



Education Law Center
Standing Up for Public School Children

By Fax and Regular Mail

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Re: School Funding Reform Act - Educational Adequacy Report

Dear General Chiesa:

I write to bring to your immediate attention an issue regarding the Commissioner of Education's legal responsibility to periodically review implementation of New Jersey's school funding formula -- the School Funding Reform Act ("SFRA") -- and recommend adjustments to the formula to the Legislature to begin in 2012-13. As you know, Education Law Center ("ELC") advocates for fair and equitable funding for New Jersey public school children and serves as counsel to the Plaintiff school children in the landmark Abbott v. Burke litigation.

Under the SFRA, the Commissioner is required, every three years, to review implementation of the SFRA formula and, based on that review, to issue an "Educational Adequacy Report" ("Report") that recommends to the Legislature adjustments to the base and preschool 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-46. In addition, the adjustments recommended by the Commissioner 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 constitutionality of the SFRA in Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX"), the Supreme Court underscored the State's commitment, through issuance of the statutorily required Report, to diligently review the formula's implementation, and to "adjust the formula as necessary based on the results of that review." Abbott XX at 167. Further, in directing full SFRA funding in May 2011, the Court ordered the State to undertake this review, at the very least for the benefit of the Abbott Plaintiffs:

We further order that, whether the formula is fully funded on a statewide basis, the State nevertheless must undertake a look-back analysis that is meaningful and relevant for the Abbott districts so that the SFRA continues to operate optimally and as intended in future years for pupils in those districts. Abbott v. Burke, 206 N.J. 332 (2011) ("Abbott XXI") (emphasis added).

On February 23, 2012, Acting Commissioner Christopher Cerf released a document titled the Education Funding Report ("EFR"). In the EFR, the Acting Commissioner recommends to the Legislature all of the adjustments to the costs, weights and rates and coefficients in the formula, as delineated in N.J.S.A. 18A:7F-4b. EFR, at 67-79. The EFR makes clear that the formula adjustments recommended by the Acting Commissioner, if approved by the Legislature, would begin in 2012-13.

However, ELC has recently been advised that the Department of Education has verbally informed the Legislature that the EFR is not intended by the Acting Commissioner to serve as the statutorily prescribed Educational Adequacy Report, even though the EFR expressly recommends to the Legislature all of the specific formula adjustments required by the SFRA statute.

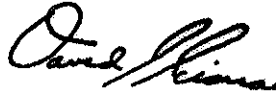
Under the SFRA statute and Abbott rulings, the Commissioner is required to recommend future formula adjustments to the Legislature through the issuance of the Educational Adequacy Report which, upon receipt, triggers a statutorily imposed deadline wherein such recommendations "shall be deemed approved" unless the Legislature adopts specific objections through passage of a concurrent resolution. N.J.S.A. 18A:7B-46b.

Accordingly, it is imperative that you promptly clarify the Acting Commissioner's intention and purpose in issuing recommendations to the Legislature for SFRA formula adjustments in the February 23 EFR. More specifically, please advise

whether the EFR has been issued to fulfill the State's obligation to review and adjust the SFRA formula under N.J.S.A. 18A:7B-46b and the Court's order in Abbott XXI. If the EFR is not intended to comply with this mandate, but to be merely advisory, then please advise when the Acting Commissioner will issue the required Educational Adequacy Report, consistent with the SFRA statute and Abbott rulings.

Thank you for your prompt attention to this matter. Please do not hesitate to contact me to discuss further or to assist your Office in ensuring the Acting Commissioner takes timely and appropriate steps to satisfy the State's responsibilities under the SFRA statute and Supreme Court order.

Respectfully yours,



David G. Sciarra, Esq.

cc: Michael Walters, Deputy Attorney General
Charles B. McKenna, Governor's Counsel
Honorable Stephen Sweeney, Senate President
Honorable Sheila Oliver, Speaker of the Assembly
Kathleen Fazzari, Education Section Chief, OLS