

RAYMOND ARTHUR ABBOTT, et al.,

Plaintiffs,

v.

FRED G. BURKE, et al.,

Defendants.

SUPREME COURT OF NEW JERSEY
DOCKET NO. M-969/1372-07

ON REMAND BEFORE THE HON. PETER
E. DOYNE, A.J.S.C.

CIVIL ACTION

PLAINTIFFS' PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATIONS

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

GIBBONS P.C.
LAWRENCE S. LUSTBERG, ESQ.
One Gateway Center
Newark, New Jersey 07102-5310
(973) 596-4731

On the Post Trial Submission:

David G. Sciarra, Esq.
Elizabeth A. Athos, Esq.
Ellen M. Boylan, Esq.
Avidan Y. Cover, Esq.
Theresa S. Luhm, Esq.
Deborah Splansky, Esq. R.1:21-3c

Attorneys for Plaintiffs

TABLE OF CONTENTS

FINDINGS OF FACT.....1

A. The Constitutionality of SFRA.....1

B. The Deficiencies in CEIFA.....3

C. The State’s Claims on Remand.....5

D. The Models Developed through the 2003 NJ PJP.....6

E. DOE Changes to PJP Model in 2007.....10

F. Validation of PJP and SFRA Models.....19

G. Impact of SFRA on Abbott Districts.....22

 1. Regular Education Costs and Funding.....22

 2. Supplemental Programs.....27

 3. Supplemental Funding for K-12 Supplemental
 Programs.....34

 4. Municipal Overburden.....37

 5. Preschool.....39

 6. Repeal of the Abbott Remedial Designation.....42

CONCLUSIONS OF LAW.....45

RECOMMENDATIONS.....48

FINDINGS OF FACT

A. The Constitutionality of SFRA

1. The overarching issue before the Court is whether the School Funding Reform Act of 2009 ("SFRA") is unconstitutional as applied to students in Abbott districts. Abbott v. Burke, 196 N.J. 544, 566 (2008) ("Abbott XIX").

2. The "existing decisions and orders of [the Supreme Court] must serve as the starting point for any discussion of the constitutionality of SFRA as applied" to students in the Abbott districts. Id. at 551-52.

3. In Abbott v. Burke, 149 N.J. 145, 153, 169-177, 180-86 (1997) ("Abbott IV"), the Court declared the prior Comprehensive Educational Improvement and Financing Act ("CEIFA") formula unconstitutional as applied to Abbott districts because: (1) funding for regular education was based on a hypothetical model district that "did not account for the characteristics" of Abbott districts; and (2) aid for supplemental programs to address special needs of Abbott students was not based "on a study of the special needs of the high concentrations of poor students" in Abbott districts. Abbott XIX, 196 N.J. at 562.

4. Since 1997, the "constitutional level" of funding for Abbott students has been "dictated" by Supreme Court decisions. Id. at 551.

5. The constitutional level of funding provided to Abbott districts under the Supreme Court's decisions are:

a) The resources and funding of the average expenditure for regular education in the District Factor Group ("DFG") I&J districts to ensure "parity" in regular education funding with those districts, id. at 562;

b) The provision of required and needed supplemental programs, funded through categorical aids in CEIFA augmented by needs-based supplemental funding. Id. at 563; see Abbott v. Burke, 153 N.J. 480, 489, 457-461("Abbott V")(Whole School Reform); id. at 461-64(preschool); id. at 464-469(K-12 supplemental programs); and

c) The requirement of a supplemental funding process for districts to seek funding necessary to implement required and demonstrably needed supplemental programs and services, including preschool. Id. at 498, 518-19, 525-27; Abbott XIX, 196 N.J. at 563.

6. Regular Education is curriculum and instruction to enable Abbott students to achieve the New Jersey Core Curriculum Content Standards ("CCCS"), as established by

State performance standards. Abbott IV, 149 N.J. at 161-162.

7. Supplemental programs in Abbott districts are those “supplemental educational and educationally-related programs and services” that are unique to students in Abbott districts, not required in wealthier districts, and that “represent an educational cost not included within the amounts expended for regular education.” Id. at 180 (quoting Abbott III, 136 N.J. at 453-454).

8. Supplemental programs are “the indispensable foundation of a thorough and efficient education and a fundamental prerequisite to the fulfillment of the State’s constitutional obligation.” Abbott IV, 149 N.J. at 199. Supplemental programs include programs and services for which “the educational dividends derived from [such] programs may not be immediately apparent or easily measurable.” Id.

9. The Supreme Court remanded this case to resolve the “limited” issue as to whether SFRA overcomes the deficiencies in CEIFA’s funding provisions as applied to Abbott districts. Abbott XIX, 196 N.J. at 566.

B. The Deficiencies in CEIFA

10. The Supreme Court found the following deficiencies in the CEIFA formula:

a) lack of evidence of a "concrete" link between the base cost for regular education in CEIFA ("T&E amount") and the resources and actual funding needed for students in the Abbott districts to achieve the CCCS. Abbott IV, 149 N.J. at 169;

b) the base cost in CEIFA was derived from a single hypothetical model school district that "was not based on" characteristics and conditions of the Abbott districts. Id. at 172;

c) The T&E amount was well below parity, or the amount spent for regular education in I&J districts, and only slightly above the base amount found constitutionally deficient in the Quality Education Act of 1990. Id. at 174;

d) The I&J districts could continue to raise funds and spend for regular education above the T&E amount without evidence that this spending represented inefficiencies or was not needed. Id. at 169-171;

e) The CEIFA formula failed to provide educational and educationally-related supplemental programs and services to meet the special needs of Abbott students. Id. at 173-174, 185-186;

f) Funding for supplemental programs under CEIFA through Demonstrably Effective Program Aid and Early Childhood Program Aid was not based on any study of: (1)

the special needs of Abbott students for those supplemental programs; and (2) the actual costs of the needed programs or any evidence that the funding would ensure the provision of those programs needed to meet the special needs of Abbott students. Id. at 180-186; and

g) CEIFA did not require any plan for implementation of those supplemental programs needed to meet the special needs of Abbott students. Id. at 181-183.

C. The State's Claims on Remand

11. On remand, the State claims that the SFRA overcomes the deficiencies in CEIFA because:

a) the hypothetical district model used in SFRA was initially developed in 2003 through the "professional judgment process" ("PJP") cost method, D-12, p.5, Pre-hearing Brief of Defendants ("Db"), p.2;

b) the final hypothetical model for SFRA included changes made by the Department of Education ("DOE") in 2007 that "enhanced" the level resources for high poverty districts, D-12, pp. 12-13, Db6;

c) the PJP models and final SFRA model were "validated" by national experts, D-12, pp. 7-9, Db36; and

d) the "empirical" result is that New Jersey school districts, based on 2005-06 data, had a per-pupil funding among the highest in the country. D-136; Rebuttal

transcript of Katherine Attwood, February 27, 2009, p. 131, lines 2-6 (Attwood Rebuttal, T131-2-6).

