

**PRELIMINARY STATEMENT**

Amici curiae districts -- Boards of Education of Bridgeton, Burlington City, East Orange, Elizabeth, Gloucester City, Harrison, Jersey City, Keansburg, Passaic, Paterson, Pemberton, Perth Amboy, Phillipsburg, and Trenton ("amici") - file this post-trial brief to supplement their pre-trial brief. Amici also join in Plaintiffs' post-trial Findings of Fact, Conclusions of Law, and Recommendations and urge the Court to conclude that the Defendants have failed to meet their burden of convincingly demonstrating that the School Funding Reform Act of 2008 ("SRFRA") overcomes the deficiencies in CEIFA's funding provisions and cures other constitutional defects identified by the Supreme Court in CEIFA and prior school funding formulas. Therefore, the Court should recommend that the Supreme Court declare SFRA's provisions unconstitutional as applied to the Abbott districts.

In this brief, amici will focus on the testimony and evidence presented by Abbott district witnesses and will address the Court's inquiry as to whether the SFRA is unconstitutional as applied to the Abbott districts because of the lack of a K-12 supplemental funding remedy and process. Amici will set forth below the relevant Findings

of Fact, Conclusions of Law and Recommendation on this issue.<sup>1</sup>

However, prior to doing so, some preliminary observations are in order regarding the constitutional significance of the supplemental funding remedy and process, Defendant's position in these proceedings on the supplemental funding process under SFRA, and the record before the Court. It is beyond peradventure that "supplemental programs for disadvantaged students are the indispensable foundation of a thorough and efficient education and a fundamental prerequisite to the fulfillment of the State's constitutional obligation." Abbott v. Burke, 149 N.J. 145, 199 (1997) ("Abbott IV"). It is equally well-established that the supplemental funding process should accord Abbott Districts "full administrative and judicial protection in seeking the demonstrably needed programs, services, positions and funding necessary to provide the level of education required by CEIFA and the Constitution." Abbott v. Burke, 153 N.J. 480, 527 (1998). ("Abbott V").

In these proceedings, Defendants have taken the absolutist and dogmatic position that the SFRA formula is

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<sup>1</sup> The findings and conclusions relating to the elimination of a preschool supplemental funding process are fully set forth in Plaintiffs' post-hearing brief and are incorporated herein.

infallible and will provide adequate resources and funding to meet all the needs of disadvantaged students in all the Abbott districts now and in future school years. Defendants' assertion is fallacious and is contradicted by the testimony of Plaintiffs' expert witnesses and by the evidence that Abbott districts have already had to make drastic cuts in supplemental programs, services and positions in the 2008-09 school year. Other district witnesses testified that they have been able to stave off such cuts in the present school year, but will be compelled to eliminate supplemental programs and services in future school years because of flat funding under SFRA.

Defendants' claims of adequate resources and funding under SFRA are unsupported by any actual analysis of the real conditions in the Abbott districts or by data on the actual implementation of supplemental funding remedies in those districts. The most the Defendants have been able to produce on this critical issue is a comparison between a fictitious and theoretical "Abbott V model" and the hypothetical PJP enhanced model. As has been the fatal defect in Defendants' evidence throughout the remand hearing, their claims about this comparison of hypothetical models have not been tested by any comparison of the SFRA model with the actual conditions and characteristics of the

Abbott districts and their students' needs. The lack of such a "reality check" with actual experience in the Abbott districts made it "impossible to determine on [the] record" in Abbott IV "whether the amounts of supplemental funding [in CEIFA] were sufficient to meet the real needs of disadvantaged children in the" Abbott districts, 149 N.J. at 199. The absence of such a record in these remand proceedings on this paramount issue makes it similarly "impossible" for the Court to determine whether SFRA's adequacy budget is "sufficient to meet the real needs of disadvantaged children" in the Abbott districts.

