



Education Law Center

Standing Up for Public School Children

November 25, 2009

Hon. Lucille Davy, Commissioner
New Jersey Department of Education
River View Executive Plaza
Building 100, P.O. Box 500
Trenton, NJ 08625-0500

Re: Calculation of Eligible Preschool Universe

Dear Commissioner Davy:

In 2008, the Department of Education ("Department"), without opportunity for public comment and without explanation, adopted a significant change in the calculation of the universe of children eligible for preschool under the Abbott v. Burke rulings and the School Funding Reform Act ("SFRA") by eliminating private school children from that count. Because this change has an adverse impact on outreach, recruitment and planning of preschool programs for three and four year olds statewide, and particularly those children in high needs districts, we write to urge the Department to reconsider and revise its position on this critical issue.

Calculation of the universe of preschoolers eligible to attend the Abbott preschool program was addressed by the New Jersey Supreme Court in Abbott v. Burke, 170 N.J. 537 (2002) ("Abbott VIII"). There, the Court underscored the importance of "accuracy" in projecting the total number of eligible children, 170 N.J. at 550, and approved the Department's proposed regulation to establish a uniform method for calculating the universe of eligible preschoolers "that averages the total number of public and **non-public** school kindergarten and first grade pupils in a district," 170 N.J. at 551(emphasis added).

This method of calculating a district's eligible preschool universe was codified and implemented by the Department and districts until the Abbott preschool regulations expired on June 30, 2008. Thus, the inclusion of students who go on to non-public schools in determining the preschool universe was not only approved by the Supreme Court, it was well-established in State regulation. This calculation, spelled out at N.J.A.C. 6A:10A-2.2(a)(25)(i)(expired), was as follows:

(# of district first graders) - (# of first graders retained) + (# of non-public school first graders))* 2

By including non-public school first graders in the count, the regulation required districts to account for three- and four-year olds who would go on to private elementary schools, but were present and eligible to be served by the district's preschool program.

With the special adoption of regulations to implement the SFRA, the Department abruptly changed its method of calculating the preschool universe. Under the SFRA regulations, N.J.A.C. 6A:13A-2.3(d)(1), the calculation of the universe of preschoolers to be served by universal preschool is simply as follows:

(# of district first graders) * 2

The effect of this regulatory change has been enormous. In the 31 Abbott districts, the preschool universe decreased dramatically from 51,732 in 2008-09 to 44,841 in 2009-10. Determinations of whether these districts are fully serving their eligible preschoolers are therefore made without consideration of the estimated 6,891 students who attend private school in first grade.

A calculation that excludes thousands of students in need of public preschool from the eligible universe, simply because those students subsequently choose to attend a private elementary school, means that districts do not have the appropriate guidance: 1) to undertake the outreach and recruitment necessary to reach all eligible preschoolers in their communities; and 2) to plan for an accurate number of preschoolers. The negative effects of this lack of guidance could range from discouraging enrollment to improper waiting lists and/or delays in providing needed preschool services.

As you are aware, New Jersey's poor urban districts have significant numbers of parochial and other private schools that serve low income families. Whether or not the students in those schools remain in private school or return to public school, as many do, it is imperative that they be given the same constitutional opportunity as students who remain in public school to benefit from the preparation that public preschool is intended to provide. Elimination of those students from the preschool universe greatly decreases the chances those students

will be served or, alternatively, makes it harder for public school students to obtain available slots as preschoolers.

Accordingly, we ask you to take the opportunity to reverse course, and promptly revise N.J.A.C. 6A:13A-2.3(d)(1) to put include private school first graders back in the calculation, thereby ensuring that the universe of eligible preschoolers is determined accurately.

Thank you for your consideration of this request. We look forward to your response.

Sincerely yours,



Elizabeth Athos, Esq.

Via Regular Mail and
Facsimile Transmission

Encls.

cc: Dr. Ellen Wolock, Director, Office of Preschool Education
High Needs Districts
Early Care and Education Coalition
Our Children/Our Schools Coalition
Garden State Coalition of Schools
LEE Groups