

RAYMOND ARTHUR ABBOTT, et al.,

Plaintiffs,

v.

FRED G. BURKE, et al.,

Defendants.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 42,170

CIVIL ACTION

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION IN AID OF LITIGANTS' RIGHTS

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EDUCATION LAW CENTER  
DAVID G. SCIARRA, ESQ.  
60 Park Place, Suite 300  
Newark, NJ 07102  
(973) 624-1815  
dsciarra@edlawcenter.org

Attorneys for Plaintiffs

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... ii

PRELIMINARY STATEMENT.....1

PROCEDURAL HISTORY.....2

STATEMENT OF FACTS.....3

    A.    Reexamination and Adjustment of the SFRA Formula.....3

    B.    SFRA Formula Implementation in 2014-15.....6

ARGUMENT .....11

I.    THE STATE’S FAILURE TO OPERATE THE SFRA FORMULA IN 2014-15  
VIOLATES THE ABBOTT XX AND XXI ORDERS.....11

    A.    The State’s Failure to Notify Districts of the  
          Approved SFRA Formula Adjustments.....11

    B.    The State’s Failure to Notify Districts of the SFRA  
          Aid Amounts and Adequacy Budgets for 2014-15.....16

II.   IMMEDIATE JUDICIAL RELIEF IS NECESSARY TO ADDRESS THE  
STATE’S VIOLATION OF THE ABBOTT XX AND XXI ORDERS.....21

CONCLUSION.....25

**TABLE OF AUTHORITIES**

**State Cases**

Abbott v. Burke, 149 N.J. 176 (1996)..... 20

Abbott v. Burke, 199 N.J. 140 (2009)..... passim

Abbott v. Burke, 206 N.J. 332 (2011)..... passim

**Statutes**

N.J.S.A. 18A:7F-43 to 63..... 2

N.J.S.A. 18A:7F-46(b)..... 12, 14

N.J.S.A. 18A:7F-5(a)..... passim

N.J.S.A. 18A:7F-5(c)..... 23

N.J.S.A. 18A:7F-51..... 17

**PRELIMINARY STATEMENT**

This Court in Abbott v. Burke, 206 N.J. 332 (2011)("Abbott XXI") took swift and decisive steps to enforce the "clear" and "exacting" conditions for maintaining the constitutionality of the formula enacted in the School Funding Reform Act of 2008 ("SFRA") in future years, as mandated in Abbott v. Burke, 199 N.J. 140 (2009)("Abbott XX"). Reinforcing once again that the constitutionality of the SFRA "is not an occurrence in a moment in time" but "a continuing obligation," the Court ordered the State to restore a substantial funding cut from Abbott districts to the levels required by the SFRA formula and directed the State, for the second time, to undertake the statutorily-required three-year reexamination of the formula's implementation and adjustment of the costs, weights, aid amounts and other components to keep SFRA operating at its optimal levels and as intended in future years.

Regrettably, the State has, for the second time, indisputably violated the Abbott XX and Abbott XXI orders by failing to operate the SFRA in 2014-15 using the adjustments approved in 2013. In effect, the State has now abandoned the SFRA in its entirety as the means for determining the funding needed to deliver a thorough and efficient education, a "deficiency" of such overwhelming "constitutional dimension" as to compel prompt judicial intervention and relief.

## PROCEDURAL HISTORY

In Abbott XX, this Court upheld the constitutionality of the SFRA formula, N.J.S.A. 18A:7F-43 to 63, and authorized its implementation statewide. The Court also imposed two express mandates to effectuate the State's continuing obligation to operate the SFRA at its optimal levels in future years: (1) provide funding "at the levels required by SFRA's formula" during the initial three-years of implementation; and (2) reexamine and adjust for the next three years the formula's costs, weights and other components based on information and analysis obtained from actual implementation in the preceding years. Abbott XX, 199 N.J. at 146, 174.

