

Newark Public Schools
Office of the General Counsel
2 Cedar Street
Newark, NJ 07102-3091
(973) 733-8343
Attorney for State Operated School District
of City of Newark

RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs,

v.

FRED G. BURKE, ET AL.,

Defendants.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 42,170

Civil Action

NOTICE OF MOTION TO INTERVENE
PURSUANT TO R. 4:33-1

To: Anne Milgram, Attorney General of New Jersey
Hughes Justice Complex
25 Market Street
Trenton, NJ 08625
Attorney for Movants

David G. Sciarra, Esq.
Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102
Attorney for Plaintiffs

Michelle Lyn Miller, Esq.
Senior Deputy Attorney General
P.O. Box 112
Trenton, NJ 07102
Attorney for Movants

Mary A. Ciccone, Esq.
NJ Protection and Advocacy
210 S. Broad Street
Trenton, NJ 08608
Attorney for Proposed Amicus Curiae

Emily Goldberg, Esq.
Seton Hall Center for Social Justice
Seton Hall Law School
833 McCarter Highway
Newark, NJ 07102
Attorney for Proposed Amicus Curiae

Cecilia Zalkind, Esq.
Association for Children of New Jersey
35 Halsey Street
Newark, NJ 07102
Attorney for Proposed Amicus Curiae

Edward Barocas, Esq. & Jeanne LoCicero, Esq.
American Civil Liberties Union of New Jersey
89 Market Street, 7th Floor, P.O. Box 32159
Newark, NJ 07101
Attorney for Proposed Amicus Curiae

Rafael C. Haciski, Esq.
WolfBlock LLP
1940 Route 70 East, Suite 200
Cherry Hill, NJ 08003
Attorney for Camden School District - Proposed Intervener

Arnold Robinson, Esq.
Robinson, Andujar, & Webb, LLC
2057 Wheaton Avenue, PO Box 788
Millville, NJ 08332
Attorney for Millville School District - Proposed
Intervener

Richard E. Shapiro, Esq.
5 Mapleton Drive
Princeton, NJ 08540
Attorney for Twelve Abbott Districts - Proposed Intervener

Robert A. DeSanto, Esq.
Gruccio, Pepper, DeSanto & Ruth, P.A.
817 East Landis Avenue
P.O. Box 1501
Vineland, NJ 08362-1501
Attorney for Vineland School District - Proposed Intervener

PLEASE TAKE NOTICE that the State Operated School District City of Newark will move to intervene in the above-reference litigation as a matter of right.

In support of this motion, the movant relies on the attached Letter Brief, Certification of Newark Superintendent, Marion A. Bolden, as well as the previously filed briefs by Richard Shapiro, Esquire on behalf of other Abbott school districts and David Sciarra, Esquire of the Education Law Center on behalf of students of Abbott districts.

Respectfully submitted,

Perry L. Lattiboudere

Perry L. Lattiboudere
Attorney for State Operated School
District City of Newark

DATE: May 23, 2008

Perry L. Lattiboudere
Newark Public Schools
2 Cedar Street
Newark, NJ 07102-3091
(973) 733-8343
Attorney for State Operated School District
of City of Newark

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v. :
FRED G. BURKE, et al. : CIVIL ACTION
Defendants. :
: CERTIFICATION OF SERVICE

I, Perry L. Lattiboudere, an attorney for the proposed
movant-intervenor, hereby certify that on this date, I served
two copies of the Notice of Motion seeking leave to intervene;
supporting Letter Brief, Certification of Marion A. Bolden, and
this Certificate of Service to be Hand Delivered upon:

Anne Milgram, Attorney General of New Jersey
Hughes Justice Complex
25 Market Street
Trenton, NJ 08625
Attorney for Defendants

David G. Sciarra, Esq.
Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102
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Michelle Lyn Miller, Esq.
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35 Halsey Street
Newark, NJ 07102
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Newark, NJ 07101
Attorney for Proposed Amicus Curiae

