

SUPREME COURT OF NEW JERSEY
DOCKET NO. 62,700
M-969-07 & M-1372-07

RAYMOND ARTHUR ABBOTT, ET AL., :
 : Civil Action
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 Plaintiffs, :
 :
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 v. :
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 FRED G. BURKE, ET AL., :
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 Defendants. :
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THE STATE'S EXCEPTIONS TO THE
OPINION/RECOMMENDATIONS OF THE SPECIAL MASTER

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-7457
Attorney for the Defendants
Kevin.Jespersen@dol.lps.state.nj.us

ROBERT J. GILSON
Director, Division of Law
Assistant Attorney General
Of Counsel

NANCY KAPLEN
Assistant Attorney General
Of Counsel

KEVIN R. JESPERSEN
Deputy Attorney General
On the Brief

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INTRODUCTION

The Honorable Peter E. Doyne, the Special Master in this case, found that the School Funding Reform Act of 2008 (the "SFRA"), N.J.S.A. 18A:7F-43 to 62, provides to the Abbott districts funding that exceeds the requirements necessary for a thorough and efficient education. Judge Doyne thus found that the SFRA provides constitutionally sufficient funding. That finding renders unnecessary the continuation of the Abbott remedies of parity funding and supplemental funding.

Judge Doyne's conclusion that the SFRA provides more than adequate funding to the Abbott Districts resulted from an evidentiary hearing that Judge Doyne conducted over sixteen days. Judge Doyne considered hundreds of documents that were admitted into evidence. During the course of the proceedings, Judge Doyne heard the testimony of thirty-one witnesses, including the New Jersey Commissioner of the Department of Education (the "Department"), four Assistant Commissioners of the Department, ten expert witnesses, and administrators from nine of the Abbott districts.

Judge Doyne placed the burden of proof on the State and required the State to establish its case with "convincing evidence," a quantum of proof more demanding than a preponderance of the evidence. Thus, Judge Doyne found convincing evidence established that funding under the SFRA exceeds the amounts

necessary for the Abbott districts to provide a thorough and efficient education to their students.

Judge Doyne specifically recommended that the parity remedy be discontinued. This recommendation is fully supported by the evidence that convincingly established the SFRA provides more than adequate funding to the Abbott districts.

Judge Doyne, however, recommended that some type of supplemental funding remedy continue. Judge Doyne cited no finding of fact that justified the continuation of supplemental funding. Instead, Judge Doyne stated that he could not predict with absolute certainty how the SFRA would operate in the future. Judge Doyne sought to protect against the remote possibility that somehow in the future the SFRA would be inadequate for some Abbott district under presently undefined circumstances.

Judge Doyne was in error in recommending the continuation of the supplemental funding remedy. Judge Doyne's unequivocal finding that convincing evidence demonstrates funding under the SFRA is in excess of the requirements necessary to provide a thorough and efficient education negates the need for supplemental funding. A supplemental funding remedy, moreover, would undermine the essential objectives that the Legislature sought to achieve with the SFRA. In particular, a supplemental funding remedy would erode the transparency, equity and predictability in school funding that the SFRA creates. The imposition of a supplemental funding remedy

in light of the finding that the SFRA provides more than adequate funding would constitute an improper encroachment upon the powers of the Legislature and would violate the constitutional doctrine of the separation of powers. In the absence of a clear finding of some constitutional deficiency in the SFRA, the supplemental funding remedy ceases to be a constitutional remedy and becomes an incursion into education policy making.

For all these reasons, this Court should adopt the factual finding of Judge Doyne that the SFRA provides more than adequate funding for the Abbott districts to provide a thorough and efficient education. Because the SFRA provides more than adequate funding for the Abbott districts, this Court should end the parity and the supplemental funding remedies.

ARGUMENT

POINT I

THIS COURT SHOULD ADOPT JUDGE DOYNE'S FACTUAL FINDINGS THAT THE SFRA PROVIDES MORE THAN SUFFICIENT RESOURCES TO AFFORD A THOROUGH AND EFFICIENT EDUCATION FOR CHILDREN IN THE ABBOTT DISTRICTS.

Judge Doyne found that the SFRA was designed "to exceed the requirements necessary to provide a thorough and efficient education" in the Abbott districts. Opinion/Recommendations to the Supreme Court of the Special Master (March 24, 2009) ("Opinion") at 70. The funding under the SFRA provides adequate resources to address the needs of the students in the Abbott districts, including "ample funds" for "whatever supplemental programs are needed" in the Abbott districts. Opinion at 77.

Judge Doyne imposed upon the State a "convincing" burden of proof. Opinion at 70. According to Judge Doyne, "A 'convincing' standard requires a burden greater than the preponderance standard, yet does not necessitate the clear and convincing standard." Opinion at 70. Judge Doyne's conclusions thus reflect the determination that the vast amount of evidence in this case *convincingly* demonstrates that the SFRA exceeds the requirements necessary to provide a thorough and efficient education. Opinion at 70.¹

¹Judge Doyne's use of a "convincing" standard was an error. Given the usual strong presumption of constitutionality afforded

The New Jersey Constitution provides, "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years." N.J. Const., art. VIII, §4, ¶1. See generally Abbott v. Burke, 196 N.J. 544, 548 (2008) (Abbott XIX). This Court has concluded that the Core Curriculum Content Standards (the "CCCS") provide a "constitutionally acceptable definition of a thorough and efficient education." Abbott XIX, 196 N.J. at 562. A school funding formula satisfies constitutional requirements if it provides sufficient financial support for the resources necessary for students to achieve the CCCS. See Abbott XIX, 196 N.J. at 564; Abbott v. Burke, 119 N.J. 287, 309 (1990) (Abbott II). "If . . . that level is reached, the constitutional mandate is fully satisfied regardless of the fact that some districts may exceed it. In other words, the Constitution does not mandate equal expenditures per pupil." Opinion at 8, quoting Abbott II, 119 N.J. at 306-7 (emphasis in Judge Doyne's Opinion).

legislative enactments (see e.g., N.J. Ass'n on Corrections v. Lan, 80 N.J. 199, 218 (1979); State v. Trump Hotels and Casino Resorts, 160 N.J. 505, 526 (1999); N.J. Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972); Caviglia v. Royal Tours of America, 178 N.J. 460, 477 (2004)), placing a higher burden on the State than a preponderance was inappropriate. See, also, Pre-Hearing Brief of the Defendants at pages 24-33 (February 4, 2009). Despite Judge Doyne's erroneous use of the higher "convincing" standard, the State nonetheless established that funding under the SFRA was constitutionally adequate.

