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April 3, 2006

John M. Chacko, Clerk
Superior Court of New Jersey, Appellate Division
Hughes Justice Complex
25 W. Market St.
P.O. Box 006
Trenton, New Jersey 08625

Re: Rosalie Bacon, et al. v. New Jersey Department of Education
DOCKET NO.: A-2460-05T1

Dear Mr. Chacko:

Please accept this Letter Brief, on behalf of the amicus curiae Education Law Center ("ELC")¹, in lieu of a more formal Brief in support of the Petitioners' and Petitioner-Appellants' appeal of the January 4, 2006 decision entered by the New Jersey State Board of Education ("State Board") in this matter. The State Board found that the fiscal and educational circumstances in the 16 rural districts ("Bacon districts") "mirror" those of the 31 poor

¹ ELC was granted leave to appear as amicus curiae in this case before the New Jersey State Board of Education below. Since its founding in 1973, ELC has advocated on behalf of disadvantaged students for access to an equal and adequate education under state and federal laws through research, public education, technical assistance, advocacy and litigation. Further, since 1981, ELC has served as attorneys in the Abbott v. Burke case for the plaintiff class of over 325,000 children who attend public

urban districts ("Abbott districts"), and therefore, that the Comprehensive Educational Improvement and Financing Act ("CEIFA") "as applied to [the Bacon] districts has failed to conform to the constitutional mandate." State Board Decision at 43, 70. Nevertheless, the State Board stopped short of applying binding Supreme Court precedent to order the requisite remedial relief for students in these communities, in accordance with Abbott v. Burke, 149 N.J. 145 (1997) ("Abbott IV") and Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V").

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STATEMENT OF FACTS

Amicus incorporates herein the facts set forth on pages 1-5 and in footnote 5 of Petitioners and Petitioner-Appellants' Brief.

schools and preschools in the 31 poor urban communities, commonly referred to as "Abbott districts."

PROCEDURAL HISTORY

Amicus incorporates herein the Procedural History set forth on pages 1-5 of Petitioners' and Petitioner-Appellants' Brief.

LEGAL ARGUMENT

Point I

**THIS COURT SHOULD APPLY BINDING SUPREME
COURT PRECEDENT TO ORDER IMMEDIATE RELIEF
FOR THE BACON DISTRICTS IN THE FORM OF
PARITY FUNDING, 100% FACILITIES FUNDING,
AND UNIVERSAL PRESCHOOL**

In Abbott IV, the New Jersey Supreme Court established that the CEIFA funding provisions are constitutionally defective as to districts that possess particular socioeconomic and educational characteristics. 149 N.J. at 152-53. In the context of the poverty faced by districts in the urban "Abbott" communities, the Court determined that the Act's formula is fundamentally deficient in the critical areas of regular education funding, id. at 169, Demonstrably Effective Program Aid ("DEPA") for "at-risk" students, id. at 180, Early Childhood Program Aid ("ECPA"), id. at 182, and the remediation of dilapidated, unsafe, and overcrowded facilities, id. at 186, because it effectively denies funding for the key elements of a thorough and efficient education. See id. The Court found that the inability of the Abbott districts to provide standards-based education, K-12 supplemental programs, preschool,

and school facilities improvements was directly attributable to, and caused by, the fundamental defects in CEIFA in these areas. See id.

To address CEIFA's deficiencies in the areas identified, the Court, in Abbott IV and Abbott V, ordered implementation of a remedial framework comprised of three bedrock forms of relief: per-pupil parity funding; universal, high-quality preschool for all three- and four-year-olds; and full funding for new and rehabilitated facilities. See Abbott IV, 149 N.J. at 190; Abbott V, 153 N.J. at 503-505; id. at 519. With respect to these remedies, the Court underscored the essential, universally applicable nature of this three-pronged framework for any needy district - urban or non-urban - that is found to lack a constitutionally-adequate level of school funding under the CEIFA scheme. See Abbott IV, 149 N.J. at 190 ("[I]t is beyond dispute that per-pupil expenditures remain a relevant and important element in the attempt to assure constitutionally sufficient educational opportunity."); Abbott V, 153 N.J. at 503-505 ("There is no fundamental disagreement over the importance of pre-school education...The Legislature itself has recognized the necessity of early childhood education for three- and four-year olds in the poorest school districts."); Id. at 519 ("[D]eplorable [facilities] conditions have a direct and deleterious impact on the education available to the at-risk

children. The State's constitutional educational obligation includes the provision of adequate school facilities.").