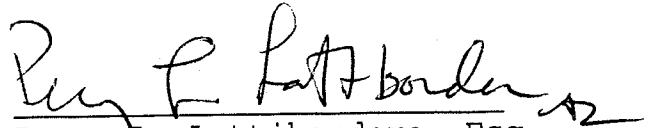
Rafael C. Haciski, Esq.
WolfBlock LLP
1940 Route 70 East, Suite 200
Cherry Hill, NJ 08003
Attorney for Camden School District - Proposed Intervener

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Robinson, Andujar, & Webb, LLC
2057 Wheaton Avenue, PO Box 788
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817 East Landis Avenue
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Vineland, NJ 08362-1501
Attorney for Vineland School District - Proposed Intervener

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.



Perry L. Lattiboudere, Esq.
Attorney for State Operated School
District City of Newark

Dated: May 23, 2008



The Newark Public Schools
Office of the General Counsel
2 Cedar Street
Newark, New Jersey 07102-3091
Phone: 973-733-7139
Fax: 973-733-8771



Dr. Marion A. Bolden
State District Superintendent

Lucille E. Davy
Commissioner of Education

Perry Lattiboudere, Esq.
General Counsel

Arsen Zartarian, Esq.
Adam S. Herman, Esq.
Sr. Associate Counsel

May 23, 2008

Mr. Stephen W. Townsend, Esq.
Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: Abbott v. Burke, Docket No. 42,170

Dear Mr. Townsend:

Please accept this Letter Brief in support of the State Operated School District of the City of Newark's (hereafter "District" or "NPS") motion to intervene and seek denial of the State's motion to the extent that the State requests to eliminate the District's present right to appeal for supplemental funding established by this Court's decision in Abbott v. Burke, 153 N.J. 480, 526-27 ("Abbott V"). In support of this motion, the Board submits the Certification of Marion A. Bolden, Superintendent of the Newark Public School District. In addition, in this Letter Brief NPS adopts the statement of facts and relies upon the legal argument presented by Plaintiffs', the Abbott public schoolchildren, as well as the brief filed by Richard E.

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Shapiro, Esq., on behalf of twelve other Abbott school districts. The Board seeks leave to intervene in these proceedings under R. 4:33-1 (Intervention as of right) or R. 4:33-2 (Permissive Intervention). The District meets the criteria for intervention under both of those Court Rules, thus the Court should grant the Board's motion to intervene.

Under R. 4:33-1, there are four criteria for determining intervention as of right. The applicant must: (1) claim "an interest relating to the property or transaction which is the subject of the transaction," (2) show it is "so situated that the disposition of the action may as a practical matter impair or impeded [its] ability to protect that interest," (3) demonstrate that the "applicant's interest" is not "adequately represented by existing parties," and (4) make a "timely" application to intervene. Meehan v. K.D. Partners, L.P. and Planning Board of the Borough of Longport, 317 N.J. Super. 563, 568 (App. Div. 1998) (citation omitted). This rule has been construed liberally and "the test is whether the granting of the motion will unduly delay or prejudice the right of the original parties." Id. (citation omitted). The Board's application meets all four criteria and, therefore, intervention as of right should be granted.

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As evidenced by the attached certification, as well as the Statement of Facts as set forth in Plaintiff's and Richard E. Shapiro's brief in support of their Opposition to Defendants' motion, the Board has obvious programmatic and fiscal interests in the continued mandate of the Abbott remedial measures, so that it can continue to address the needs of its disadvantaged students. The State's application, if granted, would have a direct adverse impact on the Boards' ability to provide the programs, services, and positions needed by their disadvantaged students. Specifically, the School Funding Reform Act of 2008's ("SFRA") elimination of the Abbott districts' right to apply, in the 2008-09 school year, for supplemental funding based on a demonstration of particularized need under Abbott V and as guaranteed by the Commissioner's Court-mandated Abbott regulations. Abbott V, 153 N.J. at 526-27; N.J.A.C. 6A:10-2.8. As the certification of Marion A. Bolden makes clear, the elimination of this remedy will force Newark Public School District to cut current programs, services, and positions in future school years.