This Court implemented the Abbott remedies of parity funding and supplemental funding because of the absence of a "'measuring stick' by which to gauge the necessary educational resources for the CCCS to be provided in districts having large concentrations of poor children within their pupil population." Abbott XIX, 196 N.J. at 563-64.

The SFRA, however, now fully and adequately defines the necessary resources. The State engaged in an intricate and prolonged process to identify the resources necessary for students to achieve the CCCS. Opinion at 21 and 72.

Judge Doyne found the SFRA ensures that all disadvantaged students "will receive the necessary educational resources to help these students achieve the CCCS." Opinion at 73. Judge Doyne further found that the SFRA "was designed to **exceed** the requirements necessary to provide a thorough and efficient education." Opinion at 70. Among other things, the SFRA provides "more than ample funds" to the Abbott districts to provide whatever supplemental programs are needed for students in those districts to achieve the CCCS. Opinion at 77.

Because the SFRA provides more than adequate funding for the resources necessary for students in the Abbott districts to achieve the CCCS, the Abbott remedies are no longer necessary.

A. Judge Doyne Was Correct in His Determination That the SFRA Is Designed to Exceed the Requirements Necessary to Provide a Thorough and Efficient Education to Students in the Abbott Districts.

1. The Department of Education Developed the SFRA Through a Professional Judgment Panel Process, an Appropriate Method to Determine a School Funding Formula.

The funding formula in the SFRA was rigorously developed through a Professional Judgment Panel, or "PJP," process. The PJP process relies upon the knowledge and experience of professional educators to identify those particular resources, such as teachers, technology, and support staff, necessary to educate students in a hypothetical school district to a specific educational standard. Opinion at 21 and 24. The PJP process is one of four methods that experts in the field of education policy accept as appropriate for the creation of a school funding formula. Opinion at 21.

In evaluating the propriety of the New Jersey PJP process, Judge Doyne heavily relied upon the expert opinion of David Monk, Ph.D., who is the Dean of the College of Education at Pennsylvania State University. Opinion at 26-27. Judge Doyne explained that he relied upon Dr. Monk's assessments because Dr. Monk was a "highly persuasive and compelling witness as his opinions were reserved, yet firm." Opinion at 29. Judge Doyne further noted:

[Dr.] Monk is a recognized expert in

educational finance. His testimony was thoughtful, temperate, non-partisan and moderate in approach. Of all the experts who testified concerning the PJP process, [Dr.] Monk's testimony was the most considered, even-handed and well structured.

Opinion at 26.

Dr. Monk testified that the PJP process is a reliable method to develop a school funding formula. Opinion at 38. Dr. Monk further testified that the PJP process is the "preferred approach" to the design of a funding formula. Opinion at 27-28.

The PJP method has been used to determine educational costs in several States, including Maryland, Colorado, Kansas, North Dakota, Tennessee, Connecticut, Missouri, South Dakota, Nevada, Montana and Pennsylvania. D-124², page 4.

The Department retained Augenblick, Palaich and Associates, Inc. ("APA") to conduct the New Jersey PJP process. Opinion at 16 and 21. APA is a leading national expert in conducting PJP studies to develop school funding formulas. Opinion at 22. Judge Doyne found that APA had "a wealth of experience in many states" in developing school funding formulas. Opinion at 28.

²"D-124" refers to the Defendants' exhibit entered in evidence at the hearing before Judge Doyne and marked as Exhibit D-124. Exhibits bearing a "D" designation are the Defendants' trial exhibits; "P" documents are the Plaintiffs' trial exhibits. The parties have filed directly with this Court copies of all trial exhibits. Exhibit C-1 is the Special Master's exhibit that indicates the Plaintiffs' exhibits entered into evidence. The Special Master's Exhibit C-2 indicates the Defendants' exhibits entered into evidence.

Dr. Monk testified that APA "are a very capable, very able group that would probably be the first group I would think of if I were wanting to commission a study of this sort." 12T22:9-16 (Monk)³. John Augenblick, the founder of APA, was the project leader for the New Jersey PJP process. 3T57:20 to 23 (Silverstein). Dr. Monk testified that Dr. Augenblick is well regarded in the field of adequacy studies and has extensive experience in conducting PJP studies. 12T22:17 to 12T23:15 (Monk).

The New Jersey PJP process sought to identify those resources particularly necessary for students to achieve the CCCS, New Jersey's measure of a thorough and efficient education. See Abbott XIX, 196 N.J. at 552-53.

In the New Jersey PJP process, three separate panels of educational experts were asked to determine the resources necessary to achieve the CCCS. Opinion at 18. Each panel was given broad discretion to identify whatever resources they determined were necessary to achieve the CCCS. Opinion at 24-25. Among the resources that the panelists identified were instructional staff, such as classroom teachers, instructional aides and resource teachers; support staff, such as librarians,

³"12T22:9-16 (Monk)" refers to the twelfth trial transcript, at page 22, lines 9 to 16. The parenthetical identifies the witness whose testimony is cited. A table of the trial transcripts correlated to the witnesses who testified and the dates of the testimony is attached to this Brief.

nurses, social workers and counselors; administrative staff, such as principals and department chairs; and other costs such as professional development, supplies and materials, and equipment. See, e.g., D-2, Appendix 9-23.

