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Special Counsel For Intervenors-Movants  
Boards of Education of City of Bridgeton,  
Burlington City, City of East Orange,  
City of Elizabeth, Gloucester City,  
Keansburg Borough, City of Passaic,  
State-Operated School District of Paterson,  
Pemberton Township, City of Perth Amboy,  
Town of Phillipsburg and  
City of Trenton

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 PABLO MUNOZ**

Pablo Muñoz, of full age, hereby certifies as follows:

1. I am the Superintendent of the City of Elizabeth School District ("District"), which is designated an Abbott district under this Court's Abbott rulings. I make this Certification in support of the Motions of the Movants-Intervenors: (1) to intervene in this action in opposition to the State's motion for a Court Order declaring that the School Reform Funding Act of 2008 ("SFRA") is constitutional and that

the Abbott remedial orders are no longer required; and (2) for an immediate Order that the procedural protections established by Abbott v. Burke, 153 N.J. 480, 526-27 (1998), including the right of Abbott districts to seek on appeal additional funding based on a showing of demonstrated or particularized need, shall remain in effect pending a final decision on the State's Motion.

2. I have overall responsibility for implementing the Abbott programs and reforms in the District to enable all students to achieve the New Jersey Core Curriculum Content Standards ("NJCCCS"). This includes the submission of requests in prior years for supplemental funding, based on a demonstration of particularized need, to support existing and supplemental programs, services and positions, as well as additional, demonstrably-needed programs, services and positions. The District has also sought such additional funding through the Abbott V administrative and judicial process when the Department of Education ("DOE") denied needed funding.

3. I am familiar with the demographics of the District and our student population that support the continuation of the Abbott designation, with the features of our schools that are very different from the hypothetical school district that

provides the foundation for the SFRA's formulas, with the supplemental programs and services that have been successful in the districts, with the District's prior experience in requesting supplemental funding and appealing DOE denials of that funding, and with the impact of the SFRA on the education of our students in the coming years.

4. In past years, when the District sought supplemental funding, the District and the DOE worked collaboratively to reach agreement on a supplemental funding amount that would support the District's DOE-approved budget, which included funding for effective and efficient needs-based programs, services and positions. This process enabled the District and the DOE to engage in a constructive dialogue about the educational needs of our students and to discuss specific programs, positions and services that would be needed to help our students achieve the CCCS and to overcome their socio-economic disadvantages.

5. In those few instances when the District and the DOE could not reach agreement on the appropriate amount of supplemental funding, the District had the opportunity to seek review of DOE's decision through the administrative and judicial process established by the Court and by the DOE regulations.

6. The opportunity to discuss with the DOE the need for supplemental funding for specific programs, services and positions needed for our students, and the ability to have full administrative and judicial due process to challenge DOE denials of that needed funding, have been integral to the District's efforts to provide our students with a thorough and efficient education. Through this process, the District has received supplemental funding in the amount of \$66.3 million from 2002-2008, which has been essential to meet important needs of our students so that they can overcome the significant impediments to education as a result of their socio-economic disadvantages and benefit from the District's educational programs.

7. Contrary to the DOE's claims in the motion, the administrative and judicial appeals process has successfully worked to facilitate a productive dialogue between the DOE and our District on supplemental funding needs for our students. The mandated funding formula dictated by the SFRA provides no opportunity for the District to seek additional funding based on the demonstrable needs of our students, no matter how substantial or compelling the needs of our students are and no matter how great the obstacles that they must still overcome to benefit from our educational program.

8. Our students will suffer if the formulaic amounts fail to provide the needed funding for programs, services and positions that are essential for our students' success. If the SFRA will provide the needed funding, as the DOE claims, to continue all of the programs, services and positions to address the special disadvantages of our students, then there would be few, if any appeals. However, if the SFRA fails to provide that funding, then the effect of the statute is to deprive the District and its students of the fundamental right to seek additional funding to meet those needs. I do not perceive any educational justification for a curtailment in the SFRA of the due process right to seek demonstrably needed funding for our students.

9. I was quite surprised to learn that the DOE viewed the supplemental funding process as fostering an "adversarial relationship." I had always viewed the process as an opportunity for collaboration to determine the programs, services and positions required to meet the needs of our disadvantaged students. I am not aware of anything during this process that has impeded the ability of the District and the DOE to work together on a variety of issues to increase the opportunity for our students to receive a thorough and efficient education and to facilitate the ability of the

District to operate in an efficient and fiscally responsible manner.

