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and the Vineland Board of Education

RAYMOND ARTHUR ABBOTT, ET AL.,	:	SUPREME COURT OF NEW JERSEY
	:	DOCKET NO.: 42,170
Plaintiffs	:	
	:	CIVIL
v.	:	
	:	
FRED G. BURKE, et al.,	:	NOTICE OF MOTION TO INTERVENE
	:	PURSUANT TO <u>R.</u> 4:33-1
Defendants.	:	

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

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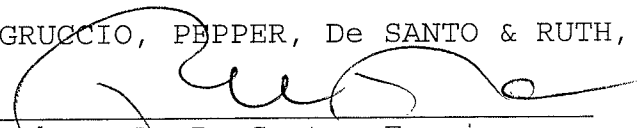
PLEASE TAKE NOTICE that the Vineland Board of Education, will move to intervene in the above-referenced litigation as a matter of right.

In support of this motion, the movant relies on the attached certifications and briefs filed by David Sciarra of the Education Law Center on behalf of students of Abbott districts and by Richard Shapiro, Esquire on behalf of other Abbott school districts.

Respectfully submitted,

Dated: May 7, 2008

GRUCCIO, PEPPER, De SANTO & RUTH, P.A.



Robert A. De Santo, Esquire
Attorney for Vineland Board of
Education

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Plaintiffs	:	
	:	CIVIL
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FRED G. BURKE, et al.,	:	CERTIFICATION OF ROBERT
	:	A. De SANTO IN SUPPORT OF
Defendants.	:	MOTION TO INTERVENE

ROBERT A. De SANTO, ESQ., of full age, hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey and represent the Vineland Board of Education and City of Vineland School District which has been designated as an Abbott school district. I am fully familiar with the facts set out in this Certification and make this Certification in support of the movant's motion to intervene in the above-referenced litigation.

2. I have had an opportunity to review the State's Brief in Support of its motion to remove the Abbott remedial mandates previously ordered by this Court.

3. I make this application as a matter of right pursuant to R. 4:33-1 because if the State's request is granted, the Vineland School District:

a. will be required to make severe and drastic cuts in

programs services and positions that will prevent the district from implementing the Abbott mandates; and

b. will be required to abandon or reduce current programs, services and positions put in place to implement the Abbott mandates.

4. Said action will threaten the progress we have made in this District under the Abbott decisions, and will preclude the Vineland District from seeking supplemental funding for demonstrably needed programs and services for its students.

5. The impact of such action is further expounded upon in the attached certification of Superintendent of the schools for the Vineland School District - Charles Ottinger.

6. For the reasons set forth above, I respectfully request that the Vineland Board of Education/City of Vineland School District be permitted to intervene in the above-referenced litigation.

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



ROBERT A. De SANTO, ESQUIRE

DATED: May 6, 2008

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Attorneys for Plaintiffs

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 NAME

Charles Ottinger, of full age, hereby certifies as follows:

1. I am the Superintendent of the Vineland School District. Vineland is designated an Abbott district under this Court's rulings in Abbott v. Burke. I make this Certification in support of Plaintiffs' reply and cross-motion to the State's motion to remove the Abbott remedial mandates previously ordered by this Court. This Certification has been prepared in consultation with Kevin J. Franchetta, Business Administrator.

2. As Superintendent, I have overall responsibility for

implementing the Abbott programs and reforms in Vineland school district and enabling all students to achieve the New Jersey Core Curriculum Content Standards ("NJCCCS"). This includes the application for additional funding based on a demonstration of particularized need, to support preschool, K-12 supplemental programs, services, and positions, along with needed enhancements to existing foundational education programs, such as music and art, and special education programs for students with disabilities.

3. My analysis and conclusions are informed by my knowledge of Vineland School District's budget under CEIFA/Abbott, the Abbott programs and reforms currently implemented and needed in my district, and the progress that has been made in my district as a result of the Abbott programs and reforms. In addition, I have reviewed some of the available documentation and data on SFRA, including: A Formula for Success: All Children, All Communities, Department of Education (December 2007) ("2007 Cost Report"); Report on the Cost of Education, Allen Dupree and John Augenblick (December 2006) ("2006 Cost Report"), the State's Brief in support of its Motion for Review of the SFRA, and the supporting certifications of Dr. Jay Doolan, Assistant Commissioner Katherine Attwood, and Commissioner Lucille Davy.