The panelists in the New Jersey PJP process were specifically charged with determining the additional resources that were required to meet the educational needs of students who were in poverty, or "at-risk" students⁴, and students with limited English proficiency, or "LEP" students. D-2, pages 8-10. The additional resources that the panelists identified as necessary for at-risk students included such items as reading specialists, social workers, parent liaisons, instructional aides, and after-school and summer-school programs. See D-12, Appendix E Tables 4 and 4a; D-2, Appendix 9-24. Hence, the model that resulted from the New Jersey PJP process directly and specifically addressed the needs of at-risk and LEP students.

The New Jersey PJP process avoided one of the flaws of the Comprehensive Educational Improvement and Financing Act of 1996 ("CEIFA"). This Court observed that CEIFA did not, in any concrete way, attempt to link the Core Curriculum Content Standards to the actual funding needed to deliver that content.

⁴ Under the SFRA, "at-risk" is defined as a student from a household in which the household income is at or below 185% of the Federal Poverty Level. This standard reflects the eligibility criteria for free or reduced-price lunch. D-12, page 12; N.J.S.A. 18A:7F-47 (definition of "at risk pupils").

Abbott v. Burke, 149 N.J. 145, 169 (1997) (Abbott IV). The panels in the New Jersey PJP process identified the resources necessary for all students, including at-risk student and LEP students, to achieve the CCCS. Indeed the panels included professional educators who work in Abbott districts. Opinion at 26; D-2, Appendix 7. Thus, educators who had experience in teaching at-risk students in the Abbott districts participated in the process of identifying the resources needed to enable those students to achieve the CCCS. The Department determined the costs of those resources, and the resulting costs were the basis of the SFRA's funding formula. D-12, pages 5 and 10-18. As a result of the New Jersey PJP process, the funding under the SFRA was linked specifically to the costs of achieving the CCCS.

Judge Doyne determined that the Department, with the assistance of APA, properly and fairly implemented the PJP process in its efforts to develop an equitable and adequate school funding formula. Opinion at 38. In reaching this conclusion, Judge Doyne relied upon, among other things, the evaluation of Dr. Monk. Dr. Monk concluded that the Department had conducted the New Jersey PJP process in "good faith." Opinion at 28. Dr. Monk further opined that "the use of the PJP process was reasonable and provided a systemic approach to connect the inputs and outputs of the educational funding system." Opinion at 28.

Judge Doyne rejected the criticisms of the PJP process that

the Plaintiffs' experts offered. Judge Doyne found Margaret E. Geortz, Ph.D. to be "less than persuasive," because, among other things, she was unable to offer an opinion whether the PJP process is an appropriate method to develop an adequacy formula. Opinion at 29-30. See, also, 11T55:23 to 11T56:6.

As for the Plaintiffs' expert Clive Belfield, Ph.D., Judge Doyne observed that, because Dr. Belfield believed the funding that resulted from the New Jersey PJP process was inadequate, he assumed that the process itself must have been flawed. Opinion at 33. Dr. Belfield otherwise offered no real analysis of the New Jersey PJP process. Judge Doyne rejected Dr. Belfield's criticism that the New Jersey PJP process produced inadequate funding. Opinion at 77-78. Dr. Belfield estimated the costs for educating at-risk students in Abbott districts would be between \$31,000 and \$33,000 per pupil. Opinion at 77. The national average for per pupil expenditures in 2005-2006 was \$9,154, and, in fiscal year 2008-2009, the average per pupil expenditure of the I and J districts was \$14,046. Opinion at 63. Dr. Belfield's funding requirements would require the State to provide an additional \$2.9 billion to the already generous State aid provided under the SFRA to the Abbott districts. Opinion at 77. Judge Doyne thus correctly found that Dr. Belfield's recommended funding requirements were unnecessarily exorbitant and unrealistic. See

Opinion at 77-78.⁵

Finally, the Plaintiffs' expert Bruce Baker, Ph.D. undertook an elaborate statistical analysis of the New Jersey PJP process, but he was notably selective in the data that he relied upon. For example, he developed a statistical model of the composition of the panels that suggested the Abbott districts were under represented (P-54, page 9), but left out of the analysis the composition of the third panel (18T46:1 to 24 (Baker)). See, also, Opinion at 36. Dr. Baker was fully aware that three of the eight members of the third panel, or 37.5%, were from Abbott districts. 18T46:1 to 24 (Baker). See, generally, Opinion at 36. Inclusion of the third panel in Dr. Baker's statistical study would have substantially altered the analysis of Abbott representation on the panels.

As explained in detail in Point I B 4, infra, the Department implemented a number of significant enhancements to the resources of the PJP model that substantially increased the funding available to the Abbott districts. Dr. Baker produced a statistical study of these enhancements and claimed his analysis showed that the enhancements did not provide an "appreciable"

⁵The Plaintiffs objected to the admission into evidence of Dr. Belfield's report, "The Cost of Providing Supplemental Programs in the Abbott Districts in New Jersey," D-126. 29T139:6 to 22. The report affirms Dr. Belfield's unrealistic position that the necessary per pupil expenditures for Abbott districts is between \$31,000 and \$33,000.

increase in funding for the Abbott districts. See P-54, page 18, 28 and 29. Dr. Baker, however, failed to include in his analysis a number of key enhancements. See 18T115:1 to 12 (Baker). For example, he did not account for the change in the definition of at-risk students. Under the original definition, only students eligible for a free lunch under the federal free lunch program were included in the definition of at-risk students. The definition was expanded so that both children eligible for a free lunch and for a reduced price lunch were included. This change substantially increased the number of students eligible for at-risk funding and thus increased the funding to Abbott districts by approximately 17%. 18T122:23 to 18T125:1 (Baker). Another enhancement was the adoption in the SFRA of a sliding scale that substantially increased the funding for security as the concentration of at-risk students increased. Dr. Baker did not include in his analysis the effect of this increase in security aid for the Abbott districts. 18T115:1 to 12 (Baker).