D. **The Models Developed Through the 2003 NJ PJP**

12. SFRA, like CEIFA, uses a single hypothetical school district model to determine resources for the "base cost" for regular education and the "at-risk cost" for supplemental programs. D-12, p. 10, App. T1-4a.

13. The SFRA model was derived from six district resource models developed in 2003 through the PJP cost methodology utilized by John Augenblick, a Denver-based consultant retained by the DOE. D-2, p. 10.

14. The Augenblick PJP cost method can be an appropriate process to develop education resources and costs, if:

a) performed "properly," Transcript of Susanna Loeb, February 13, 2009, Vol. I page 52, line 6 - page 53, line 18 (Loeb T52-6 - 53-18); D-122, ¶¶38-39, 44-45; Transcript of David Monk, February 17, 2009, page 36, lines 1-5 (Monk T36-1-5); and

b) empirically validated against data on actual school district spending and outcomes. Transcript of Margaret Goertz, February 16, 2009, page 68, line 1 - page 69, line 7 (Goertz T68-1 - 69-7); Transcript of Bruce Baker,

February 20, 2009, Vol. I page 55, line 10 - page 56, line 23 (Baker T55-10 - 56-23); P-54, p.3.

15. The PJP, as conducted by Augenblick's firm -- Augenblick, Palaich and Associates or "APA" -- with the DOE in New Jersey in 2003, was not properly performed and was methodologically flawed as follows:

a) The PJP participants were not provided with the supplemental program standards determined constitutionally necessary in Abbott V to address the extreme concentration of poverty and student disadvantages in Abbott districts. Goertz T67-12-18; Baker Vol. I T58-8-18; P-54, p.4;

b) The characteristics of the hypothetical model school districts were not representative of the Abbott districts. Baker Vol. I T91-25 - 93-4:

1) Although the prototype models constructed for the PJP process reflected the overall size of the Abbott districts, those models did not represent the extreme concentration of poverty and need in those districts. The analysis by Dr. Bruce Baker, a nationally-recognized expert on school finance and education cost methods and studies, demonstrated that 27 of the 31 Abbott districts have poverty concentrations higher than the PJP prototype models. Baker Vol. I T95-19, 96-16; P-56; P-158;

2) According to Dr. Baker, while overall district size may not affect resources, the degree of poverty concentration in districts has a direct impact on resources and cost, especially in moderate and large-sized districts with very high concentrations of poverty, such as the Abbott districts. Baker T99-5-20; P-54, p. 10-13; P-56;

3) The failure to include districts with high and very high concentrations of poverty among the prototype districts rendered the PJP models unrecognizable for the PJP participants in relation to the actual characteristics of the Abbott districts. Baker Vol. I T89-19 - 90-7; P-54, p. 10; Goertz T79-18 - 81-9; and

4) Dr. Baker's analysis demonstrated that the PJP process did not estimate the resource needs and costs for model districts that possess the actual characteristics -- in relation to both size and poverty concentration -- of most of the Abbott districts. Baker Vol. I T96-16 - 100-25; P-54, p. 4; P-159; Goertz T79-12-20; P-3, ¶32;

c) The process deviated from the protocols established by APA and utilized in every other APA cost study conducted in other states in several respects:

1) The first panel was comprised of state employees, not school level educators and staff, Goertz T66-10 - 67-11; Baker Vol. I T74-16 - 75-14;

2) There is no evidence regarding which of the individuals invited to participate in the second panel actually attended the meeting, D-2, App. 6-1, n.20;

3) The invited members of the second panel consisted of almost no experienced, practicing teachers -- the school-level personnel most knowledgeable of the resource needs of students and schools, Goertz T66-17 - 67-11; Transcript of Lawrence Picus, February 12, 2009, page 74, lines 2-23 (Picus T74-2-23); D-12, pp.27-28;

4) There were very few invited school and district representatives from New Jersey districts, such as Abbott districts, with very high poverty concentrations, Baker Vol. I T82-4-13; D-12, pp. 27-28; and

5) The PJP results were not released for four years, Picus T38-10-17, Transcript of Justin Silverstein, February 10, 2009, page 96, line 20 - page 97, line 12 (Silverstein T96-20 - 97-12).

16. During the period between the completion of the PJP process in early 2003 and its release four years later, there were changes in State standards and assessments -- and the intervening Abbott X decision on whole school reform and supplemental programs -- which impacted on resource needs in Abbott districts. Goertz T68-20 - 69-19; Picus T91-10 - 93-3.

17. Because the PJP was improperly performed and methodologically flawed, the PJP process resulted in hypothetical models not connected to the unique characteristics and conditions that exist in Abbott districts. Baker Vol. I T91-25 - 93-4, T99-5-20, T104-25 - 105-7; Goertz T70-18 - 81-9; P-2; P-53; P-54, p. 5.

E. DOE Changes to PJP Models in 2007

18. The State presents evidence of changes made in 2007 to the six PJP hypothetical models to arrive at the final single model used in the SFRA formula. D-12, pp. 10-25.

19. The State describes many of these changes as "enhancements" that increase the level of resources and funding to New Jersey districts, particularly Abbott districts. D-12, pp. 10-14.

20. The principal changes made by DOE in 2007 to the PJP models include the following:

a) Utilizing a single model district with grade level weights rather than the six hypothetical PJP models, D-12, p. 10;

b) Developing a sliding scale for the at-risk weight, capped at 60% poverty concentration, D-12, pp. 12-13;

c) Combining the separate LEP and at-risk weights developed by the PJP into a single weight for students with both needs, D-12, p. 13;

d) Using the census based method to fund special education rather than the weights developed by the PJP, D-12, pp. 15-16;

e) Constructing a New Jersey county level index for a geographical cost index instead of the nationally recognized Taylor/Fowler method, D-12, p. 31; and

f) Removing all security costs from the PJP models and providing categorical aid for security, D-12, p. 14.

21. The State presented no analysis of the actual impact of these changes on Abbott districts and other New Jersey districts. Testimony of Lucille Davy, February 9, 2009, Volume II, page 104, lines 15-21 (Davy Vol. II T104-15-21); Attwood Rebuttal T149-15 - 151-15.

22. Dr. Baker, plaintiffs' school finance expert, analyzed the actual impact of these changes on the Abbott districts. Baker Vol. I T37-9-12; P-54.

23. Dr. Baker testified that DOE increased the resources for at-risk students over the PJP model utilizing a sliding scale, but capped those resources at 60% poverty concentration. Dr. Baker's analysis and expert opinion establish that this cap fails to account for the

significantly higher concentrations of poverty in the Abbott districts. P-54, p. 10-13 and 17; P-158; P-159; Baker Vol. I T-99-21 - 100-6.