I. Discrepancies between the SFRA Model District and Vineland School District.

4. In reviewing the 2007 Cost Report, I closely examined the single model district, the large K-12 district, that the Department of Education utilized to develop the SFRA base cost amount, as well as the at-risk funding "weight." See 2007 Cost Report, 10, Appendix E. The model district that served as the basis for SFRA's adequacy budget does not resemble my district for a number of different reasons.

5. The first major discrepancy between the SFRA model district and my district is that of student enrollment and the number of elementary, middle, and high schools within Vineland school district. See 2007 Cost Report, at 9 and Appendix E, Tables 1 and 2. These differences are as follows:

- (a) The SFRA model district assumes a total student enrollment of 5,240 students for the district. My district's total student enrollment is 9,644.
- (b) The SFRA model district has six (6) elementary schools of 400 students each; whereas, my district has eight (8) elementary schools of 541 students each.
- (c) The two (2) middle schools of 600 students each in the SFRA model district are not reflective of my

district's four (4) middle schools of 545 students each.

(d) The SFRA model district's one (1) high school with 1,640 students does not resemble the two (2) high schools with 1,452 students each in my district.

6. The grade configuration of the schools in the SFRA model district is the same as that in my district. The SFRA model district and my district are configured as grades K-5, 6-8, or 9-12.

7. In addition to the size of the district and its configuration, the demographics of the students in the SFRA model school district differ drastically from those of my district.

(a) The SFRA model accounts for three variations of poverty concentration: 10% ("low at-risk"), 20% ("moderate at risk") and 40% ("high at-risk"). See 2007 Cost Report, Appendix E, Table 4. By contrast, my district has a low-income student concentration of 67%.

(b) For the SFRA formula, however, the Department did not use the at-risk weights which were developed using the SFRA model district. Instead, "the Department decided to increase the weight as the district's proportion of at-risk students increases to reflect the additional academic challenges present

in districts with concentrated poverty." 2007 Cost Report, at 11. The Department also developed a sliding scale at-risk weight with a low of 0.47 and a high of 0.57. In districts with poverty concentration of 20% or less, the weight is 0.47, but this number gradually increases to a maximum weight of 0.57 for districts with poverty concentration of 60% or greater. The weight however fails to account for districts with a poverty concentration above 60%. My district has a poverty concentration of 67%.

(c) In addition to the concentration of poverty, the SFRA model district assumes a concentration of students that are Limited English Proficient ("LEP"). The SFRA model district assumes a seven percent LEP concentration in elementary school, 10.75% in middle school, and 4.39% in high school, with a district-wide LEP concentration of 6.2%. See 2007 Cost Report, Appendix E, Table 3. In my district, the district-wide LEP concentration is 4.01%, with a 5.13 percent LEP concentration in elementary school, 3.35% in middle school, and 2.87% in high school.

II. Resource Inputs in the SFRA Model

8. I have reviewed the resource inputs in the SFRA model in comparison to the Court mandated programs and services in the Chart of Supplemental Programs, as well as those programs

and services currently implemented or needed in my district. While DOE asserts that the resources in its enhanced SFRA model exceed "the resources necessary for a district to implement the Abbott V model," id. ¶ 29, there are programs and services that are not identified as inputs that are currently in place in my district, and others that are necessary to enable students in my district to achieve the NJCCCS.

- (a) The DOE failed to input early literacy reading blocks and assessment in determining the cost of providing a T&E education to at-risk students. In my district we have provided ninety (90) minutes for language arts in our eight (8) elementary schools for several years. We have also implemented the LEADS program in grades 5 through 8 with fifth (5th) grade being a part of our elementary schools. We also provide support through our basic skills teachers. The downside is that we are losing the support of our literacy coaches due to budget constraints and the remaining basic skills teachers are spread thin. We also had the support of collaborative teachers at the elementary level which made a significant difference for our struggling students. Once again, we lost those positions last year due to budget cuts. This

program is necessary to prevent children in my district from falling behind and needing remediation and to intervene early and intensively with a student who is experiencing difficulty in achievement.

(b) SFRA fails to account for the employment of community services coordinators in middle and high school as the DOE neglected to include this integral position as an input during the PJP process. In my district, seven (7) community services coordinators/health and social service coordinators are employed in four (4) middle schools and two (2) high schools. The community services coordinators serve to respond to and reduce teacher time taken out to deal with problems such as significant health and social service needs stemming from poverty, substance abuse, teenage pregnancy and parenthood, inadequate housing, violence and crime.

