

September 5, 2005

VIA FEDERAL EXPRESS

Mr. Gordon MacInnes
Assistant Commissioner
Division of Abbott Implementation
State of New Jersey
Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Re: Revised 2005-06 Abbott Regulations

Dear Assistant Commissioner MacInnes:

I submit these comments on the 2005-06 regulations on "Improving Standards-Driven Instruction and Literacy and Increasing Efficiency in Abbott School Districts" on behalf of the following school districts: Asbury Park, Elizabeth, Gloucester City, Keansburg, Passaic, Pemberton, Phillipsburg, Plainfield, Salem and Trenton ("Districts"). The Districts appreciate the extension of time for the filing of these comments to September 7, 2005.

The DOE does not provide any explanation in the regulations or introductory comments as to why certain recommendations of the Districts were adopted in the new draft and others were rejected. Therefore, the Districts list below their original comments on specific provisions not adopted by the Department of Education ("DOE"). The Districts have presented new comments, primarily on the new travel regulations; those comments are in bold below. The Districts also advise the DOE that the Districts incorporate into this letter their general comments on pages 1-3 of the August 2, 2005, letter to you and the Education Law Center's proposed changes, dated August 26, 2005.

The Districts hope that, unlike the DOE's response to the first round of comments, the DOE will explain the reasons why the Districts' proposed changes have not been adopted.

DEFINITIONS

1. The definition of "Base budget," which was an integral part of the presumptive budget formula in the 2004-05 regulations, has been deleted without explanation. Although the DOE has indicated that the budget regulations will be released later, the bifurcation of the regulatory process makes it difficult to understand fully the inter-relationship between these draft regulations and the budget regulations that will be drafted over the next couple of months.

2. The definition of "Effective" remains in the 2005-06 regulations and requires that programs or services must contribute to "improved student achievement as demonstrated through site-specific evaluation employing the standards of evidence-based research and/or comparative data analysis. . . ." The DOE continues to require all programs, including supplemental programs, to demonstrate improved student achievement. However, the Supreme Court has stated in the Abbott decisions that many needs-based supplemental programs are required even though they might not bear a direct, evidence-based connection to improved student achievement.

3. The definition of "Efficient" remains the same as in the 2004-05 regulations (expenditure, program, service, etc. must maximize "the use of time, effort, and resources, including funding, as demonstrated through site-specific evaluation and/or comparative data analyses of spending for the same expenditure categories in other school districts") In the 2004-05 regulations, the DOE stated that the comparative analyses would be with other school districts "as determined by the median spending statewide and as compared to other Abbott school districts and school districts in the same region, county, District factor grouping, and of the same size." Without any explanation, the 2005-06 regulations delete all of the language setting forth the specific districts that would be used to determine whether an expenditure is effective based on comparative data.

4. "Fiscal Year 2006 Education Opportunity Aid" makes reference to the "presumptive budget formula." State funding under the regulation will be under the "presumptive budget or parity . . . whichever is greater." The regulation improperly merges foundation education funding

with funding for supplemental programs in violation of Abbott IV and V.

5. "Fiscal Year 2006 Discretionary Education Opportunity Aid" is limited to funding for "specific effective and efficient foundational education and supplemental programs to enable students to achieve the CCCS." Although this definition is identical to the 2004-05 regulations, it again limits supplemental programs and services to those that have a direct evidence-based relationship to achievement of the CCCS contrary to the Supreme Court's understanding of supplemental funding beyond the District's parity aid.

6. The 2005-06 regulations delete the definition of "needs assessment" even though the term is used throughout the regulations.

7. The definition of "Reallocation" differs in material respects from the Supreme Court's explicit language that reallocations may not be made if they "will undermine or weaken either the school's foundational education program or already existing supplemental programs."