In Abbott XXI, the Court enforced the State's non-compliance with the Abbott XX orders by directing the State to: (a) provide funding to Abbott districts "in accordance with the SFRA formula"; and (b) to undertake the required three-year reexamination and adjustment to keep the formula operating "optimally and as intended in future years." Abbott XXI, 206 N.J. at 376.

Plaintiffs file the within Motion to enforce the State's failure to operate the SFRA formula in 2014-15 using the formula adjustments approved through the executive and legislative branch reexamination of the formula in 2013.

## STATEMENT OF FACTS

### **A. Reexamination and Adjustment of the SFRA Formula**

The SFRA includes a requirement that the Commissioner evaluate implementation of the formula every three years to ensure it continues to operate in optimal fashion and as the Legislature intended in future years. The Governor, in consultation with the Commissioner, is required to provide this evaluation to the Legislature in the Educational Adequacy Report ("EAR"), and, based on that evaluation, recommend adjustments to the costs, weights, and other formula components for the next three-year implementation timeframe. Certification of Danielle Farrie ("Farrie Cert.") ¶9.

Although due September 1, 2010, the Governor did not issue the first EAR since the SFRA's adoption in 2008 until December 14, 2012. The December 2012 EAR made recommendations for adjustments to the costs, weights, aid amounts and other formula components, as delineated in the SFRA. Specifically, the EAR recommended adjusting the base cost and other aid amounts for inflation over the preceding three years, and other adjustments based on current data. However, the EAR also recommended: (a) the at-risk, bilingual and combination per pupil weights be "adjusted downward" to the reduced levels initially proposed during the early stages of the development of the formula and before these initial weights were increased by expert

recommendation and made final in the SFRA; and (b) an increase in the threshold for extraordinary special education aid for the purpose of reducing eligibility and state aid levels. Farrie Cert. ¶10, Ex. B.

On February 14, 2013, the Legislature passed Senate Concurrent Resolution ("SCR") 134, notifying the Governor of its approval of the adjustments to the base per pupil amount, preschool per pupil amounts, grade level and county vocational school weights, cost coefficients for security aid and transportation aid, the statewide average classification rate and the excess cost for speech-only pupils and for all other special education pupils. The Legislature accepted these recommendations "because they are based on the use of the most current relevant data available or the application of the consumer price index." Farrie Cert. ¶11, Ex. C.

In SCR 134, the Legislature also notified the Governor of its objections to reducing the weights for at-risk pupils, bilingual pupils, combination pupils, and the increase in eligibility thresholds for extraordinary special education aid. The Legislature rejected these recommendations because they were "devoid of the type of research and analysis of the school funding level necessary to achieve the State's standards." The Legislature stated that, "in the absence of evidence of more substantive analysis," the at-risk, bilingual and combination

weights, and the eligibility threshold for extraordinary special education aid "should remain the same" as those established in the SFRA when it was enacted. Farrie Cert. ¶12, Ex. C.

In notifying the Governor in SCR 134 of its acceptance and objection to the adjustments recommended in the EAR, the Legislature also made clear its intention that these adjustments should govern implementation of the SFRA formula for FY14, FY15 and FY16 by establishing September 1, 2015 as the due date for the next EAR. Farrie Cert. ¶13, Ex. C.

In a letter dated March 18, 2013, the Commissioner responded to the Legislature's objections in SCR 134 to reducing the at-risk, bilingual and combination weights and raising the threshold for extraordinary special education aid. The response simply reiterated the recommendations in the December 2012 EAR, and offered no new information, research or analysis to support the recommendation for lowering the at-risk and bilingual pupil weights and increasing the threshold for extraordinary special education aid, or otherwise address the Legislature's objections. Farrie Cert. ¶14, Ex. D.

Upon the completion of the Legislature's review of the Governor's EAR, the Commissioner is required to notify each district of the approved adjustments to the costs, weights, aid amounts and other components to be used to operate the formula over the applicable three-year timeframe. To date, the

Commissioner has failed to notify districts of the adjusted formula components for FY14, FY15 and FY16, as approved and objected-to by the Legislature in SCR 134. Farrie Cert. ¶15.

