

ORDER PREPARED BY THE COURT

Education Law Center, on behalf of Abbott :
v. Burke Plaintiff Children, :
 :
 Plaintiff, :
 vs. :
 :
 New Jersey Department of Education, :
 :
 Defendant. :
 :
 :

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
CHANCERY DIVISION-GENERAL EQUITY
DOCKET NO. C-83-05

CIVIL ACTION

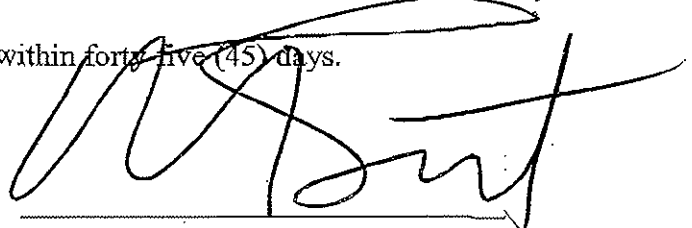
ORDER

This matter having been presented to the Court by way of an Order to Show Cause and Verified Complaint filed by Plaintiff Education Law Center, on behalf of Abbott v. Burke Plaintiff Children, seeking a summary proceeding pursuant to R. 4:67-2; and opposition having been filed by Defendant New Jersey Department of Education; and the court having reviewed the submissions of counsel; and having heard oral argument on July 20, 2005; and for the reasons set forth in the Statement of Reasons attached hereto; and for good cause having been shown;

IT IS ON THIS 8th DAY OF AUGUST 2005,

ORDERED that Judgment is entered in favor of Plaintiff Education Law Center and against Defendant New Jersey Department of Education; and it is further

ORDERED that Defendant shall create a plan for the Abbott Districts for the fiscal years 2006 and 2007 pursuant to N.J.A.C. 6A:10-4.1(b) within forty five (45) days.



Neil H. Shuster, P.J.Ch.

EDUCATION LAW CENTER
on behalf of Abbott v. Burke
Plaintiff Children

v.

NEW JERSEY DEPARTMENT
OF EDUCATION

Docket No. C-83-05

ORDER TO SHOW CAUSE SEEKING A SUMMARY PROCEEDING TO
ENFORCE DOE REGULATION

This order to show cause arises from a verified complaint filed by the Education Law Center on behalf of the Plaintiff children in the Abbott v. Burke cases (“Plaintiff”). Plaintiff seeks an order compelling the New Jersey Department of Education (“Defendant”) to draft a three-year plan regarding the administration of “Abbott Districts.” Plaintiff states that this plan is required by regulatory and constitutional mandates.

Plaintiff filed its verified complaint on June 13, 2005, along with its application for an order to show cause seeking a summary proceeding pursuant to R. 4:67-2. The court signed the order to show cause on June 15, 2005 and heard oral argument on July 20, 2005. The facts reveal that Plaintiff is a non-profit legal services organization that provides advocacy for the education of New Jersey’s poor, minority, and disabled public school

children – in this case the schools that are located in the so-called “Abbott Districts.”

The system of designation and administration of these districts is the result of a line of cases decided by the New Jersey Supreme Court. The Abbott line of cases is originally descended from Robinson v. Cahill, 118 N.J.Super. 223 (Law Div. 1972)(subsequent history omitted), a lawsuit in which students in poor urban school districts sought to enforce the New Jersey Constitution's educational guarantee. See Abbott v. Burke, 153 N.J. 480, 490 (1998)(Abbott V). “In successive decisions, this Court found that the system of public school funding then in place was unconstitutional.” Ibid. (citations omitted). “The Legislature responded by enacting the Public School Education Act of 1975,” which was subsequently found constitutional in a continuing line of cases. Ibid. (citations omitted).

Challenges of the state’s education system continued when the first Abbott case was brought in 1981, “when public school students from Camden, East Orange, Irvington, and Jersey City challenged the constitutionality of the 1975 Act as applied.” Id. at 490-491. The Court remanded the case to an ALJ in order to establish a record regarding the state of these school districts. Id. at 491 (citing Abbott v. Burke, 100 N.J. 269, 301-02 (1985)). As a result of this remand, the Supreme Court

eventually declared the 1975 Act unconstitutional “as applied to the State's twenty-eight poorest urban districts.” Ibid. (citing Abbott v. Burke, 119 N.J. 287 (1990)(Abbott II)). This decision became known as Abbott II, and required parity in funding regardless of local ability to contribute, as well as a legislative plan to address the special needs of Abbott districts. Ibid. The Legislature thereafter enacted the Quality Education Act of 1990. Ibid. (citing N.J.S.A. 18A:7D-1 et seq. (repealed)). This statute was also challenged in the case Abbott III and “the Court, in 1994, found that statute unconstitutional as applied to the special needs districts because it failed to ensure parity of educational spending.” Ibid. (citing Abbott v. Burke, 136 N.J. 444, 451, 643 (1994)(Abbott III)). As a result of Abbott III, the Legislature passed the Comprehensive Educational Improvement and Financing Act (“CEIFA”), which is still the basic legislative framework today. See N.J.S.A. 18A:7F-1 et seq.

In Abbott v. Burke, 149 N.J. 145 (1997)(Abbott IV), the Supreme Court found the portion of CEIFA dealing with supplemental programs unconstitutional and remanded the matter to the trial court. The court also made the general statement that, “The Commissioner has an essential and affirmative role to assure that all education funding is spent effectively and efficiently, especially in the special needs districts, in order to achieve a