24. The State presented no evidence or research to support capping the at-risk resources at 60% poverty concentration. Both Dr. Baker and Dr. Clive Belfield, Plaintiffs' school finance expert with specific expertise in the effectiveness and cost of programs for at-risk and disadvantaged students, testified that the available research indicates an upward sloping weight for districts with higher concentrations of poverty. Testimony of Dr. Clive Belfield, February 19, 2009, Volume I, page 19, lines 8-24; page 60 line 25 - page 61, line 6 (Belfield Vol. I T19-8-24, T60-25 - 61-6); Baker Vol. I T99-21 - 100-6.

25. Dr. Picus, Defendant's expert, who developed a cost methodology utilizing evidence-based programs, raised concerns about the lack of any support for capping the at-risk weight at 60% poverty concentration in New Jersey and stated in his report that the cap on at-risk costs may under-represent the actual cost of serving children in districts with even higher concentrations of at-risk students. D-74, p. 6.

26. Dr. Baker also testified that the DOE's decision to use a single SFRA model with grade level weights instead

of the six PJP hypothetical models results in less resources for Abbott districts under SFRA because they have proportionately fewer students in secondary school than higher wealth districts. Baker Vol. I T114-2 - 118-25; P-54.

27. Dr. Baker further testified that the DOE's decision to use a combined weight for Limited English Proficient ("LEP") and at-risk students, instead of the separate weights developed by the PJP, was based upon a claim of "overlapping resources," and not on any actual assessment of these resources and programs in Abbott districts or other New Jersey districts. Baker Vol. II T147-20 - 152-10. Dr. Baker's testimony was confirmed by the testimony of the Defendant's witness Susan Ecks. Transcript of Susan Ecks, February 10, 2009, Volume II, page 134, line 8 - page 136, line 3(Ecks T134-8 - 136-3).

28. According to Dr. Baker, the research in this area shows "the amount of intervention" needed for students with both at-risk and LEP needs "actually escalates" not "diminishes." Baker Vol. II T151-21 - 152-9.

29. The DOE's decision to combine the LEP weight with the at-risk weight reduces resources for Abbott districts under the SFRA because these districts have a significantly

higher number of students who are both LEP and at-risk than other districts. Baker Vol. II T3-12 - 6-19.

30. Based on the State's data, the difference between the full LEP weight of .5 and the reduced at-risk combination LEP weight of .125 represents \$83,442,587 in reduced funding for the Abbott districts. D-21.

31. The DOE's decision to use a census-based method to fund special education rather than the weights developed by the PJP was based upon an assertion by DOE that classification rates above the statewide average were the product of over-classification of students with disabilities and "assumes an equal distribution of disabilities throughout the student population of the State." D-12, pp. 15-16.

32. The DOE presented no study or analysis to support the claim of over-classification, and the only empirical evidence in the record -- the New Jersey Special Education Expenditure Project ("SEEP") study -- finds misclassification but to lower cost service and program tiers. Baker Vol. II T10-6 -12-19; D-78, p. ii.

33. The DOE's "assumption" that there is an equal distribution of disabilities throughout the student population of New Jersey has no evidentiary support. Baker Vol. II T10-6-17; Davy Vol. II T125-14 - 126-5; P-29.

34. Dr. Baker testified that his research shows that children with disabilities are "very unevenly distributed by location" within New Jersey, and are "geographically clustered." Baker Vol. II T95-11-96-9. He also testified that there is a "poverty association" which leads to "correlation with a higher rate [of students with disabilities] in Abbott districts." Baker Vol. II T-96-10 - 97-21).

35. According to Dr. Baker, because numerous Abbott districts have classification rates above the State average, they will have less special education funding to meet student needs while the I&J districts, with lower than average classification rates, will experience a net gain in special education funding. Baker Vol. II T-6-20 - 10-5; P-27, ¶30; P-29.

36. According to Dr. Picus, the State's expert, if the funding provided to a particular district does not meet the needs of its special education students because its concentration of students with disabilities is higher than the state average, then "it's possible that the district would have to use other general resources to meet the special education needs." Picus T-98-25 - 99-17.

37. DOE's decision to use a census-based method to fund special education disadvantages the Abbott districts

as they may be compelled to divert funding designed to address other needs to special education because their special education classification rates exceed the statewide average. Baker Vol. II T6-20 - 10-5; P-29.

38. The DOE constructed its own county level wage index for the geographic cost adjustment ("GCA") utilized in SFRA rather than using the nationally-recognized Taylor/Fowler methodology. Transcript of Edward Pittman, February 12, 2009, page 43, line 21 - page 44, line 7; D-12, p. 31.

39. Dr. Baker testified that the use of counties in the NJ GCA, rather than the regional labor markets in the Taylor Fowler index, results in cost adjustments that disadvantage the Abbott districts while favoring more affluent districts that otherwise share the same labor market. Baker Vol. II T22-13 - 33-10.

40. The State contends that the difference between the NJ GCA developed by DOE and the GCA calculated using the Taylor/Fowler method is insignificant. Attwood Rebuttal T113-12-17; D-133.

41. The use of the NJ GCA, instead of the Taylor/Fowler GCA, results in a reduction of almost \$130,000,000, or \$470 per pupil, in the Abbott districts' adequacy budgets under SFRA. D-133; D-21.

42. The reduction resulting from use of the NJ GCA is particularly significant in Paterson (loss of \$43,100,000 overall or \$1,750 per pupil), Jersey City (loss of \$31,900,000 overall or \$1,080 per pupil), Passaic (loss of \$21,100,000 or \$1,820 per pupil), and Union City (loss of \$11,500,000 overall or \$1,197 per pupil). D-133; D21.

43. The State's expert witnesses testified that the Taylor/Fowler index is an appropriate and accepted method for calculating the GCA, but did not analyze how DOE's adjustments altered the results or impacted upon Abbott districts or other New Jersey districts. Loeb T60-25 - 61-14; Monk T59-21 - 60-16; Picus Vol. I T94-10 - 95-3.

44. The DOE also claims that the transfer of security resources from the PJP base costs and at-risk costs to categorical aid in SFRA results in an "enhanced" level of resources for security in Abbott districts. D-12, p. 14; Attwood Vol. I., T25-10 - 26-25.

45. Dr. Baker testified that the State presented "no data" supporting the claim that removing all security from the PJP base and at-risk costs to categorical aid under SFRA represents an overall increase in the level of resources and actual funding for security in Abbott districts or other New Jersey districts. Baker Vol. II T146-4 - 147-19.

46. The evidence of the cumulative effects of the changes made to PJP models does not support the State's claim that -- in every instance -- the DOE's adjustments represented an increase in resources to Abbott districts. Baker Vol. II T34-2 - 35-11; P-54, p. 17-18.

47. Dr. Baker was the only witness who analyzed the overall impact of DOE's changes, and his analysis demonstrates that any claimed benefit of these changes to Abbott districts was largely offset by changes that disadvantaged those districts. Baker Vol. II T14-22 - 21-8; P-54, p. 18.

