



Education Law Center

Standing Up for Public School Children

April 20, 2009

Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street
Trenton, NJ 08625-0970

Re: Abbott v. Burke
Docket No. 62,700
(M-969-07 & M-1372-07)

Dear Mr. Townsend:

Please find enclosed for filing with the New Jersey Supreme Court an original and ten copies of Plaintiffs' Reply to the State's Exceptions to the Special Master's Report and Recommendations in the above referenced matter and the Certificate of Service.

Kindly return one filed copy of the document in the self-addressed, stamped envelope provided. Thank you for your attention to this matter.

Respectfully submitted,

David G. Sciarra, Esq.
Attorney for Plaintiffs

BY HAND DELIVERY
Encls.

cc: Robert Gilson, Director, Division of Law
Counsel for Amici Curiae
Hon. Peter Doyne, A.J.S.C.

RAYMOND ARTHUR ABBOTT, et al.,
Plaintiffs,

v.

FRED G. BURKE, et al.,
Defendants.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 62,700
M-969-07 & M-1372-07

CIVIL ACTION

PLAINTIFFS' REPLY TO DEFENDANT'S EXCEPTIONS TO THE SPECIAL MASTER'S
REPORT AND RECOMMENDATIONS

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PRELIMINARY STATEMENT

As evident from the Special Master's Report and as Plaintiffs demonstrate in their Exceptions, the Special Master, other than on the issue of supplemental funding, only conducted a general, statewide facial review of the School Funding Reform Act of 2008 ("SFRA"), rather than the as applied assessment ordered by this Court. The State's Exceptions to the Opinion/Recommendations of the Special Master ("State's Br.") reinforce and underscore this fundamental flaw.

Strikingly, the State makes only a passing reference in its Brief to the two central remand issues: (1) whether SFRA overcomes the deficiencies in CEIFA's funding provisions identified by this Court; and (2) whether SFRA is constitutional as applied to Abbott districts and can replace this Court's funding methodology in those remedial districts. Instead, the State re-hashes the evidence it proffered relating to the process for developing SFRA and to the formula's statewide operation. Sprinkled throughout this description of SFRA's provisions are assertions about the resources the State claims the formula will generate for Abbott districts.

Rather than squarely confronting the Special Master's error, or identifying any as applied analysis in the Report, the State attempts a wholesale revision of the Report - quoting language out of context to suggest that the Special Master made

findings that he clearly never did. The State's strained effort to convert the Report from what it is, a facial review of SFRA largely based on the State's representations about the statewide sufficiency of the formulaic amounts, into findings and conclusions that support SFRA's constitutionality as applied, only emphasizes the Special Master's flawed assessment.

Ironically, on the issue of supplemental funding, where the Special Master did assess SFRA's actual impact on Abbott districts - and made specific findings that SFRA would be unconstitutional as applied without the supplemental funding remedy - the State claims that the Special Master made no "finding of fact" to justify that conclusion. The State also claims that the Special Master based his supplemental funding recommendation on an inability to "predict with absolute certainty" how SFRA would operate in the future and on the "remote possibility" that some Abbott districts might need supplemental funding. State's Br. 2-3.

These claims are baseless. As Plaintiffs have shown in their Exceptions, and will further explain below, the Special Master's conclusion and recommendation with respect to the supplemental funding remedy were grounded in specific findings derived from substantial credible evidence in the record and a practical and realistic consideration of the harm to Abbott students if the supplemental funding remedy were discontinued.

At bottom, the State urges this Court to discontinue the Abbott remedies – and jettison decades of this Court’s jurisprudence affording constitutional protection to students in urban areas of extreme poverty, racial isolation, municipal overburden and educational inadequacy – based on a Special Master’s Report that failed to make findings on, and assess, the essential as applied issues on remand. Substantial credible evidence in the remand record demonstrates that SFRA replicates, and aggravates, the deficiencies in CEIFA’s funding provisions and will have a devastating impact on the Abbott students and districts. On this record, the Court should find that SFRA is unconstitutional as applied and that the Abbott remedies should remain intact.