**B. SFRA Formula Implementation in 2014-15**

Each year, the Commissioner, two days following the transmittal of the Governor's State budget address to the Legislature, is required by N.J.S.A. 18A:7F-5(a) to issue a "State aid notice" to each district with the following information relevant to the succeeding school year:(a) the "maximum amount of aid payable" to the district under the SFRA formula; and (b) the district's adequacy budget calculated under the formula. The State aid notices provide districts with the detailed calculation of their adequacy budgets for the next school year including: the weighted student enrollment based on the projected enrollment from the prior year's October 15 student census; the base cost per pupil the grade level, at-risk and LEP weights; the state aid cap; the local fair share and local levy; and the levels of SFRA formula aids, including equalization aid, security aid, transportation aid, educational adequacy aid, school choice aid, adjustment aid and preschool education aid. Farrie Cert. ¶16.

The annual State aid notices provide each district with essential information on the operation of the SFRA formula, specifically: (a) the budgetary level necessary for the district

to have adequate resources for a thorough and efficient education, given the district's unique enrollment weighted for student need; (b) the maximum amounts of state aid and the district's local fair share the district should receive to support the adequacy budget in the coming school year; and (c) the amount of aid the State is proposing to provide for that year, based on the State budget transmitted by the Governor to the Legislature. Farrie Cert. ¶17.

In FY13 and FY14, the State aid notices contained all of the formula aid and adequacy budget calculations, as required by the SFRA. However, the State used the reduced at-risk, bilingual and combination weights recommended by the Commissioner in the December 2012 EAR and rejected by the Legislature in SCR 134. Farrie Cert. ¶18, Ex. E and F.

On February 25, 2014, the DOE issued the FY15 State aid notices to each district. The notices did not provide the maximum aid levels payable to the district, nor the district's adequacy budget, and did not utilize the adjusted costs, weights, aid amounts and other components of the SFRA formula, either as recommended by the Governor in the EAR or as approved by the Legislature in SCR 134. In fact, the State aid notices did not include any of the requisite information and calculations necessary for the proper implementation of the SFRA formula in FY15. Farrie Cert. ¶19.

Instead, the State aid notices provided only resident, not weighted, enrollments, and exactly the same level of formula aid as the district received in FY14. The notices did not provide for any increase in formula aid or adjustments for changes in enrollment, local fair share or the local levy. The notices do provide for two new aid categories not part of the SFRA formula -- "Per Pupil Growth Aid" and "PARCC Readiness Aid." These new aid categories, combined, provide \$20 per student to every district, an increase of less than one percent overall. The \$20 per pupil is a flat amount and, as a result, was not determined in relation to the SFRA adequacy budget, weighted student need, or any actual cost research. Farrie Cert. ¶20, Ex. G.

With the exception of preschool education aid, the FY15 State aid notices do not contain any of the calculations, costs, weights, aid amounts and other elements necessary to determine each district's SFRA adequacy budget. The notices show only a summary of the total amount of aid allocated under each category. No district, therefore, received notice of the maximum amount of aid payable to the district under the SFRA or of the district's adequacy budget for FY15. Farrie Cert. ¶21.

Following the issuance of the State aid notices, districts are required to submit individual budgets for the coming school year to the Commissioner for approval. The DOE has established a schedule for districts to prepare and submit their budgets,

which is accessible online at <http://www.state.nj.us/education/finance/fp/dwb/calendar.pdf>.

Since most districts no longer present their budgets for voter approval and elect school boards in November, most districts submit their budgets to the Commissioner in May. Farrie Cert. ¶22.

The failure to notify districts of the SFRA aid amounts and adequacy budgets leave districts with no information on the funding levels that are adequate to provide students with a thorough and efficient education in 2014-15, nor do they know what state aid and local revenue they should be receiving to support adequacy. Districts are simply unable to submit 2014-15 budgets which provide any meaningful assurance of a thorough and efficient education. Farrie Cert. ¶23.