Dr. Baker's various statistical analyses were so skewed that Judge Doyne described Dr. Baker as "a 'magician' with numbers." Opinion at 38. Dr. Baker's analysis prompted Judge Doyne to observe, "There are three kinds of lies: lies, damned lies and statistics." Opinion at 38, quoting Mark Twain, Autobiography of Mark Twain 149 (Harper 1959).

Judge Doyne's assessment of the various experts' testimony

was based in large measure upon an evaluation of the witnesses' credibility. This Court should, therefore, give that assessment considerable weight. Judge Doyne, as the fact finder, had "the opportunity to make first-hand credibility judgments about the witnesses" who appeared on the stand, and had "a 'feel of the case' that can never be realized by the review of the cold record." See, e.g., N.J. Div. of Youth and Family Serv. v. E.P., 196 N.J. 88, 104 (2008). See, also, State v. Johnson, 42 N.J. 146, 161 (1964); Abeles v. Adams Eng'g Co., Inc., 35 N.J. 411, 423-24 (1961).

After carefully evaluating the New Jersey PJP process, Judge Doyne was "satisfied the PJP process established fairly and equitably the first step in constructing a constitutionally mandated equitable funding formula for all districts, [including] the Abbott districts." Opinion at 38.

All of this evidence demonstrates the soundness of Judge Doyne's fundamental conclusion:

The court was impressed with the evolution of the SFRA, the efforts taken attempting to construct an equitable formula which would not only be fair to all students in New Jersey, but which would also **ensure more than adequate funds were available for the students in the Abbott districts**. Not only were six national experts retained in an effort to ensure adequate funding, but those experts who testified, testified in a measured, non-partisan and thoughtful manner. Uniformly, the defendants' experts testified the process utilized by the State in attempting to develop an equitable formula was appropriate if not

commendable. [Dr.] Monk's observation [that] the development of the SFRA should serve as the national model for the development of a school funding formula is accepted with his recognition [that] the development of any formula cannot meet the requirements of perfection.

Opinion at 63 (emphasis added).

2. The SFRA Uses a Weighted Student Formula to Ensure Adequate Funding for the Needs of Students in the Abbott Districts.

After the panelists identified the resources necessary to achieve the CCCS, the Department applied actual cost data to the model resources. D-12, page 5. For example, in order to determine the cost associated with personnel identified in the model, the Department used the statewide average for the actual salaries of certificated staff, data from the Bureau of Labor Statistics for non-certificated staff salaries and actual benefit costs.

The principal mechanism for educational funding under the SFRA is a weighted student formula. Dr. Monk testified that "[e]xperts in the field of adequacy have not only recognized a Weighted Student Formula as an appropriate method for school funding, but the growing consensus is that it is a preferred way to develop a school funding formula." Opinion at 27, citing D-123, ¶13. In addition, Susanna Loeb, Ph.D., an expert in education policy who testified at the remand hearing, stated that the weighted student formula is "perhaps the most appropriate funding approach." Opinion at 39, citing 9T20:16-19 (Loeb).

Funding under the SFRA is based upon a per pupil amount applied to a school district's enrollment. The per pupil amount is adjusted through the use of weights to account for, among other things, the additional needs of at-risk students and LEP students. Opinion at 39. See, also, D-122, page 21-23, ¶¶37-39. The principal relevant characteristic of the Abbott districts is the presence of large numbers of at-risk and LEP students. Such students may have special educational needs that may affect the funding requirements of the Abbott districts. See, generally, Abbott XIX, 196 N.J. at 560-63.

Education funding under the SFRA begins with the calculation of an "Adequacy Budget" designed to support the vast majority of the educational resources needed by children in a district. Opinion at 41; D-12, page 19. See also N.J.S.A. 18A:7F-51. Depending on the composition of the student body, some districts may need more resources and other districts less. Accordingly, each district has an individual Adequacy Budget that is based on the specific needs of the district's students.

For the 2008-09 school year, the identified resources for an elementary school student generated a cost of \$9,649; the identified resources for a middle school student generated a weight of 1.04; and the identified resources for a high school student generated a weight of 1.17. D-12, Appendix E, Table 2. See also N.J.S.A. 18A:7F-49. Accordingly, the per-pupil base amount in each

district's Adequacy Budget reflects the number of elementary school students times \$9,649, the number of middle school students multiplied by \$10,035 and the number of high school students multiplied by \$11,289. D-12, Appendix C; N.J.S.A. 18A:7F-50.

The number of at-risk students in a district adds an additional amount to the Adequacy Budget given that low-income students may need extra educational resources to meet the CCCS. See N.J.S.A. 18A:7F-51(b). The per-pupil increase in the Adequacy Budget for at-risk students was derived from the specifically identified additional educational resources that these students may need to achieve the CCCS and from the cost of providing those resources. A district's Adequacy Budget is increased for every at-risk student in that district by the per-pupil cost of those additional educational resources. The SFRA uses a minimum weight of 0.47 for each at-risk student which is multiplied by the per-pupil base amount for that grade level. N.J.S.A. 18A:7F-51(b). Thus, for the 2008-09 fiscal year, the SFRA formula includes a minimum of \$4,535 for each at-risk elementary student, \$4,716 for each at-risk middle-school student and \$5,306 for each at-risk high-school student. D-12, Appendix E Tables 4 and 4a.

The at-risk weights for districts with high concentration of at-risk students, such as the Abbott districts, increases even further through the use of a sliding scale. As the concentration of at-risk student increases, the weight for those students

increases from 0.47 to 0.57.⁶ The appropriate weight (reflecting a district's concentration of at-risk students) is applied to the base amount, depending on grade level, for each at-risk student. Accordingly, a district's Adequacy Budget could be increased up to \$5,500 for each at-risk elementary student, \$5,720 for each at-risk middle school student and \$6,435 for each at-risk high school student. D-12, Appendix E, Table 4a.