(c) My district has two (2) drop out prevention specialists/programs in our middle and high schools and these individuals/programs respond to an existing need as my district has a 4.7% drop out rate. SFRA fails to account for this particularized need in my district as drop out prevention specialists/programs

were not included in the inputs that determined the costs of the SFRA at-risk weight;

(d) The DOE's PJP process failed to input on site social and health services and the cost of implementing such a program. In my district on site social and health services are available at four (4) middle schools and two (2) high schools. The implementation of this program costs \$389,680 and it responds to the need for and lack of effectively and efficiently run social and health services in the surrounding community;

(e) In my district two (2) school-to-work and two (2) college transition counselor(s)/program are implemented in the two high school buildings. These individual/program responds to the existing need to increase the basic skills of students to support themselves responsibly, provide access to information about college and employment opportunities, to match students with prospective employers, and help students become aware of their interests and strengths;

(f) The SFRA model inputs of programs to respond to the needs of at-risk youth did not included an enriched

nutrition program. In my district an enriched nutrition program is implemented. It provides high quality breakfast and lunch and a high quality snack to nourish our students and enable them to be ready to learn when. The implementation of this program costs \$787,000;

- (g) In my district there is an existing implemented enhanced art and music programs to provide exemplary music and art programs beyond those recommended by the Commissioner. These supplemental programs are necessary in my district to respond to the needs of our gifted population. An enhanced art and music programs were not included in the inputs utilized to determine the SFRA at-risk weight. Our gifted program, Learners with Exceptional Abilities Program (LEAP) has serviced our students addressing these areas successfully, each by a LEAP teacher. However, due to budget constraints we have eliminated all LEAP (gifted) teachers and these responsibilities will now fall upon the regular classroom teachers.;
- (h) SFRA does not cost-out the inclusion of a school-based management and budgeting team in the resource inputs to calculate the SFRA at-risk weight. In my

district there are/we need fourteen (14) school-based management and budgeting teams in eight (8) elementary schools, four (4) middle schools, and two (2) high schools. This team enables a team of parents, administrators, and teachers to develop a school-based budget while actively involving all stakeholders in planning, budgeting, and governance and in turn to increase effectiveness and tenure of our school reform efforts;

- (i) Technology enhancements were not costed-out as an input in the development of the SFRA at-risk weight. Technology enhancements are necessary to help students master the basic and advanced skills necessary to reach the NJCCCS, to ensure school and classroom libraries have appropriate materials to supplement the curriculum, to facilitate the implementation and use of educational technology throughout our schools, and to increase effective use of technology in my district's classrooms. Currently we have the following technological enhancements implemented in my district's schools and classrooms:

- District wide Follett Automated Library System.

This is critical particularly now, due to the fact

that we are losing the support of our library aides due to budget cuts;

- Kid Biz and Teen Biz - Reading literacy and student e-mail programs for all students grades two through eight;
- Continual enhancements in network infrastructure to support band with requirements;
- PRS-On Line - Parent resource system to access student records and information electronically;
- Electronic home instruction and support for students with special needs who require electronic capability at home.

9. I also find that the SFRA model specifies a fixed, assumed level of resources for several other programs on the Chart of Supplemental Programs. Some of these resources, while identified as a resource are currently implemented and/or necessary at a higher rate in my district:

(a) security is allocated based on a set ratio of security guards to students, with one (1) guard for 400 elementary school students; 1 to 200 middle school students; 1 to 175 high school students. Currently in my district, based on need to keep students, staff, and

facilities safe and secure, there are twenty-four (24) security guards to 2,905 students in the high schools, fifteen (15) security guards to 2,182 students in the middle schools, and thirteen (13) security guards to 4,331 students in the elementary schools;

1:121
1:145
1:333

(b) a fixed per pupil cost for after school and summer school is allocated on the assumption that only half of the at-risk elementary and middle students will need such programs; whereas in my district, for the 2007-2008 school year, there are 570 elementary and middle school students participating in after school programs. We have 1,273 additional students who are in need and would benefit from an after school program. During the summer of 2007, 220 students, grades 6 through 8, who failed one or two subjects, participated in summer school. Due to budget constraints the district has been unable to support a summer school program for the past four years for strengthening of skills at the elementary and middle school level. If we were able to offer summer school programs for those who need an extended year program for strengthening of skills, approximately 1,650 students would be eligible.