48. Dr. Baker testified that even the State's inclusion of reduced-priced lunch students in the at-risk cost and weight did not affect his ultimate conclusions and opinions that DOE's changes are largely offsetting in terms of funding to Abbott districts and do not provide the appreciable benefits to those districts claimed by the State. Baker Vol. II T16-21 - 18-6; P-54, pp. 17-18.

49. Dr. Baker also found that the cumulative effect of the changes made by DOE actually benefit wealthier New Jersey districts, particularly I&J districts. Baker Vol. II T21-1-8; T26-5-21; P-54, pp. 17, 25, 28, 30.

F. Validation of PJP and SFRA Models

50. The State claims that the PJP process and SFRA funding formula were validated by: (1) the national experts who reviewed the PJP process in early 2007, D-12, p.7, Db36; (2) the national experts who were consulted during the summer of 2007, D-12, pp. 8-9, Db36; and (3) the empirical evidence that New Jersey's per pupil spending in 2005-06 is among the highest in the nation. D-136, Attwood Rebuttal T131-2-6.

51. Dr. Picus presented the only testimony and reports regarding the State's expert review of the PJP process. See Transcript of Lawrence Picus, February 12, 2009, D-74, D-125. See also Davy Vol. I T60-20 - 62-3, T64-9 - 66-3, T66-14 - 67-6 (sustaining objections to admission into evidence of reports of non-testifying experts, Dr. Odden and Dr. Olchefske).

52. Dr. Picus' reports and testimony regarding validation of the PJP resource determinations consisted of a comparison of the New Jersey PJP results with the results of his 2006 evidence-based cost study in Washington State. Picus T52-22 - 53-3; T62-13 - 63-2; D-74 at 9. Dr. Picus concluded, however, that "[a]bsent the conduct of a full [Evidence Based] study in New Jersey, it is impossible to know exactly what the final recommendations of such a study

would be and how they would compare to the findings from this PJP analysis." D-74, p. 16, n. 7; Picus T70-20-24.

53. Dr. Picus conceded that he had not performed any review or analysis of the resources, funding or actual needs for educational resources for students in the Abbott districts, Picus T96-18 - T97-4, even though he stated in his January 2007 report that it is "essential," in light of the history of school funding litigation in New Jersey, to address the impact of the PJP resources and resulting funding formula on the Abbott districts. D-74, p. 16.

54. The State also asserts that it developed the SFRA formula through consultations with three experts -- Dr. Susanna Loeb, Dr. David Monk, and Mr. Thomas Corcoran -- in the summer of 2007. D-12, p. 9.

55. The State's 2007 report, A Formula for Success, generally states that these experts provided advice on a few components of the formula and on special education funding, but does not disclose the specific advice provided. D-12, p. 10-15.

56. There was no evidence or testimony of the specific advice and recommendations of these experts, and the bases for such. The State did not elicit such testimony from its witnesses and, on cross-examination, invoked the deliberative process privilege to limit Dr.

Loeb and Dr. Monk's testimony on these matters in this proceeding. Loeb T48-2-17; Monk T44-6-14; 46-7 - 47-9. The record is therefore silent on the reasons or bases for their expert recommendations or advice.

57. Dr. Loeb and Dr. Monk testified in general support of the SFRA formula by offering generic opinions on certain components of the formula. Their testimony did not include any analysis, data or other research on the impact of the formula on Abbott districts or any other New Jersey districts. Specifically, Dr. Loeb testified that she has "not done any analysis of New Jersey," T42-6-9, and that, because she did not analyze the adequacy of PJP resources for Abbott students, "there is no way to prove whether or not those resources are adequate." Loeb T47-6-14. Dr. Monk testified to his lack of knowledge of actual funding provided under SFRA to Abbott districts or to the impact of SFRA funding on programs and services. Monk T66-2-22.

58. The State's claim that the SFRA is empirically validated because New Jersey's per pupil spending in 2005-06 is among the highest in the nation has no evidentiary relevance to the issue on remand, which is whether SFRA overcomes the deficiencies in CEIFA. The 2005-06 per pupil spending relied upon by the State is also irrelevant because that data precedes the enactment of the SFRA by two

years. The State also did no analysis of comparative per pupil spending in other states after the enactment of SFRA or any analysis of comparative spending in other States against student performance and outcomes. Attwood Rebuttal T154-21 - 155-2.

59. The State did not offer any evidence, through the testimony of experts or DOE personnel, validating the PJP results or establishing a concrete link between the resources and funding provided by SFRA and the conditions and needs that actually exist in the Abbott districts. Davy Vol. II T-112-3-11; T109-4 - 111-5; Baker Vol. I T91-25 - 93-4, T99-5-20, T104-25 - 105-7; Goertz T71-7 - 72-21; P-2; P-53; P-54, p. 5.

G. Impact of SFRA Formula on Abbott Districts

1. Regular Education Costs and Funding

60. SFRA sets a "base per pupil amount" for regular education in 2008-09 of \$9,649 per elementary pupil. D-12, p.12. With the weights applied to middle and high school students, the SFRA base amount is \$10,281 per pupil on average. Goertz T32-24 - 33-2.

61. The SFRA base cost of \$9,649 per elementary pupil is \$135 per pupil less than the constitutionally inadequate CEIFA T&E amount of \$9,784 per elementary pupil, adjusted for inflation. Goertz T33-20 - 34-5.

62. The SFRA average base cost of \$10,281 per pupil for 2008-09 is 20% below the parity amount of \$12,872 per pupil for 2007-08. P-3, ¶43; P-27, ¶¶13-14; P-28.

63. Under the SFRA base cost, expenditures for regular education in Abbott district budgets in 2008-09 are \$1 billion or 30% below the level approved by the State in 2007-08. P-3, ¶47.

64. In 2008-09, the Abbott districts' expenditures for regular education are \$1.23 billion, or 34% below parity, i.e., the estimated I&J district average. P-3, ¶49; Goertz T44-20 - 45-8.

65. The estimated parity gap between Abbott districts and I&J districts for 2008-09 is \$4,503 per pupil. Goertz T37-11-16; T45-4-6.

66. Plaintiffs' school finance expert, Dr. Margaret Goertz, testified that, based on her analysis and experience in school funding litigation in New Jersey, the SFRA formula "reinstates the gap between the Abbott districts and the average of the I and J districts." Goertz T45-18 - 46-5. Dr. Goertz further testified that the gap in spending for regular education between I&J districts and Abbott districts will widen in future years. Goertz T45-18 - 46-5; T47-14-19.

67. SFRA permits I&J districts to raise additional funds and to spend for regular education well in excess of the SFRA adequacy amount. Goertz T42-12-16; T46-23 - 47-11.

68. There are 103 I&J districts that are currently spending \$345.9 million over the SFRA base amount in 2008-09. Transcript of Patrick Fletcher, February 24, 2009, page 58, lines 20-23 (Fletcher T58-20-23); P-131; P-27, ¶39; P-32.