Put simply, without any legal, factual or educational justification, SFRA scraps the vital supplemental funding remedy and process -- and leaves amici districts and their students at the mercy of SFRA's formulaic determinations. Defendants' claim that the SFRA's formulas will produce adequate supplemental resources and funding for all at-risk students in all Abbott districts is speculative and illusory. In the absence of a convincing showing on remand that SFRA generates sufficient resources and funding for the Abbott districts, there will be a continuing need for the supplemental funding remedy and process to ensure that student needs in the Abbott districts are met. Therefore, on the remand record, the State's bald assertions of

problems with the supplemental funding process - and Defendants' hyperbolic claim that the SFRA statutory scheme will be vitiated if the supplemental funding remedy is continued -- must give way to the "lessons of history" that "render it essential that [the] interests [of students in the Abbott districts] remain prominent, paramount, and fully protected." Abbott v. Burke, 153 N.J. 480, 528 (1998).

#### **FINDINGS OF FACT**

1. Defendants assert several reasons for eliminating the supplemental funding remedy and process under SFRA: (1) the SFRA budget is adequate to meet all student needs in all of the Abbott districts now and in the coming years (Davy, 2/09/2009, Vol. I, T102:17-23; Pre-hearing Brief of Defendants ("Db") at 35-36,43-44); (2) the supplemental funding process is difficult and burdensome for the Department of Education ("DOE")(Davy Vol. I, 2/09/2009, T106:7 to 108:17, T115:5-13; Davy Vol. II, 2/09/2009, T70:7-12, T127:5-15, T141:4-12, T148:24 to 150:11; Attwood Vol. I, 2/11/2009, T96:10 to 97:10, T98:7 to 100:1; Attwood Rebuttal, 2/27/2009, T47:16 to 48:21; Db41; (3) the supplemental funding remedy provides an improper incentive for Abbott districts to seek as much supplemental funding as possible (Davy Vol. I, 2/09/2009), T104:16 to 105:14;

Db41); and (4) the supplemental funding remedy results in negotiated resolutions rather than in a determination of actual fiscal needs. (Davy Vol. II, 2/09/2009, T129:4-17; Attwood Vol. I, 2/11/2009, T93:19-25; Db41).

2. Testimony of Abbott district witnesses repeatedly documented that Abbott districts have not in the current school year, and will not in future school years, be able to meet the needs of their students under SFRA for supplemental programs, services and positions. (Gilson, 2/21/2009, T181:1-24, T188 to 190-7; Hoover, 2/25/2009, T61:17 to 64:9; Chando, 2/23/2009, Vol. II, T26:8 to 30:5, T50:4-22, T86:12-15); Hugelmeyer, 2/23/2009, T31:13 to 32:12, T48:5 to 71:10; Lee, 2/26/2006, T96: 1-22; P-129, P-147; Schneider, 2/25/2009, T168:6 to 170:7).

3. Defendants have failed to convincingly demonstrate that SFRA's hypothetical model district -- which is the foundation for the assertion that the adequacy budget allows districts to provide necessary supplemental programs and services for all Abbott students in all districts -- is based on the real conditions and characteristics of the Abbott districts with their high poverty concentrations. (Baker Vol. I, T89:19 to 100:25; P-54, p. 4, 10-13; P-159; Goertz T79:12 to 81:9; P-3 at ¶ 32; P-10; P-24).

4. SFRA caps the at-risk sliding scale weights at 60% even though twenty-four (24) Abbott districts have poverty concentrations in excess of 60%. (D-12 at 12-13; P-24; Belfield, 2/19/2009, Vol. I, T60:23 to 61:6, T67:13 to 69:20).

5. It is undisputed that, since Abbott V, the DOE has never analyzed or assessed the implementation, effectiveness or costs of supplemental programs, services, and positions required and demonstrably needed for Abbott students. (Davy, 2/09.2009, Vol. I, T39:12-25; T41:16 to T42:1; Belfield, 2/19/2009, Vol. I, T17:2 to 19:7, T53:1-25).

6. Without information and actual data on the current needs, costs and conditions in the Abbott districts, SFRA cannot ensure adequate resources and actual funding for the provision of supplemental programs and services to warrant elimination of the supplemental funding remedy. (Goertz T68:20 to 69:7, T77:5-19; Baker, 2/20/2009, T55:2 to 56:14).

