

EDUCATION LAW CENTER

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Filing fees waived under R. 1:13-2

EDUCATION LAW CENTER, on
behalf of ABBOTT V. BURKE
PLAINTIFF CHILDREN

Plaintiff,

v.

NEW JERSEY DEPARTMENT OF
EDUCATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION:
GENERAL EQUITY PART

MERCER COUNTY
DOCKET NUMBER:

Civil Action

VERIFIED COMPLAINT

Education Law Center, on behalf of Abbott v. Burke
Plaintiff School-age Children and Preschoolers, by way of
Complaint against New Jersey Department of Education ("NJDOE" or
"Department"), states as follows:

1. Plaintiff Education Law Center ("ELC") is a non-profit
legal services organization that provides legal assistance to
New Jersey's low income public school children, and children
with special needs, in matters related to access to equal and
adequate education under state and federal laws. Specifically,
ELC has served, since 1981, as attorneys in the Abbott v. Burke
case for the plaintiff-class of over 350,000 school-age children
and preschoolers who attend public schools and preschools in 31
poor urban communities, commonly referred to as "Abbott

districts." As counsel for the Abbott plaintiff class, ELC represents the interests of the school children in Abbott districts. As class counsel, ELC continuously monitors implementation and State compliance with the remedies ordered by the New Jersey Supreme Court in Abbott v. Burke so as to ensure improvements in the quality of education received by the Abbott plaintiff class.

2. In the 1997 and 1998 Abbott rulings, the Supreme Court ordered implementation of programs and reforms designed to ensure a "thorough and efficient" education to the Abbott plaintiff class, as guaranteed under Article VIII, Section IV, ¶ 1 of the New Jersey Constitution. The Abbott remedies include: (1) standards-based education, supported by foundation per-pupil funding equal to spending in successful suburban schools ("parity funding"); (2) universal, high quality preschool for all three- and four-year olds; (3) supplemental ("at-risk") programs to address student and school needs attributed to high-poverty, such as early literacy and drop-out prevention programs, and social and health services; (4) new and rehabilitated facilities to house all programs, relieve overcrowding, and eliminate safety violations; (5) school and district reforms to improve curriculum and instruction, and for the effective and efficient use of funds to enable students to achieve state standards; and (6) State accountability for

effective and timely implementation to ensure district and school progress in improving student achievement. Abbott v. Burke, 149 N.J. 145 (1997) ("Abbott IV"); Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V").

3. Under these Abbott rulings, the Commissioner of Education ("Commissioner") and the Defendant NJDOE are required to ensure that "the [Abbott] reforms are conscientiously undertaken and vigorously carried forward." Abbott V, 153 N.J. at 528. The Commissioner must adopt regulations and guidelines governing implementation of the Abbott remedies by the NJDOE, the Abbott districts, and schools. Id. at 526.

4. The Abbott rulings also require the Commissioner and NJDOE to ensure that all Abbott funds are spent effectively and efficiently to improve Abbott plaintiffs' achievement. Abbott IV, 149 N.J. at 193. Indeed, the Commissioner and NJDOE are obligated to ensure that these funds are "put to optimal use" in furtherance of "the improvement of the students' ability to achieve the content standards in the [Abbott] districts." Id. at 194.

5. On November 30, 2004, the Commissioner adopted regulations implementing the Abbott remedies for FY 2005. These regulations, N.J.A.C. 6A:10A, are effective through June 30, 2005.

6. The FY 2005 Abbott implementing regulations spell out in detail the roles, responsibilities and specific duties of the NJDOE in managing and supervising implementation of the Abbott remedies to improve student achievement. See generally N.J.A.C. 6A:10A-4.

7. Pursuant to the FY 2005 regulations, the NJDOE is expressly directed to "provide leadership for improved teaching and learning in the Abbott districts" by "ensur[ing] full, effective and efficient local implementation of the Abbott reforms, programs and services." N.J.A.C. 6A:10A-4.2; 4.2(b).