69. Plaintiffs' experts, Dr. Goertz and Mr. Melvin Wyns, an expert in school finance in New Jersey, testified that SFRA renders a substantial level of current expenditures in Abbott districts, approved by the DOE under the Abbott decisions and mandates, in excess of the amount deemed adequate under the SFRA formula. Goertz, T46-18 - 47-11; Transcript of Melvin Wyns, February 18, 2009, page 111, line 16 - page 115, line 9 (Wyns T111-16 - 115-9).

70. The State claims that the DOE's prior approval of Abbott budgets does not represent a determination of resources necessary to ensure a thorough and efficient system of education. Davy Vol. II T126-17 - 13-24; Attwood Vol. I T96-6-21.

71. The State's assertion in this proceeding directly conflicts with the explicit representations in the DOE's own Abbott fiscal regulations, N.J.A.C. 6A:10-1.1(a), which

state in pertinent part that DOE's approval constitutes assurance of the resources needed to provide Abbott students with a thorough and efficient education and to comply with the Abbott decisions. Wyns T112-17 - 118-3.

72. Specifically, N.J.A.C. 6A:10-1.1(a) provides:

These rules are adopted . . . to ensure that budgets are prepared and approved in a manner that ensures all students in poor urban school districts receive the educational opportunities and resources guaranteed them by the New Jersey Constitution. The rules apply to "Abbott districts" . . . and are adopted to ensure the provision of adequate funding to ensure a thorough and efficient system of education as guaranteed by the New Jersey Constitution (T&E), and defined by the Supreme Court in the Abbott decisions and by P.L. 1996, c. 136, as the Core Curriculum Content Standards.

[N.J.A.C. 6A:10-1.1(a)]

73. The State presented no evidence or study that the prior DOE-approved expenditures for regular education in the Abbott districts under parity -- and above the SFRA base amounts -- are no longer needed to achieve State standards or represent significant or widespread inefficiencies in those districts. Goertz T116-16 - 117-11.

74. The State presented no evidence that the expenditures in I&J districts for regular education in excess of the SFRA base amount represent genuine inefficiencies or are truly unnecessary to achieve state standards. Goertz T47-4-8; T116-3-15.

75. Dr. Goertz' analysis demonstrates that the State's asserted "enhanced" at-risk cost and weights under SFRA do not represent new resources for Abbott districts, but rather constitute a transfer of resources from the prior, DOE-approved regular education expenditures under parity. P-13; P-2, ¶14; P-3, p.33, ¶69(g).

76. Dr. Goertz' analysis demonstrates that SFRA represents a \$734 per pupil reduction in the combined base, at-risk and LEP costs in the Abbott district adequacy budgets under SFRA as compared to the resources available to Abbott districts under the DOE-approved budgets under the Abbott parity and supplemental program remedies. P-13; P-2, ¶14; P-3, p.33, ¶69(g).

77. The State further claims that the SFRA resources and costs are adequate for Abbott districts because resources in the enhanced PJP model for SFRA exceed the resources in the DOE's proffered "Abbott V model." Attwood Vol. II T91-20 - 93-25; D-47 - D-61.

78. The testimony established that the "Abbott V model" was not based on prior Abbott decisions or an analysis of the actual resources for regular education and supplemental programs needed and implemented in the Abbott districts, but was instead based solely on "illustrative" school budgets submitted by the DOE in 1997 during the

remand proceedings prior to the Abbott V decision that were not adopted by the Remand Court or the Supreme Court in the Abbott V decision. Attwood Vol. II T98-8 - 103-12; Goertz T92-3-14; Abbott V, 153 N.J. at 518.

79. To support the SFRA, the State claims that Abbott district total per pupil spending exceeds that in the I&J districts. Attwood Vol. II T73-3 - 74-12.

80. Plaintiffs' expert, Mr. Wyns, testified that the State's analysis is misleading and inaccurate because it fails to take into account the substantial differences in student need in the respective districts. Wyns T52-10 - 56-20. Mr. Wyns' analysis, which the State did not contest, demonstrates that, when properly adjusted for student need, the I&J districts actually outspend the Abbott districts by \$901 per pupil. Wyns T54-3-15; P-37.

81. SFRA contains the same, multiple defects in the cost and funding of regular education to enable Abbott students to achieve state standards as found in CEIFA. Goertz T92-21 - 93-17.

2. Supplemental Programs

82. To address student needs generated by extreme concentrated poverty in Abbott districts, the SFRA contains an "at risk cost," defined as "the cost of providing educational and other services for at-risk pupils," and

represented by an at-risk student weight, or a ratio of the SFRA base amount. D-12, pp. 12-13.

83. The SFRA at-risk cost and weight are derived from the same hypothetical model district as that used to develop the base amount for regular education. D-12, p. 12.

84. The SFRA at-risk cost is not based upon any study of the unique disadvantages of Abbott students and their need for supplemental programs. Belfield Vol. I T53-11-25; T64-3-9; T101-11-23; P-18.

85. The SFRA at-risk cost is not based upon expenditures derived from the actual implementation of the Abbott V supplemental programs. Belfield Vol. I T19-4-7; T53-1-25; Davy Vol. I T39-12-25; T41-16 - 42-1.

86. Dr. Belfield's analysis demonstrates that the SFRA model for at-risk costs does not include resources for a number of the required and needed Abbott V and Abbott X supplemental programs, "including early literacy, reading, community services, drop-out prevention, [and] on-site social enhanced services." Belfield Vol. I T62-10-20; P-19, ¶41.

87. According to Dr. Belfield's analysis, SFRA's at-risk weight also does not include resources related to the required elementary Whole School Reform and Secondary Education Initiative. Belfield Vol. I T62-21-25; P-19, ¶42.

88. For those Abbott V and Abbott X programs included in the SFRA model, the model contains staff, inputs, and other resources at assumed levels, ratios and amounts. Belfield Vol. I T63-1-13; P-19, ¶43-44; D-12, pp. 37-38.

89. These program resources are not based on any study, data or other information relating to the actual experience with respect to supplemental programs in Abbott districts, the costs of implementing those supplemental programs, or the current particularized needs of Abbott students and schools. Belfield Vol. I T19-4-7, T63-1-13.

90. SFRA does not require Abbott districts to implement the Abbott V and Abbott X supplemental programs or services, or any other required or needed supplemental programs for their students. Belfield Vol. I T63-14-20; P-27, ¶24.

91. Plaintiffs' experts' undisputed testimony and analyses demonstrated that SFRA does not provide any differentiated funding for the implementation of supplemental programs in Abbott districts, but instead blends the costs for regular education, at-risk costs, costs for two-thirds of special education, and costs for ELL students to generate a single amount of state "equalization" aid. Belfield Vol. I T89-15 - 90-1; P-19, Wyns T25-13-20; ¶¶34-35, 47; P-27, ¶29; Goertz, P-2, ¶16.

92. SFRA does not require this blended equalization aid be used to provide the Abbott V and Abbott X supplemental programs, or any other supplemental programs, nor does SFRA require that funding for supplemental programs be in addition to funding for regular education. Belfield Vol. I T101-11-23; P-19, ¶59(a); P-27, ¶19; P-2, ¶16.