8. The DOE has replaced the district's "three year operational plan" and the separate "Preschool Operational Plan" with the "School district two-year report on instructional priorities" and "School two-year report on instructional priorities." The stated purpose is to synchronize the Abbott districts' plans with NCLB reporting requirements. The two year plan must specify instructional improvements for preschool, literacy, math and science "with special references to English language learners and students classified as disabled." Neither the definition of the school nor the district's plan contains specific language contained in the 2004-05 regulations specifying that the plan should be based on "school and student needs," which was an integral component of the definition of the three-year operational plan.

9. The definition of "School Leadership Council" refers to a "collaborative school-based planning and advisory." Yet, this definition is inconsistent with the specific regulation on the SLC's role and responsibilities. See N.J.A.C. 6A:10A-5.4(a). That provision states that the SLC shall be the "collaborative advisory and decision-

making body to improve teaching and learning in the school." These inconsistent statements create uncertainty about the specific role and responsibilities of the SLC.

10. The definition of "Whole school reform" in 2004-05 related to the "school-based implementation of a coherent design for the school. . . ." The 2005-06 regulations change this definition to now mean "the school-based implementation of a school district- and Department-approved coherent design. . . ." It is unclear from the definition and from the specific regulations on whole school reform whether the DOE is abandoning school-based determinations of whole school reform models and shifting the focus of decision-making for a coherent whole school reform design from a focus on the school to a focus on the school district. The DOE should provide clear and consistent regulations on whole school reform implementation.

SUBCHAPTER 2. PRESCHOOL PROGRAM

The DOE has not included any regulations implementing the Supreme Court decisions in Millville and Passaic. The former case requires the DOE to provide full State funding for pre-school unless the DOE can demonstrate that money can be reallocated from K-12 budget line items in the district budget without affecting other student needs. This decision is intended to ensure that all local taxes in a district budget will be, unless DOE can demonstrate to the contrary, used for K-12 programs, as intended by the Supreme Court and the Legislature, and not to fund pre-school program shortfalls.

The Passaic case requires the Commissioner to assess actual need when making mid-year pre-school expansion aid adjustments rather than using the per pupil reduction method that was previously used. Neither the requirements of the Millville nor the Passaic decisions are incorporated into the 2005-06 regulations.

The DOE also fails to include in the 2005-06 Abbott regulations significant standards that are tantamount to regulatory requirements. Specifically, the DOE publishes written guidance on preschool program budgets and funding. The guidance contains recommended ratios for staff in district stand-alone early childhood centers and provides the opportunity for districts to seek staff levels beyond

the recommended ratios based on particularized need. Yet, the guidance does not explain how the ratios were determined even though these ratios may be dispositive of the amount of DOE funding for staff in these centers. Nor does the guidance (or the regulations) set forth the specific standards that will govern the DOE's evaluation of what constitutes a particularized need to deviate upwards from the guidance.

The need for a published regulation is even more compelling in the implementation of the Abbott decisions because the Supreme Court explicitly directed the DOE to promulgate regulations that "include the procedures and standards that will govern applications by individual schools and districts for needed programs and necessary funding." Abbott v. Burke, 153 N.J. 480, 526 (1998) ("Abbott V").

1. N.J.A.C. 10A-2.2(11) refers to a "needs assessment," but the term is not defined in the regulations.

2. The 2005-06 regulations contain a new requirement that the DOE "will utilize historical enrollment trends and the school district's past ability to reach the target enrollment to establish projected enrollment and to determine the need for additional classrooms." N.J.A.C. 6A:10A-2.2(a)(21)(v). The DOE should not be using historical data to limit a district's ability to serve the projected preschool population. The DOE can always recover funding in the mid-year audit if actual enrollment is less than projected enrollment. There is no legal basis for the DOE to reduce funding in advance of the school year based on the agency's assumptions about historical data that might bear no relation to the present realities in the district.

3. The 2005-06 regulations also provide that "if the approved projected enrollment is greater than the actual enrollment of the previous school year, the school district will not receive funding for more than 15 classrooms not filled to capacity." N.J.A.C. 6A:10A-2.2(a)(21)(v). While the Districts understand the DOE's interest in having all classrooms contain 15 students, there are geographic and demographic reasons why some preschool classes in some schools or providers might be under-utilized. Yet, the DOE regulations contain a mandatory cut-off of not "more than

15 classrooms not filled to capacity" without providing the district with the opportunity to show particular reasons why such a requirement would hamper universal preschool attendance in the district.