POINT ONE

THE STATE’S BRIEF DEMONSTRATES THAT THE SPECIAL MASTER’S REVIEW OF SFRA’S FUNDING PROVISIONS WAS FACIAL, GENERAL AND STATEWIDE, NOT AS APPLIED IN ACCORDANCE WITH THE REMAND ORDER.

The State asserts that the Abbott remedies of parity funding and supplemental funding were “interim devices,” State’s Br. 27, and that, in Abbott v. Burke, 196 N.J. 544, 563-64 (2008) (“Abbott XIX”), the Court stated that these remedies were implemented in the “absence of a ‘measuring stick’ by which to gauge the necessary educational resources for the CCCS to be provided in districts having large concentrations of poor

children within their pupil population." State's Br. 6 (citing Abbott XIX, 196 N.J. at 563-64). The State also claims that the Special Master factually found that SFRA provides more than sufficient resources to afford a thorough and efficient education for children in the Abbott districts. These assertions are legally erroneous and factually unsupportable.

First, there is nothing in the Court's prior opinions to support the State's legal claim that supplemental funding, like parity, was implemented as an interim remedy. To the contrary, the Court expressly stated in Abbott IV, and more recently in Abbott XIX, that the "parity remedy" can "be understood to be in the nature of provisional or interim relief." Abbott v. Burke, 149 N.J. 145, 196 (1997) ("Abbott IV"); Abbott XIX, 196 N.J. at 562 (stating that the "parity remedy was recognized, even at the time, as an 'interim' remedy, albeit the Court's 'chosen interim remedy.'"). The Court has never characterized supplemental funding in a similar manner, and the State is unable to point to any statement of this Court doing so. Indeed, the Court has never intimated that the provision of supplemental programs to address the extreme disadvantages and special needs of Abbott students, which is the constitutional anchor for the supplemental funding remedy, is likewise interim. See Plaintiffs' Exceptions 23-28 (addressing Special Master's failure to conclude that SFRA, like CEIFA, is deficient because of the

failure to require the Abbott K-12 supplemental programs, or other supplemental programs based on a study of Plaintiffs' special needs).

Moreover, the Court's references to a "measuring stick" in Abbott IV and Abbott XIX are explicitly confined to the parity remedy for funding regular education, not supplemental funding for the provision of supplemental programs. Abbott IV, 149 N.J. at 177 ("We are, however, still without any constitutional measuring stick against which to gauge the resources needed to provide the educational opportunity other than the inputs in the I&J districts."); Abbott XIX, 196 N.J. at 563 (reiterating that parity "was chosen because of the absence of any other 'measuring stick'" to ensure adequate resources for regular education in high poverty Abbott districts). The State's legally erroneous assertions about the interim nature of the supplemental funding remedy should be summarily rejected.

Second, the State's discussion of the Special Master's Report manifestly demonstrates Plaintiffs' claim that the Special Master's review was largely facial, general and statewide, not the as applied assessment mandated by this Court. See Plaintiffs' Exceptions 6-14. The State's strained effort to refashion the Special Master's Report as making the requisite findings and determinations regarding SFRA's constitutionality is predicated on selective and incomplete excerpts from the

Report. The compelling conclusion from even a cursory reading of the State's Brief is that the State on remand failed to present substantial credible evidence that SFRA overcomes CEIFA's deficiencies as applied to Abbott districts, and thus failed to meet its heavy evidentiary burden.

For example, in the extended portion of the State's Brief devoted to the Special Master's discussion of SFRA, State's Br. 4-27, the State largely relies on a recitation of the evidence it presented - and the Special Master included in his Report - on the process of SFRA's development and the funding generated by SFRA's formulaic provisions statewide and in selected Abbott districts.¹ The State repeatedly quotes the Special Master's statement that the DOE "properly and fairly implemented the PJP process in its efforts to develop an equitable and adequate school funding formula." State's Br. 11, 15(citing Report at 38). Similarly, the State relies on the Special Master's statements that he was "impressed with the evolution of the

¹ Plaintiffs discuss at length in their Exceptions the State's failure to produce any expert who could testify on the crucial as applied issues on remand. Plaintiffs' Exceptions 12-13, 24-30, 39-40. The State's reiteration of the Special Master's findings with respect to Dr. Monk and Dr. Loeb highlights that their testimony was directed at the general reliability of the PJP process and the appropriateness of the funding approach. State's Br. 8-9, 11, 16. Neither the State nor the Special Master cites any testimony of these experts on SFRA's application to Abbott districts. This omission stands in stark contrast to Plaintiffs' experts who testified extensively about SFRA's actual, as applied impacts. Plaintiffs' Exceptions 19-22.