93. The State claims the SFRA gives Abbott districts flexibility and discretion, if they choose to do so, to allocate SFRA funding to supplemental programs, or to continue existing supplemental programs, in their respective districts. D-1, ¶29; Db39.

94. The testimony and analysis of Dr. Goertz and Dr. Belfield demonstrated that SFRA provides no assurance that funding will be directed to the special needs and extreme disadvantages of Abbott students, rather than being diverted to support other competing programs or budgetary items. Belfield Vol. I T101-11-23; P-2, ¶16.

95. The Abbott V K-12 supplemental programs, as memorialized in the Chart of Supplemental Programs in Abbott X, provides for three distinct areas of supplemental programs that remain required: a) required programs with a baseline; b) required programs with no baseline; and c) as needed programs. P-90. Abbott V and Abbott X also require

implementation of supplemental programs through elementary Whole School Reform and the Abbott Secondary Initiative. P-89.

96. The K-12 supplemental programs that remain required with a baseline are the following: full-day kindergarten, early reading literacy, elementary parent involvement, class size limits, elementary social and health referral and coordination, middle and high school health referral and coordination, access to technology, dropout prevention and alternative education. P-90, pp. 1-3.

97. The K-12 supplemental programs that remain required without a baseline are the following: early math literacy and mastery of other core subjects, professional development, violence prevention and school security, and school to work and college transition. P-90, p. 4.

98. The K-12 as needed supplemental programs, which similarly remain required upon a showing of demonstrated need, are the following: on-site social and health services, supplemental literacy supports for non-SFA ("Success For All") schools, instructionally-based after school programs, instructionally-based summer programs, enriched nutrition programs, exemplary music, art, and

special education, and school-based management and budgeting. P-90, pp. 5-6.

99. Elementary Whole School Reform and the Abbott Secondary Initiative remain required as the mechanism for implementation of supplemental programs at the school level. P-89; P-91 (N.J.A.C. 6A:10A-4.3(c), N.J.A.C. 6A:10A-3.2).

100. The evidence shows that the 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. Transcript of H. Victor Gilson, February 21, 2009, page 137, lines 11-17, page 146, line 9 - page 156, line 15 (Gilson T137-11-17, T146-9 - 156-15); Transcript of Charles Ottinger, February 25, 2009, page 36, line 19 - page 39, line 14, page 42, line 15 - page 54, line 25 (Ottinger T36-19 - 39-14, T42-15 - 54-25); Transcript of Shelly Schneider, February 25, 2009, page 151, line 3 - page 153, line 6, page 157, line 5 - page 163, line 3 (Schneider T151-3 - 153-6, T157-5 - 163-3); Transcript of Clarence Hoover, February 25, 2009, page 32, lines 10-19, page 69, line 2 - page 71, line 2 (Hoover T32-10-19, T69-2 - 71-2); Transcript of George Chando, February 23, 2009, page 4, line 4 - page 12, line 19 (Chando T4-4 -

12-19); Transcript of Ronald Lee, February 26, 2009, page 25, line 23 - page 26, line 5 (Lee T25-23 - 26-5).

101. There is no evidence in the record that any of the supplemental programs identified in the Chart of Supplemental Programs has not been provided in Abbott districts prior to the enactment of SFRA.

102. The State has not presented any evidence, data or study showing that any of the specific Abbott V or Abbott X supplemental programs -- and elementary Whole School Reform and the Abbott Secondary Education Initiative -- have not been needed and provided in Abbott districts prior to the enactment of the SFRA.

103. The State asserts, based on the 2006 draft report of Dr. Belfield, that the costs of implementing supplemental programs in the Abbott districts would be billions of dollars every year. Attwood Rebuttal T123-25 - 128-3; D-135.

104. The State's cost calculations are not linked at all to the actual experience in the Abbott districts during the ten-year implementation of the required and needed Abbott supplemental programs and services. Instead, the State's calculations are based on the erroneous assumption, and misrepresentation of Dr. Belfield's draft report, that every supplemental program would or should be implemented

in every Abbott district regardless of need. Belfield Vol. II T22-14 - 26-15.

105. As admitted by Assistant Commissioner Attwood, Dr. Belfield made no recommendation that Abbott districts implement every supplemental program, and in fact, did not present data on total costs as calculated in D-135 because he did not want people "to infer" that this was the amount of money he was suggesting. Belfield Vol. II T24-23 - 25-8; Attwood Rebuttal T153-4-10.

106. SFRA fails to overcome, and actually perpetuates, the deficiencies in the CEIFA funding provisions relating to supplemental programs and services to address the unique and extreme needs of Abbott students.

3. Supplemental Funding for K-12 Supplemental Programs

107. SFRA provides no procedures for Abbott districts to seek needs-based supplemental funding beyond the SFRA formulaic amounts, even if needed to continue or expand Abbott V K-12 supplemental programs, to provide new programs and strategies, or to address unmet student needs. Belfield Vol. I T64-10 - 65-10; P-26, ¶13; P-27, ¶54.

108. Dr. Belfield testified that in the absence of a supplemental funding process, other educational requirements will dominate at the expense of needed at-

risk, supplemental programs. Belfield Vol. I T64-16-22; P-2, ¶16.

109. Considering state and local revenues, the Abbott districts will have \$426 million, or 9.3%, less in budgetary revenue in 2008-09 under SFRA than was approved and available under the Abbott remedies in 2007-08. Wyns T4-13-21; P-27, ¶¶34-37.

110. This represents a reduction in funding of \$936 per student from 2007-08 to 2008-09. Wyns T4-13; P-27, ¶¶34-37.

111. In 2007-08, 18 Abbott districts had budgetary expenditures of \$217.6 million in excess of those deemed adequate under SFRA. P-26, ¶6.

112. SFRA relied on "adjustment aid" to provide most Abbott districts with a 2% increase in 2008-09, but adjustment aid will decrease in 2009-10 and in future years. Wyns T43-14 - 47-5; P-40.

113. Under SFRA, many Abbott districts face flat state aid beginning in 2009-10 and extending into future years. Goertz T125-23 - 126-2; Wyns T43-14 - 45-13; P-40; Lee T-49-15-19.

114. The Abbott districts typically face at least a 4% annual budgetary increase due to non-discretionary expenditures such as contractually-obligated teacher

salaries, health benefits, and other factors. Wyns T41-5 - 43-3; Gilson T184-7-23; Chando T38-4 - 40-13; Ottinger T23-19-24, 27-17 -28-1; Hoover T85-2-4; Lee T50-19-24.

115. Even assuming Abbott districts can raise the local levy by 4% and the State provides adjustment aid, Mr. Wyns' analysis demonstrates that Abbott districts can expect estimated budgetary shortfalls under SFRA as high as \$173.8 million in 2009-10, reaching \$298 million in 2010-11. Wyns T35-9 - 40-1; P-36.

