

COPY

ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN
A PROFESSIONAL CORPORATION

ANDREW F. ZAZZALI (1925-1969)

ANDREW F. ZAZZALI, JR.
ROBERT A. FAGELLA**
KENNETH I. NOWAK***
RICHARD A. FRIEDMAN
PAUL L. KLEINBAUM*
EDWARD H. O'HARE*

COUNSEL
KATHLEEN NAPRSTEK CERISANO

ATTORNEYS AT LAW
150 WEST STATE STREET
TRENTON, N.J. 08608
Telephone: (609) 392-8172
Telecopier: (609) 392-8933

One Riverfront Plaza
Newark, NJ 07102
Telephone: (973) 623-1822
Telecopier: (973) 623-2209

JASON SOKOLOWSKI
COLIN M. LYNCH**
GENEVIEVE M. MURPHY-BRADACS**
EDWARD M. SUAREZ, JR.
CYNTHIA M. REVESZ■
AILEEN M. O'DRISCOLL*
MICHAEL P. CHIACCHIO*

OF COUNSEL
JAMES R. ZAZZALI***
WILLIAM A. PASCARELL■

Please Reply to Trenton

*Also admitted Pennsylvania
**Also admitted New York
***Also admitted New York & D.C.
■New York Only

June 5, 2008

Supreme Court of New Jersey
Hughes Justice Complex
25 Market Street
Trenton, NJ 08625

Re: Raymond Arthur Abbott, et al.
v. Fred G. Burke, et al.
Docket No. 42,170

Honorable Justices of the Supreme Court of New Jersey:

Please accept this letter brief, in lieu of a more formal brief, on behalf of amicus curiae New Jersey Education Association (hereinafter NJEA) in response to the Defendants' motion seeking a determination by this Court regarding the constitutionality of the recently enacted School Funding Reform Act of 2008 (SFRA).

TABLE OF CONTENTS

Table of Contents 1,2
Procedural History 2

Statement of Facts 2

Legal Argument 2

THIS COURT SHOULD DENY DEFENDANTS' MOTION TO RELEVE THEM OF COMPLYING WITH THE REMEDIAL MEASURES REQUIRED BY ABBOTT, BECAUSE DEFENDANTS HAVE FAILED TO PROVIDE A SUFFICIENT LEGAL OR FACTUAL BASIS THAT THOSE MEASURES ARE NO LONGER REQUIRED 2

Conclusion 9

PROCEDURAL HISTORY

Amicus curiae, NJEA, adopts and incorporates the procedural history set forth in Plaintiff, Education Law Center's brief, except to add that this Court granted NJEA leave to file this brief as amicus curiae.

STATEMENT OF FACTS

Amicus curiae, NJEA, adopts and incorporates the statement of facts set forth in Plaintiff, Education Law Center's brief.

LEGAL ARGUMENT

THIS COURT SHOULD DENY DEFENDANTS' MOTION TO RELEVE THEM OF COMPLYING WITH THE REMEDIAL MEASURES REQUIRED BY ABBOTT, BECAUSE DEFENDANTS HAVE FAILED TO PROVIDE A SUFFICIENT LEGAL OR FACTUAL BASIS THAT THOSE MEASURES ARE NO LONGER REQUIRED.

Alarminglly, Defendants seek an order terminating the remedial measures mandated by this Court in Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V), which Defendants allege are no longer required.

As detailed in Plaintiffs' brief in opposition to the Defendants' motion, this Court has spent almost four (4) decades deliberating the issue of how to ensure that children in the poorer urban districts of this State are actually receiving the "thorough and efficient education" mandated by the New Jersey Constitution. During this time, the State has enacted several public school funding formulas which this Court subsequently declared to be unconstitutional. Abbott v. Burke, 119 N.J. 287 (1990) (Abbott II); 136 N.J. 444 (1994) (Abbott III); 149 N.J. 145 (1997) (Abbott IV). In the Abbott IV decision, this Court ruled that the regular education funding provisions of the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA) were unconstitutional as they applied to the poorer urban districts, which have become known as "Abbott districts." In doing so, it stressed the existence of unique and seemingly overwhelming disadvantages facing students in these districts, such as poverty, hunger, unstable family situations, poor health, illness, drug-abuse, violence and crime, and acknowledged that those unfavorable conditions and societal ills must be overcome in order for those students to achieve a thorough and efficient education. The Court thus held that the Core Curriculum Content Standards - adopted by the Department of Education in May 1996 as a primary component of CEIFA - substantially defined the content of a thorough and efficient

education for all New Jersey children, and remanded the matter to the Superior Court for further proceedings to determine the extra-educational needs of these children.