In addition, the lack of notice of districts' SFRA adequacy budgets means that legislators and district officials cannot determine if districts will have funding over or under the adequacy budget in 2014-15. For "under adequacy" districts, this information is essential for determining whether their budget provides sufficient teachers, support staff, programs and services, as embodied in SFRA's formula costs, to deliver the State content standards to all students. Farrie Cert. ¶24.

The lack of SFRA implementation also poses a major impediment to the Legislature's ability to have an informed

debate over the Governor's FY15 State budget. The Governor is proposing a \$36 million increase in state aid through the two new, "off formula" categories described above. The Governor does not propose to increase equalization aid or other SFRA categorical aids. Without operating the formula, the Legislature lacks the information necessary to weigh the impact and merits of the Governor's aid proposal when finalizing the State Budget. Farrie Cert. ¶25.

Given the timeframe for enactment of a final FY15 State budget, and the need for districts and the Legislature to have all requisite information on SFRA's operation in 2014-15, it is imperative the Commissioner issue State aid notices that fully and properly implement the SFRA as quickly as possible. Farrie Cert. ¶26.

## LEGAL ARGUMENT

### **I. THE STATE'S FAILURE TO OPERATE THE SFRA FORMULA IN 2014-15 VIOLATES THE ABBOTT XX AND ABBOTT XXI ORDERS**

In Abbott XX and Abbott XXI, the Court concluded the SFRA formula could provide adequate resources for a thorough and efficient education if the State followed through on its commitment to operate the formula from year-to-year and adjust the formula every three years based on a rigorous "reexamination" of actual implementation, Abbott XXI, 206 N.J. at 354,<sup>1</sup> declaring the SFRA's "constitutionality is not an occurrence at a moment in time" but "a continuing obligation," Abbott XX, 199 N.J. at 146. As explained below, the State's failure to operate the SFRA in 2014-15 using the adjustments approved through last year's periodic reexamination of the formula is a patent violation of these explicit Abbott XX and Abbott XXI orders.

#### **A. The State's Failure to Notify Districts of the Approved SFRA Formula Adjustments**

In mandating the operation of SFRA at its optimal level and as intended in future years, the Court underscored the "continued commitment by the Legislature and Executive to

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<sup>1</sup> The Abbott XXI ruling not only enforced the Abbott XX order to reexamine and adjust the formula to keep SFRA operating optimally in future years, but also ordered relief to address the State's "conscious and calculated" decision to cut funding in the initial implementation cycle. Abbott XXI, 206 N.J. at 359.

address whatever adjustments are necessary," Abbott XX, 199 N.J. at 146, based upon diligent "retooling of SFRA's formula's parts, at the designated mileposts in the formula's implementation," Abbott XXI, 206 N.J. at 360. See also N.J.S.A. 18A:7F-46(b)(requiring Governor to recommend adjustments every three-years through the EAR with Legislative review and approval).

The SFRA codifies the three-year reexamination and adjustment mandate by requiring the Commissioner to notify districts of the approved adjustments to be applied in each successive year of the relevant implementation cycle. N.J.S.A. 18A:7F-5(a) provides:

Within 30 days following the approval of the Educational Adequacy Report, the commissioner shall notify each district of the base per pupil amount, the per pupil amounts for full-day preschool, the weights for grade level, county vocational school districts, at-risk pupils, bilingual pupils, and combination pupils, the cost coefficients for security aid and for transportation aid, the State average classification rate and the excess cost for general special education services pupils, the State average classification rate and the excess cost for speech-only pupils, and the geographic cost adjustment for each of the school years to which the report is applicable.

As discussed supra at 5-6, there is no dispute that the State has failed to comply with this requirement. In the face of this unequivocal SFRA directive, and the Court's "clear" and "exacting" orders, Abbott XXI, 206 N.J. at 360, the Commissioner did not notify districts of the approved adjustments to be

applied to the formula for 2014-15 and 2015-16. For several reasons, the State's non-compliance with this core obligation constitutes bald defiance of the Court's order for SFRA's optimal maintenance and continuing constitutionality.