Moreover, the State's application ignores the Newark Public School District's daily efforts to improve the educational opportunities of its students and to remedy their disadvantages. The District should be able to fully

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participate in these proceedings as an interested party and the only party capable of presenting the specific impact that SFRA will have on the schoolchildren in Newark Public School District. NPS further needs to actively participate in these proceedings so that the Court has an inside and ground-level view of the harm to the Newark Public School District that cannot be provided by Plaintiffs who lack ready access to the critical information and data in the individual districts that needs to be presented to the Court to ensure that the Court fully understands the devastating impact SFRA's implementation would have in Newark.

The District was not served with the State's motion and has sought to file this application shortly after the receipt of the Superintendent's Certification. This motion will not delay these proceedings because the Board is filing this motion in advance of the State's reply to Plaintiffs' opposition. Therefore, the Court should approve the Board's motion under R. 4:33-1 and allow the movant, who has a vital and unique interest in these proceedings, to intervene and supplement the record with facts specific to the Newark Public School District. Chesterbrooke Ltd. Partnership v. Planning Bd., 237 N.J. Super. 118, 124 (App. Div. 1989).

The District also meets the standards for permissive intervention under R. 4:33-2 and our submission should not

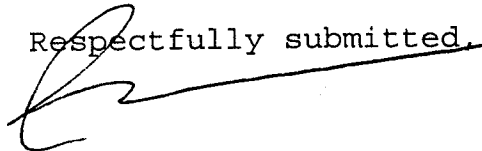
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delay or prejudice the Court's decision on the State's application. In addition, the public interest and the importance of the public issues raised by the State's motion support the strong need for the District's active participation in these proceedings. Evesham Tp. Board of Adj. v. Evesham Tp., 85 N.J. 295 (1981). Therefore, intervention is also justified under R. 4:33-2.

For the foregoing reasons set forth in this Letter Brief, the Newark Public School District respectfully requests that this Court grant its motion to intervene and seek denial of the State's motion so far as the State requests to eliminate the district's present right to appeal for supplemental funding in future school years.

Respectfully submitted,



Perry L. Lattiboudere, Esq.
Attorney for Newark Public School

District Movant-Intervenor

Perry L. Lattiboudere
Newark Public Schools
Office of the General Counsel
2 Cedar Street
Newark, NJ 07102-3091
(973) 733-8343
Attorney for State-operated School District
of the City of Newark

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SUPREME COURT OF NEW JERSEY

DOCKET NO. 42,170

CIVIL ACTION

CERTIFICATION OF MARION A. BOLDEN

DR. MARION A. BOLDEN, of full age, certifies as follows:

1. I am the Superintendent of the State-operated School District of the City of Newark ("District"), which is the largest Abbott district in the State. I make this Certification in support of the Motion of the Movant-Intervenor: (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. As Superintendent, I am familiar with the demographics of the District and our student population that support the continuation of the Abbott designation. I am also familiar 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 our students' 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. Supplemental funding has also been essential to meet important needs of our students so that they can overcome the significant impediments to education as a result of our students' socio-economic disadvantages, and so they can 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 to continue all of the programs, as the DOE claims, 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 40%, 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 at-risk funding "weight." 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 my District.

13. The major differences between the SFRA model district and my District are in the student enrollment and needed alternative and specialized educational programs within this District. These differences include:

- (a) The SFRA model district assumes a total student enrollment of 5,240 students for the district. My District's total student enrollment is 40,503.
- (b) The SFRA model district has six elementary schools; my District has 56 elementary schools.
- (c) The SFRA model district's one high school with 1,640 students does not resemble the 14 high schools in my District, with a total of 11,744 students.