Because the SFRA's weighted student formula properly and adequately accounts for the increased costs associated with educating at-risk and LEP students, the SFRA provides sufficient funding for the Abbott districts. Opinion at 39-40.

**3. Allan Odden, Ph.D. and Lawrence Picus, Ph.D.
Validated the Resources Developed Under the
New Jersey PJP Process.**

Dr. Odden and Dr. Picus are nationally recognized experts in education finance and are leaders in the field of adequacy studies. Opinion at 71. Together, Dr. Odden and Dr. Picus developed the Evidence Based method of conducting adequacy studies. Opinion at 19. See, also, 12T28:10 to 12T29:24 (Monk); D-5; D-6; 1T53:23 to

⁶The at-risk sliding scale uses a maximum weight of 0.57, which is highest at-risk weight used in the country. Opinion at 45. The weight remains at 0.57 for concentrations of at-risk students of 60% or more. The additional funding generated by the weight is applied to **all** at-risk students in a district, regardless of how high the concentration may be. That is, although the weight remains at 0.57, the district receives funding at the at-risk weight for **every** at-risk student, even though the district may have as much as an 100% at-risk student concentration. See Opinion at 44.

1T54:12 (Davy).

The Evidence Based method attempts to identify the educational programs that current research indicates are effective. The Evidence Based method determines resources necessary to provide those programs, and determines the costs of those resources across all schools and school districts in a particular State. See Opinion at 19. See, also, 7T21:21 to 7T22-4 (Picus).

Dr. Odden and Dr. Picus analyzed the resources identified in the New Jersey PJP process using the Evidence Based method. They found that the New Jersey PJP process resulted in resources that met or exceeded the Evidence Based standards in all essential areas, including support staff, class size and number of teachers, books, materials and equipment, central office resources, student activities, and resources for limited English proficiency students. Opinion at 71-72. See, also, D-12; 1T62:17 to 1T64:3 (Davy); D-74, page 16.

4. After the Conclusion of the PJP Process, the Department Implemented a Number of Significant Enhancements that Substantially Increased the Adequacy Budgets for the Abbott Districts.

After the conclusion of the New Jersey PJP process, the Department conducted public hearings regarding the results of the process. Opinion at 19. See, also, D-12, page 7; 1T52:19 to 1T53:7 (Davy). In addition, the Department retained three experts, Allan Odden, Ph.D., Lawrence Picus, Ph.D. and Joseph Olchefske, to analyze and comment upon the New Jersey PJP process. Opinion at

19. See, also, D-12, page 8; 1T53:23 to 1T55:24 (Davy). Dr. Odden, Dr. Picus and Mr. Olchefske are each nationally recognized experts in the area of education finance and policy. Opinion at 19. See, also, D-5 and D-6; 1T53:23 to 1T55:24 (Davy). The Department also retained three consultants, Thomas Corcoran, Susanna Loeb, Ph.D. and David Monk, Ph.D., to advise the Department regarding the development of a funding formula based on the New Jersey PJP process. Opinion at 20. See, also, D-12, page 9. Mr. Corcoran, Dr. Loeb and Dr. Monk are each experts in the area of education policy and finance. See D-9, D-10, D-11 and D-91. Finally, the Department conducted stakeholder and legislator meetings. Opinion at 20.

As a result of comments received during the public hearings and meetings, and the advice and analysis from the experts, the Department implemented certain substantial enhancements to the funding formula. Opinion at 20. See, also, D-12, pages 10-14. Those enhancements included, among other things:

1. The expansion of the definition of at-risk students to include students that are eligible for both free and reduced-priced lunches under the Title I Federal Free or Reduced Lunch Program. The original definition included only student eligible for free lunch.
2. The adoption of an at-risk weight sliding scale

that replaced the at-risk weights derived from the PJP process. The PJP at-risk weights varied from 0.42 to 0.46. The sliding scale used a weight that increased from 0.47 to 0.57 as the concentration of at-risk students increased in a district. D-12, page 38. The sliding scale increased the weights for at-risk students and therefore increased funding under the SFRA for those students.

3. An increase in funding for security based upon the concentrations of at-risk students in a district.
4. The inclusion in the district resources of a line item for capital improvements at a rate of \$175 per pupil.
5. The addition of nine coach/facilitators at the district level for the model district. These coaches and facilitators assist in teachers' professional development.
6. An additional allocation of \$20,000 at the model district level for professional development.
7. The use of mean salaries instead of median salaries in determining the cost of personnel identified in the model school district. This change increased the amount attributable to the costs for personnel identified in the model.

See, generally, Opinion at 20. See, also, D-12, pages 11 to 14; 5T19:9 to 5T38:25 (Attwood).

The adoption of the enhancements produced substantial increases in the Adequacy Budgets for the Abbott districts. For example, for the Abbott districts the change from the PJP at-risk weights to the sliding scale weights added from \$579 to \$1,242 per at-risk student, depending upon the concentration of at-risk students in the district and the grade level of those students. D-12, page 38. The incremental increases in the Adequacy Budgets for particular districts resulting from the at-risk sliding scale are notable. See D-47 through D-61. For example, Newark's Adequacy Budget increased by \$32,794,170 as a result of the change to the at-risk sliding scale. D-54.

In addition, the inclusion of a line item for capital in the amount of \$175 per pupil produced \$917,000 for a district with 5,240 students. D-12, page 34. Each Abbott District received substantial increases in its Adequacy Budget based upon the capital line enhancement. For example, for each of the following districts, the capital line produced the following increases in the Adequacy Budget based upon the district's enrollment:

1. Newark (enrollment of 44,720 (D-83, page AB00409)): \$7,826,000.
2. Jersey City (enrollment of 29,545 (D-83, page AB00417)): \$5,170,375.