7. There are numerous programs and services that are not accounted for in the SFRA model, but that are currently in place in districts. For example, the DOE failed to account for intensive literacy programs in the early elementary grades. These early literacy programs, which

rely on tutors and other supplemental positions, have been instrumental in boosting achievement scores of Abbott students at the elementary level. (P-103(Gilson) at ¶13; P-106(Hoover) at ¶14; P-116(Chando) at ¶14; Belfield, 2/19/2009, Vol. I, T62:10-20).

8. With regard to secondary education, the SFRA model fails to address the resource needs and costs arising from implementation of the Abbott Secondary Education Initiative ("SEI") in middle and high schools. SEI consists of establishing smaller learning communities within schools; providing ongoing support to students and their families; and increasing the academic rigor of curriculum and instruction. Although the SEI is under implementation in the amici districts, the SFRA model does not account for needed additional resources and costs for the proper implementation of this initiative. (P-103(Gilson) at ¶17; P-106(Hoover) at ¶19; P-116(Chando) at ¶17; Belfield, 2/19/2009), Vol.I, T62:21-23); P-19(Belfield) at ¶ 42).

9. The SFRA model also fails to include resources for numerous programs, services, and positions demonstrably needed to serve Abbott students. These include: community services coordinators in middle and high school; a school-to-work and college transition

counselor(s)/program in the high school; adequate numbers of social workers; a sufficient allocation of parent liaisons to provide critical outreach to the community and parents; teacher tutors at elementary and middle schools; drop-out prevention and health and social service coordinators at the middle and high school level; alternative education programs at middle and high school; vocational programs; substance awareness coordinators; elementary and secondary school facilitators; media specialists; family support teams; student assistance counselors; adequate literacy and math coaches; an enriched nutrition program for breakfast and lunch to enable students to be ready to learn; district attendance officers; school-based health and social services positions; K-8 gifted and talented programs; technology positions and technology needs; increased instructional time in after school programs; special area supervisors for alternative education, nursing, staff development, home instruction, guidance, social studies, and fine and performing arts. (Gilson, 2/21/2009, T146:15 to 154:17; Hoover, 2/25/2009, T61:17 to 64:9; Schneider, 2/25/2009, T152:16 to 153:6, T160:24 to 165:1; Chando, 2/23/2009, T4:4 to 8:10; P-103 (Gilson) at ¶¶14-15; P-106(Hoover)at ¶¶15-16; P-116 (Chando) at ¶¶15-16).

10. The SFRA model also fails to ensure resources and actual funding for "exemplary programs" for art, music and special education in the Districts, which were identified in Abbott V and Abbott X as requiring special protection. 153 N.J. at 518-19. (Belfield, 2/19/2005, Vol. I, T63:1-13).

11. The SFRA model does not contain resources and funding for needed technology positions and other technology needs. (P-103(Gilson) at ¶15; P-106 (Hoover) at ¶16; P-116(Chando) at ¶16; Gilson, 2/21/2005, T148:13-25).

12. Annual increases in fixed costs, the extra unfunded costs needed for new school facilities coming on line, and myriad other items not included in the SFRA adequacy budget or SFRA model have in the 2008-09 school year, and will in future school years, compel Districts to eliminate or reduce needed programs, services, and positions for at-risk students to address these competing needs. (Gilson, 2/21/2009, T184:3 to 185:17, T187:19-25; Ottinger, 2/25/2009, T36:19 to 52:25; T106:14 to 108:11; Schneider. 2/25/2009, T125:21-25; T152:16 to 153:6; 160:24 to 165:1; P-144 at Ex. C; Hoover, 2/25/2009, T:83:2-25, T108:24 to 114:8; Chando, 2/21/2009, T26:18 to 30:5, T86:2-15; T38:24-25; T40:8-13; P-129; Hugelmeier, 2/23/2009, T80:15 to 81:2; Clancy, 2/26/2009, T60:16-22, T94:21 to

95:11; P-106(Hoover) at ¶¶23-25; P-103(Gilson) at ¶¶21-23; P-116(Chando) at ¶¶21-23).