8. By way of "lead[ing]" implementation, the Department is required, inter alia, to provide collaborative assistance to school districts; develop a program for training Abbott school board members about Abbott; assist the school districts' central offices in the development of regular and continuous training of the School Leadership Councils; and establish partnerships with practitioners, researchers, providers of technical assistance and experts. N.J.A.C. 6A:10A-4.2(b). The Department must also collect, analyze, and disseminate research and data about students and their schools by, for example, preparing an annual report that aggregates and disaggregates school and school district-level achievement data for all students. N.J.A.C. 6A:10A-4.2(a). Other specific NJDOE responsibilities set forth by

the regulations include resolving disputes between School Leadership Councils and school management or the school district central offices, N.J.A.C. 6A:10A-4.3(a), and continuing the Statewide Council on Abbott achievement to review and make recommendations about state policies, procedures, and three-year Divisional plans and annual budgets, N.J.A.C. 6A:10A-4.4(a).

9. To enable the NJDOE to comply with its requisite management and supervisory roles, responsibilities and duties, the regulations also include specific provisions related to "improving the [NJDOE] Division of Abbott Implementation's organizational capacity to support Abbott school improvement." See generally N.J.A.C. 6A:10A-4.1.

10. The first of these provisions expressly directs that "[t]he Division will operate to the same standards it expects of Abbott school districts and schools in respect to the recruitment, retention, professional development, evaluation and effective deployment of its professional staff." N.J.A.C. 6A:10A-4.1(a). To this end, the Abbott Division is required to clearly define the roles and responsibilities of staff members; assess staff expertise and professional development; align the experience of staff with the needs of school districts for assistance; and assure that all staff members are informed

about, and fluent with, Abbott regulations. N.J.A.C. 6A:10A-4.1(a)(1)-(4).

11. Pursuant to N.J.A.C. 6A:10A-4.1(b), the NJDOE Abbott Division is also required to "prepare a three-year plan" - covering 2004-05 through 2006-07 - "for the transformation of the Division to enable it to successfully lead the State's efforts to improve teaching and learning in the Abbott school districts." This plan insures that the Division will, in fact, develop the requisite organizational capacity and undertake to "ensure full, effective and efficient local implementation of the Abbott reforms, programs and services." See N.J.A.C. 6A:10A-4.2; 4.2(b).

12. The required three year plan for NJDOE's Abbott Division must, at a minimum, (a) "address the recruitment, retention, professional development, and effective deployment of Division staff and consultants, as well as the organizational issues;" (b) "estimate the funds that will be required to implement the instructional support and capacity-building goals of the Division as well as those other fiscal, organizational, and monitoring responsibilities;" and (c) "include annual goals and objectives with benchmarks to permit assessment of progress." In preparing the plan, NJDOE must "solicit the advice of Abbott stakeholders" as well as recognized education

experts, and the plan must be "approved by the Commissioner" and "disseminated" to "interested parties." N.J.A.C. 6A: 10A-4.1(b).

13. In the FY 2005 Appropriations Act, the Legislature transferred "an amount not to exceed \$14,686,000" from a \$907 million appropriation of "Education Opportunity Aid" to NJDOE for the express "purpose of managing and supervising implementation" of the Abbott remedies. FY 2005 Annual Appropriations Act, P.L. 2004, c. 71. "Education Opportunity Aid" is the additional state funding required by Abbott to support the Abbott districts' K-12 foundational education program under New Jersey Core Curriculum Content Standards. The aid amount is based on the level spent in suburban districts, and is also known as "parity aid."

14. The proposed FY 2006 State budget includes the same provision as in FY 2005 to transfer \$14.6 million in Education Opportunity Aid from the Abbott districts to NJDOE to manage and supervise Abbott implementation. Analysis of the New Jersey Budget, FY 2005-06, Office of Legislative Services, May 2005, at 28.