3. Paterson (enrollment of 24,624 (D-83, page AB00439)): \$4,309,200.
4. Camden (enrollment of 15,411 (D-83, page AB00395)): \$2,696,925.
5. Millville (enrollment of 5,256 (D-83, page AB00401)): \$919,800.
6. Vineland (enrollment of 9,961 (D-83, page AB00403)): \$1,743,175.
7. East Orange (enrollment of 9,982 (D-83, page AB00405)): \$1,746,850.

The increase in security aid also provided the Abbott districts with substantial resources. The base amount for security under the SFRA is \$70 per pupil. D-12, page 14. The calculation of aid for security, however, increased sharply as the percentage of at-risk students in a district increased. The incremental increases of the amounts attributable to security, over the base amount of \$70 per pupil, were as follows:

1. Camden: \$4,923,156. D-83, page AB00396.
2. East Orange: \$2,893,562. D-83, page AB00406.
3. Newark: \$11,959,542. D-83, page AB00410.
4. Jersey City: \$8,233,274. D-83, page AB00418.
5. Paterson: \$7,905,632. D-83, page AB00440.

Thus, the total effect of the enhancements of the capital line, the adoption of the at-risk sliding scale and the security

aid for particular districts were as follows:

1. Newark: \$52,579,712.
2. Paterson: \$33,845,695.
3. Camden: \$21,065,971.
4. East Orange: \$12,548,818.

These calculations do not include the effect of other enhancements, such as increased funding for professional development. D-12, pages 11-12. All of these enhancements represent additions to the resources that were derived from the New Jersey PJP process. The enhancements, therefore, ensure that the SFRA provides adequate funding for the Abbott districts.

5. The SFRA Provides Abbott Districts With Substantial Funding.

New Jersey ranks third among all States in spending on education after adjusting for geographic cost differences. D-136. For the school year 2005-2006, the New Jersey unadjusted per pupil expenditure was \$14,954, and the adjusted per pupil expenditure was \$13,238. The national average in 2005-2006 was \$9,154 per pupil. Opinion at 63. See, also, D-136. The average per pupil revenue available to the Abbott districts under the SFRA is among the highest in the State. See D-62. Indeed, Judge Doyle expressly found that the average per pupil revenue available to the Abbott districts under the SFRA is **23.3% higher** than the average revenues in the I and J districts. Opinion at 63. All of this evidence shows that, under the SFRA, the Abbott districts have among the

highest per pupil revenues in the nation. See Opinion at 63.

Several Abbott districts received considerable increases in State aid under the SFRA for the 2008-2009 fiscal year. For example, Garfield received a 19.8% increase, Union City obtained an 18.4% increase, and New Brunswick's increase was 12.2%. D-32. The total increase in State aid to the Abbott districts from 2007-2008 to 2008-2009 was \$209,132,753. D-32.

The average revenue per pupil under the SFRA in 2008-2009 for the Abbott districts is \$17,325, exclusive of federal funds. The average per pupil revenue for the I and J districts is \$14,046. Opinion at 63. Critically, the SFRA provides at-risk students in the Abbott districts with additional funds that can be used for additional supplemental programs, positions and services to meet any particularized need of their students. For example, an Abbott district with an enrollment of 60% or more of at-risk students receives an additional \$5,500 for each at-risk elementary student, \$5,720 for each at-risk middle school student and \$6,435 for each at-risk high school student. D-12, page 38.

This Court should accept the finding of Judge Doyne that the funding under the SFRA exceeds the requirements necessary to provide a thorough and efficient education. See Opinion at 70. This Court should further accept Judge Doyne's determination that the SFRA provides more than ample funds for whatever supplemental programs, positions and services may be necessary for at-risk

students in the Abbott districts. See Opinion at 77.

B. Judge Doyne Correctly Concluded that the SFRA is a Necessary Reform of the Two-Tiered Funding System Under the Abbott Remedies.

This Court implemented the Abbott remedies of parity funding and supplemental funding as interim devices to assure that funding for the Abbott districts was sufficient to provide a thorough and efficient education. See, e.g., Abbott XIX, 196 N.J. at 562-63. As Judge Doyne found, the Abbott remedies created a two-tiered system of school funding. Opinion at 73. While students in the Abbott districts received the benefits of the parity and supplemental funding remedies, at-risk students in non-Abbott districts did not receive the advantages of those remedies. Opinion at 73. Yet, as Judge Doyne found, 49% of the approximately 375,000 at-risk students in New Jersey attend schools in non-Abbott districts. Opinion at 73. Similarly, 54% of New Jersey's minority students attend non-Abbott schools. Opinion at 73. This anomaly caused Judge Doyne to opine, "The time for reform is now." Opinion at 74.

Judge Doyne correctly concluded that the SFRA eliminates the two-tiered system that resulted from the Abbott remedies and establishes a uniform spending formula that is transparent, equitable and predictable. Opinion at 72. The SFRA ensures that all disadvantaged students, regardless of where they live or how their district is categorized, will receive the resources necessary

to achieve a thorough and efficient education. Opinion at 73.

An example of the benefit of eliminating the two-tiered system of school funding is the expansion of preschool programs for at-risk students outside the Abbott districts. Judge Doyne noted:

Recognizing the success of the Abbott high quality preschool program, SFRA expands the program to provide the same high-quality full-day preschool to all at-risk three and four year olds in the state. N.J.S.A. 18A:7F-44(k); D-1 ¶55. Preschool education has probably been the singular success of the Robinson and Abbott litigation saga. The preschool program is also provided to all children (not simply at-risk children) in DFG A and B districts, and to all children in DFG C and D districts with concentrations of at-risk students above 40%. D-1 ¶55; see also Joye, 4 T 23:3-9.

Opinion at 55 (footnote omitted).