13. The additional special education costs in those Abbott districts whose classification rate exceeds the Statewide average will also compel those districts to eliminate or reduce needed programs, services, and positions for disadvantaged students to ensure fulfillment of Federal and State special education mandates.(P-103, ¶24; P-106 (Hoover), ¶26; P-116(Chando), ¶24; P-29; P-129).

14. Without the supplemental funding remedy, there is no opportunity for Abbott districts to meet the educational and educationally-related needs of their students, and there will be no opportunity for Abbott districts, on behalf of those students, to seek administrative and judicial protections for supplemental funding to address those needs. (Belfield, 2/19/2009, Vol. I, T64:10 to 65:10; P-19 at ¶59(d); P-116 (Chando) at ¶25; P-103 (Gilson) at ¶25; Gilson, 2/21/2009, T148:13-25, T157:5 to 158: 13, 159:20 to 160:6, T181:1-24, T188:11-25, T189:7 to 190:7; Schneider, 2/25/2009, T168:6 to 170:7; Chando, 2/23/2009, T50:4-22; Clancy, 2/26/2009, T97:10-16).

15. On this record, the harm to the paramount interests of students in a thorough and effective education, through the right of Abbott districts to seek

supplemental funding, outweighs the State's unsupported claim that the supplemental funding remedy and process are unnecessary because the SFRA will undoubtedly meet all student needs in all Abbott districts now and in the coming years. (P-27(Wyns) at ¶53-54; Gilson, 2/21/2009, T156:20 to 160:-6; Hoover, 2/25/2009, T61:17 to 64:9; Chando, 2/23/2009, T9:13 to 12:19; Lee, 2/26/2009, T65:11 to 69:8, P-148 at Ex. B; Clancy, 2/26/2009, 63:11 to 66; Davy Vol. I, 2/09/2009, T102:17-23).

16. Defendants' claim that the supplemental funding remedy should be eliminated because it is allegedly burdensome and difficult for DOE to implement is factually unsubstantiated and is contradicted by DOE staff witnesses administering the preschool program. Those individuals testified to the workable, collaborative supplemental funding process -- through DOE guidance, clear budget line items and instructions, and the opportunity for special requests -- that has resulted in a high quality, well-planned, and nationally-recognized preschool program. (Joye, 2/10/2009, T55: 16-19, 60:19-22, 79:10 to 80:2; Jones, 2/27/2009, T132:3-17, T142:21-24).

17. Testimony from District witnesses also demonstrated that the K-12 supplemental funding process has worked to provide funding for needed programs and services

in numerous Abbott districts. (Gilson, 2/21/2009, T175:4 to 176:7; Clancy, 2/26/2009, T100:18-24; Hoover. 2/25/2009, T41:20 to 44:7).

18. The evidence shows that in past years, amici districts and the DOE worked collaboratively to reach agreement on a supplemental funding amount that would support the required and demonstrably needed supplemental programs, services and positions in the DOE-approved budgets. (Gilson, 2/21/2009, T133:1-7, 173:11 to 174:24, 179:8 to 180:14; Hoover, 2/25/2009, T48:3-9; P-103(Gilson) at ¶¶4-9; P-116(Chando) at ¶¶4-9; P-106 (Hoover) at ¶¶4-9).

19. The supplemental funding process enabled the amici districts and the DOE to engage in a constructive dialogue about the educational needs of students and to discuss specific supplemental programs, positions, and services that would be needed to help students overcome their socio-economic disadvantages and achieve the CCCS. (P-103(Gilson) at ¶4; P-106 (Hoover) at ¶4; P-116 (Chando) at ¶4; Gilson, 2/21/2009, T165:13 to 166:3,167:7 to 169:16; Schneider, 2/25/2009, Vol. I, T116:21 to 118:19; Hoover, 2/25/2009,T48:3-9).

20. District witnesses stated that the process has worked to facilitate a productive dialogue between the DOE and the districts in addressing supplemental funding needs.

They are unaware of anything during this process that has impeded the ability of the DOE to work with the districts on a variety of fiscal and educational issues. (P-103(Gilson), ¶9; P-106(Hoover), ¶9; P-116, Chando), ¶9).