(c) In my district, there are nine (9) social workers in eight (8) elementary schools, four (4) in the middle schools, and two (2) in the high school, whereas in the SFRA model district the DOE only allotted one social worker to an elementary, middle and high school in its inputs. One social worker per elementary school, middle school, and high school is not sufficient to respond to the need of health, counseling, nutritional, tutorial, and other services existing in my district.

(d) The SFRA at-risk weight was determined based on an input of one parent liaison at the elementary, and no resources for parent involvement in middle and high schools. In my school district parent involvement is an integral resource in recruiting parents to join parent participation programs, fostering parenting skills and career development, and increasing parental education to support student learning at home. In 2007-2008 there are eight (8) parent liaisons at the elementary level, four (4) at the middle school level, and none in the high school. For the 2008-2009 school year, the parent liaison positions were eliminated.

10. I also can find no evidence that the SFRA model includes any resources or costs related to elementary Whole

School Reform ("WSR") or the 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 my district both of these programs are currently implemented and have serious resource implications.

(a) In my district, the elementary schools have implemented an alternative design program.

(b) The SEI is implemented in both the middle and high schools in my district. Implementation of SEI in my district's middle and high school demands the following resources: Funding for necessary teaching staff to accommodate small learning community structure and program specialties; Funding for supplies, equipment, and textbooks to accommodate small learning community programs; Sufficient counseling staff to work with each of our eight high school small learning communities and twelve middle school small learning communities; Facility improvements including new and renovated science labs in our North High School to accommodate chemistry and physics; Technology funding to support small learning

communities' infrastructure and allow for Learnia testing without our middle school communities; Supportive services such as ample media center staffing to meet the demands of an intensified academic program with thematic program needs; Professional development funding to support numerous changes including academic rigor, advocacies, teaching within the block, differentiated instruction, and teaching thematic approaches; Coaching assistance at the middle and high school levels to work with teachers, provide professional development, teaching strategies, data analysis, lesson modeling, and more on a daily basis for our teachers; and Leadership resources to enable all changes to be fully implemented.

III. Progress Made in My District Based on the Required Implementation of the Abbott Programs and Reforms.

11. The DOE set forth Abbott regulations that require Abbott schools and districts to implement preschool, the Court-mandated K-12 supplemental programs, and elementary and secondary school reform. These regulations direct districts, schools and preschools to annually plan and budget for implementation of WSR in elementary schools and SEI in middle and high schools, and the supplemental programs set forth in the Chart of Supplemental Programs, based on particularized

needs. N.J.A.C. 6A:10-2.4(b); N.J.A.C. 6A:10-2.5(f); N.J.A.C. 6A:10-2.6(e). The regulations also contain procedures for districts to demonstrate the need for supplemental funding. N.J.A.C. 6A:10-2.11.

12. I have been responsive to the Abbott regulations' mandated implementation of preschool, elementary WSR, SEI, and K-12 supplemental programs as based on existing need in my district. The opportunity to apply for additional funding based on a demonstration of particularized need has allowed my district to respond to the obstacles our high-poverty student body faces when they enter the classroom.

13. The implementation of required Abbott programs and reforms has already resulted in progress that I have witnessed in my district. This success is evident in the following ways:

- Implementation of the Everyday Math program;
- Two (2) new elementary facilities that created a reduction in class size. However, due to budget constraints we have had to eliminate staff which will result in increased class size;
- The Preschool program has contributed to increased test scores in grade three (3) for the students who attended preschool for two years prior to kindergarten;

- The implementation of the LEADS program in grades 5 through 8. Unfortunately, due to budget constraints we are unable to hold our LEADS summer program this year. The state will provide some financial support, however, we are not in a financial position to fund ten teachers and pay for transportation to assure the necessary participation in this valuable summer program;
- Eight (8) literacy coaches were hired to services grades Kindergarten through eight (8). This has been a wonderful support for both teachers and students. However, due to budget constraints we are cutting at least three (3) of these positions.