As Judge Doyne observed, the SFRA represents "our best hope" of providing a thorough and efficient education to New Jersey's children through an equitable, transparent and predictable funding mechanism. Opinion at 84.

POINT II

JUDGE DOYNE'S FACT FINDINGS DO NOT JUSTIFY THE CONTINUATION OF THE SUPPLEMENTAL FUNDING REMEDY.

Although the evidence in this case convincingly demonstrated that the funding for the Abbott districts under the SFRA exceeds the requirements necessary to provide a thorough and efficient education, Judge Doyne nonetheless recommended that some type of supplemental funding remedy remain available to the Abbott

districts. See, e.g., Opinion at 70. This recommendation was based entirely on the conjecture that, despite the vast array of convincing evidence that the SFRA provides more than adequate funding, the SFRA somehow may not in some circumstance in the future provide all of the funds necessary for some Abbott district. Critically, Judge Doyne's Opinion contains no specific finding of fact that justifies the need for a supplemental funding remedy. This Court should therefore reject the recommendation that the supplemental funding remedy continue.

A. Because the SFRA Provides More than Adequate Funding and No Reliable Evidence Disputes this Finding, a Supplemental Funding Remedy is Unnecessary.

Judge Doyne found that the SFRA "was designed to exceed the requirements necessary to provide a thorough and efficient education." Opinion at 70. Moreover, Judge Doyne specifically found that the SFRA provides "more than ample funds" for whatever supplemental programs any Abbott district may require. Opinion at 77. In particular, the SFRA provides extra funding for each at-risk student. That additional funding is as much as an extra \$5,500 for each elementary at-risk student, \$5,720 for each middle school at-risk student, and \$6,435 for each high school at-risk student. D-12, page 38. Given these facts, there is simply no justification for a supplemental funding remedy.

The Department adopted the at-risk sliding scale so that districts with high concentrations of at-risk students could meet

any particularized needs in those districts. The additional funds available through the at-risk sliding scale are substantial and are over and above what is necessary to provide educational resources identified through the New Jersey PJP process for at-risk children. The per pupil incremental increases resulting from the sliding scale weights as compared to the PJP weights for the Abbott districts range from \$579 to \$1,242 per pupil. D-12, page 38. Examples of the incremental increase in the Adequacy Budgets for particular districts are as follows:

1. East Orange: \$7,908,406. D-50.
2. Camden: \$13,445,890. D-49.
3. Elizabeth: \$15,625,242. D-51.
4. Newark: \$32,794,170. D-54.
5. Passaic: \$10,893,714. D-55.
6. Paterson: \$21,630,863. D-56.

See, generally, D-47 to D-61. Thus, the funds under the SFRA are not only adequate to provide a thorough and efficient education, but they also provide the resources with which districts can address particularized needs.

Given that the SFRA's weighted student formula provides more than adequate funding for the increased costs associated with educating at-risk and LEP students, the SFRA provides the funding necessary for supplemental programs, positions and services in the Abbott districts. Accordingly, the need for a supplemental funding

remedy is no longer necessary, and is not constitutionally compelled.

The adequacy of the funding under the SFRA, moreover, is subject to review every three years. The SFRA requires the Governor, after consultation with the Commissioner, to provide the Legislature with an Educational Adequacy Report every three years. N.J.S.A. 18A:7F-46(b). The report is to identify appropriate adjustments to be made to the base per-pupil amount; the per-pupil amounts for full-day preschool; the weights for grade level, at-risk pupils, LEP pupils and combination pupils; and other components of the SFRA. N.J.S.A. 18A:7F-46(b). The SFRA was first implemented in the 2008-2009 budget year. Hence, after two more budget years, the assessment of the SFRA will be completed.

Judge Doyne suggested that supplemental funding was necessary in order to address any unforeseen circumstances that would render funding under the SFRA inadequate. See Opinion at 70. If an unforeseen condition arises that creates a financial emergency, a district can apply to the Department for emergency aid. See N.J.S.A. 18A:58-11; N.J.A.C. 6A:23-5.1. A substantial and unexpected increase in enrollment is among the unforeseen conditions that would be eligible for emergency aid. See N.J.S.A. 18A:58-11.

In addition, the Abbott districts have access to considerable federal funding that already supplements, and by federal law cannot

supplant, the funding under the SFRA. Opinion at 79-80. See, also, 29T100:24 to 29T110:19 (Attwood); D-131; D-132; D-53 through D-61. Judge Doyne noted that he could not consider federal aid in evaluating the constitutionality of the SFRA in light of this Court's decision in Abbott II. Opinion at 80 and 80 n. 33. He nonetheless recognized that federal funding "cannot be blithely ignored." Opinion at 80.

The Abbott districts will receive funds under the Title I, 20 U.S.C.A. §6301, et seq. and Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.A. §1400 et seq. Title I funds provide aid to schools with students from low-income families. 20 U.S.C.A. §§6313 and 6314. Title I funds must supplement and cannot supplant state funding. 20 U.S.C.A. §6321. IDEA funds, among other things, assist local school systems and States with providing educational services to disabled children. 20 U.S.C. §1400(d)(1). IDEA funds also supplement, but cannot supplant, State funding for special education. 20 U.S.C.A. §§1412(a)(17) and (18).⁷

Judge Doyne specifically found that the Abbott districts received in excess of \$150 million in federal Title I funding in fiscal year 2008-2009. Opinion at 79-80; D-131. Judge Doyne

⁷Although supplanting State funds is totally prohibited, the IDEA does permit districts receiving increases in funding under that title to utilize 50% of the increase over the previous fiscal year to offset expenditures for activities permitted by the Elementary and Secondary Education Act of 1965, 20 U.S.C.A. §6301 et seq., that are supported by local funds. 20 U.S.C.A. §1413(a)(2)(C).

further determined that the Abbott districts received a total of more than \$74 million in federal IDEA funding in fiscal year 2008-2009. Opinion at 79-80; D-132.

