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By Fax and Mail

August 26, 2005

Honorable Richard Rosenberg
Acting Commissioner of Education
PO Box 500
Trenton, NJ 08625-0500

Re: Draft FY06 Abbott Regulations

Dear Commissioner:

On August 17th, I received, via e-mail communication from Gordon MacInnes, Assistant Commissioner for Abbott Implementation, a revised draft of proposed FY2006 Abbott regulations. In his e-mail, the Assistant Commissioner indicated that the Department has "added back" into the proposal "much of the language" from the FY2005 regulations in order to have the draft "reflect closely" last year's rules. The Assistant Commissioner also set a deadline of one week - or until August 24 - for comments on the proposal and indicated that the regulations will be adopted "before Labor Day."

It appears that, other than ELC, the proposed draft was circulated only to a few education organizations and the Abbott superintendents and business administrators.

At ELC's request, the Assistant Commissioner granted an extension until August 29th to file comments. It does not appear that any of the other recipients of the proposal, or other interested stakeholders, were given notice of this extension.

As you know, ELC submitted comments, dated July 15th, on the initial draft of the regulations, urging the Department to establish a formal process for broad public notice of the proposed rules, along with ample time for the public to review the proposal and submit comments. In addition, we identified

serious violations of the Supreme Court's Abbott rulings on preschool, supplemental programs, whole school reform and school intervention (CAPA), along with deficiencies in other key policy areas.

We have analyzed the revised proposal and have found that, contrary to the Assistant Commissioner's statement, virtually none of the critical provisions related to preschool, supplemental programs and other areas in the FY2005 regulations were "added back" into the proposal. Most importantly, almost all of the serious constitutional deficiencies identified in our July 15th comments have not been addressed. Moreover, the structure of the proposal is confusing and disjointed, rendering the rules cumbersome, difficult to comprehend, and particularly inaccessible to administrators, teachers, board members, parents and other end-users of this important document.

To address these serious issues, we are submitting as comments a revised draft of the regulations. The major revisions in the ELC draft include:

(1) Reinserting key provisions from the FY2005 regulations pertaining to preschool, supplemental programs, whole school reform and school intervention, as necessary to ensure compliance with the Abbott rulings;

(2) Restoring the requirement in prior year regulations for separate Abbott implementation plans and budgets for the district-wide preschool program, and K-12 foundational education and supplemental programs at the school and district level;

(3) Restoring provisions requiring Department accountability and fostering parent and community involvement and engagement in districts and schools;

(4) Adding and revising several critical definitions to conform to prior regulations;

(5) Restoring requirements and mechanisms contained in the FY2005 regulations designed to maximize parent and community engagement, and school district and Department accountability for Abbott implementation; and

(6) Restructuring several sections in order to make the rules coherent and more easily comprehensible to diverse groups and stakeholders.

All of the revisions in the ELC draft are highlighted as "tracked changes" in the text. We understand that rules pertaining to budgeting and funding will be issued separately at a later date. Without those rules, we are unable to comment on Subchapters 7 and 8, and will do so at the appropriate time. Please advise if our understanding is incorrect.

In light of the significant substantive and structural deficiencies with the proposal, and the ad hoc manner in which the Department has proceeded with rulemaking thus far, we reiterate our request that the proposed rules be reissued in a manner consistent with due process and the procedures in the Administrative Procedure Act. At a minimum, the Department should provide broad public notice of the proposed rules, describing the specific provisions in the proposal and explaining those provisions that do not "reflect closely" last year's rules. Ample time should be afforded for public comment, and the Department should provide a written response to all comments upon adoption and publication of the rules.

Since the districts' initial submissions under these rules are not until mid-November, there is sufficient time to complete this rulemaking process. Above all, it is in the Department's interest to have clear, coherent and constitutionally compliant rules in place to guide those district submissions.

Please advise me as soon as possible, but not later than Wednesday, August 31st, if the Department will agree to this request. Thank you, and I look forward to your reply.

Sincerely,

David G. Sciarra
Executive Director

cc: Acting Governor Richard Codey
Chair and Members, Assembly Education Committee
Chair and Members, Senate Education Committee
Assistant Commissioner Gordon MacInnes
Michelle Miller, Deputy Attorney General
Abbott Superintendents
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