Only with respect to the remedy for deficiencies in DEPA funding for "at-risk" students - K-12 supplemental programs and educational reform - did the Court decide that assessment of the "particularized needs" of students and schools in the different districts must drive the determination of what specific programs was required to be developed. See Abbott V, 153 N.J. at 511; Abbott v. Burke, 177 N.J. 578 (2003) ("Abbott X") (setting forth a detailed matrix of required and need-based educational and educationally-related programs for the 31 urban Abbott districts). That is, only with respect to this one area did the Court determine that the requisite remedy was not universally applicable, but rather need-based and tailored to the characteristics of the district at issue. See id.

Here, notwithstanding the clarity with which the Court spoke, in Abbott IV and Abbott V, about the bedrock remedial framework that is triggered by a determination that CEIFA is unconstitutional as to districts with particular fiscal and economic characteristics, the State Board erroneously declined to apply that binding precedent to this case.

Specifically, based on voluminous findings respecting conditions of rural poverty and educational deficiencies in the 16 Bacon districts, conditions that "mirror" those in the urban

communities at issue in the Abbott rulings, the State Board declared that CEIFA "as applied to [these] districts has failed to conform to the constitutional mandate." State Board Decision at 43, 70. In other words, the Board determined that, like the Abbott districts, the inability of these rural communities to provide rigorous standards-based education, K-12 supplemental programs, preschool, and school facilities improvements, are directly attributable to, and caused by, the fundamental defects in CEIFA identified by the Supreme Court in Abbott IV. Nevertheless, the State Board stopped short of applying Abbott IV and Abbott V to order the requisite package of three-pronged relief for students in these communities. Instead, the State Board undermined the Court's mandates by directing the Commissioner to propose, in the first instance, a needs assessment for the Bacon districts. State Board at 70-71.

The proper remedial approach for this Court to follow on appeal is straight-forward and well-established: if the Court determines, in accordance with the factual findings of the Administrative Law Judge and the State Board, that the conditions of poverty and educational failure in the Bacon districts make CEIFA unconstitutional as applied to these communities, then it must order, as corresponding relief, the immediate implementation of the bedrock remedial framework set forth by the Court in Abbott IV and Abbott V.

Amicus ELC respectfully submits that, given the State Board's finding of constitutional default in the 16 Bacon districts -- which has not been appealed --, these communities should not then be left to wait, without a remedy, while their children are denied their rights to a thorough and efficient education. Rather, the Supreme Court requires that they be afforded immediate relief from CEIFA's deficiencies in the form of per-pupil parity funding, high-quality universal preschool for all three- and four-year-olds, and full funding for the remediation and construction of school facilities. Only with respect to the remedy of K-12 supplemental programs - programs such as early literacy, drop-out prevention, and social and health services in the urban Abbott districts - is it appropriate for this Court to delay the provision of relief to the Bacon districts pending the Commissioner's hopefully prompt assessment of need as it is "particularized" to these 16 rural communities.

In sum, if CEIFA fails to equip the Bacon districts, as it did the Abbott districts, with sufficient funding for rigorous standards-based education, K-12 supplemental programs, preschool, and school facilities improvements, then the Act's funding scheme is unconstitutional and the remedial framework that must be applied is clear.

CONCLUSION

For the foregoing reasons, if this Court affirms the State

Board's findings with respect to the unconstitutionality of CEIFA as to the Bacon districts, it should grant immediate correlative relief to these communities in the form of per-pupil parity funding, universal, high-quality pre-school for all three- and four-year-olds, and full funding for facilities renovation and construction. It should further order that the Commissioner promptly undertake and complete an appropriate needs assessment with respect to the remedy of K-12 supplemental programs to determine which particular programs are necessary and required in these rural districts.

Respectfully submitted,

EDUCATION LAW CENTER

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R.: 1:21-3(c)

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