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 numerous elementary 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: numerous educators involved in the District's intervention and referral services committees; health and social services coordinators; student assistant counselors; substance awareness counselors; parent coordinators; parent liaisons; guidance counselors; social workers; school-to-career personnel; and an enriched nutrition program for breakfast and lunch to enable our students to be ready to learn.

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.

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 my 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 five parent coordinators, one stationed in each SLT; 62 parent liaisons at the elementary level; and 18 parent liaisons at the high school level. 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.

18. The implementation of required Abbott programs and reforms has already resulted in progress in the District:

- In seven years, the achievement gap at grade 4 is less than half of what it was 7 years ago. At Grade 4, student proficiency in Mathematics has reached 76.1% for General Education students, exceeding the state benchmark by 14 points; and achievement for total students has reached 69.3%, exceeding the state benchmark by 7 points.
- Student achievement in Language Arts Literacy in fourth grade since 2001 has improved about 3 percentage points per year on average, reaching almost 70% proficiency by 2007.

This steady incremental progress shows an increase from 51.9% students' proficient in 2001 to 69.4% proficient by 2007.

- In 2001, there was a 32 point gap between the state benchmark and Newark, and the 10 point gap between Newark and other Abbott districts, and the 45 point difference between Newark and the affluent districts have narrowed. In 2007, these gaps have been reduced to an 11 point gap between Newark and the state benchmark, on level with other Abbott districts, and 25 points between Newark and affluent districts.
- For the graduating class of 1997, less than half of the students, 45.7%, who entered NPS as freshmen graduated as seniors. The class of 2003, who entered high school in the fall of 1999 at the beginning of Abbott reforms, graduated 58.1% of its cohort of freshmen who had entered four years earlier. Even those graduating by the Special Review Assessment has now dipped below 50% (actual rate of 44.7%) from a high of 62.5% graduating by SRA in 2004.
- In 2001, there were five schools offering Advanced Placement courses, three of which were magnet schools. In 2007, all twelve high schools offered Advanced Placement courses, increasing access for all students. In 2001, AP English/composition had 83 students; in 2007, there were 200 enrolled. In 2001 AP Calculus had 22 students enrolled; in 2007, 109 students were enrolled in three Advanced Placement mathematics courses - Calculus, Statistics and Probability and Computer Science. In 2001, there were 29 students in AP science courses; now there are 137. In 2001, we offered one AP the Advanced Placement History course - US History - had 42 students enrolled. In 2007, there were 160 students enrolled in 3 History courses - US History, World History and Macro Economics. In 2001, there were 13 students enrolled in AP Spanish and now in 2007, there are 43 students enrolled. These results point to a sea change at the high school level that is raising expectations and demanding rigor and excellence in all high schools.

19. 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.

20. 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.

21. Under the SFRA, the cuts in the District's overall budget will be 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, such as parent liasons, parent coordinators, security guards, guidance counselors, social workers, technology coordinators, along with numerous specialized afterschool and alternative programs that our students so desperately need.

23. I am also concerned that because our classification rate for special education students (approximately 16%) is above the Statewide average of 14.69% used in SFRA and because the District will be unable to raise sufficient local fair share to meet the additional special education expenses, the District

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.

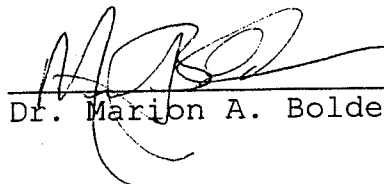
24. Without the ability to demonstrate the need for Abbott supplemental funding, the District will likely have no alternative but to reduce and/or eliminate needed programs, services and positions/staff in the future in order to address budget shortfalls under the SFRA. As the transitional "adjustment 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.

25. The DOE has never analyzed or assessed the implementation, effectiveness or costs of foundational and supplemental programs, services, and positions required and

demonstrably needed for the students in my district. 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.

26. In sum, the SFRA formulaic approach 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.



Dr. Marion A. Bolden

Dated: May 23, 2008
Newark, New Jersey