SUBCHAPTER 3. STANDARDS-BASED REFORM

1. The regulations, without explanation or reasons, eliminate needs-based supports and programs for students reading below grade level and for students with disabilities and other special needs.

2. The regulations eliminate all the detailed and specific supports for teachers in a discrete section of the regulations (N.J.A.C. 6A:10A-3.5 in the 2004-05 regulations); all the detailed and specific supports for students in a discrete section of the regulations (N.J.A.C. 6A:10A-3.6 in the 2004-05 regulations); and all the specific and detailed supports for parents and families in a discrete section of the regulations (N.J.A.C. 6A:10A-3.7 in the 2004-05 regulations). These regulations contained vital requirements for proper Abbott implementation.

3. The 2004-05 regulations required review and modification of the curriculum based on "student needs." The regulations, N.J.A.C. 6A:10A-3.1(a)(2), now state that the review and modification should be based on "student performance." Here again the regulations dispense with the Supreme Court mandate that programs and services be based on "student needs."

4. There are additional requirements for the curriculum in the 2005-06 regulations. N.J.A.C. 6A:10A-3.1(a)(6). Among these is the provision that the "curriculum shall be used as one standard to review teachers' content mastery and instructional skills to determine what professional development is necessary." N.J.A.C. 6A:10A-3.1(a)(6)(iv). Is the DOE proposing that this should now be used as part of the professional assessment of a teacher? The regulation is unclear on this point.

5. The 2004-05 regulations contained a provision for "Special supports for students reading below grade level including research-based programs for extended day, extended year, or in-class assistance." (2004-05 regulations at N.J.A.C. 6A:10A-3.2 (d)(11)). The 2005-06

regulations eliminate this provision for needs-based extended day, extended year and in-class assistance programs, in violation of Supreme Court mandates.

N.J.A.C. 6A:10A-3.2:SECONDARY EDUCATION INITIATIVES

1. The Districts do not understand the reasons for making regulatory changes in the Secondary Initiative regulations in the regulations when the regulations have never been implemented and tested by experience and data.

2. The 2004-05 regulations required that all courses "Integrate technology into instruction as appropriate." The 2005-06 regulations delete this requirement without any explanation and in violation of Supreme Court mandates on the integration of technology.

3. The Secondary Education Initiatives in the text eliminate, without explanation, essential components contained in the 2004-05 regulations. Specifically:

A. The 2004-05 regulations identify eight "essential components" of the "Abbott Secondary Education Regulations." The 2005-06 Abbott regulations identify only six "essential components" (and, as discussed below, several of the remaining components have been substantially changed). The first "essential component" which has been completely removed is the one addressing the "professional development plan created by the school district and school leaders, with the assistance of staff and consultants if helpful that provides three phases of building for school district and school-based personnel to prepare to implement Abbott Secondary Education Regulations." The prior provision also stated that the "plan shall permit school districts to begin capacity-building and professional development on a staggered timeline" that incorporates "three phases to be completed 18 months from the start of each cluster group's participation. . ." This "essential component" commits the DOE to provide specific professional development and support for the three phases of the capacity-building and preparation designed to implement the Secondary Initiative as recommended by the workgroup and reflected in the 2004-05 regulations. This commitment is an important part of the collaborative state-district partnership envisioned by the secondary initiative and its retention is an important expression of DOE's commitment to implementation.

B. A second "essential component" omitted from the proposed 2005-06 regulations is the provision stating that the "plan shall be implemented by the school district to permit staff to acquire the knowledge to contribute to the newly-revised curriculum and instruction, and the personalization of student support. The school district shall prepare annual progress reports showing accomplishments and challenges met and report to the public."