10. Although the State claims changes in the Abbott districts, the District remains in District Factor Group ("DFG") A, based on 2000 data, which is the same DFG the District was in at the time of the original Abbott designation. The District's poverty concentration, according to the DOE still exceeds 60% (it is currently 73.1%), and, as Professor Goertz explains in her Certification, the District still possesses the requisite demographic, economic and educational characteristics for Abbott designation.

11. I am not aware of any State Board, DOE or legislative study or analysis of the criteria for Abbott designation that would justify the elimination of the District from the list of poorer urban districts designated as Abbott districts. I am also not aware of any State Board, DOE or legislative study that would support the ability of the local taxpayers in this District to provide the local fair share contemplated by the SFRA without resulting in municipal overburden.

12. I examined the single model district -- the large K-12 district -- that the DOE utilized to develop the SFRA base cost amount, as well as the LEP and at-risk funding "weights." The model district that served as the basis for SFRA's adequacy

budget is not representative of the actual size and configuration of the schools in the District. There are several assumptions about the hypothetical school district that do not match the reality of our school district: For example, our District operates K-8 schools while the model does not accommodate this factor. Our District also operates at district LEP rate of greater than 14% while the model is at 6.2% and an at risk factor of greater than 50% at the Middle and High School level while the model is at a maximum of 40%.

13. The major differences between the SFRA model district and the District are in the student enrollment and the number of elementary, middle, and high schools within this District. These differences are as follows:

- (a) The SFRA model district assumes a total student enrollment of 5,240 students for the district. The District's student enrollment is 20,622.
- (b) The SFRA model district has six elementary schools of 400 students each; the District has 10 elementary schools averaging 605 students each.
- (c) The two middle schools of 600 students each in the SFRA model district are not reflective of the District's 5 middle schools averaging 748 students each.

- (d) The SFRA model district does not account for the K-8 structure in 9 of our schools averaging 604 students each.
- (e) The SFRA model district's one high school with 1,640 students does not resemble the 1 high school in the District with 5,111 students for 2007-2008. Since the 1996-1997 school year when there were 4,547 students, the Elizabeth High School grew over a ten year period to have the highest student population in the State and one of the highest in the nation at 5,279 students in 2006-2007.

14. Although the DOE claims that the resources in its SFRA formulaic model exceed the resources necessary for a district to implement the Abbott V Chart of Supplemental Programs and Services, there are programs and services that are not identified as inputs in the SFRA model, but that are currently in place in the District. For example, the DOE failed to input early literacy reading blocks and assessment in determining the cost of providing a thorough and efficient education for at-risk students. These early literacy reading programs have been instrumental in boosting our achievement scores in the elementary grades. In the District, early literacy reading blocks and assessment are implemented in 11



elementary and 8 K-8 schools and this program has resource requirements, which are not accounted for in the SFRA formula.

15. The SFRA "at risk" inputs also fail to include, among others, the following positions that the District needs to serve at-risk children: teacher tutors, social workers at the elementary and middle schools; dropout prevention and health and social services coordinators at the middle schools and Elizabeth High School; substance awareness coordinators and community services coordinators; teacher /school disciplinarians; school to work and college transition counselor(s)/ program in the high school; the reality of costs associated with alternative education, the reality of costs for after school and summer programs, a school based managed instruction team of an assistant principal, language arts literature coach and school based math coach; core content area supervisors at the elementary and middle school level; special area supervisors, including guidance, alternative education, nursing, vocational and career education, athletics; staff development, home instruction, special services, human resources and business office and plant and property functions.

16. The SFRA formulaic inputs also fail to include adequate funding for the "exemplary programs" for art, music and special education in the District, which were identified by

the Court in Abbott V as requiring special protection. Nor do the SFRA inputs provide funding for the technology positions and other technology needs and enhancements to help our students master the CCCS and compete with their peers in the wealthier districts. Further, the additional costs associated with the requirements by code of a K-8 gifted and talented program are excluded from the SFRA.

17. The SFRA at-risk weight is based on an input of one parent liaison at the elementary, and no resources for parent involvement in middle and high schools. In the District, parent involvement is critical for recruiting parents to join parent participation programs, fostering parenting skills and career development, and increasing parental education to support student learning at home. There are currently 10 parent liaisons at the Middle and High Schools.