First, the Court's orders make crystal clear that full effectuation of SFRA's periodic reexamination and adjustment is central to keep the formula operating optimally from year-to-year. Abbott XX, 199 N.J. at 146, 169(stating that the finding of constitutionality "is tethered to the State's commitment diligently to review the formula after its initial years of implementation and to adjust the formula as necessary based on the results of that review"). Indeed, in reaffirming this "express mandate[]," the Court underscored that carrying out the formula's reexamination and adjustment is "no small matter." Abbott XXI 206 N.J. at 354. The reason is plain and simple: the process yields information vital to evaluate the formula's "efficacy" in achieving its core objective, Abbott XX, 199 N.J. at 146, namely, to provide "those resources necessary for the delivery of State education standards across the State." Id. at 170. The process also plays a pivotal role in making certain the Executive and Legislature honor their respective commitments to "not allow our school districts to regress to the former problems that necessitated judicial intervention in the first place." Id. at 172.

Second, the Commissioner, by not giving notice of the approved formula adjustments for the current implementation cycle, has, in effect, wholly ignored the Legislature's diligent review of the Governor's recommended adjustments, as reflected in SCR 134. That concurrent resolution, adopted pursuant to N.J.S.A. 18A:7F-46(b), detailed the Legislature's findings, and approved most of the Governor's recommendations as "based on the use of the most current relevant data available or the application of the consumer price index," but also objected to proposed reductions in the weights for at-risk, bilingual and combination pupils and an increase in the threshold for extraordinary special education aid as "devoid of the type of research and analysis of the school funding level necessary to achieve the State's standards" under SFRA and "as expected" by the Abbott XX decision. See supra at 4-5 (discussing SCR 134); and see Abbott XX at 169 (making clear that any adjustments must be based on evidence derived from actual formula implementation).<sup>2</sup> The failure to apply the adjustments both endorsed and opposed by the Legislature in SCR 134, through the notification required by N.J.S.A. 18A:7F-5(a), means the Executive did not complete the mandatory "look-back" and,

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<sup>2</sup> As discussed supra at 5, the Commissioner's response to the Legislature's objections in SCR 134 merely reiterated the Governor's recommendations, providing no new information "based on a dissection of how the statute's formula actually worked once implemented." Abbott XXI, 206 N.J. at 354.

therefore, did not "address whatever adjustments are necessary to keep SFRA operating at its optimal level." Abbott XX, 199 N.J. at 146. Put simply, the Legislature, with extraordinary care, exercised its constitutional responsibility to diligently review -- and accept or reject -- the Governor's proposed SFRA adjustments, while the Executive walked away from its concomitant obligation to apply those approved adjustments to the current implementation cycle.

Finally, without notice of the approved formula adjustments, district officials and legislators have no advance information about how the State will apply those adjustments to implement the SFRA in 2014-15 and 2015-16. Specifically, notice of the per pupil costs and weights, categorical aid amounts, special education classification rates, geographical cost differentials and the other components that will be applied in SFRA's operation in these successive school years is a key element for effective and transparent budget planning from year to year at the district and State levels. Thus, the absence of this crucial information undermines the core objective of formula's "periodic reexamination and retooling," that is, to keep SFRA "operating with equity, transparency and predictability." Abbott XX, 199 N.J. at 174; id. at 173 (finding "all districts" benefit from SFRA's predictability, transparency and accountability).

In sum, the State's failure to notify districts pursuant to N.J.S.A. 18A:7F-5(a) of the approved SFRA formula adjustments to be applied in 2014-15 and 2015-16 violates the Abbott XX and Abbott XXI orders mandating SFRA's optimal operation as an express condition for the formula's continuing constitutionality.