In the regulations, the first part of this district requirement to support effective staff participation in implementing the secondary initiative is replaced by a weaker, and more vague requirement to meet "the goals of the school district and individual professional improvement plans" which has been added to "essential component" number 4 dealing with instruction. (N.J.A.C. 6A:10-3.2(c)(4)(vi)). The second part of this "essential component," which requires preparation and public reporting of annual progress, is eliminated and does not appear elsewhere. Retaining these provisions is critical to developing the internal and external capacity needed to support the initiative and to involve staff and community in its success.

4. The Secondary Education Standards in Appendix B impose substantial additional requirements on the teacher as "advocate," including, but not limited to, serving in the role of advocate for groups of 20 students and family members, additional meeting requirements with students and family members, and preparation of an academic plan. There is nothing in the regulations to ensure sufficient staff, facilities, funding and resources for the Districts to implement such a program.

5. The regulations eliminate the specific elements of whole school reform models and AWSRD reforms in the 2004-5 regulations (2004-05 regulations at N.J.A.C. 6A:10A-3.4(b) and 3.4(h)(2)).

N.J.A.C. 6A:10A-3.3: DISTRICT TWO-YEAR REPORT ON INSTRUCTIONAL PRIORITIES

1. In the 2005-06 regulations, the DOE replaces the specific and detailed requirements for the Three-Year Operational Plan and the Pre-School Operational Plan in the 2004-05 regulations with the modified and truncated

District Two-Year Report on Instructional Priorities. The new report is limited to a few elements, instead of the numerous elements in the 2004-05 regulations. These elements impermissibly restrict district planning to minimal instructional goals and eliminate comprehensive needs-based program planning and budgeting for all programs and services, including mandated and demonstrably needed supplemental programs. The shift in the scope and contents of planning documents also represents another change that impedes the Districts' ability to implement the Abbott reforms in a consistent manner.

2. In violation of the Abbott X Mediation Order, the 2005-06 regulations contain no standards to guide school and district assessments, planning, budgeting and implementation of needs-driven services, programs and supports. Nor do the regulations provide any standards for the DOE's decision-making on such critical supplemental funding requests.

3. The school district is required to show plans for eliminating specific math courses with titles like "business math," "essentials of math," and "fundamentals of math." There is no explanation of why the DOE is implementing this requirement, particularly since such courses may be essential for those students who are not college-bound.

SUBCHAPTER 4: SCHOOL DISTRICT RESPONSIBILITIES FOR IMPROVED STANDARDS

1. The 2005-06 regulations eliminate all the provisions in the 2004-05 regulations addressing "Support for students," which specifically set forth supplemental programs and services based on demonstrable need. (2004-05 regulations at N.J.A.C. 6A:10A-3.6). These requirements included, among others, the library media specialist; a technology coordinator; sufficient computers, software and peripherals; the family support team; adequate social and health services in elementary schools; and extended day and extended school year programs. The DOE does not provide any explanation or reasons for these deletions.

2. The regulations also eliminate, without explanation, the 2004-05 regulatory requirement of an annual needs assessment to determine obstacles to student achievement.

3. The regulations eliminate the specific class size requirements set forth in the 2004-05 regulations. Smaller class sizes are research-based reforms that can produce dramatic improvements in student performance. Moreover, the DOE cites no reason(s) for eliminating this longstanding regulatory requirement.

4. The 2004-05 regulations required that the draft school budgets provided by the district to the schools be "adjusted for the estimated cost of living increases for the following year." The regulations (N.J.A.C. 6A:10A-4.3(b)(1)) eliminate that COLA adjustment in the draft budgets.

5. The 2004-05 regulations required that any new WSR model or alternative whole school reform design ("AWSRD") contain specific elements required in all whole school reform programs. As mentioned above, these elements have now been eliminated as requirements of a WSR model or of a newly selected model or an AWSRD.

SUBCHAPTER 5. THE ABBOTT SCHOOL'S ROLE IN STANDARDS-BASED INSTRUCTION

1. The regulations substitute preparation, review and implementation of a school's two-year report on instructional priorities and budget for the preparation, review and implementation of the three-year operational plan in the 2004-05 regulations. The problems with the new two-year report are identified above.