116. Beyond 2010-11, many districts face continuing, even deeper budget shortfalls as SFRA funding remains flat. Wyns T49-9-24.

117. Evidence from representative Abbott districts throughout the state shows those districts have been, and will in the future, be unable to maintain programs, services and positions previously approved by DOE and needed by their students. Gilson T156-20 - 160-6; Ottinger T36-19 - 39-14, T42-15 - 54-25; Schneider T151-3 - 153-6, 157-24 - 165-1; Hoover T61-17 - 64-9; Chando T9-13 - 12-19; Lee T65-11 - 69-8, P-148, Ex. B; Transcript of Dennis Clancy, February 26, 2009, page 63, line 11 - page 66, line 21.

118. Without access to the Abbott V supplemental funding process, including the administrative and judicial

process established in Abbott V, Abbott districts will have no opportunity to seek and obtain funding needed to continue existing programs, services and positions, or to develop new programs needed by their students.

4. Municipal Overburden

119. Under SFRA, the Abbott districts' local share is \$1.14 billion. This is 79.4% or \$507 million above the \$635.2 million in local revenue the districts actually provided in 2007-08 and 73.5% or \$484.2 million above the \$658.7 million in local revenues the districts actually provided in 2008-09. P-27, ¶40; P-34.

120. Plaintiffs' municipal and tax policy expert, Dr. Jon Erickson, testified to his extensive analysis of conditions in the Abbott districts that demonstrated those districts continue to experience the conditions that contribute to municipal overburden. Transcript of Jon Erickson, February 18, 2009, page 125, line 18 - page 126, line 6 (Erickson T125-18 - 126-6); P-48; P-3, ¶¶63-68.

121. Abbott districts have a smaller tax base per capita on which to raise funds. The average equalized real estate value per capita in Abbott districts is \$55,484, which is half of the statewide average of \$115,855. Erickson T97-18 - 98-3; P-50, Table 1.

122. According to 2005 data from the NJ Department of Community Affairs, the average municipal non-school equalized tax rate of 1.621 for the Abbott districts is approximately double the average municipal non-school equalized tax rate of .880 for the State as a whole. Erickson T104-5-14; P-50, Table 3.

123. The non-school equalized tax rate shows that Abbott municipalities are under considerable fiscal stress before adding on the school tax rate. Erickson T105-5-10.

124. Data on median household income shows that the average of the nine Abbott districts for whom 2007 U.S. Census data is available is \$36,736, nearly one-half of the median household income for the State of New Jersey of \$67,035, with 23.4% of all people in those Abbott districts having income below the federal poverty level, compared to 8.6% statewide. Erickson T122-4 - 124-2; P-51, Table 6.

125. In Abbott districts, on average, 28% of real estate value is tax exempt which is substantially higher than the state average of 12%. P-50, Table 2. Tax exempt properties prevent municipalities from raising adequate revenues and overburden municipal services that the tax exempt property demands. Erickson T98 - 16 - 100-5; P-48, ¶5.

126. The average foreclosure rate in the Abbott districts is 7.3%, and the state average is 4%, and five Abbott districts have foreclosure rates over 10%. The statewide subprime mortgage rate is approximately 10% but in the Abbott districts, the rate is 38% and five municipalities have a rate over 50%. Erickson T107-5 - 110-19; P-51, Table 3.

127. The State presented no evidence, study or data to contradict or refute Dr. Erickson's data, analysis and findings that Abbott districts remain in the condition of municipal overburden.

5. Preschool

128. Under Abbott decisions and regulations, preschool budgets are prepared separately from district budgets and are submitted to DOE in mid-November of each year, with determinations issued by January 15 of the following year. Transcript of Colleen LaRocca Malleo, February 21, 2009, page 53, lines 20-25 (Malleo T53-20-25); N.J.A.C. 6A:10-2.3(g)-(h).

129. Under the Abbott regulations, preparation of the preschool budget began with a needs assessment and development of a program plan. Transcript of Olga Hugelmeyer, February 23, 2009 page 12, line 8 - page 13, line 2 (Hugelmeyer T12-8 - 13-2); N.J.A.C. 6A:10A-2.2(a).

130. DOE provided "fairly detailed and specific" guidance to the Abbott preschool programs for the preschool program plan and budget preparation. Joye T55-16-19. This included line item budget templates that include costs for many of the items listed. Malleo T42-2-22.

131. Prior to SFRA, Abbott preschool programs could make "special requests" for necessary items that did not fit within the DOE's line item budget template or required funding beyond the line item amounts. Hugelmeyer T20-5-19; Malleo T50-2 - 51-9.

132. These special requests served to address the particularized needs of the Abbott districts, such as a medical van and driver to provide medical screenings to all preschoolers, translators to provide appropriate information to parents in their native language, and security. Joye T55-20 - T57-8, Hugelmeyer T17-15 - 28-21; Malleo T51-4 - 52-9; P-78; P-83.

133. For 2008-09, the DOE for the first time gave Abbott districts the option of accepting a presumptive preschool budget based on a 2.89% increase over their 2007-08 budget, or the traditional line-item, needs-based budget. Joye T61-25 - 62-18. Eight districts opted to submit a line-item budget and ten districts submitted a line-item budget for community preschool providers, all of

which were approved by the DOE. P-23. District 2008-09 budgets showed wide variance in per pupil expenditures across districts. P-19, ¶32.

134. In contrast to the reliance on the PJP process for development of the K-12 base amount and at-risk costs in SFRA, the DOE decided not to use the results from the 2003 PJP process -- and a second preschool-specific PJP process undertaken by APA in 2006 -- to determine preschool costs, citing the unreliability of the PJP process and results. Davy Vol. II T24-9 - 26-6; D-12, p. 17; P-54, p.5.

135. The DOE instead derived the preschool per pupil formula amounts from 2007-08 average preschool expenditures, by program setting: \$11,506 for in-district programs; \$12,934 for community provider settings; and \$7,146 for Head Start programs. SFRA adjusts the per pupil amounts in 2009-10 and 2010-11 by the CPI. D-12, pp. 17-18. Joye T68-5 - 69-3.

136. Beginning in 2009-10, SFRA provides Abbott district preschool funding based on the greater of 1) the formula amount; 2) the district's total 2008-09 preschool budget, adjusted for enrollment; or 3) the districts 2008-09 per pupil preschool cost, adjusted for enrollment. In contrast to annual CPI increases to the formula amounts, funding derived from 2008-09 district budgets or per pupil

amounts are not subject to a cost-of-living adjustment in 2009-10 and subsequent years. Joye T72-3 - 73-21.

137. SFRA eliminates needs-based preschool budgeting, and provides preschool aid based on pre-determined amounts, either pursuant to the formula or derived from flat funding of a district's 2008-09 budget or per pupil amounts, if greater. Joye T75-9 - 76-4; D-12, pp. 22-24.