**B. The State's Failure to Notify Districts of the SFRA Aid Amounts and Adequacy Budgets for 2014-15**

The SFRA operationalizes the formula through the Commissioner's notice to districts of the SFRA aid amounts and adequacy budgets following delivery of Governor's proposed State budget to the Legislature. N.J.S.A. 18A:7F-5(a) provides:

Annually, within two days following the transmittal of the State budget message to the Legislature by the Governor pursuant to section 11 of P.L.1944, c.112(C.52:27B-20), the commissioner shall notify each district of the maximum amount of aid payable to the district in the succeeding school year pursuant to the provisions of P.L.2007, c.260(C.18A:7F-43 et al.), and shall notify each district of the district's adequacy budget for the succeeding school year.

Pursuant to this provision, the Commissioner issued State aid notices for 2014-15 to districts on February 25<sup>th</sup>. On their face, these notices in no way comport with the SFRA's clear directives. As discussed supra at 7, the notices are completely devoid of any calculation of district SFRA aid amounts and adequacy budgets under the formula's provisions. Instead, the notices carry-over the same aid amounts from 2013-14, with the

addition of \$20 per pupil for every district in two new aid categories not part of SFRA, thus having no relationship to districts' weighted enrollment and adequacy budget.

The failure to notify the districts of their adequacy budgets for 2014-15 strikes at the very "core of the formula." Abbott XX, 199 N.J. at 153(describing the central role of the adequacy budget). The adequacy budget is calculated each year using the base per pupil amount -- the cost of educating an elementary student to achieve State standards -- the weights for grade level, at-risk, bilingual and combination pupils, and two-thirds of special education and speech-only costs. Thus, the adequacy budgets determine each district's funding level for a thorough and efficient education. Id. at 153-55; N.J.S.A. 18A:7F-51(specifying adequacy budget calculations). The February 25<sup>th</sup> State aid notices neither provide district adequacy budgets for 2014-15, nor the required SFRA aid amounts to support that budget and the categorical aids payable under the formula. The notices effectively leave the Legislature and districts in the dark as to how SFRA will operate and provide funding for a thorough and efficient education in 2014-15.<sup>3</sup>

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<sup>3</sup> Because the Commissioner did not provide the SFRA aid amounts and adequacy budgets, the information in the February 25th notices did not utilize the adjustments approved through last year's formula reexamination, even those recommended by the Governor and accepted by the Legislature in SCR 134.

It is clear that the February 25<sup>th</sup> notices fly in the face of this Court's orders to "keep SFRA operating at its optimal level," Abbott XX, 199 N.J. at 146. Indeed, the notices do not merely implicate concerns over the level of the formula's operation. Rather, they render the SFRA formula wholly inoperative for 2014-15. By failing to operate the formula altogether, the State has turned its back on the "good faith" commitment, id. at 146, upon which the Court authorized SFRA to "be implemented as it was designed, as a state-wide unitary system of education funding," id. at 147. Unquestionably, this failure represents a "deficienc[y] of a constitutional dimension" warranting immediate judicial intervention. Id.

Moreover, the State's failure to notify districts of their SFRA maximum aid amounts and adequacy budgets deprives legislators, district officials and parents of timely and essential information about how the SFRA will operate in 2014-15. The lack of SFRA-compliant State aid notices means that districts do not know whether their SFRA budgets and aid levels are adequate to enable their students to achieve State academic standards; legislators do not know the level of funding needed in the FY15 State budget to ensure SFRA adequacy; and parents do not know if their children will have the resources to succeed academically when school starts in September.

In Abbott XXI, the Court emphasized that its decision in Abbott XX to relieve the State of the Abbott parity and supplemental funding remedies in favor of statewide implementation of the SFRA "reflected a quid pro quo" among the respective branches of government. Id. at 355. Although the Court "could not say that the State had produced a formula that would guarantee students adequate funding to support a thorough and efficient education," the State "was allowed to effectuate [SFRA]" through annual implementation, with diligent reexamination and adjustment every three years based on evidence gained from that implementation. Id. Indeed, this mandate reflected the Court's prescient finding that SFRA's operation does not merely implicate any particular "moment in time." Id. at 354, citing Abbott XX, 199 N.J. at 146. Quite the opposite, the obligation to keep the formula operating optimally year-to-year is both a constitutional and continuing one.