2. The regulations eliminate the requirement in the 2004-05 regulations that the school plan be "based on student and school needs." The new plan focuses exclusively on instructional priorities and does not address other obstacles to student achievement that could be overcome by mandated and demonstrably needed supplemental programs and services, in violation of Supreme Court mandates.

3. The 2004-05 regulations explicitly stated that the SLC should adopt an annual school-based budget based on a demonstration of need. (2004-05 regulations at N.J.A.C. 6A:10A-6.2(a)(2)). The 2005-06 regulations delete the requirement that the budget adopted by the SLC be based on "demonstrated need." Yet, under the responsibilities of the SLC, the SLC is required to review the district budget proposed by the school "to ensure that the needs of

students, faculty and the school are addressed." N.J.A.C. 6A:10A-5.4(a)(2). These regulations are inconsistent and confusing.

4. As mentioned above, there is an inconsistency between the definition of the SLC and the specific regulations governing the roles and responsibilities of the SLC.

5. The regulations indicate that the SLC will receive training on, among other things, "identification of possible instructional strategies to reduce" obstacles to student achievement. N.J.A.C. 6A:10A-5.5(a)(3). Again, the entire focus is on "instructional strategies" rather than on other needs, such as the need for supplemental programs and services, that serve as obstacles to student achievement.

SUBCHAPTER 6. THE DEPARTMENT OF EDUCATION'S ROLE IN SCHOOL IMPROVEMENT

1. The regulations eliminate the requirement of the Division of Abbott Implementation to "ensure the full, effective, and efficient local implementation" of Abbott reforms and mandates.

2. The regulations delete the specific duties and obligations of the DOE and the DOE's obligation to prepare a three-year plan for the Division.

3. The regulations eliminate the requirement that the DOE serve as a "clearinghouse" for certain information on research and needs. (2004-05 regulations at N.J.A.C. 6A:10A-4.2(a)(1)).

4. The regulations delete the 2004-05 regulations requiring continuation of a Statewide Council on Abbott Achievement, which included representatives of various stakeholders, including Districts.

5. The regulations eliminate the specific procedural and substantive standards and requirements in the 2004-05 regulations pertaining to the CAPA and the CAPA process.

**SUBCHAPTER 7: COST EFFICIENCY, EDUCATION OPPORTUNITY AID,
AND DISCRETIONARY EDUCATION OPPORTUNITY AID.**

This subchapter retains the legally questionable provisions that first appeared in the 2004-05 regulations and that have never been approved by the Supreme Court.

1. The DOE threatens to withhold the disbursement of DEOA for any district that fails to resolve the deficiencies identified by the DOE by the date designated by the DOE in its notice of deficiencies. N.J.A.C. 6A:10A-7.1(a) and (a)(1).

2. The regulations add the following to the conditions for receipt of DEOA: "The school district's Auditor's Management Report submitted with the CAFR did not contain repeat audit findings." If there are repeat audit findings, the school district must certify that the conditions resulting in the repeat audit findings have been corrected. The regulation does not provide any opportunity for the district to show that repeat audit findings may be practically and professionally unavoidable.

The DOE "Audit Program" followed by auditors in performing audits has evolved into a document that requires auditors to perform many compliance procedures that are not necessary for them to opine on the financial statements of districts but instead are required of the auditors by the State because it does not have the funding to perform these compliance procedures. One of these areas involves required procedures performed on the District's Application for State Aid (ASSA). Auditors are required to test enrollment data, Special Ed classification, Free and Reduced classification.

A finding from this testing might be a Special Ed Tier II student reported on the ASSA that should have been classified as a Tier III student. The next year the auditors might find a Tier II student was reported on the ASSA that should have been classified as a Tier I student. As this example illustrates, it is rare for districts not to have repeat audit findings in the ASSA area. This type of finding has no financial impact on the district's operations (especially in this era of flat funding with no increases for student population, poverty changes, special ed classifications, etc.) and to hold back a district's DEOA for a technicality of a repeat finding is improper. If

anything, this regulation should be limited to repeat audit findings relating to financial operations not repeat findings on compliance testing procedures that have no impact on the financial status of a district.