21. In the few instances when a district and the DOE could not reach agreement, the district had the opportunity to seek review of the DOE's decision through the expedited appeals process established by the Court and by the DOE regulations. The administrative and judicial process has been integral to amici Districts' ability to provide their students with a thorough and efficient education and to help them overcome significant impediments resulting from their extreme socio-economic disadvantages. (P-103 (Gilson) at ¶¶5-6; P-106 (Hoover) at ¶¶5-6; P-116 (Chando) at ¶¶5-6).

22. Defendants failed to provide any persuasive evidence why the supplemental funding remedy should be eliminated under SFRA since, as District witnesses stated in their Certifications, "if the SFRA will provide the needed funding, as the State claims, to continue all of the programs, services and positions to address the special disadvantages of [Abbott] students, then there would be few, if any appeals." On the other hand, "if the SFRA fails to provide that funding, then the effect of the

statute is to deprive the District[s] and [their] students of the fundamental right to seek additional funding to meet those needs." (P-103 (Gilson) at ¶8; P-106 (Hoover) at ¶8; P-116 (Chando) at ¶8)

23. Defendants' assertion that supplemental funding has been used to fill a "budget hole" or "budget gap" is unsupported on this record. Numerous District witnesses testified, and the State's witnesses agreed, that the gap between needed appropriations and available sources of revenue is not an undefined or indefinable "budget hole," but consists of demonstrably needed supplemental programs, services and positions that would have to be eliminated or reduced in the absence of the requested supplemental funding. (Gilson, 2/21/2009, T146:9-20; 147:16-18; 148:5-12 (references to specific supplemental programs in Bridgeton); Ottinger, 2/25/2009, T42 (reference to supplemental program positions that had to be cut in Vineland); P-129 (Phillipsburg); P-147 (East Orange).

24. DOE's written decisions on supplemental funding require that: (1) the funding be dedicated to specific programs, services and positions rather than to fill a budget hole; and (2) the Districts maintain an appropriate paper trail to monitor the use of those funds and to ensure that they were spent of the approved supplemental programs,

services and positions. (D-161: Letter to Dr. Schneider, dated December 4, 2006).

25. Defendants have not produced any evidence to explain why the DOE cannot revise the present budget documents and submissions to make information that is necessary for decisions on supplemental funding more transparent and to minimize the time-consuming process of requesting additional information and delaying the final budget decisions.

26. Defendants have not produced any evidence to explain why DOE could not provide appropriate and specific guidance and regulations regarding applications for K-12 supplemental funding similar to the specific guidance and regulations provided for preschool plans and funding.

27. The K-12 supplemental funding remedy and process has been evolving and improving over time in order to lessen the burdens on the DOE and the Abbott districts. (Attwood rebuttal testimony, 2/27/2009, T45:19 to 48:25).

28. Defendants failed to produce any evidence that Abbott districts' applications for supplemental funding were not made in good faith and in the interest of ensuring their students a thorough and efficient education through the provision of required and demonstrably needed supplemental programs, services and positions.

29. Defendants failed to produce any evidence that, in view of the burdens imposed on Abbott districts seeking supplemental funding (P-92 at N.J.A.C. 10-2.7 through 2.9), an Abbott district would undertake these substantial efforts without a legitimate need for supplemental funding to address student needs.

30. District witnesses testifying in these proceedings were persuasive in their commitment to the hard and difficult work involved in the day-to-day operations of their districts, and in their tireless commitment to develop and seek funding for required and demonstrably-needed supplemental programs, positions and services to address the needs of their disadvantaged students. (See e.g., Schneider, 2/25/2009, Vol.I, T153:21 to 154:18; Hoover, 2/25/2009, T108:15 to 109:17).

31. Defendants failed to produce evidence that any negotiated settlements on applications for supplemental funding did not reflect agreements by the DOE and the Abbott districts on actual programmatic and fiscal needs.

32. Based on this record, the negotiation process appears to have represented good faith efforts on the part of the DOE and the districts to come to a meeting of the minds on the programs, services and positions actually needed in the school year in question without the need for

administrative and judicial appeals.