SFRA"; "the efforts taken attempting to construct an equitable formula"; and the appropriateness of the "process utilized by the State." State's Br. 15-16(citing Report at 63). Of course, as Plaintiffs explain in their Exceptions, these observations by the Special Master do not address the as applied issues remanded to the Special Master; the remanded issues are simply not assessed in the Report other than in the discussion of the supplemental funding remedy.² Nor does the State or the Special Master ever go beyond describing the resources generated by DOE's claimed formula "enhancements," State's Br. 20-27, to address the critical as applied issues.³

The glaring gap in the State's Brief – and in the Special Master's Report – is the absence of any discussion of Plaintiffs' substantial credible evidence on SFRA's failure to

² The State reiterates the Special Master's comments on certain aspects of the testimony of Dr. Goertz, Dr. Belfield and Dr. Baker relating to the PJP process and other matters. State's Br. 12-13. Plaintiffs fully addressed the validity of the data and analysis of these experts relating to the as applied issues on remand in their Exceptions, Plaintiffs' Exceptions 18 n.6, 19 n. 7, 26 n. 11, and will not repeat that discussion here.

³ The State ignores Plaintiffs' undisputed evidence that numerous Abbott districts experience substantial funding reductions, not "enhancements," from the DOE's decision to use the combination weight for at-risk and LEP students, the census-based special education approach, and the "unique" geographic cost index. Plaintiffs' Exceptions, 32, n.14, 36-42. For example, these DOE changes, in totality, result in a funding loss of \$52,717,642 in Paterson, \$37,378,724 in Passaic, \$34,258,585 in Jersey City, \$22,079,663 in Newark, and \$18,863,032 in Union City. See D-21; D-133(providing basis for district-specific calculations).

overcome CEIFA's deficiencies as applied, and on the devastating impact of SFRA's provisions on Plaintiffs and their remedial districts. The State's only consideration of whether SFRA cures CEIFA's deficiencies is its claim, unsupported by any finding or conclusion of the Special Master, that the PJP process identified "the resources necessary for all students, including at-risk students and LEP students, to achieve the CCCS." State's Br. 10-11. However, the State does not explain, nor does the Special Master address, how the hypothetical model districts used in the PJP process - and later reduced to a single model for the SFRA formula - could generate adequate inputs for Abbott districts when the SFRA model, like CEIFA's model, "assumes, as the basis for its resource allocations and cost projections, conditions that do not, and simply cannot, exist in these failing [Abbott] districts." Abbott IV, 149 N.J. at 172; Abbott XIX, 196 N.J. at 562 (identifying use of a model that "did not account for the characteristics of special needs districts" as CEIFA's core defect); Plaintiffs' Exceptions 17-19.

The fatal legal and factual flaw in the Special Master's Report - and in the State's Brief - is also starkly illustrated by consecutive statements in the Report, the second of which the State notably ignores. The first - a quote the State repeatedly modifies to de-emphasize the word "designed," State's Br. 4, 6, 26, reads that "the court is convinced SFRA was designed to

exceed the requirements necessary to provide a through and efficient education such that the interim parity remedy no longer need be employed." (Report at 70)(emphasis added). Yet in the very next sentence, the Special Master concedes that "this court does not have the prescience to decide currently how SFRA funding (sic) will work in practice." Ibid.(emphasis added).