3. The regulations also require that the school district "does not return funds to the Federal government" in addition to the previous requirement in the 2004-05 regulations that the "school district applies for, and implements Federal grant programs in a timely and appropriate manner." The regulation does not provide any opportunity for the school district to explain the reasons why Federal funds are being returned and to seek an exemption from this provision, where appropriate. For example, budget projections in the fall of one fiscal year do not necessarily materialize in the subsequent budget year. **It is inappropriate to penalize a district for circumstances beyond the district's control that require a district to return Federal funds in order to comply with federal grant requirements.**

4. **N.J.A.C. 6A:10A-7.2: Cost Efficiency.**

A. Although not specified in the present set of regulations, it appears that the DOE will again pressure Abbott districts to accept a presumptive budget. Administrative costs in district budgets are again capped in violation of the Abbott need standard.

B. To compel districts to submit a presumptive budget, the DOE has developed claimed cost efficiency standards. The DOE has, through the McKinsey Group, developed a Department Efficiency Study ("DES") that reviews **nine key cost centers** based on median spending across the following **six subgroups**: statewide, Abbott school districts, operating type and size, county, region and district factor grouping. ("DFG"). The nine cost centers are: administration and student support salaries, health benefits, facilities, regular transportation, special education transportation, supplies and equipment, utilities, adjusted classroom instruction and purchased professional services. There is no explanation or indication of why these cost centers were selected and why the DOE and McKinsey consider these cost centers to be relevant indicators of efficiency.

C. Abbott districts are supposed to ensure that economies and efficiencies are being attained through the use of, but not limited to, the DES and a review of administrative cost limits. The DOE will discuss with the Chief School Administrator and the school business administrator any costs that exceed the "midpoint average median" of the six sub-groups listed above to determine if cost savings can be achieved. There is no explanation of why -- nor does there appear to be any reason to believe that -- the "midpoint average median" is an appropriate and reliable standard in these circumstances.

D. Under a new provision in the regulations (N.J.A.C. 6A:10A-7.2(d)), the Commissioner may now withhold all State aid from districts that do not comply with certain stated requirements, such as having no material qualifications or adverse opinions in the audit; no deficit in the prior year unless a plan is submitted to show that controls have been put in place to avoid a future deficit; no repeat audit findings; and no return of Federal funds.

There is no explanation of why the DOE has now expanded its authority to withhold all State funds for reasons that were previously identified only with the withholding of DEOA. Beyond now allowing the Commissioner to withhold all State funding, and not just to withhold DEOA, the present set of regulations has the same defects identified above in the discussion of conditions for the receipt of DEOA.

SUBCHAPTER 8. ABBOTT FINANCIAL REPORTING AND SCHOOL LEVEL BUDGETS

1. The regulations contain the provision, first included in the 2004-05 regulations, requiring the full amount of "Local Contribution - Transfer to Special Revenue" be used to fully fund preschool. This provision fails to take into account - and violates -- the Millville decision, which is discussed above.

2. N.J.A.C. 6A:10A-8.1(a)(7). This regulation must provide the District with the opportunity to demonstrate why it should not be applicable in specific circumstances. For example, in urban districts, it is highly unlikely that 100% of the children eligible for free/reduced meals will have a parent/guardian that will submit the required household application. Even if a 100% response level was

achieved, the annual increase in subsidy is insufficient to cover the real increases in the cost of the food service operations. Many urban families cannot provide proper meals/nutrition for their children nor are they capable of providing their children with a daily allowance for food. These children still must eat to be education-ready. The funds transferred from the general fund to the enterprise fund to cover food services expenditures are a necessary expenditure. Without the ability to transfer those funds, budget deficits and cash flow problems will be inevitable.