18. The SFRA model does not include any of the additional resources or costs related to elementary Whole School Reform ("WSR") or to the mandated Secondary Education Initiative ("SEI") in middle and high schools. Elementary WSR requires implementation of a model program or alternative design, and SEI consists of establishing smaller learning communities within schools; providing ongoing support to students and their families; and increasing the academic rigor of curriculum and

instruction. In the District, the elementary schools have implemented whole school reform models. The SEI is implemented in both the middle and high schools in my district. However, there is no input in the SFRA for the additional costs relating to these educational programs. Additionally, the additional costs from our district's offerings of a 200 day and extended hour program at one of our K-8 schools, extended hours at 4 of our K-8 schools and additional instruction time for increased graduation credit requirements at Elizabeth High School have not been factored into the SFRA.

19. The implementation of required Abbott programs and reforms has already resulted in progress in the District. Progress is noted in various areas including but not limited to Adequate Yearly Progress (AYP) status under the No Child Left Behind Act in schools across the district, increased standardized test scores and increased student attendance rates. Specifically:

- 11 schools now hold AYP status in comparison to 8 schools in the 2006-2007 academic year.
- the student attendance rate has increased over a ten year period from 89.91% for the 1996-1997 school year to 93.8% for the 2006-2007 school year.

- the results of standardized testing have yielded an overall increase in scores across multiple grade levels. District wide, in reading, language arts, and mathematics, 77.9% of our kindergarteners are performing on grade level in 2007 vs. 71% in 2006; more than 74% of our first graders are performing on grade level in 2007 vs. just over 72% in 2006; and over 60% of our second graders are performing on grade level in 2007 vs. over 57% in 2006 in reading
- more than 75% of our second graders are performing on grade level in language arts and mathematics in 2007 vs. over 70% in 2006.
- District wide in language arts literacy, 75% of our third graders are performing at or above the level required by the New Jersey Core Curriculum Content Standards (NJCCCS) as compared to 69.9% in 2006; and in mathematics, 81.9% of our third graders are performing at this level vs. 79.2% in 2006.
- District wide this year, 69.4% of our fourth graders are performing at or above the level required by the New Jersey Core Curriculum

Content Standards (NJCCCS) in language arts literacy, as compared to 66.9% in 2006; and 77.9% of our fourth graders are performing at this level in mathematics vs. 72.3% in 2006. Furthermore, over the course of the past nine years, our fourth graders have demonstrated a significant growth in proficiency from 17.5% in 1999 to the current 69.4% of our fourth graders in language arts literacy. Over this same period a significant growth in proficiency was also evident in mathematics from 34.3% in 1999 to the current 77.9%.

- District wide, in language arts literacy, 54.7% of our sixth graders are performing at or above the level required by the New Jersey Core Curriculum Content Standards (NJCCCS) as compared to 48.5% in 2006; in mathematics, 67.8% of our sixth graders are performing at this level vs. 48.6% in 2006.
- District wide, in language arts literacy 57.8% of our seventh graders are performing at or above the level required by the New Jersey Core Curriculum Content Standards (NJCCCS) as

compared to 57.2% in 2006 and 39.7% of our seventh graders are performing at this level in mathematics vs. 38.8% in 2006. Further, District wide, in mathematics 4.2% of our seventh graders are performing at an Advanced Proficient level vs. 2.9% in 2006. In language arts literacy, the percentage of students performing at the Advanced Proficient level is nearly 3.2% vs. 0.7% in 2006.

- District wide 2007, in LAL 45.8% of our eighth graders are performing at or above the level required by the New Jersey Core Curriculum Content Standards (NJCCCS) as compared to 42.6% in 2006, and 34.0% of our eighth graders are performing at this level in mathematics vs. 32.0% in 2006. Furthermore, over the course of the past nine years, our eighth graders have demonstrated a significant growth in proficiency from 20.8% in 1999 to the current 34.0% of our eighth graders in mathematics.
- Since the 2001-2002 school year the percentage of our high school students performing at or above the level required by the New Jersey Core

Curriculum Content Standards District wide, has increased from 58.9% to 61.9% in LAL and 29.3% to 38.0% in mathematics (47.8% in 2004-2005).

