

RAYMOND ARTHUR ABBOTT, a minor, by his Guardian Ad Litem, FRANCES ABBOTT; ARLENE FIGUEROA, FRANCES FIGUEROA, HECTOR FIGUEROA, ORLANDO FIGUEROA and VIVIAN FIGUEROA, minors, by their Guardian Ad Litem, BLANCA FIGUEROA; MICHAEL HADLEY, a minor, by his Guardian Ad Litem, LOLA MOORE; HENRY STEVENS, JR., a minor, by his Guardian Ad Litem, HENRY STEVENS, SR.; CAROLINE JAMES and JERMAINE JAMES, minors, by their Guardian Ad Litem, MATTIE JAMES; DORIAN WAITERS and KHUDAYJA WAITERS, minors, by their Guardian Ad Litem, LYNN WAITERS; CHRISTINA KNOWLES, DANIEL KNOWLES, and GUY KNOWLES, JR., minors, by their Guardian Ad Litem, GUY KNOWLES, SR.; LIANA DIAZ, a minor, by her Guardian Ad Litem, LUCILA DIAZ; AISHA HARGROVE and ZAKIA HARGROVE, minors, by their Guardian Ad Litem, PATRICIA WATSON; and LAMAR STEPHENS and LESLIE STEPHENS, minors, by their Guardian Ad Litem, EDDIE STEPHENS,

O R D E R

Plaintiffs-Movants,

v.

FRED G. BURKE, Commissioner
of Education; EDWARD G.
HOFGESANG, NEW JERSEY
DIRECTOR OF BUDGET and
ACCOUNTING; CLIFFORD A.
GOLDMAN, NEW JERSEY STATE
TREASURER; AND NEW JERSEY
STATE BOARD OF EDUCATION,

Defendants-Respondents.

The within matter having been initiated by the Attorney
General on behalf of the Department of Education (DOE or
Department) on motion for modification of the decision in Abbott
v. Burke, 153 N.J. 480 (1998) (Abbott V);

And the Supreme Court having duly considered that motion
(M-976);

And the Court also having considered the cross-motions
filed by the Education Law Center (ELC) for an order setting
forth an expedited schedule in respect of decisions on district
budgets and requiring the DOE to conduct a formal evaluation of
the implementation of Whole School Reform (WSR), and for counsel
fees (M-996/997);

And the Court having ordered on April 29, 2003, that the
ELC and the DOE participate in mediation for the purpose of
resolving the issues raised by the parties in their motion and
cross-motion;

And the Court having ordered that Superior Court, Appellate Division, Judge Philip S. Carchman, be appointed to serve as mediator for the sole purpose of resolving the issues raised in defendants' motion and the cross-motion of plaintiffs;

And the Court having further ordered that mediation be completed by May 30, 2003;

And the Court having further ordered that Judge Carchman report specifically on all areas of agreement and on any areas on which agreement could not be reached;

And the Court having been advised by Judge Carchman that the parties have complied with the Court's Order and have participated in mediation over a three-week period consisting of telephone conferences, the exchange of proposals and counter-proposals and eight full-day mediation sessions;

And the Court having been further advised by Judge Carchman that the participants in mediation included David G. Sciarra, Esq., Executive Director of the ELC; Steven G. Block, Director of School Reform Initiatives for the ELC; Nancy Kaplen, Esq., Assistant Attorney General; Michelle Lynn Miller, Esq., Senior Deputy Attorney General; Hon. William L. Librera, Commissioner of Education (Commissioner); Gordon A. MacInnes, Assistant Commissioner of Education in charge of Abbott implementation; and Fred Carrigg, Special Assistant to the Commissioner for Urban Literacy;

And the Court having been further advised by Judge Carchman that, consistent with this Court's Order of April 29, 2003, "the positions espoused by those who were granted amicus curiae status" were considered and their counsel kept informed about the progress of the mediation;

And the Court having been further advised by Judge Carchman that the mediation resulted in the parties reaching agreement on all issues except the DOE's application to extend by one additional year the one-year relaxation of remedies previously granted in Abbott v. Burke, 172 N.J. 294 (2002) (Abbott IX);

