districts. It can seek to demonstrate by "convincing" evidence that "specifically identified" elements of DFG I & J budgets "represent genuine inefficiencies or excesses and demonstrate that they are truly unnecessary to the achievement of a thorough and efficient education, as evidenced

by student performance and achievement of the content standards.”

It is not clear whether these two descriptions by the Supreme Court of the State’s burden are really different or are merely different formulations of the same standard. In either event, the extent to which the level of expenditures provided for by the SFRA is different from parity with the DFG I and J districts, and, if so, whether that difference is educationally justified is central to the constitutional standard enunciated by the Supreme Court.

In light of this Court’s previous enunciation of this constitutional standard, D & S contended before the Supreme Court in the present proceeding that:

The School Funding Reform Act of 2008 (“SFRA”), L. 2007 c. 260 (codified primarily at N.J.S.A. 18A:7F-44 et seq.), establishes a new so-called “educational adequacy” standard for expenditures by all school districts. As presented by the State, this standard bears no factual relationship with the educational expenditure by District Factor Group (DFG) I and J districts that have historically enabled them to provide a high quality education for their students. It is as much as \$2,000 per pupil below the current expenditures by DFG I and J districts.

Indeed, the statutory “adequacy budget” is below the current level of expenditures for 383 of the state’s 595 operating school districts. Far from representing a consensus of informed educational decision-makers as to the level of expenditures necessary to “deliver the core curriculum content standards and extracurricular and extracurricular and co-curricular activities necessary for a through and efficient education” mandated by the SFRA, the

education adequacy standard is a dramatic step down from what school districts throughout New Jersey have found to be essential for the provision of the education that the Constitution guarantees to every child, as evidenced by their actual budget decisions.

In the present proceedings, the statutory educational adequacy standard is not supported by any empirical factual analysis of actual expenditures of successful schools. The State has not provided the type of "convincing demonstration" that this Court has required to prove that a statewide expenditure standard other than parity with current expenditure levels of DFG I and J districts assures that all districts can operate "thorough and efficient" systems of public schools.

Combined with the SFRA's stringent restrictions on increases in school expenditures and on increases in local school tax levies, the expenditure standard will have the long term practical effect of driving the expenditure level of historically high achievement districts down toward the "adequacy budget" level. It will have the foreseeable effect of also driving down their ability to provide a high quality education for their students. It may ultimately reduce the disparity between DFG I and J districts and so-called Abbott districts, but only at the price of denying all children the constitutionally mandated "thorough and efficient" education. [Amicus Brief of D & S before Supreme Court at pp. 1-2]

To assist this Court in performing its task of reporting "factual findings and conclusions" as to the "factual contentions raised by the parties and amici curiae before [the Supreme] Court," D & S proposes the following factual findings and conclusions based upon the record made before this Court.

FINDINGS OF FACT

COMPARISON OF ADEQUACY BUDGET WITH LEVELS OF ACTUAL SCHOOL DISTRICT EXPENDITURES

1. The SFRA "adequacy budget" for 2008-09 is below the level of actual expenditures for 2007-08 for 383 of the 595 school districts in the state. Montesano, 2 Tr.¹ 6 , Ex. P-157, pp. 12A-20A.

2. The SFRA "adequacy budget" for 2008-09 is below the level of actual expenditures for 2007-08 for 103 of the 127 DFG I and J school districts in the state--81.1%. Fletcher, Tr. 54, 58, Ex. P-131.

3. The SFRA "adequacy budget" for 2008-09 is below the level of actual expenditures for 2007-08 for 30 of the 43 DFG I and J school districts in the state that are k-12 districts--69.8%. Fletcher, Tr. 54, 59, Ex. P-132.

4. For all DFG I & J districts spending over the "adequacy budget," the average (mean) difference between the

¹ For purposes of this submission, "Fletcher, Tr." refers to the transcript of the testimony of Patrick Fletcher, Superintendent of the River Dell School District on February 24, 2009, "Montesano, 1 Tr." refers to the transcript of the testimony of Dr. Roy Montesano, Superintendent of the Ramsey School District on the morning of February 24, 2009, "Montesano, 2 Tr." refers to the transcript of the testimony of Dr. Montesano, on the afternoon of February 24, 2009, and "Attwood 2 Tr." refers to the testimony of Assistant Commission of Education Katherine P. Attwood on the afternoon of February 11, 2009.

adequacy budget for 2008-09 and actual budgeted expenditures for 2007-08 is \$3,358,413. Calculation from Ex. P-131.