3. N.J.A.C. 6A:10A-8.1 (a)(8). This regulation suffers from the same defects as (a)(7). It is inappropriate to punish districts for using general fund surplus to cover unanticipated early childhood needs unless the DOE provides additional funding to meet those needs under the Passaic decision. Such punitive measures are contrary to the DOE's stated objective of providing high quality early childhood educational programs.

4. N.J.A.C. 6A:10A-8.2(a) and 8.2(b). Are these provisions meant to apply to "under-budgeted" revenue or to "over-budgeted" revenue? If the district's revenue projection is not realized, why would that be a factor for the DOE to assess? Please clarify or explain the intent of the regulations.

5. N.J.A.C. 6A:10A-8.3(a)(1). The regulation states that travel must be "directly related to the school district professional development plan." There may be instances where travel is necessary, but is not directly related to the professional development plan. There should be an opportunity to justify travel in these circumstances. Additionally, Board members have no professional development plan, but still need to travel to conferences or workshops. The regulations treat employees and Board members interchangeably even though their circumstances are very different.

6. N.J.A.C. 6A:10A-8.3(c)(1). The regulation must differentiate between the connection between travel and responsibilities for employee and board members. Board members do not have "work" responsibilities, but rather duties and responsibilities of their positions.

7. N.J.A.C. 6A:10A-8.3(d)(5). To require the "full voting membership of the Board would restrict the

district's ability to operate efficiently and effectively. It would be more appropriate to require a majority of the full voting membership. Section d(5) is also redundant since (d)(4) already requires written approval of the board of education without the impractical provision relating to full voting membership.

9. N.J.A.C. 6A:10A-8.3(d)(7). The DOE fails to explain what type of documentation should be provided to meet this standard.

10. N.J.A.C. 6A:10A-8.3(d)(8). The requirement of three months advance notice prior to the travel date should only apply when practicable. Conference and workshop travel needs - or emergent travel needs - frequently arise from shorter notification periods. The DOE should have a regulation to address these circumstances rather than a blanket requirement of three months advance notice.

11. N.J.A.C. 6A:10A-8.3(f). The same concerns apply to situations where the travel need arises within one month prior to the anticipated travel. Additionally, it is not clear whether this regulation is meant to apply to non-State funded travel or travel that is a condition of federal grants or WSR requirements. This should be clarified.

SUBCHAPTER 9. APPEALS

1. These regulations are substantially similar to the 2004-05 regulations. On early childhood appeals, the DOE must provide a list of each proposed program and expenditure not approved by the DOE, with specific reasons for denying any program or expenditure. However, the regulations governing school budget appeals inexplicably eliminate the requirement in prior regulations and in the early childhood appeal regulations that the decision must contain specific reasons for denying a program or expenditure. This omission violates the Abbott decisions.

2. N.J.A.C. 6A:10A-9.2 (a)(1) sets a 30 day time limit from the "date of the decision" for filing appeals to decisions other than early childhood program and budget decisions. The question has arisen this year as to what is the time limit for the appeal of an action that does not constitute a decision under the Abbott regulations. The regulations should be clarified to provide whether that

type of action will be governed by the 30 day time limit or by the 90 day time limit for appeals from a "final order, ruling or other action by the . . .agency, which is the subject of the requested contested case hearing." N.J.A.C. 6A:3-1.3(i).

The Districts look forward to the DOE's adoption of the above proposed changes. In the event the DOE decides not to adopt any of the recommended changes, the Districts anticipate that the DOE will provide explanations and reasons for not adopting any of the above proposals. The Districts would also greatly appreciate clarifications of the numerous areas where the regulations are unclear, confusing or inconsistent. Finally, the Districts also reiterate their hope that the DOE will convene a group of stakeholders to address these comments - and any revised regulatory language - and to participate in the drafting of the 2005-06 budget regulations.

Thank you.

Very truly yours,

Richard E. Shapiro
Special Abbott Counsel
for Named Districts

cc: Commissioner William Librera
Assistant Commissioner Richard Rosenberg
Superintendents of Named Districts