33. Defendants' claims that the supplemental funding remedy and process are no longer needed are based on conclusory and unsubstantiated assertions by Commissioner Davy and Assistant Commissioner Attwood. (Davy, 2/9/2009, Vol. I, T100-7 to 101-4; Attwood, 2/11/2009, Vol. I, T91-10 to 92-1).

34. The supplemental funding remedy and process remain a critical mechanism for the Abbott districts and their students to seek funding for: (1) the continuation of demonstrably needed programs, services and positions to meet the severe needs of disadvantaged students in the Abbott districts; (2) new demonstrably needed programs, services and positions to meet those student needs; and (3) demonstrably needed programs, positions and services not in the SFRA's model; and (4) positions, programs and services in the adequacy budget in those instances where the SFRA's model fails to provide adequate resources, inputs and costs.

#### **Educational Progress in Amici Districts**

35. The evidence shows that Abbott districts have been providing the Abbott V and Abbott X supplemental programs, either because they were required - with or without a baseline - or because the districts demonstrated the need

for such programs. (Gilson, 2/21/2009, T 137:11-17, T 146:9 to 156:15); Ottinger, 2/25/2009, T36:19 to 39:14, T42:15 to 54:25); Schneider, 2/25/2009, T151:3 to 153:6, T157:5 to 163:3); Hoover, 2/25/2009, T32:10-19, T69:2 to 71:2; Chando, 2/23/2009, T4:12-19; Lee, 2/26/2009, T25:23 to 26:5).

36. Evidence at the hearing also detailed the progress in the Abbott districts as a result of the implementation of the Abbott remedies for regular education and supplemental programs. (Gilson, 2/21/2009, T154:18 to 156:15; T165:13 to 166:3; T167:6 to 169:16; Ottinger, 2/25/2009, T57:14 to 59:11; Chando, 2/23/2009: T12:23 to 18-10).

37. Although many challenges remain in the Abbott districts requiring continuation of the Abbott remedies, the concrete progress in these districts in the past decade includes higher achievement scores in mathematics and language arts/literacy in standardized tests, most prominently in the early grades, but in other grades as well and a narrowing of the achievement gap between these districts. (P-3 at ¶¶20(a) and (b)).

38. The Abbott districts' ability to provide demonstrably needed supplemental programs, services and positions to disadvantaged Abbott students has been

important in meeting the students' educational and educationally-related needs and to address their significant disadvantages. (Lee, 2/26/2009. T72:13-23; Gilson, 2/21/2009, T189:7 to 190:7; Ottinger, 2/25/2009, T57:14 to 59:11).

39. Amici districts are concerned that, without the supplemental funding remedy and process, they face the prospect of eliminating all the Abbott remedial positions, programs, and services and losing all the educational gains obtained under the Abbott remedial mandates. (P-103(Gilson) at ¶¶23, 25; P-106 (Hoover) at ¶25,27; P-116 (Chando) at ¶23,25).

#### CONCLUSIONS OF LAW

1. Defendants have failed to satisfy their burden of proof that SFRA overcomes the deficiencies in CIEFA's funding provisions for K-12 supplemental programs and services to address the special needs and disadvantages of Abbott students.

2. Defendants have failed to satisfy their burden of proof that there is no longer a continuing need to provide the Abbott districts with: (1) the opportunity to seek supplemental for required and demonstrably-needed K-12 supplemental programs and services to address the special and unique needs of their students in the event the SFRA

formulaic amounts are inadequate; (2) an administrative and judicial process to ensure their students' rights to supplemental programs and services are fully protected.

3. SFRA is unconstitutional as applied to the Abbott districts because of the lack of a K-12 supplemental funding remedy and process.

4. Defendants' claim that the supplemental funding remedy undermines the State's goals in SFRA of transparency, predictability and equity or uniformity on a Statewide basis has no legal relevance to the determination of whether the SFRA is unconstitutional as applied to the Abbott districts because of the lack of a K-12 supplemental funding remedy and process.

5. The K-12 supplemental funding remedy and process established by the Abbott decisions and orders should be continued and improved in accordance with the following recommendations.