This shift away from a focus on specific school funding formulas and toward a standards-based education plan was further emphasized when, just 10 years ago, this Court issued its unanimous landmark ruling in Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V). Following the Court's directive in Abbott IV, this matter was remanded to the Superior Court, Chancery Division, and assigned to the Honorable Michael Patrick King, with the directive that he conduct hearings with the Commissioner of Education and all parties. With the Court's approval, Judge King designated a Special Master to assist with the remand proceedings and the review of all evidence. Following extensive testimony over twelve (12) hearing days, review of voluminous exhibits, experts' reports, recommendations by the Special Master, presentations by all parties, and several visits to court-selected schools in one of the Abbott districts, Judge King issued a lengthy and comprehensive report. That report, and the process leading to its creation, were recognized by this Court in its Abbott V decision as "a solid evidentiary record that was fully informed by the views and recommendations of the Commissioner of the Department of Education, expert and knowledgeable witnesses offered by both parties, and the Special

Master. Most importantly, the educational programs to be implemented through these remedial measures comport substantially with the statutory and regulatory policies that define the constitutional thorough and efficient education." 153 N.J. at 489-490.

Based upon that report, this Court mandated implementation of an unprecedented series of reforms and programs in the Abbott districts to address the additional needs of those students and ensure their academic success, and further required that a process be established by which additional programs and services funded by the State can be added if the need for same is clearly demonstrated. Those reforms included implementation of mandatory full-day kindergarten, and half-day high quality pre-school programs for 3 and 4 year olds (necessary to improve language development in children from low income families and close the gap in school readiness).

Other remedies and programs mandated by this Court in Abbott V include family support teams in elementary schools (comprised of nurse, social worker, counselor, parent liaison and instructional facilitator) to address social and health needs, a community services coordinator in every middle and secondary school for the purpose of indentifying student needs and arranging for community-based providers to furnish essential health and social services, school security and violence

prevention programs, enhanced access to technology, alternative schools or comparable education programs where necessary or appropriate to assist with dropout prevention, school-to-work and college-transition programs, and limitations on class sizes.

In directing the implementation of these programs in the Abbott districts, this Court noted that,

"...beginning as early as Abbott II, we have stressed the importance of having the particularized needs of these children drive the determination of what programs should be developed...The provision of supplemental programs involving necessary services should not be detached from the actual needs of individual Abbott schools and districts."

153 N.J. at 511. Thus, with regard to each of these mandated supplemental programs and remedies, this Court recognized that the need for these programs may vary from school to school, and held that individual Abbott schools or districts have the right to request supplemental programs and the Commissioner of Education must authorize the requested programs that are based upon demonstrated need and, in turn, secure or provide the necessary funding for those programs.

Finally, in Abbott V this Court also recognized that these mandated programs may not be sufficient to close the achievement gap, and it granted Abbott districts the right, "based upon demonstrated need, to request the resources necessary to enable them to provide on-site social services that either are not available within the surrounding community or that cannot

effectively and efficiently be provided off-site." 153 N.J. at 513. Those supplemental programs may include the following types of services: on-site health and social service clinics, instructionally based after-school and summer school programs, and enhanced nutrition programs.

Defendants allege in their motion papers that the newly enacted School Funding Reform Act of 2008 (SFRA), which will begin to govern distribution of State Aid during the 2008-2009 school year, provides sufficient financial support for a thorough and efficient system of education for all public school students throughout the State of New Jersey. Defendants therefore seek an order from this Court absolving them of further compliance with Abbott's remedial measures. Defendants do not, however, provide any demonstrable evidence that the aforementioned baseline programs and reforms mandated by Abbott V are no longer needed. Nor have they provided any evidence of the new funding formula's impact on the ability of current Abbott districts to maintain existing programs that have proven to be successful in raising student achievement and in closing achievement gaps. In fact, there does not appear to be any mechanism under the new funding formula whereby Abbott districts may exercise the absolute right granted to them by this Court to apply to the State for additional funding for programs and/or facilities based upon the particularized and demonstrated needs

of their students and schools. Absent any such procedure, undoubtedly, Abbott districts will be forced to eliminate programs, services and staff which are vital to ensuring that students in these districts receive the thorough and efficient education which this State's constitution and the Abbott decisions mandate that they receive.

In sum, Abbott districts have experienced remarkable educational gains over the past decade despite continuing poor social conditions such as high poverty rates, high crime rates and erratic community support, as well as numerous attempts by defendants to delay or discontinue implementation of the programs and reforms mandated by Abbott V. Although there is continued progress to be made in these districts, it is inconceivable to expect that any of these Abbott remedies and programs would immediately resolve these problems. Nevertheless, these supplemental programs continue to be vital to the elimination of learning disadvantages and the improvement of academic achievement levels among students in the Abbott districts. Any effort to improve education and student achievement in such districts requires stability for program planning and implementation over an extended period of time. Absent any demonstrable evidence from the defendants that the programs and reforms mandated by Abbott V are no longer needed,

any order eliminating such programs and reforms at this time would certainly be premature.

CONCLUSION

For the above reasons, this Court should deny the Defendants' motion.

Respectfully submitted,

ZAZZALI, FAGELLA, NOWAK,
KLEINBAUM & FRIEDMAN, P.C.
Attorneys for New Jersey
Education Association

By:



Richard A. Friedman

RAF:kn

21326-890