And the Court having acknowledged Judge Carchman's conclusion that the successful mediation between the parties bespeaks the commitment of all parties to ensuring the enhancement of educational opportunities for all students in the Abbott districts;

And the parties having previously reached agreement on an expedited budget process and appeals therefrom, as approved by the Court and set forth in this Court's Order filed May 21, 2003;

And the DOE having withdrawn its application for relief, except as to its request for a one-year extension of the relaxation of remedies granted by the Court in Abbott IX, which request remains unresolved by mediation and continues to be opposed by the ELC;

And the DOE having further agreed not to adopt the proposed regulations relating to the issues before the Court;

And the Commissioner having reserved his right to adopt that portion of the proposed regulations related to the 2003-2004 maintenance budget in respect of the single issue the parties were unable to resolve;

And the ELC or Abbott districts having reserved their rights in respect of the single issue the parties were unable to resolve;

And the parties having requested that the Court direct the improvements to implementation of WSR and supplemental programs as agreed to in mediation;

And good cause appearing;

It is ORDERED that the mediated agreement set forth in Judge Carchman's Report is approved by the Court as follows:

1. Every Abbott elementary school shall continue to implement WSR as required by Abbott V;
2. Every Abbott elementary school also shall continue to implement the selected WSR model, except as described below:

a. Low Performing Schools

(1) The Commissioner shall, based on progress benchmarks agreed to in mediation, designate schools as low performing. A low performing school is defined as a school whose percentage pass rate on the 2002 Elementary School Proficiency Assessment (ESPA) Language Arts Literacy subtest for general education students is fifty percent

or less. The designation of low performing schools shall be adjusted by the Commissioner, as appropriate, based on mean score growth over four years (1999-2002);

(2) Low performing schools shall undergo a review and planning process to make informed decisions about school and/or program improvement as follows:

(a) A Performance Assessment Team (Team) shall be assigned to each low performing school. Teams shall include, but not be limited to, a highly skilled teacher, an administrator, and a parent. The Team, in collaboration with the School Management and Improvement Team (SMIT), shall review and assess obstacles to improved performance, including quality of instruction and school leadership; effectiveness of the SMIT; level of parent participation, WSR model implementation, support from DOE and the district central office; the adequacy of supplemental programs and services to meet student needs; and such other areas of inquiry as the Commissioner shall deem appropriate. The teams shall be assembled by the DOE in consultation with the district central office and, where appropriate, with such schools subject to review;

(b) The team, the district and the SMIT will develop an agreement based on the findings of the team as to the strategies and objectives for improving student achievement, how to implement those strategies and objectives, and the responsibilities of the various individuals and/or entities;

(c) The agreement shall include either (1) continued or improved implementation of the selected WSR model; (2) selection of another DOE-approved WSR model; or (3) an alternate WSR design;

(d) The Commissioner shall assist in resolving any disagreements between and among the Team, the SMIT and the district central office;

(e) The Commissioner shall review and approve the agreement. Upon approval, the district and the school shall present the agreement to the school community and to plaintiffs;

(f) Nothing herein shall limit the authority of the Commissioner to conduct a pilot program in ten low performing schools prior to the conclusion of the collaborative rulemaking process established below, notwithstanding that the ELC has not agreed to the structure, timing and direction of the proposed pilot program;

(3) Regulations shall be developed to implement the review and agreement process herein approved;

b. High Performing Schools

(1) The Commissioner shall, based on progress benchmarks agreed to in mediation, designate schools as high performing. A high performing school shall be defined as a school that has a percentage pass rate on the 2002 ESPA Language Arts Literacy subtest for general education students above the state average percentage pass rate. The designation of high performing schools shall be adjusted by the Commissioner, as appropriate, based on mean score growth over four years (1999-2002);

(2) Based on a comprehensive assessment of student and school needs, the SMIT in consultation with the district central office may develop a Plan which includes one of the following:

(a) adjustment to implementation of the selected WSR model;