The design of the formula may be appropriate for a facial analysis, but an as applied analysis must go farther and address SFRA's application and how it will work "in practice" to overcome CEIFA's deficiencies in the remedial districts. The Special Master not only failed to conduct this analysis, but he also ascribed his inability to do so to a lack of "prescience," notwithstanding the overwhelming, largely undisputed and substantial credible evidence presented by Plaintiffs that SFRA, in practice, would have significant adverse impacts on Abbott districts and the Special Master's findings of serious deficiencies in SFRA's funding provisions that require continuation of the Abbott supplemental funding remedy.

Furthermore, the State repeatedly claims that the Special Master found that there are more than "ample funds" for "whatever supplemental programs are needed." State's Br. 4(citing Report at 77). However, taken in context, the excerpts quoted by the State do not reflect statements or determinations

made by the Special Master, but merely describe the State's assertion. (Report at 77). The only basis in the Special Master's facial analysis for the statement that "there should be adequate funds for all necessary programs in all districts, including the Abbott districts," (Report at 78), is what the "DOE posits." (Report at 72). There are no findings to support the contention that there are "ample funds," nor is there any consideration of the substantial credible evidence in the record that SFRA, as applied, will not provide adequate funding, let alone "ample funds," to Abbott districts.

The State seeks to fill this gap by claiming that Dr. Odden and Dr. Picus, two of the State's experts, confirmed that the resources identified by the New Jersey PJP "met or exceeded the Evidence Based standards in all essential areas. . ." State's Br. 20. The State, however, omits reference to a crucial piece of record evidence. The comparison conducted by Dr. Odden and Dr. Picus involved the results from a 2006 Evidence Based cost study conducted in the State of Washington. Dr. Odden did not testify at the remand hearing; consequently, Plaintiffs had no opportunity to test the State's heavy reliance on Dr. Odden. Yet to the extent that Plaintiffs could address those results through cross-examination of Dr. Picus, he actually underscored the invalidity of a comparison of the New Jersey PJP with the Washington State results by conceding that "[a]bsent the conduct

of a full [evidence-based] 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." D-74, 16 n. 7; Picus, 7T 70:20-24.⁴

Third, beyond the above distortions of the Special Master's statements and the remand record, the State also claims that "Judge Doyne found the SFRA ensures that all disadvantaged students 'will receive the necessary educational resources to help these students achieve the CCCS.'" State's Br. 6(citing Report at 73). That claim is simply wrong. The Special Master did not make such a finding; he merely asserted that "SFRA is then the attempt to ensure all disadvantaged students, regardless of where they live or how their district is categorized, will receive the necessary educational resources to help those students achieve the CCCS." (Report at 73)(emphasis added). The full quotation from the Report demonstrates that the Special Master never took the critical step of assessing SFRA, as applied, to determine if it "ensures" the necessary

⁴ The State falls back on its claim that SFRA provides the Abbott districts with substantial funds, asserting, as it did on remand, that "the Abbott districts have among the highest per pupil revenues in the nation" and that their funding exceeds the "average per pupil revenue for the I&J districts." State's Br. 25-26. The fallacy in the I&J district comparison is addressed in Point II, infra at 13-19. Moreover, while these claims relate to overall funding levels in 2008-09, they do not address whether SFRA overcomes CEIFA's deficiencies and SFRA's actual impact on Abbott districts.

educational resources for regular education and supplemental programs in Abbott districts. Specifically, he made no findings on whether the State's "attempt" actually ensures that the disadvantaged Abbott students will receive those necessary resources. In fact, the substantial credible evidence demonstrates that they will not. Indeed, the Report does not mention, let alone consider, the substantial credible evidence in the record regarding the data and analysis of Plaintiffs' experts and the testimony of district witnesses that, as applied, the State's "attempt" will, in actuality, restore the inequities and two-tiered educational system in existence prior to the implementation of the mandated Abbott remedies.

Finally, the State points to SFRA's preschool expansion provisions to extol "the benefit of eliminating the two-tiered system of school funding." State Br. 28(citing Report at 55). Yet this "benefit" is in no way dependent upon eliminating the Abbott remedies, nor do those remedies prevent the State from expanding preschool to other districts. The State's policy decision to expand preschool has nothing to do with SFRA's constitutionality as applied to Abbott districts.

