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March 17, 2016

Robert Lougy, Esq.  
Acting Attorney General of New Jersey  
Office of the Attorney General  
P.O. Box 080  
25 West Market St.  
Trenton, New Jersey 08625-0080

Re: Abbott v. Burke: FY17 State Aid Notices

Dear Mr. Lougy:

As counsel for the Plaintiff schoolchildren in Abbott v. Burke, Education Law Center (ELC) writes to bring to your immediate attention serious legal issues concerning the failure of the Commissioner of Education (State) to implement the School Funding Reform Act of 2008, N.J.S.A. 18A:7F-43 to 63 (SFRA), and adjust the formula to ensure the optimal operation of SFRA in 2016-17 and in future years. The State's implementation of the SFRA formula clearly conflicts with the Education Clause of the New Jersey Constitution, N.J. Const. Art. VIII, §4, ¶1, and the Supreme Court's rulings upholding the constitutionality of the SFRA in Abbott v. Burke, 199 N.J. 140 (2009) (Abbott XX) and Abbott v. Burke, 206 N.J. 332 (2011) (Abbott XXI). Accordingly, we request your office take immediate corrective action to ensure State compliance with these requirements for a thorough and efficient education for the Abbott school children.

The State's failure to implement the SFRA consistent with firmly established constitutional parameters is plain. First, the Commissioner, in the February 2016 Educational Adequacy Report (EAR), proposed improper adjustments to the costs, weights and other components of the SFRA formula for the 2016-17 and the following two years. Specifically, the 2016 EAR - similar to the 2013 EAR - arbitrarily reduces the costs and weights for at-risk, bilingual and combination pupils. In response, the Legislature on March 14, 2016 passed Assembly Concurrent Resolution (ACR) No. 131 expressly rejecting the Commissioner's proposed reductions in weights for at-risk,

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combination and bilingual pupils in the absence of evidence to support the proposed reductions based on examination of the formula's operation in the preceding three years. The Legislature "again concludes" that the objected-to weights "should remain the same" as those established in the SFRA when enacted.

In Abbott XX, the Supreme Court explicitly conditioned the constitutionality of the SFRA on the State's commitment to undertake the statutorily required review of the formula's weights and operative parts every three years and, in so doing, "address whatever adjustments are necessary to keep the SFRA operating at its optimal level." Abbott XX, 199 N.J. at 146. In Abbott XXI, the Court re-emphasized this commitment, stating that the State's obligation to periodically review and retool the SFRA formula to ensure the formula's continued operation at an optimal level and as intended "in future years" is "no small matter." Abbott XXI, 206 N.J. at 354 and 376. Indeed, the Court has made abundantly clear in both rulings that the SFRA's constitutionality "is not an occurrence at a moment in time" but rather "a continuing obligation."

Second, the annual aid notices to school districts for 2016-17, issued by the Commissioner on February 20, 2016, utilized the reduced weights for at-risk, bilingual and combination pupils rejected by the Legislature in ACR No. 131. In addition, the notices fail to increase preschool education aid by the consumer price index pursuant to N.J.S.A. 18A:7F-54(c)3. Thus, the State has, to date, failed to notify each school district "of the maximum amount of aid payable to the district" and the district's adequacy budget calculated with the proper cost, weights and aid amounts for the 2016-17 school year, as mandated by N.J.S.A. 18A:7F-5(a).

Finally, the State has failed to propose a FY17 Budget consistent with the Supreme Court's explicit holding in Abbott XXI, namely that "the plaintiff class of schoolchildren from the Abbott districts cannot be deprived of the full SFRA funding that the State offered, and received approval to exchange for the decisions and remedial orders that had previously established the funding required for such school districts." Abbott XXI, 206 N.J. 332, 369.

Accordingly, it is imperative that the State take immediate steps to bring implementation of the SFRA in 2016-17 and future years into full compliance with the SFRA formula and Abbott XX and Abbott XXI mandates. Specifically, the Commissioner must

immediately: 1) notify each school district, as required by N.J.S.A. 18A:7F-5(a), of the proper adjustments to the costs, weights and aid amounts in the SFRA formula as approved by the Legislature in ACR No. 131; 2) notify school districts of their corrected adequacy budgets for 2016-17 utilizing the weights for at-risk, bilingual and combination pupils approved in ACR No. 131 and preschool education aid amounts adjusted by the CPI; and 3) notify all school districts of the maximum amount of aid payable to districts based on the district's corrected adequacy budget under the SFRA formula for the 2016-17 school year, as required by N.J.S.A. 18A:7F-5(a).

Further, the Commissioner must take all necessary steps to ensure the districts serving the Plaintiff Abbott school children receive full funding of the SFRA formula in the FY17 Budget.

Plaintiffs' counsel stands ready to assist you in ensuring the State properly implements the SFRA as intended by the Legislature, and in accordance with the Court's mandate for continuing constitutionality, in 2016-17 and future years. Please contact me if you need additional information or wish to discuss this matter further. In the event the State fails to correct the SFRA's implementation, as set forth above, Plaintiffs will have no alternative but to seek appropriate judicial relief.

We anticipate your prompt response to the substantial constitutional issues raised herein.

Respectfully yours,



David G. Sciarra, Esq.  
Counsel for Plaintiffs

cc: Thomas Scrivo, Chief Counsel to the Governor  
David S. Hespe, Commissioner of Education  
Donna Arons, DAG, Education Section Chief  
Vincent Prieto, Speaker of Assembly  
Stephen Sweeney, Senate President