(b) selection and implementation of another DOE-approved WSR model; or

(c) development and implementation of an alternate WSR design;

(3) The Commissioner shall assist in resolving any disagreements between the SMIT and the district central office;

(4) The Commissioner shall review and approve the Plan. On approval, the district and the school must present the Plan to the school community and to plaintiffs;

(5) Regulations shall be developed to implement the assessment and planning process for high performing schools as herein approved;

c. Schools Without WSR Developer Contracts in 2002-03

(1) Any school, other than those designated low or high performing, that did not have a WSR developer contract in 2002-03 shall be required to reinstate in 2003-04 any previously existing contract or to contract with a WSR developer. In those circumstances, where the Commissioner determines that no appropriate model is available to meet the current needs of the school, the Commissioner may authorize an alternative WSR design;

(2) Regulations shall be developed to implement the provisions of paragraph c(1);

d. WSR Contract Problems

(1) Any school, other than those designated low or high performing, or any WSR developer experiencing problems with performance under the terms of a WSR contract may, at any time, file a complaint and request for investigation and resolution of such complaint with the Commissioner. The Commissioner shall take such action as may be required to ensure satisfactory performance under the WSR contract;

(2) Regulations shall be developed to implement the provisions of paragraph d(1);

e. Alternate WSR Design

Regulations shall be developed to guide planning for the adoption and implementation of an alternate WSR design;

3. Whole School Reform in Middle and High Schools : Collaborative Work Group

- a. A "Collaborative Work Group on Middle and High Schools" (Work Group) shall be established to develop protocols and guidance for a program of WSR in Abbott district middle and high schools. The parties shall agree on participants, agenda, meetings and other operations of the Work Group. The first meeting shall take place no later than July 15, 2003;
- b. The Work Group shall look at both successful Abbott schools and other successful secondary schools. The Work Group shall review data on student achievement and actual dropouts, the level of implementation of the Abbott remedies since 1999, the appropriateness of prior regulations on secondary WSR (including provisions concerned with required positions, services and programs in the secondary schools), and the research on secondary WSR models and other initiatives designed to improve teaching and learning in urban middle and high schools. The Work Group shall make recommendations for a program of WSR in middle and high schools no later than December 31, 2003. The Work Group is not limited in its recommendations by the contents of the chart described in paragraph 4(a) of this Order;
- c. The parties shall work together to develop proposed regulations to implement recommendations of the Work Group and seek input from interested persons and groups on the proposals prior to publication. Regulations shall be adopted in

time for implementation in Abbott district middle and high schools by 2004-2005;

4. Supplemental Programs

- a. Every Abbott school shall continue to implement supplemental programs as set forth in the chart entitled "Supplemental Programs in Abbott Schools," attached hereto. Although the DOE has not agreed that all of the programs listed on the chart are supplemental or are required by Abbott V, the Department has agreed to the inclusion of the contents of the chart in regulations to be adopted;
- b. Regulations shall be developed to guide school and district assessment, planning and implementation of needs-driven supplemental programs as set forth in the chart entitled "Supplemental Programs in Abbott Schools";

5. Supplemental Funding

- a. The DOE 2003-2004 proposed regulations notwithstanding, the DOE represents that its funding proposal relates only to the 2003-2004 school year, and that it does not otherwise seek to modify or limit the right of Abbott districts to request supplemental funding for all demonstrably needed programs, services and positions and to appeal the denial of such requests, as provided for in Abbott V, 153 N.J. at 517-19, 525-27;
- b. Regulations shall be developed to implement the provisions of paragraph 5(a);

6. Cooperative Rulemaking

- a. The Commissioner shall establish an Abbott Rulemaking Committee (Committee) no later than June 30, 2003. In addition to the parties (and their counsel, as needed), the Committee shall be comprised of designated interests, as follows:
 - District Superintendents (2),
 - Teachers (2),
 - Principals (2),

Parents (2),
Community (2),
Higher Education (2),
WSR Developer (1),
Legislators (2);