POINT TWO

THE STATE MISCHARACTERIZES THE BASIS FOR THE SPECIAL MASTER'S CONCLUSION THAT SFRA IS UNCONSTITUTIONAL AS APPLIED TO ABBOTT DISTRICTS WITHOUT CONTINUATION OF THE SUPPLEMENTAL FUNDING REMEDY.

The State asserts that the Special Master's conclusion that SFRA is unconstitutional as applied to Abbott districts without continuation of the Abbott supplemental funding remedy, (Report at 82), "was based entirely on conjecture" and is not supported by any specific findings; is otherwise unnecessary because of federal funds; and is "inherently inequitable" and "corrosive" to the "essential purposes of the SFRA." State's Br. 28-43. These contentions grossly mischaracterize the Special Master's findings and conclusion and are otherwise unsupportable.

First, the State's assertion that the Special Master made "no specific findings" on the need to continue the Abbott supplemental funding remedy is flatly wrong. State's Br. 29. The Report sets forth specific findings, supported by substantial credible evidence related directly to SFRA's impact on Abbott districts, including flat funding in future years; the persistence of municipal overburden; the stress on budgets due to fixed, non-discretionary cost increases in teachers' salaries, utilities and other items; SFRA's failure to provide adequate resources to address Plaintiffs' supplemental program needs given that most of the remedial districts have poverty

concentrations above the 60% formulaic at-risk cap; and the State's failure to demonstrate spending inefficiencies that might ameliorate SFRA's adverse budgetary impacts. (Report at 82); see also Plaintiffs' Exceptions 52-56. These findings led the Special Master to conclude that the "potential harm" to Plaintiffs "outweighs" the State's claim that SFRA obviated the need for the supplemental funding remedy. (Report at 82).⁵

Second, the State claims that SFRA "was designed" to provide adequate funding, relying on the at-risk costs and weights in the SFRA formula, State's Br. 30, evidence proffered by the State and merely described by the Special Master. (Report at 43-46). The State, however, ignores the Special Master's crucial findings that SFRA's 60% cap fails to accommodate Plaintiffs' supplemental program needs and that, as a result, he was unable to find SFRA constitutional "in practice" in the remedial districts. Id. at 70, 82. The State also completely ignores the overwhelming, and undisputed evidence presented by representative district witnesses that not only does SFRA fail

⁵ Viewed in the context of the Special Master's specific findings, the State's separation of powers claim is frivolous. State's Br. 42-43. The Special Master recommended continuation of constitutionally-mandated supplemental funding. Such funding has been, and remains, within the sole province of this Court's authority to fashion an appropriate remedy to protect Plaintiffs' right to a substantive thorough and efficient education in this litigation. This proper exercise of judicial authority in no conceivable way violates the separation of powers doctrine.

to adequately fund necessary supplemental programs, but also that these districts have already had to eliminate or reduce such programs in SFRA's first year, and will have to undertake substantial additional cuts in the future, unless afforded continuing access to the supplemental funding remedy. (Report at 65); see Plaintiffs' Exceptions 52-55 (summarizing districts' supplemental program cuts).

Third, the State contends that the Commissioner's three-year review and report to the Legislature on SFRA's formula provisions renders the supplemental funding remedy "unnecessary." State's Br. 29, 31. While the Special Master describes this provision, (Report at 60), he neither found, nor concluded, that this periodic, administrative "review" addressed the serious SFRA funding deficiencies identified in the Report. Id. at 82. Moreover, just as in CEIFA, such review is just that - a review by the Commissioner - and offers no assurance of adequate funding for supplemental programs even if conducted every three years. Reock, 14T 78:3-12 (testifying that CEIFA's similar periodic review was "not observed" by the State).

Fourth, the State's assertion that the Special Master "suggested" supplemental funding is necessary to address "unforeseen circumstances" is patently erroneous. State's Br. 31. The Special Master never made such a "suggestion"; rather his conclusion that the supplemental funding remedy should

continue is grounded, as stated above, in specific factual findings that the SFRA formula "in practice" is deficient and harmful to the provision of a constitutional education to Plaintiffs. (Report at 70, 82). The State's proffer of a statute, N.J.S.A. 18A:58-11, which annually appropriates \$500,000 statewide for "financial emergencies" - to be distributed subject to the discretion of the Commissioner and State Board - as a replacement for the supplemental funding remedy is wholly without merit.