138. SFRA does not allow the opportunity for districts to seek funding allocations developed after an assessment of actual program and student needs. Malleo T63-18-25; Joye T76-1-4; Belfield Vol. I T97-2-4.

139. SFRA fails to overcome the identical deficiencies in the preschool funding provisions in CEIFA.

140. SFRA does not require the State to meet the standards established in prior Court decisions for high quality, well-planned preschool programs. Belfield Vol. I T91-15-24, P-19, ¶55.

141. SFRA allows districts to reallocate preschool aid to K-12 programs, contrary to prior Abbott preschool decisions. Belfield Vol. I T94-13, P-19, ¶58.

6. Repeal of the Abbott Remedial Designation

142. SFRA repealed the remedial designation of Abbott districts in CEIFA. P-3, ¶16.

143. The State presented no evidence, nor does SFRA contain any findings, of changed circumstances relating to extreme poverty, fiscal incapacity, educational inadequacy, or racial isolation that formed the basis for the Court's judgment and designation of these districts for remedial relief. Goertz T86-17 - 87-1.

144. Dr. Goertz' analysis of the current conditions in the Abbott districts shows no changed circumstances in the factors relied upon for designation of these districts for remedial measures. P-3, ¶¶17-28;

145. Dr. Goertz' analysis also demonstrates that the socio-economic and educational factors resulting in remedial designation continue to persist in Abbott districts. Goertz T82-25 - 84-19; P-3, ¶¶18-27; P-5; P-6; P-8; P-9; P-24.

146. The current data show: (a) All Abbott districts have concentrated student poverty over 40%, with twenty-four over 60%, Goertz T83-9-11; P-24; (b) the Abbott districts remain racially isolated, with seventeen above 90% minority and 88% of Abbott students from racial/ethnic minority groups, Goertz T83-17-18; P-3, ¶18(g); (c) Abbott districts continue to perform well below both the state average and I&J districts with respect to state assessments and graduation rates, Goertz T83-25 - 84-3; P-8; (d) 52.4%

of Abbott schools are labeled "schools in need of improvement" under the federal No Child Left Behind Act for not making adequate yearly progress, compared to 12.6% of schools in other districts, and 1.8% of schools in I&J districts, P-3, ¶27; and (e) Abbott districts continue to experience municipal overburden, Goertz T64-4-13; P-5.

147. The Abbott districts continue to experience the conditions that led the Supreme Court to direct the State to provide remedial measures to ensure "a constitutionally sound, mandated educational program that is supported by a consistent level of State funding" and that has succeeded in enabling Abbott students "to show measurable educational improvement." Abbott XIX, 196 N.J. at 549.

148. Dr. Ernest Reock, another Plaintiffs' expert on school finance in New Jersey, testified that the Abbott remedial measures ensured stable and consistent funding for the Abbott districts throughout the period from 2002-2008 when the Legislature failed to fund the CEIFA formula. Testimony of Ernest Reock, February 18, 2009, T45-2-5; T46-13-18; T70-2-5; P-43, ¶10.

CONCLUSIONS OF LAW

1. To the extent that any of the foregoing findings of fact incorporate conclusions of law or the application of law to fact, they are incorporated herein as conclusions of law.

2. The State's burden in these proceedings is to convincingly demonstrate that the SFRA overcomes the deficiencies found in the prior CEIFA funding provisions as applied to Abbott districts. Abbott XIX, 196 N.J. at 562 (citing Abbott IV, 149 N.J. at 196).¹

3. The State's argument that the Court should take into account assertions of transparency, predictability and equity of the SFRA formula on a statewide basis has no legal relevance to the determination of whether the SFRA overcomes the deficiencies in CEIFA's funding provisions as applied to the Abbott districts, the "limited issue" in this proceeding.

4. The State has failed to convincingly demonstrate that SFRA overcomes the deficiencies in CEIFA's funding provisions for regular education expenditures as applied to the Abbott districts.

¹ The State fails to meet the "convincing" quantum of proof, even though Plaintiffs maintain that the proper burden in these proceedings is clear and convincing evidence, as set forth in Plaintiffs' Pre-Trial Brief.

5. The State has failed to convincingly demonstrate that SFRA overcomes the deficiencies in CEIFA's funding provisions for supplemental programs and services to address the special and unique needs and disadvantages of Abbott students.

6. The State has failed to convincingly demonstrate that there is no longer a continuing need to provide the Abbott districts with the opportunity to seek supplemental funding for required and demonstrated needed supplemental programs and services to address the special and unique needs of their students in the event the SFRA formulaic amounts are inadequate.

7. SFRA continues to rely on substantial local contributions from Abbott districts, with no convincing showing that the circumstances of municipal overburden have been ameliorated in those districts, and, consequently, fails to assure adequate funding for regular education and supplemental programs necessary to achieve a thorough and efficient education.

8. The State has failed to convincingly demonstrate that the elimination of the opportunity to seek supplemental funding for the Abbott preschool program based on particularized need can assure the continuation of well-

planned, high quality preschool for Abbott children consistent with the Supreme Court's standards and mandates.

9. The State has not convincingly demonstrated that the SFRA's failure to incorporate the Court's Abbott preschool standards and mandates, and its provision allowing reallocation of preschool funding to K-12 education, will not undermine the provision of well-planned, high-quality preschool for Abbott children as required by the Supreme Court.

10. The State has failed to convincingly demonstrate that the SFRA funding formula provides sufficient and adequate resources and actual funding to Abbott districts to deliver a substantive thorough and efficient education to their uniquely disadvantaged students.

11. The State cannot convincingly demonstrate that the Abbott remedial designation and the Abbott constitutional remedies are not needed to ensure Abbott students receive a thorough and efficient education.

RECOMMENDATIONS

Based on the findings and conclusions set forth above, Plaintiffs request that this Court recommend to the Supreme Court the following:

1. The SFRA should be declared unconstitutional as applied to the Abbott districts.

2. The State should be required to continue the interim parity remedy for regular education in Abbott districts until it can be convincingly demonstrated through amendatory legislation that a substantive thorough and efficient education can be guaranteed in the Abbott districts by expenditures that are lower than the parity amounts.

3. The State should be required to continue the constitutional mandates for supplemental programs and funding under Abbott V and Abbott X.

4. The State should be required to maintain the Abbott remedial designation.

5. The State should be required to implement the recommendations set forth in the Post-Trial submission of the Amici Abbott districts regarding necessary changes to the supplemental funding protocols and process, which recommendations Plaintiffs adopt and incorporate herein.

6. The Supreme Court should appoint a Special Master to oversee, on an expedited basis and in collaboration with Plaintiffs and Amici Abbott districts, the adoption of an appropriate protocol with procedures and standards that will govern applications by Abbott districts for needed programs and necessary funding and will provide full administrative and judicial protection for those districts seeking demonstrably-needed programs and services.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is fluid and cursive, with a large initial "D" and "S".

By: _____
David G. Sciarra, Esquire
Education Law Center
Counsel for Plaintiffs

Dated: March 9, 2009