- b. The parties shall reach agreement on the Committee members who will represent the designated interests on the Committee, which members shall be responsible for their own expenses of participation;
- c. The Commissioner shall submit to the Committee his proposed regulations on the Abbott K-12 programs and reforms no later than July 2, 2003;
- d. The Committee shall make every effort to reach consensus on those proposed regulations no later than July 31, 2003;
- e. With the concurrence of the parties, the Commissioner shall appoint an impartial and neutral person to serve as facilitator/mediator. The facilitator/mediator shall:
 - (1) Schedule and chair Committee meetings;
 - (2) Facilitate the Committee's discussions and deliberations;
 - (3) Attempt to mediate any disputes in order to reach consensus;
 - (4) Arrange for minutes to be kept of each meeting and distribute those minutes to all participants;
 - (5) Direct the process of revising the Commissioner's proposals and draft regulations, as necessary; and
 - (6) Provide on-going progress reports to the Commissioner;
- f. The Commissioner shall be responsible for the expenses of the facilitator/mediator;

- g. If the Committee is unable to reach consensus on any issue despite the best efforts of the facilitator/mediator, the Commissioner may resolve the issue, subject to any right to judicial appeal of the final regulations;
- h. If necessary to complete the work of the Committee, or on the request of the facilitator/mediator, the time frames established herein shall be extended on agreement of the parties;
- i. The Commissioner and the parties are urged to continue engaging in cooperative rulemaking to develop consensus regulations implementing the Abbott decisions;

7. Adoption of Regulations

The parties shall support the inclusion of language in the Appropriations Act consistent with the language in the Governor's budget permitting the Commissioner to adopt Abbott regulations effective on filing with the Office of Administrative Law. The Commissioner will exercise that authority consistent with the Abbott decisions and this Order;

8. Expedited Early Childhood Review

The following schedule shall be implemented in respect of the decision and appeal process relating to the Early Childhood Education program:

- a. The DOE shall issue budget decisions to Districts on or before the fifteenth of January;
- b. The Districts shall have thirty days from the date of the Department's determination to file an appeal with the Office of Administrative Law;
- c. The Office of Administrative Law shall determine the District Appeal within forty days, and the initial decision shall include an itemization of the record;

- d. The Commissioner of Education shall issue a final decision within twenty-five days of the Office of Administrative Law's decision;
- e. Any appeal from the final decision of the Commissioner shall be filed with the Appellate Division within six days of the Commissioner's decision; and
- f. The Appellate Division shall expedite any appeal from the Commissioner's final decision;

9. Evaluation of Abbott Programs

- a. The parties shall agree to the composition and scope of work for a small group (Group) to recommend the structure, content, scale and duration of a prospective evaluation of the effectiveness of programs and reforms in improving student achievements in the Abbott districts;
- b. The Group shall consist of DOE and ELC members, practitioners (at least one Abbott superintendent), researchers/scholars with experience with similar formats, and others mutually agreed on;
- c. The Group shall hold its first meeting by June 30, 2003, with the sole agenda item to be the review of data fields contemplated for inclusion in NJSMART and to determine whether any fields should be included;
- d. Recommendations for the design of an evaluation shall be completed by September 1, 2003 and shall include a proposed schedule and probable costs, and

It is further ORDERED that the issue on which the parties have not reached accord -- the DOE's application to extend by one additional year the one-year relaxation of remedies previously granted in Abbott IX -- is set down for oral argument

in the Supreme Court Courtroom, Hughes Justice Complex, 25
Market Street, Trenton, on Thursday, July 10, 2003 at 9:30 a.m.
The parties should be prepared at that time to address the
implications of the grant or denial of relaxation and the
standards to be applied during the budget review process.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice at
Trenton, this 24th day of June, 2003.

/s/ Stephen W. Townsend

CLERK OF THE SUPREME COURT

**CHIEF JUSTICE PORITZ and JUSTICES LONG, LaVECCHIA,
ALBIN, and WALLACE join in the Court's Order. JUSTICES
VERNIERO and ZAZZALI did not participate.**