

**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  
LAW DIVISION:

MERCER COUNTY  
DOCKET NUMBER:

Civil Action

**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 ("DOE" 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 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, and 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. Defendant New Jersey Department of Education is the executive agency responsible for managing and implementing the State's public education system, and for ensuring that all students receive a constitutionally sufficient education. Under the Abbott rulings, DOE is specifically required to ensure that "the [Abbott] reforms are conscientiously undertaken and vigorously carried forward." Abbott v. Burke, 153 N.J. 480 (1998) ("Abbott V").

3. In the 1997 Abbott ruling, the New Jersey Supreme Court held that the funding provisions of the Comprehensive Educational Improvement and Financing Act ("CEIFA") are constitutionally defective as to the Abbott districts. Abbott v. Burke, 149 N.J. 145, 152-53 (1997) ("Abbott IV"). Specifically, in the context of the poverty faced by these communities, the Court determined that the Act's formula is fundamentally deficient in the critical areas of regular education funding, id. at 169, Demonstrably Effective Program Aid ("DEPA") for "at-risk" students, id. at 180, Early Childhood Program Aid

("ECPA"), id. at 182, and the remediation of dilapidated, unsafe, and overcrowded facilities, id. at 186, because it effectively denies funding for the key elements of a thorough and efficient education. See id.

4. To address CEIFA's deficiencies in the areas identified, the Court, in the 1997 and 1998 Abbott rulings, 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 IV, 149 N.J. 145; Abbott V, 153 N.J. 480.

5. In 2003, the DOE's Office of School Funding undertook a study to determine the cost of providing a constitutionally adequate education to New Jersey students ("Adequacy Cost Study" or "Study") - i.e. the cost of educating students to meet the Core Curriculum Content Standards ("CCCS"). The purpose of this Study was to provide information to the Department, and to the public stakeholders involved in the process, that could then be used to review and revise CEIFA. The Study was later updated to provide cost figures for subsequent years. See Certification of Elizabeth Athos, Esq., ¶ 3("Athos Cert.").

6. To complete the Adequacy Cost Study, the Department contracted with a consultant, Dr. John Augenblick, who assisted DOE in implementing two well-established methodologies to determine the cost of providing a constitutionally adequate education to New Jersey students. Previously, Dr. Augenblick had provided similar services to over eleven other states - all of which have since made public studies that employed these same methodologies to determine the cost of a constitutionally adequate education in these states. Athos Cert. ¶ 4.

7. Under the first method used by DOE, the "successful school district" approach, the cost of regular education

services was calculated based on measures of district performance that were used to develop a list of districts that meet the CCCS. Then, actual district expenditure data was employed to determine regular education cost per-pupil in these "successful" districts. Athos Cert. ¶ 5, Ex. B.

8. The second method, the "professional judgment" approach, is used to estimate the cost of regular education as well as the additional costs of providing services to students with special needs (i.e. special education, at-risk, and limited English proficiency). To implement this analysis, the DOE convened public stakeholders - superintendents, business administrators, school principals, teachers, and ELC staff - and charged them with determining what inputs and resources are needed by hypothetical school districts with varying characteristics to provide a constitutionally adequate education to students. Athos Cert. ¶ 6, Ex. B.

9. DOE never released the Adequacy Cost Study to the public stakeholders who participated in the Study or to the public at large, despite several informal requests from stakeholders, including ELC, and the clear public importance of this information. Athos Cert. ¶ 7.

10. On May 10, 2006, ELC submitted a formal online OPRA request for "all records (electronic and paper) related to the 2003 study, estimate, review and/or analyses of the cost of