At bottom, the State's complete abandonment of the SFRA in 2014-15 not only represents an elemental breakdown in the good faith commitments made to this Court. It would also return public education funding to the pre-SFRA era in which annual funding determinations were wholly irrational, lacking any concrete link to the cost of achieving State content standards. As the Court recognized, SFRA ushered in a sea-change in the long effort to ensure all students, especially those at-risk

wherever they reside, a thorough and efficient education. See Abbott XX, 199 N.J. at 164, citing Abbott v. Burke, 149 N.J. 176 (1996) ("Abbott IV") (concluding SFRA is first State formula "designed to tie realistic expenses to the cost of delivering those educational standards to all pupils"). If not addressed, the State's decision to jettison SFRA in 2014-15 would abruptly end the historic shift from dollar to standards-driven education funding to the profound detriment of Plaintiffs and students statewide.

In sum, the failure to operate the SFRA through district notification under N.J.S.A. 18A:7F-5(a) of SFRA maximum aid amounts and adequacy budgets constitutes an egregious violation of the Abbott XX and Abbott XXII orders for SFRA's continuing constitutionality.

**II. IMMEDIATE JUDICIAL RELIEF IS NECESSARY TO ADDRESS THE STATE'S VIOLATION OF THE ABBOTT XX AND XXI ORDERS**

As demonstrated in Point I, supra, by not operating the SFRA in 2014-15 using the adjustments approved through last year's reexamination process, the State has violated the explicit Abbott XX and Abbott XXI orders for maintaining the constitutionality of the SFRA in future years. As explained below, this flagrant violation necessitates immediate judicial intervention and relief, as Plaintiffs seek on this Motion.

At the outset, this Court, in upholding the constitutionality of the SFRA if operated optimally from year-to-year -- with rigorous reexamination and adjustment every three years -- left "no doubt" that the Court "would require remediation of any deficiencies of a constitutional dimension, if such problems do emerge." Abbott XX, 199 N.J. at 146. The Court also made clear that it "remains committed" to its role "in enforcing the constitutional rights of the children of this State should the formula prove ineffective...." Id. at 169. As the record unquestionably demonstrates, the State's failure to notify districts of the approved formula adjustments and SFRA aid amounts and adequacy budgets for 2014-15 constitute "deficiencies of a constitutional dimension" requiring remediation. Even worse, the State's failure goes far beyond questions of the formula's effectiveness in providing a thorough

and efficient education. The State has now brazenly discarded the formula altogether as the means to calculate districts' funding and budget levels for providing a thorough and efficient education under SFRA's provisions. The State's decision not to operate the formula cannot be excused as "inadvertent or a mistaken exercise," nor as an "aberrational or temporary alteration," but represents yet another "conscious and calculated decision" that compels immediate judicial intervention and relief. Abbott XXI, 206 N.J. at 359, 360.

The relief sought by Plaintiffs is also calibrated to address the specific violations demonstrated on the Motion. Plaintiffs ask the Court to require the State, through the Commissioner, to implement those SFRA provisions that operationalize the formula each year. Specifically, Plaintiffs request that the Commissioner: 1) notify each school district, as required by N.J.S.A. 18A:7F-5(a), of the formula adjustments approved and objected-to by the Legislature in SCR 134 for use in 2014-15 and 2015-16; and 2) issue State aid notices to districts pursuant to N.J.S.A. 18A:7F-5(a) of the maximum amount of aid payable and adequacy budget based on the formula's approved adjustments, calculations, provisions and other operative parts. In essence, this relief represents a measured course-correction under SFRA's provisions to put the formula

back on track so that it operates optimally and as intended for districts and the Legislature in 2014-15.<sup>4</sup>