Fifth, the State asks this Court to "consider" federal funding, particularly the increases provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), to "evaluate" whether Abbott districts will have a need for supplemental funding. State's Br. 35. The State acknowledges that this Court has previously held federal aid to be "irrelevant" to the determination of constitutionally adequate funding in the remedial districts, Abbott v. Burke, 119 N.J. 287, 331 (1990) ("Abbott II"), and does not challenge that ruling. State's Br. 35.

More critically, however, the State neglects to mention that the additional federal funds provided under ARRA, which the State claims "dispel any notion" of a need for funding in the Abbott districts "over the next two budget years," State's Br. 35, is "one-time" funding provided in the economic stimulus

package that must be spent by September 30, 2011. U.S. Department of Education, Guidance on the State Fiscal Stabilization Fund Program 2 (April 2009), <http://www.ed.gov/programs/statestabilization/guidance.pdf> (last visited April 19, 2009). Moreover, U.S. Department of Education guidance makes clear that these one-time funds must be invested "thoughtfully to minimize the 'funding cliff,'" after this short-term infusion of federal aid. That is to say, the funds "should be invested in ways that do not result in unsustainable continuing commitments after the funding expires." Id. at 2.

It is crystal clear that the federal funding amounts relied upon by the State, particularly the additional one-time ARRA stimulus funds, possess the very same "fluctuating nature" criticized in Abbott II, 119 N.J. at 332. Therefore, such one-time, short-term funding cannot be considered a "critical factor" that would disturb the Special Master's conclusion regarding continuation of Abbott supplemental funding, the "underlying constitutional issue" before this Court. Ibid.

In addition, the episodic, restrictive and fluctuating character of the federal funding provides even more evidentiary support for Plaintiffs' proposed modification of the Special Master's recommendation to clarify that the supplemental funding remedy should continue until the State can demonstrate and

obtain this Court's approval that supplemental funding is no longer needed. Plaintiffs' Exceptions 59-60.

Finally, the State asserts, based on the DOE's fabricated per-pupil revenue comparison of Abbott districts and I&J districts, that the average per-pupil revenue of Abbott districts is 23.3% higher than the average per pupil revenue in the I&J districts. The State's purpose in making this claim is to support its argument that the Special Master's determinations as to supplemental funding should be rejected. State's Br. 25, 34. Yet as the record shows, the DOE compares "apples" to "oranges," as it uses district student enrollments un-weighted for student needs. When student needs, such as poverty concentration, are properly accounted for utilizing SFRA's designated weights, Abbott districts have lower per-pupil amounts than the I&J districts, \$10,377 to \$11,278 per-pupil, or \$901 less per-pupil than the I&J districts. Wyns, 13T 52:10-56:20; P-37. Thus, the substantial credible evidence shows that, when the proper "apples to apples" comparison is made in accordance with SFRA weights, the "positions of the Abbott districts and wealthier districts" under SFRA clearly have not "reversed from the districts' positions at the time of Abbott II." State's Br. 34. Those relative positions not only remain the same, but SFRA also will unquestionably widen the disparity between the Abbott districts and I&J districts in future years,

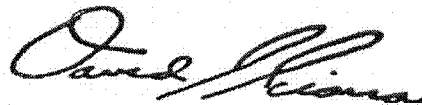
re-instituting the two-tier educational system the Abbott remedies were intended to address. Goertz, 11T 45:18-47:19.