#### **RECOMMENDATIONS**

(1) The DOE's protocols for supplemental funding should be revised to ensure that DOE obtains the necessary documentation from the Districts in a timely fashion to properly review and decide supplemental funding requests without imposing such onerous production and monitoring requirements on the Abbott districts that they are

effectively deterred from filing supplemental funding requests to address student needs. The DOE's preschool guidance and regulations provide a successful model for such a revised protocol. The protocols should be designed to reduce unnecessary burdens on both districts and the DOE throughout the supplemental funding process.

(2) There must be a stronger connection established in the regulations, as has been done with pre-school budgeting, between the supplemental funding amounts requested and needed and specific budgetary line items. With that linkage and with a showing of continued need and effectiveness, it would not be necessary for the Abbott districts to reapply annually for funding for the same supplemental programs. Supplemental funding could be then continued with a CPI increase, and new supplemental funding requests requiring additional documentation would be reserved for: (1) requests for funding increases in excess of the CPI for current supplemental programs and services; or (2) requests for funding for demonstrably-needed new supplemental programs, services and positions.

(3) The supplemental funding protocol should provide an expedited and specific schedule on all aspects of the process to ensure timely decision making by the DOE. Timelines in the regulations must be adjusted to ensure

that final appeals of DOE K-12 budget decisions are decided far enough in advance of the school year to enable Abbott districts to make appropriate decisions for the school year in question. Consequently, there should be specific deadlines for the submission of K-12 budgets, the DOE's requests for additional information, the districts' responses to the DOE's requests, the closing of the administrative record at the DOE, the DOE's decision on the supplemental funding request, and the various stages of the administrative and judicial appeal process. For example, Abbott districts' seeking supplemental funding should be required to submit their budgets and supplemental funding requests by January 10 (or even earlier) and the final Commissioner's decision -- after any administrative appeals -- should be issued by early to mid-May prior to the school year at issue.

(4) The DOE K-12 budget decisions should contain the same type of information required by the DOE's preschool regulations. The preschool regulations currently require that DOE decisions list the approved amount of the K-12 budget, "and a list of each proposed program and expenditure not approved by the Department, with specific reasons for denying the program or expenditure." (P-91 at N.J.A.C. 6A:10A-8.7(a)(2) and P-92 at N.J.A.C. 6A:10-

3.7(a)(2)). There is no legal or logical reason for not requiring that the DOE's K-12 decisions similarly list the approved supplemental programs, services and positions and their costs and a listing of each proposed program and expenditure not approved by the Department, with specific reasons for denying the program or expenditure. Such a statement of reasons -- a fundamental requirement of agency decision-making - for the DOE's decisions on supplemental programs and funding requests would serve to inform the district and the public of the reasoning underlying supplemental funding decisions and would crystallize the issues if an appeal is necessary.

(5) The DOE should be required to collect, analyze and publish detailed program and cost data for approved and unapproved supplemental programs for all districts. This would ensure public transparency and would build a record for future adjustments to the adequacy budget's resources and costs, including the at-risk resources and weights, under SFRA if the statute is determined to be constitutional in other respects.

(6) There should be a protocol developed to require the DOE and the Abbott districts to evaluate the effectiveness of any supplemental programs funded by the DOE. These ongoing evaluations would provide the DOE and

Districts with the opportunity on a regular basis to consider what programs have been effective, the reasons for their effectiveness, and any changes needed to make the programs more effective. It would also provide a data base for Abbott districts to consider whether their supplemental programs and services should be revised to make them more effective or whether programs and services that have proven to be effective in other Abbott districts should be implemented based on student needs.

(7) To facilitate the development of this protocol in a timely fashion, the remand Court should recommend to the Supreme Court that this process be conducted under the auspices and supervision of a Special Master - or a mediator, as in Abbott v. Burke, 177 N.J. 578 (2003)("Abbott X") - with the authority to assist the parties in reaching agreement on any disputes that could not be resolved through a collaborative process.

(8) The above protocol should be developed and completed within thirty (30) days from the issuance of the Supreme Court's decision and order on the constitutionality of SFRA.

Respectfully submitted,  
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By: \_\_\_\_\_  
Richard E. Shapiro

Date: March 8, 2009