20. Despite this progress, the District still requires the Abbott remedies and adequate funding to meet the special needs of our students and to overcome their severe disadvantages.

21. In addition, improvements in the more advanced grades are just beginning. The DOE, in response to the Abbott X, mediation agreement, only just established the SEI in 2005 and its implementation in middle and high schools in Abbott districts is starting to have a positive educational impact at these levels.

22. As a direct result of the SFRA and increases in non-discretionary expenditures in the 2008-09 school year, the District will have to cut current, approved expenditures for programs, services and positions in 2008-2009, including the following: School Social Workers; Parent Liaisons;, all Teacher Technology Coordinators; all Middle School Teacher School Disciplinarians; all Special Services Mainstream Facilitators; all Inclusion Facilitators; all English Basic Skills Teachers; all Math Remedial Teachers; all Special Services Transition Facilitators; Language Arts Literature Coaches; Mathematics

Coaches; Teacher Tutors; Child Study Team Social Workers and Learning Disability Teacher Consultant; Peer Leadership Teachers; Home Instruction Teachers; School Nurses; Custodians; and Secretaries.

23. There are other programs, services and positions in the Chart of Supplemental Programs that are demonstrably needed by our students, which the District will have to eliminate or reduce in the 2008-09 school year and in future school years under the SFRA's formulaic approach. These include the following: Director of Special Services, Supervisor of Alternative Education, Supervisor of Nursing and Health Services, Supervisor of Career and Technical Education, Supervisor of Science (PK-5), Supervisor of Labor Relations, and Supervisor of Transportation.

24. Under the SFRA, the cuts in the District's overall budget will be even more drastic in the next two school years, 2009-2010 and 2010-2011. As a result, more and more current approved foundational and supplemental programs, services, and positions will need to be cut.

25. I am also concerned that because of SFRA's approach to special education, the District will be unable to raise sufficient local fair share to meet additional special education expenses, including but not limited to the higher



tuition costs for out-of-district placements, and will be compelled to reallocate regular education funding, at-risk funding and other SFRA revenues from our already strapped budgets to satisfy the federal and state mandates for special education. In the past, the District could seek supplemental funding to address those special education needs and to avoid reallocations from the budgets for regular education and supplemental programs, services and positions. That opportunity is no longer available to the District under the SFRA.

26. Additionally, the District has two new schools coming on-line in the 2008-09 school year with anticipated start-up costs of \$16.4 million. However, I understand that a total of only \$15 million has been budgeted for all new facilities in Abbott districts for the 2008-09 school year. I do not know how that funding will be allocated and how many schools are anticipated to come on-line, but it is clear that the amount budgeted is not enough to cover the District's start-up costs even if every dollar was allocated to the District. This will cause an even greater drain on the District's budget and will reduce the amounts available for current educational programs, services and positions with no opportunity to seek supplemental funding to make up for those losses.


27. Without the ability to demonstrate the need for Abbott supplemental funding, the District will likely have no alternative but to reduce and/or eliminate needed programs, services and positions/staff in 2008-09, 2009-2010 and 2010-2011 in order to address budget shortfalls under the SFRA. As the transitional "adjustment aid" decreases or is not appropriated (since there is no assurance of such aid), reliance on local fair share increases, and budget shortfalls grow, the District faces the realistic prospect of eliminating all the Abbott remedial positions, programs and services and losing all the gains in educational programs, services, positions and progress obtained under the Abbott remedial mandates.

28. Since the implementation of the Abbott mandates, the DOE has never analyzed or assessed in the District the implementation, effectiveness or costs of foundational and supplemental programs, services, and positions required and demonstrably needed for our students. Therefore, I do not understand how the DOE, without actual data on the needs and realities in the Abbott districts, could have arrived at a formulaic base amount for regular education or at the formulaic weight for providing those additional programs, services and positions needed to meet our students' disadvantages with

sufficient accuracy to deprive us of any right to appeal for additional, needed funding.

29. In sum, the SFRA formulaic approach requires the District to make severe and drastic cuts in programs services and positions that will prevent us from implementing the Abbott mandates, requires the abandonment or reduction of current programs, services and positions to implement the Abbott mandates, threatens the progress we have made in this District under the Abbott decisions, and precludes the District from seeking supplemental funding for demonstrably needed programs and services for our students beyond what the SFRA formulas allow.

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



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Pablo Muñoz

Dated: May 12, 2008