5. For DFG I & J districts that operate K-12 school systems and are spending over the "adequacy budget," the average (mean) difference between the adequacy budget for 2008-09 and actual budgeted expenditures for 2007-08 is \$5,339,020. Calculation from Ex. P-132.

6. For example, for Ramsey School District, a DFG I district, the difference between the adequacy budget for 2008-09 and actual budgeted expenditures for 2007-08 is approximately \$6.2 million--\$1,997 per pupil. Montesano, 1 Tr. 129, 143, Ex. P-157 p. 10A.

7. The State requires school districts that are budgeting expenditures over the adequacy budget to analyze and explain to the SDOE and the public the fiscal and educational significance of the difference between budgeted expenditures and the adequacy budget. Montesano, 1 Tr. 120-36, Ex. 157 p. 10A.

8. The difference between what a DFG I or J district, such as Ramsey, currently spends and what it would spend if it were operating at the adequacy budget level is significant in terms of educational programs and services. It includes smaller class sizes for both high achieving and low achieving students, increased electives at the middle school level including additional "world languages," a readiness kindergarten program,

a greater level of extra-curricular and co-curricular programs, an additional child study team, and an additional part-time high school guidance counselor. Montesano, 1 Tr. 134-35, Ex. P-157, p. 10A.

9. Put in terms of what would have to be eliminated to operate the school district at the "adequacy budget" level, the difference involves:

Elimination of all athletic and co-curricular programs	\$864,015.00
Elimination of all Basic Skills/remedial programs;	\$905,185.00
Cutting of one full Child Study Team resulting in major loss of student services	\$350,000.00
Elimination of all educational media services	\$1,171,197.00;
Twenty five percent reduction in budget for operation of plant services resulting in major personnel losses and potential safety of our students	\$1,032,936.00;
Elimination of four supervisory positions resulting in major loss in instructional progress and student achievement	\$142,605.00
Elimination of all teacher training and support programs	\$142,605.00
Further reduction of 20 teaching positions Montesano, 1 Tr. 154, 2 Tr. 6, Ex. P-157.	\$1,273,529.00

10. These differences do not involve "frills." They are expenditures necessary for the Ramsey School District to carry out its core mission of providing a "thorough and efficient" school system for all its students. Most of these differences

directly affect the District's ability to "deliver the core curriculum content standards and extracurricular and extracurricular and co-curricular activities necessary for a through and efficient education" as mandated by the SFRA. Montesano, 1 Tr. 151, 153-54, 2 Tr 6, Ex. P-157.

11. Ramsey's students achieve at high levels by comparison with students in other school districts in the state. Montesano, 1 Tr. 137-38.

12. Similarly, for River Dell Regional School District, a DFG I district, the difference between the "adequacy budget" for 2008-09 and actual budgeted expenditures for 2007-08 is approximately \$2.8 million--\$1,862 per pupil. Fletcher, Tr. 29, 41.

13. The \$2.8 million difference between the adequacy budget and its actual expenditures enables River Dell to pay for school nurses, educational media services, athletics, co-curricular, and maintenance to support the infrastructure. It also enables River Dell to pay for other support programs for its students such as student assistance counselor, guidance services, and remedial programs for students who are failing to achieve at the satisfactory levels on a various performance assessments. Fletcher, Tr. 41-42.

14. These expenditures are necessary to enable River Dell to provide a "thorough and efficient" education for its students. Fletcher, Tr. 42.

15. These are the very staff, programs and services that enable River Dell to provide a quality education to its students: a relatively small class size; educational media services (libraries); counseling services for students that help them in a social and emotional; remediation for students that need additional services in order to continue to perform well. Fletcher, Tr. 30.

16. River Dell's students achieve at high levels by comparison with students in other school districts in the state. Fletcher, Tr. 29.

17. The SFRA requires school districts to represent to the public that any expenditures over the adequacy budget are for "programs and services in addition to the core curriculum content standards adopted by the State Board of Education," N.J.S.A. 18A:7F-5(d) (10), even if this is not true in fact. Montesano, 2 Tr. 10-11.