Moreover, this relief is timely. Following the issuance of the State aid notices, districts are required to submit to the Commissioner a "budget that provides for a thorough and efficient education." N.J.S.A. 18A:7F-5(c). If districts submit budgets in May based on aid notices devoid of SFRA formula aid amounts and adequacy budget calculations, those budgets, *a fortiori*, cannot "provid[e] for a thorough and efficient education." Moreover, the Legislature has until June 30<sup>th</sup> to adopt a final FY15 State budget. Thus, the prompt issuance of SFRA-compliant State aid notices will serve the crucial purpose

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<sup>4</sup> Plaintiffs recognize the Abbott XXI order limited funding relief to Abbott district students. Id. at 376. The relief on this Motion, however, requires the State to undertake actions that, of necessity, implicate all students. The adjustment of SFRA's costs and other components relate to the needs of elementary and secondary, at-risk, bilingual and special education students without regard to where they may attend school. Similarly, SFRA requires annual notice of aid amounts and adequacy budgets for "each school district," N.J.S.A. 18A:7F-5(a), not just a subset of districts. A "meaningful and relevant" adjustment and optimal operation of the formula for Plaintiffs, Abbott XXI at 376, necessitates SFRA's implementation statewide. Further, the State's violations on this Motion are "not of a de minimus or inconsequential nature" and should not "be greeted by this Court with indulgence," id. at 360, and thus the Court should enforce Plaintiffs constitutional rights even though students beyond Abbott's borders may collaterally benefit.

of informing legislative branch deliberations and actions on the amount of the appropriation of SFRA formula aid for 2014-15.

Finally, this Court did not hesitate in Abbott XXI to enforce the Abbott XX order for SFRA funding for Abbott district students. In holding that the mandates for funding and formula adjustment were "clear" and "exacting," the Court concluded:

When we granted the State the relief it requested, we were not asked to allow, and did not authorize, the State to replace the [Abbott] parity remedy with some version of SFRA or an underfunded version of the formula. In respect of the failure to provide full funding under SFRA's formula to Abbott districts, the State's action amounts to nothing less than a reneging on the representations it made when it was allowed to exchange SFRA funding for the parity remedy. Thus, the State has breached the very premise underlying the grant of relief it secured with Abbott XX.

Abbott XXI, 206 N.J. at 341(emphasis in original and added). Similarly, the State did not ask to lift, nor did the Court replace, Abbott parity and supplemental funding in exchange for absolutely no version of the SFRA. Similarly as well, the State's refusal to operate the SFRA at all in 2014-15 -- let alone at its optimal level -- "amounts to nothing less" than a "reneging on the representations" the State made "when it was allowed to exchange" SFRA for the Abbott remedies.

Accordingly, based on the undisputed record, and "the deficiencies of a constitutional dimension" that have now emerged, this Court should intervene and remediate those deficiencies by granting Plaintiffs' requested relief.

## CONCLUSION

To ensure compliance with the Abbott XX and Abbott XXI mandates for the operation of SFRA in 2014-15, Plaintiffs request an order directing the Commissioner, by May 2, 2014, to:

1) notify districts of the approved costs, weights, aid amounts and other components of the SFRA formula as accepted and objected-to by the Legislature in SCR 134 for 2014-15 and 2015-16; and 2) issue State aid notices for 2014-15 to districts with the maximum amount of aid payable and the adequacy budget calculated under the SFRA formula.<sup>5</sup>

Respectfully submitted,  
EDUCATION LAW CENTER

Dated: March 26, 2014

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David G. Sciarra, Esq.  
Attorney for Plaintiffs

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<sup>5</sup> Plaintiffs request the Court exercise discretion under R. 1:10-3 to award attorneys' fees. This Motion is the second time Plaintiffs sought relief to enforce the Abbott XX orders for the SFRA's continuing operation. The prior Motion resulted in the Abbott XXI order remediating the State's "conscious and calculated" decision, id. at 359, not to comply with Abbott XX. In light of the rights at stake, and the State's prior repudiation of clear orders, an award of attorneys' fees would serve as a strong deterrent to future non-compliance, foster judicial economy, and conserve Plaintiff counsel's scarce resources.