



Abbott districts make case for additional aid

At stake are lower class sizes and specialized programs

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On the same day Gov. James E. McGreevey stood in an ornate Statehouse chamber and trumpeted his education record as part of his State of the State address, a big piece of that record got a less-flattering airing in a stark courtroom nearby.

The setting was a Trenton state appeals court hearing on the latest chapter in the Abbott v. Burke school equity case, a 30-year-old case that McGreevey vowed to resolve when he took office two years ago but drew not a mention in his speech on Tuesday.

Starting in the morning and running well into the afternoon, the court heard appeals from 21 mostly urban districts for what could amount to more than \$150 million in additional state money.

Included were some of the same topics that McGreevey played up in his address to the Legislature, such as efforts to curb school administrative costs and bolster after-school programs.

But justices also grilled the administration's lawyers on everything from the state's methods of determining aid to how it's fighting with districts such as Newark and Jersey City that are supposedly under state operation in the first place.

"What does it mean to be state-operated?" asked Appellate Judge Donald Coburn, one of three hearing the case. "What are you doing, appealing against yourself?"

Michael Walters, a deputy attorney general, explained that state operation doesn't necessarily mean obedience to the state. "I'll admit it can sound confusing," he said.

At issue is the decision by the cash-strapped McGreevey administration to limit additional aid this year to the Abbott districts through their requests for so-called supplemental aid. That money goes to specialized programs such as reading specialists, and to lower class sizes.

Also included could be after-school programs like those proposed by McGreevey on Tuesday as part of a statewide program.

The state also reduced aid by another \$27 million based on claims of "ineffective and inefficient" administrative staffing and programs -- another pet issue for the governor -- including \$14 million in Newark and \$3 million in Phillipsburg.

In all, Newark is challenging the rejection of \$58 million in additional aid. Paterson is fighting for \$35 million. But the battles are just the latest of a series of legal squabbles that have ensued under the Democratic governor's tenure, despite his vow two years ago to get the programs on track.

That pledge instead fell prey to the state's fiscal crisis, and the state Supreme Court last summer agreed the state could limit the additional funding. Following up on hearings before lower courts, the argument before the appellate court on Tuesday was where the line is drawn.

Invoking accountant's jargon and budget esoterica, the state argued that "maintenance budgets" only retain programs and staffing that were paid for in the year before. The schools contest the Supreme Court meant they would be entitled to at least what was budgeted and approved last year, not just what was spent.

For instance, there are scores of vacancies in districts' 2002-2003 budgets that they say they couldn't fill last year and now under the state's formula are taken off the books entirely. At stake is hundreds of new teacher and other staff hires to fill those leftover vacancies, officials said.

If the appeals are lost, "a number of districts won't be able to hire permanent teachers and will again need to rely on substitutes," said Richard Shapiro, the attorney arguing the case for 15 of the districts.

In their questioning of the state, the judges appeared to side with the districts.

"If I had money approved for 10 reading specialists and could only fill five of them, under your regulations only five would be maintained?" asked Judge Harold Wells III of Michelle Miller, another deputy attorney general.

Miller agreed. "The expectation is the program could be delivered with five," she said.

But that drew a quick retort from Judge Stephen Skillman: "Maybe delivered inadequately."

Later, Coburn said Miller's argument appeared to run directly against the state Supreme Court's order that specifically "approved" programs be maintained. "I have difficulty with how you draw that inference, other than you being the counsel for the department," he said.

The questioning wasn't much kinder on the department's efforts to trim administrative costs it deems as "inefficient and ineffective," but the districts didn't get off easy, either.

Schools' administrative spending was a prime topic of McGreevey's State of the State address, including a proposal to eliminate or consolidate small districts and another to offer rewards and sanctions based on administrative office costs.

Yet in the hearing Tuesday, the judges questioned how the state makes its determinations in the case of the Abbotts. District lawyers maintained it was often just that spending was high, not necessarily wasteful.

"They can say it is excessive cost, they can say it is out of line," Shapiro said, "but then it is another step to say it is ineffective and inefficient."

But Coburn cited legal fees in Asbury Park that amount to more than \$200 per pupil, well above the \$36 average for the rest of the Abbott districts. "That's not enough for you?" he said.

The judges' decisions will likely take at least several weeks.

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