14. In addition, improvements in the more advanced grades are just beginning to surface. 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 like my own is finally beginning to have an impact. Examples of improvement are seen in many ways. Our middle schools have implemented small learning communities and common planning time during the 2007-2008 school year. We have already witnessed a significant decrease in our suspension and

in-school suspension rates as well as other disciplinary indicators. A sense of community is being developed not only by students, but by the professional staff as well. With common planning time, teachers are quickly focusing on professional growth and learning as such time is utilized for professional development, data analysis, academic strategies, group planning and program development. The LEADS program has been implemented in grade six in English and social studies classes. This will expand to grades seven and eight next year. The 100 Book Challenge continues to see steady growth in encouraging all students to read. Literacy and mathematics coaches diligently work with teachers, providing professional development, teaching strategies, data analysis, lesson modeling, and more on a daily basis for our teachers. All CAPA recommendations have been enforced in all four of our middle schools. Learnia has been initiated this year, with one testing administration and program professional development. This will be expanded to three administrations during the 2008-2009 school year. Data from Learnia is being used towards improvement of identified sub-groups, as well as individual student needs.

Our high school has implemented academic rigor within our ninth and tenth grades, and has also initiated block scheduling in these same grades. All students are being challenged and supported while working in college-prep level or high courses. Teachers have been surveyed and findings indicated a majority are supportive of block scheduling "Catch-Up" courses, designed to assist identified ninth and tenth grade students in need of such assistance, have been implemented during the first semester of the school year, with such students then taking their college-prep level English/math courses during the second semester.

IV. Resulting Cuts in Programs, Services, and Positions if SFRA were to be Implemented in My District.

15. The current general fund budget in my district under the CEIFA/Abbott remedy framework is \$160,007,971. If SFRA is implemented in the 2008-2009 school year my overall district budget will be \$164,553,374. My district faces a rise of in non-discretionary fixed costs next year. These increases in non-discretionary fixed costs include contracted teacher and staff salaries of approximately 5%, and employee benefits of approximately 9.7. Thus, when including the rise in non-discretionary fixed costs, the true cut in the overall budget of my district is approximately \$4.3 million.


16. As a direct result of the implementation of SFRA my district was forced to cut current, approved expenditures for programs, services and positions in 2008-2009. Some of the programs, services, and positions that were cut are: literacy coaches, substance abuse counselors, guidance counselors, social worker, librarians, classroom teachers, security guards, instructional and non-instructional aides, extra-curricular activities and professional development.

17. If SFRA is to be implemented in 2008-2009, the cuts to the overall budget in the next two school years, 2009-2010 and 2010-2011, will be increasingly drastic. As a result, more and more current, approved programs, services, and positions will need to be cut.

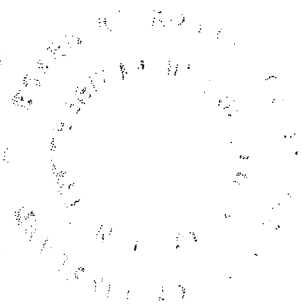
18. In 2007-08 and prior years, as an Abbott district Superintendent I could seek supplemental funding, based on demonstrated need, to maintain current approved programs, services and positions when faced with limits on budget growth imposed by the Department and/or Court. Because the SFRA eliminates needs-based Abbott supplemental programs and funding, there would be no process available to my district under SFRA to seek additional funds in order to maintain current approved expenditures in the event of a budget shortfall.

19. Without the ability to demonstrate the need for Abbott supplemental funding, my district will likely have no alternative but to reduce and/or eliminate programs, services and positions/staff in 2008-09 in order to address budget shortfalls under the SFRA. Because adjustment aid decreases, and budget shortfalls grow, my districts will no doubt have to reduce expenditures, and needed programs and services in the following two years and beyond.

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.


Charles Ottinger
Superintendent of Schools

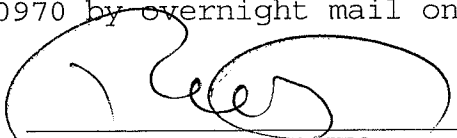
Dated: May 7, 2008



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	:	
Defendants.	:	

A copy of the within Notice of Motion To Intervene and supporting Certification have been filed with the Clerk, Supreme Court of New Jersey, Trenton, New Jersey 08625-0970 by overnight mail on May 7, 2008.



ROBERT A. De SANTO
Attorney for City of Vineland School
District and the Vineland Board of
Education

On May 7, 2008, the undersigned, mailed a copy of the within motion and supporting papers to the following by regular mail:

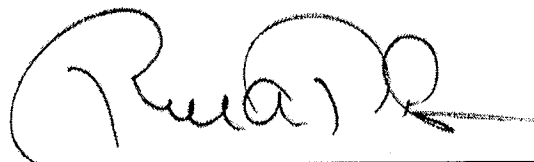
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Dated: May 7, 2008



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District and the Vineland Board of
Education