15. On May 10, 2005, ELC submitted a formal request under the Open Public Records Act ("OPRA") to the NJDOE for the three-year Abbott Division plan, required under N.J.A.C. 6A:10A-4.1(b). ELC requested the plan itself, including all of the

plan elements (staff, organizational issues, funding, annual goals and objectives, progress benchmarks, etc.) as set forth in N.J.A.C. 6A:10A-4.1(b), as well as documents related to the Commissioner's approval of the plan and dissemination of the plan to interested parties.

16. On May 20, 2005, NJDOE responded to the OPRA request by informing ELC that the three-year plan has not been prepared and, therefore, is not available.

COUNT ONE

17. Plaintiff repeats and incorporates fully herein the allegations set forth in paragraphs 1 through 16.

18. The Abbott rulings hold the State accountable for effective and timely implementation of the Abbott remedies to ensure district and school progress in improving student achievement. Abbott V, 153 N.J. at 528.

19. The Abbott rulings also require that all Abbott funding be used effectively and efficiently to enable the Abbott plaintiffs to achieve state education standards. Abbott IV, 149 N.J. at 193.

20. In FY 2005, the Legislature transferred \$14.6 million in Abbott funding from the Abbott districts to NJDOE for the express purpose of managing and supervising implementation of the Abbott remedies. The proposed FY 2006 State budget includes

the same provision as in FY 2005 to transfer \$14.6 million in Education Opportunity Aid from the Abbott districts to NJDOE to manage and supervise Abbott implementation.

21. NJDOE has failed to prepare and disseminate any plan for the expenditure of the Abbott funds transferred to NJDOE for management and supervision purposes, and for the development of the organizational capacity of the NJDOE Abbott Division to enable it to lead implementation of the Abbott remedies.

22. By failing to prepare and disseminate such a plan, the NJDOE has violated its constitutional obligation, under Abbott, to assure full, effective, and timely implementation of the Abbott remedies, and to ensure that all Abbott funds - including those transferred to the Department so that it can lead implementation - be spent effectively and efficiently to enable the Abbott plaintiffs to achieve state standards.

COUNT TWO

23. The FY 2005 regulations implementing the Abbott rulings require the NJDOE to prepare, obtain the Commissioner's approval, and disseminate a three-year plan - covering 2004-05 through 2006-07 - for the "transformation" of the Abbott Division so that it can "successfully lead the State's efforts to improve teaching and learning in the Abbott school districts." N.J.A.C. 6A:10A-4.1(b).

24. By not preparing the three year plan for the Abbott Division, the NJDOE has violated the requirements of the Abbott implementing regulations, as set forth in N.J.A.C. 6A:10A-4.1(b) and (b)(1).

WHEREFORE, Plaintiff demands preliminary and permanent relief against Defendant in the form of an Order requiring Defendant NJDOE to:

A. Prepare forthwith a draft of a three year plan for the Abbott Division to manage and supervise the Abbott remedies, and to develop the Division's organizational capacity to enable it to lead implementation of the Abbott remedies, in accordance with the Abbott rulings and the provisions of the FY 2005 Abbott implementing regulations, N.J.A.C. 6A:10A-4.1(b) and (b)(1);

B. Solicit advice and input from Plaintiff, other Abbott stakeholders, and recognized experts in education policy, administration, and management on the draft plan;

C. Finalize the plan and obtain approval from the Commissioner of Education;

D. Disseminate the final plan to Plaintiff and all other interested parties; and

E. Such other relief as the Court may deem appropriate and just.

EDUCATION LAW CENTER

By: _____
KOREN L. BELL, appearing pursuant
to R. 1:21-3(b)

DATED:

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of Rule 4:25-4, the Court is advised that Koren L. Bell is hereby designated as trial counsel.

Education Law Center

Koren L. Bell, appearing pursuant
to R. 1:21-3(b)

Dated:

CERTIFICATION

Pursuant to Rule 4:5-1, to Plaintiff's knowledge the matter in controversy is not the subject of any other action pending in any Court or arbitration proceedings.

I certify that the foregoing statements made by me are true and that if willfully false, I am subject to punishment.

Education Law Center

Koren L. Bell, appearing
pursuant to R. 1:21-3(b)

Dated: