



By Fax and Regular Mail

August 10, 2015

David C. Hespe, Commissioner
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Re: School Funding Reform Act:
September 2015 Educational Adequacy Report

Dear Commissioner Hespe:

I write to bring to your attention several critical issues that must be addressed in the Educational Adequacy Report ("Report"), as required under the School Funding Reform Act ("SFRA"), N.J.S.A. 18A:7F-46b. As you know, the next Report must be submitted to the Legislature by September 2015. Education Law Center ("ELC"), as an advocate for fair and equitable funding for New Jersey public school children, and as counsel to the Plaintiff school children in the landmark Abbott v. Burke litigation, has substantial expertise in the SFRA funding formula and its implementation since 2008.

Under the SFRA, the Commissioner must, every three years, review implementation of the SFRA funding formula and, based on that review, issue the Report which shall recommend to the Legislature adjustments to the base cost; preschool education aid per-pupil amounts; grade level, at-risk and other weights; cost coefficients for security and transportation aid; special education classification rate; excess special education costs; and extraordinary special education aid thresholds. N.J.S.A. 18A:7F-46b. In addition, the adjustments recommended in the Report "shall be deemed approved for the three successive fiscal years," unless the Legislature, within 90 days of receipt of the Report, adopts a concurrent resolution stating the Legislature's objections to "all or any specific part" of the Report. The concurrent resolution shall also "direct" the Commissioner to submit "a revised report which responds to those objections." N.J.S.A. 18A:7F-46b.

In upholding the SFRA as providing the resources necessary for all students to achieve a thorough and efficient education, the New Jersey Supreme Court expressly conditioned the continuing constitutionality of the formula on the State's commitment, through issuance of the statutorily required Report, to conduct a diligent and "rigorous" review of the formula's implementation over the prior three year period. Abbott v. Burke, 199 N.J. 140, 167 (2009) ("Abbott XX"). In addition, the Court made clear that the recommended adjustments to the formula must be based on this rigorous review of the formula's implementation and accomplish the constitutional objective of keeping the SFRA operating at its "optimal level" for the next three years. Abbott XX at 167.

To assist you in undertaking the requisite review of SFRA's implementation over the preceding three years, and to recommend appropriate adjustments for next three years to maintain the optimal operation of the formula, we outline below several critical issues that must be addressed in the Report.

1. SFRA Costs

It is important to underscore at the outset that the enactment of the FY16 State Budget by Governor Christie marks the seventh straight year in which the formula has not been properly implemented for students in all school districts. Specifically, the SFRA formula has been underfunded by over a cumulative \$7 billion during this period. Thus, the funding provided under the SFRA formula over the last three-year implementation cycle has fallen far short of SFRA's base cost, weights and aid amounts found adequate for a constitutional education, as enacted by the Legislature and upheld by the Supreme Court. Put simply, the failure to properly implement the formula since 2013 has resulted in a widening gap between the per-pupil costs contained in the SFRA formula and the funding actually provided to students through the formula's various cost components and budgetary calculations.

Thus, given the failure to implement the SFRA as designed and enacted over the last three years, the extent to which the base cost, weights and aid amounts in SFRA's formula can be reviewed and evaluated through the September 2015 Report is extremely limited. Specifically, the base cost, weights and aid amounts and other components delineated in N.J.S.A. 18A:7F-46b can only be adjusted for the next three years with updated and current data on the salaries and benefits underlying these cost components, and by the Consumer Price Index (CPI) for non-

personnel costs. The glaring deficiencies in the implementation of SFRA over the preceding three years renders any other adjustments to these components improper and inconsistent with the statutory purpose of the Report and the conditions on SFRA's continuing constitutionality established by the Supreme Court.

2. Cost of New Mandates

Despite SFRA's underfunding over the last three years, the Department of Education ("DOE") has required districts to implement several new mandates, including the Common Core Standards, revamped teacher and principal evaluation systems, and the Partnership for Assessment of Readiness for College and Career (PARCC) tests. As DOE surveys and other information document, these mandates impose additional costs on districts and directly impact district budgets. They may require additional staff, training, planning time and supervision, as well as new computers, technology upgrades, security measures, and other programs and services for students, parents and staff.

While generating new costs, the DOE has directed district implementation of these new mandates with no additional funding. Indeed, as noted above, districts have incurred these new costs over a three-year period of formula underfunding and SFRA implementation shortfalls. It is important, therefore, that the September 2015 Report analyze the additional cost to districts resulting from the imposition of these mandates over the last three years, both in actual dollars spent and in the additional time required of teachers and principals to administer them.

3. Preschool Education Aid

It is critical that the Report assess whether the current preschool education aid per-pupil amounts for in-district, community provider and Head Start classrooms are sufficient to provide preschool programs under the State's established, high quality standards. The budgetary structure under which SFRA's preschool education aid amounts were developed has changed in recent years, particularly with the reduction and/or elimination of wrap-around funding from the Department of Human Services. This change has resulted in preschool program budgets that are insufficient to maintain the requisite levels of high quality programs mandated by DOE's early childhood education standards.

The Report should review the sufficiency of the current preschool cost amounts for in district, community provider and Head Start programs across the state. The adjustments to the

per-pupil amounts for preschool education should also be based upon actual changes in the salaries and benefits of preschool teachers, aides and personnel across the state, along with CPI for non-personnel program costs.

We also note the SFRA mandated the expansion of high-quality preschool to low-income children across the state. Under the SFRA, universal districts - those in District Factor Group A&B or CD with over 40% low-income students - are required to provide preschool to all three- and four-year-olds, while targeted districts are required to provide preschool to low-income children only. N.J.S.A. 18A:7F-54a and b. Implementation of the program expansion has not occurred over the last three years, again as a result of a failure to provide additional funding to support expansion. Because the Legislature must be informed of the costs to properly implement SFRA's preschool requirements over the next three years, the September 2015 Report should also include an update with the most recent numbers of three- and four-year-old children who are eligible for SFRA preschool, but are not currently enrolled in high quality programs as required by the statute.

4. Special Education Enrollments and Costs

The September 2015 Report should update the statewide average classification rates for general special education pupils and speech only pupils. In addition, the Report should adjust the excess cost of general special education pupils based on the most recent available audited expenditure data. The speech only costs can be adjusted with updated salary and benefit data based on the resources in the SFRA model.

Conclusion

Finally, we want to underscore that the Report's recommendations must be limited to adjustments in the SFRA costs, weights, aid amounts and other factors specifically set forth in N.J.S.A. 18A:7F-46b, based on data and evidence gained directly from the formula's actual implementation over the last three years. We expect your Office will not repeat the experience with the last Report issued in December 2013, which made arbitrary and unsupportable recommendations that were promptly rejected by the Legislature through concurrent resolution. Nor would it be appropriate through the Report to recommend substantive changes in the SFRA formula itself that might alter the redistribution of state school aid among

districts. Such recommendations clearly exceed the Report's statutory parameters and scope.

Thank you for your prompt attention to this matter. We are available to assist your Office in the preparation of the Report. Please do not hesitate to contact me to discuss further.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "David Sciarra". The signature is fluid and cursive, with a large initial "D" and a stylized "S".

David G. Sciarra, Esq.
Executive Director

cc: Donna Arons, Deputy Attorney General
Members of the New Jersey Legislature