



Education Law Center

Standing Up for Public School Children

By Fax and Regular Mail

January 28, 2008

Robert Gilson, Director
Division of Law
Office of the Attorney General
Hughes Justice Complex
25 Market Street
PO Box 112
Trenton, NJ 08625

Re: Abbott v. Burke
Docket No. 42,170

Dear Mr. Gilson:

At oral argument on Plaintiffs' motion last Wednesday, the Justices expressed interest in having the parties cooperatively seek to resolve issues related to compliance with the Abbott rulings in advance of any Court proceedings. If the Supreme Court has to rule on such issues, the Justices also expressed a clear preference for a fully developed evidentiary record, not one based on certifications.

Since the State Defendants ("State") intend to bring the recently adopted School Funding Reform Act ("Act") before the Court, and to be relieved of the Court's prior rulings in this matter, Plaintiffs seek clarification of two important issues: (1) whether the State will agree to defer implementation of the Act as to the Abbott districts until the Court rules on any motion to vacate the Abbott remedial rulings; and (2) whether the State will consent to a remand for development of a full evidentiary record on the constitutional issues implicated by the Act, including the Act's satisfaction of the Abbott mandates and impact on Plaintiffs' right to a thorough and efficient education.

On the first issue, Plaintiffs note that the Attorney General's January 14, 2008 letter expressed the State's desire to base "State aid for the 2008-09 school year" on the "new funding formula." This suggests that the State intends unilaterally to apply the Act and cease implementing the Abbott

mandates prior to a judicial ruling on the State's motion to vacate those remedies. Plaintiffs hope this is not the case. Without a Court order altering the Abbott remedial mandates, the State is legally compelled to comply with the Court's constitutional rulings in this matter.

To clarify this issue for our clients and assist the Abbott districts as they plan their 2008-09 budgets, we request that the State consent to continue implementing the Abbott remedial mandates, specifically to provide parity-level funding and the opportunity to seek (through application and appeal, if necessary) supplemental funding to address the districts' demonstrable needs, until the Court determines the Act's constitutionality.

The State's agreement on this issue will not only preserve the constitutional status quo pending further proceedings on the Act, but will also prevent unnecessary expenditure of the parties', the districts' and the Court's time and resources on applications for emergent relief related to the 2008-09 budgets. It will also provide the parties and the Court the time necessary to address the constitutional issues related to the Act in a deliberative fashion, without the disruption that would occur if the Court is asked to rule hastily in the midst of preparation and review of those budgets. Further, it will resolve the uncertainty and confusion regarding the districts' budgetary process and avoid the likely need for disruptive course corrections late in the school year.

Plaintiffs, therefore, request the State consent to deferring the Act's implementation, as discussed above. We are ready to meet with you promptly to discuss the specific terms of such an agreement. See, e.g., "School Funding Hearing Needed," New Jersey Law Journal, January 18, 2005 (strongly urging parties' agreement to put the Act on hold until the Court can consider the Act's constitutionality in a deliberative manner, based on a well-developed record).

With regard to the second issue, Plaintiffs believe that the more prudent course is to ask the Supreme Court for a remand to develop an evidentiary record on the underlying issues regarding the Act's constitutionality. The Court has utilized such a procedure previously in this litigation, see, e.g., Abbott v. Burke, 136 N.J. 444 (1994); Abbott v. Burke, 153 N.J. 480 (1998), and, as noted above, has repeatedly expressed a preference for a fully developed record, especially where the issues involve detailed and complex factual matters implicating

alternative remedial measures to those mandated by the Court to ensure Plaintiffs a thorough and efficient education. See, e.g., Abbott v. Burke, 149 N.J. 145, 199-201 (1997). If the State agrees that such a procedure is appropriate and necessary in this instance, Plaintiffs, along with districts' counsel, are ready to meet to discuss an orderly and expedited remand process that the parties can then propose to the Court.

Thank you for carefully and promptly considering these issues. I am available at your convenience to discuss these matters in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is written in a cursive, flowing style.

David G. Sciarra, Esq.
Attorney for Plaintiffs

cc: Richard E. Shapiro, Esquire
Perry Lattiboudere, Esquire
Abbott District Counsel