THE BASIS OF THE ADEQUACY BUDGET

18. In formulating the "adequacy budget," the State did not rely on any studies as to the expenditures of any school district or any group of school districts and did not base the "adequacy budget" on any such studies. Rather, it relies the so-

called "professional judgment process" which involved only a set of hypothetical school districts. K. Attwood, 2 Tr. 32-57, Report on the Cost of Education, Ex. D-2, A Formula for Success, Ex. D-12.

EDUCATIONAL OUTCOMES

19. As measured the by the State Department of Education's various assessment tests, including the Fourth Grade Assessment of Skills and Knowledge (NJASK), the Eighth Grade Assessment of Skills and Knowledge (NJASK), and the Eleventh Grade High School Proficiency Assessment (HSPA), the educational programs and services provided by DFG I and J districts enable their students to achieve at a higher level than students in other school districts. Fletcher, Tr. 61-62, 66-67, Ex. P-133.

20. In particular, as measured the by the State Department of Education's various assessment tests, including the Fourth Grade Assessment of Skills and Knowledge (NJASK), the Eighth Grade Assessment of Skills and Knowledge (NJASK), and the Eleventh Grade High School Proficiency Assessment (HSPA), the educational programs and services provided DFG I and J districts enable their "economically disadvantaged" students, as defined the State, to achieve at a higher level than other than students in other school districts. Fletcher, Tr. 62-63, 66-67, Ex. P-133.

Impact of the SFRA on DFG I and J Districts

21. To the extent that the SFRA requires districts such as Ramsey and River Dell to reduce their expenditures to the adequacy budget levels, it will make it impossible for them to deliver a "thorough and efficient" education to their students. Fletcher, 31 41-42; Montesano, Tr. 151, 153-54, 2 Tr. 6, Ex. P-157.

CONCLUSIONS

1. The SFRA "adequacy budget" is substantially below the expenditures of most school districts. It does not represent a consensus of local decisionmakers who are actually operating school districts as to the level of expenditures that they need to operate school districts that adequately serve their students.

2. The SFRA "adequacy budget" is substantially below the expenditures of DFG I and J districts. It does not represent parity with the expenditures of DFG I and J districts.

3. The difference between the budgeted expenditures in DFG I and J districts and the "adequacy budget" do not involve "frills." They are expenditures necessary for those districts to carry out their core mission of providing a "thorough and efficient" school system for all its students. Many of these differences directly affect those districts' ability to deliver the core curriculum content standards and extracurricular and extracurricular and co-curricular activities necessary for a through and efficient education" as mandated by the SFRA.

4. In formulating the "adequacy budget," the State did not rely on any studies as to the expenditures of DFG I and J school or any other group of school districts and did not base the "adequacy budget" on any such studies.

5. The "adequacy budget" is not based any analysis of the budget of DFG I and J districts that "specifically identified" budgetary elements that "represent genuine inefficiencies or excesses and demonstrate that they are truly unnecessary to the achievement of a thorough and efficient education, as evidenced by student performance and achievement of the content standards."

6. Based upon a comparison with the actual expenditures of the DFG I & J districts and the state "adequacy budget," enabling school districts to spend only the level of the "adequacy budget" would deprive them of the ability to provide the staff, programs, and services that thus far have enabled DFG I & J districts to provide a "thorough and efficient" education for their students.

7. The foregoing conclusions are not altered by SFRA's requirement that school districts must declare to the public that any expenditures over the adequacy budget are for "programs and services in addition to the core curriculum content standards adopted by the State Board of Education," N.J.S.A. 18A:7F-5(d) (10).

8. To the extent that the SFRA requires DFG I and J districts such as Ramsey and River Dell to reduce their expenditures to the adequacy budget levels, it will make it

impossible for them to deliver a "thorough and efficient" education to their students

9. The statutory budgetary provisions of the SFRA, as set forth in the pre-trial brief of Dollar\$ and Sense, has the foreseeable effect over the long run of forcing expenditures by high achievement, high expenditure districts, such as DFG I and J, districts, down toward the "adequacy budget" level.

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Dated: March 8, 2009