The State makes two other claims that warrant only brief mention. The State contends that the supplemental funding remedy would be "corrosive" to SFRA's statewide "objectives" of transparency, equity and predictability. State's Br. 37-40. While appropriate policy concerns, these objectives are irrelevant to SFRA's constitutionality as applied to the Abbott remedial districts. Moreover, there is no evidence – and the Special Master made no findings – that the State's pursuit of these objectives would be undermined by continuation of the supplemental funding remedy. The State also asserts that supplemental funding should not continue because the process is time-consuming, adversarial, and one in which districts would seek to "fill" budget gaps. State's Br. 37-40. These bald assertions were raised on remand, (Report at 79), but none were accepted by the Special Master. In contrast, the Special Master did find that the supplemental funding process has been, as described by Assistant Commissioner Attwood, "evolving" and "improving," Attwood, 29T 45:19-48:25, and the Special Master could "discern no reason why the same should not continue." (Report at 83).

CONCLUSION

For the reasons stated above, and in Plaintiffs' Exceptions, Plaintiffs respectfully submit that the Court modify the Special Master's Report, and clarify his recommendations, as proposed in Plaintiffs' Exceptions. The Court should also enter an appropriate order denying the State's motion seeking a declaration that SFRA satisfies this Court's constitutional mandates and should be permitted to replace this Court's prior Abbott remedial mandates.

Respectfully submitted,



By: _____
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Counsel for Plaintiffs

Dated: April 20, 2009

Abbott v. Burke
Trial Transcripts

Number	Date and Time	Witnesses
1T	02/09/2009 AM	Lucille E. Davy
2T	02/09/2009 PM	Lucille E. Davy
3T	02/10/2009 AM	Justin Ryan Silverstein
4T	02/10/2009 PM	David Joye Susan Ecks
5T	02/11/2009 AM	Katherine P. Attwood
6T	02/11/2009 PM	Katherine P. Attwood
7T	02/12/2009 AM	Lawrence O. Picus, Ph.D.
8T	02/12/2009 PM	David Pittman
9T	02/13/2009 AM	Susanna Loeb, Ph.D. Edward Jay Doolan, Ph.D.
10T	02/16/2009 AM	Joan Saylor
11T	02/16/2009 PM	Margaret E. Goertz, Ph.D.
12T	02/17/2009 AM	David H. Monk, Ph.D. Melvin Wynn
13T	02/17/2009 PM	Melvin Wynn
14T	02/18/2009	Ernest C. Reock, Jr., Ph.D. Jon Karl Erickson, Ph.D.
15T	02/19/2009 AM	Clive R. Belfield, Ph.D.
16T	02/19/2009 PM	Clive R. Belfield, Ph.D.
17T	02/20/2009 AM	Bruce D. Baker, Ph.D.
18T	02/20/2009 PM	Bruce D. Baker, Ph.D.
19T	02/21/2009	Colleen La Rocca Malleo Victoria Scott Harry Victor Gilson, Ph.D.
20T	02/23/2009 AM	Olga Hugelmeyer George M. Chando
21T	02/23/2009 PM	George M. Chando

Abbott v. Burke
Trial Transcripts

Number	Date and Time	Witnesses
22T	02/24/2009 AM	Patrick J. Fletcher Roy R. Montesano
23T	02/24/2009 PM	Roy R. Montesano
24T	02/25/2009 AM	Charles Ottinger Shelly Schneider
25T	02/25/2009 PM	Shelly Schneider Clarence Hoover
26T	02/26/09 AM	Dennis Clancy
27T	02/26/09 PM	Ron Lee
28T	02/27/09 AM	Barbara Gantwerk Jacqueline Jones, Ph.D.
29T	02/27/09 PM	Katherine P. Attwood

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CERTIFICATE OF SERVICE

I, DAVID G. SCIARRA, an attorney at law, State of New Jersey, and counsel for Plaintiffs in the above captioned matter, hereby certify that, on April 20, 2009, I caused to be served, by regular and electronic mail, two copies of the attached Reply to the State's Exceptions to the Special Master's Findings and Recommendations and a Certificate of Service to Robert Gilson, Director, Division of Law, at his office in the Hughes Justice Complex, 25 Market Street, P.O. Box 112, Trenton, New Jersey, 08625, and one copy of all of the above via regular and electronic mail to the following counsel for amici curiae:

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I 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.

A handwritten signature in cursive script, appearing to read "David Sciarra".

David G. Sciarra, Esq.

Dated: April 20, 2009