In addition, the federal American Recovery and Reinvestment Act of 2009 (the "ARRA") will provide additional funds to the Abbott districts in the form of increased Title I and IDEA funding. Opinion at 79-80; 29T100:24 to 29T110:19 (Attwood); D-131; D-132. Under current estimates, the Abbott districts will receive in fiscal year 2009-2010 an additional \$65,885,000 in Title I funds and an additional \$48,194,000 in IDEA funds under the ARRA. Opinion at 79-80; D-131; D-132. These amounts are in addition to the Title I and IDEA funds that the Abbott districts would otherwise receive. Opinion at 79-80.

The total amount of federal funding available to the Abbott districts under Title I and the IDEA, including the estimated augmentation under the federal ARRA, is approximately \$339,000,000. Opinion at 80; D-131 and D-132.

Although Judge Doyme concluded that Abbott II prevented him from considering federal aid when determining the constitutionality of SFRA, this Court should certainly consider it. In Abbott II, this Court was confronted with notable disparities in per pupil spending, with poor districts providing far less funding per student than wealthier districts. 119 N.J. at 329-31. The State argued that federal funding should be included in considering the

actual gap between per pupil spending in the poorer districts and the wealthier districts. Abbott II, 119 N.J. at 329-31.

The effect of federal aid under the SFRA is entirely different. As Judge Doyle repeatedly stated in his Opinion, the SFRA provides resources in excess of the requirements for the Abbott districts to provide a thorough and efficient education. See, e.g., Opinion at 70. In the first year of funding under the SFRA, the Abbott districts received an average per pupil revenue of \$17,325, while the average per pupil revenue for the I and J districts was \$14,046. Opinion at 63. These revenue calculations do not include any federal funding. Hence the positions of the Abbott districts and the wealthier districts under the SFRA have reversed from the districts' positions at the time of Abbott II. At the time of Abbott II, the Abbott districts spent between 70% and 75% of the I and J districts' expenditures. Abbott v. Burke, 149 N.J. 145, 190-91 (1997) (Abbott IV). The average per pupil revenue available to the Abbott districts under the SFRA is 23.3% higher than the average per pupil revenues in the I and J districts. Opinion at 63.

This Court has stated:

We do not mean to suggest that a state will always be foreclosed from considering federal aid in determining the constitutional adequacy of its educational system, or that the remedies designed to redress constitutional failure may not someday be affected in some way by such aid.

Abbott II, 119 N.J. at 332.

In the present case, the State does not ask the Court to make federal aid a necessary component of the funding required for a thorough and efficient education. Instead, the State asks that the Court consider federal aid in evaluating whether it is at all likely that over the course of the next two budget years some Abbott districts will be so bereft of funds as to require the extraordinary remedy of supplemental funding. Given the generous amounts of funding under the SFRA and the lack of any facts that suggest a funding deficiency is at all likely, this Court should consider the vast amounts of federal funding in determining whether the supplemental funding remedy is at all necessary. Such consideration of federal aid is all the more appropriate because the State will complete its review of the adequacy of funding under the SFRA within the next two budget years. See N.J.S.A. 18A:7F-46(b). This Court should consider the availability of federal aid to dispel any notion that somehow over the course of the next two budget years some Abbott district will not have enough funds to provide a thorough and efficient education.

Convincing evidence demonstrated to Judge Doyne that the SFRA was "designed to exceed the requirements necessary to provide a thorough and efficient education" to students in the Abbott districts. Opinion at 70. This fact finding renders supplemental funding unnecessary. Judge Doyne's fact finding, moreover, should

now place the burden upon the Plaintiffs to prove any deficiency in the SFRA when such a deficiency actually arises. "Whether a statute passes a constitutional challenge 'as-applied' to any individual school district at any particular time must be determined only in the factual context presented and in light of the circumstances as they appear." Opinion at 67, citing Robinson v. Cahill, 69 N.J. 449, 455 (1976).

In sum, the Abbott districts have more than sufficient resources to provide a thorough and efficient education for their students for three reasons:

1. The New Jersey PJP process identified all of the resources necessary to provide a thorough and efficient education, and the weighted student formula that resulted from that process fully funded those resources. Moreover, the SFRA provides "ample funds" for supplemental programs that the Abbott districts may require for at-risk students. Opinion at 77.
2. The enhancement to the PJP model that increased the weight for at-risk students from the PJP values of 0.42 to 0.46 to the sliding scale numbers of 0.47 to 0.57 provided yet additional resources for the particularized needs of students in the Abbott districts.

3. The Abbott districts will have access to vast amounts of federal funding under Title I and the IDEA.

The SFRA affords more than adequate resources for the Abbott districts to provide a thorough and efficient education to their students. A supplemental funding remedy is therefore unnecessary.

B. The Imposition of a Supplemental Funding Remedy Would Undermine the Objectives that the Legislature Sought to Achieve with the SFRA.

The fundamental purpose of the SFRA is to create a transparent, equitable and predictable funding formula for all students in New Jersey. Opinion at 39-40 and 72. The Act seeks to provide to all disadvantaged students, regardless of where they live or how their district is categorized, with the resources necessary to achieve the Core Curriculum Content Standards. Opinion at 73.

A supplemental funding remedy is corrosive to the essential purposes of the SFRA. The creation of a supplemental funding remedy would grant to the Abbott districts an unnecessary source of funding that is not available to at-risk students outside the Abbott districts. Such a remedy is inherently inequitable. The inequity of supplemental funding is exacerbated by the stark reality that the State has finite resources with which to fund education.

A supplemental funding remedy would, moreover, substantially

lessen the predictability of educational funding in New Jersey. The SFRA provides funding through a readily discernable formula and hence affords predictability. See 9T18:23 to 9T19:11 (Loeb); D-122, page 21-23, ¶¶37-38. Such predictability is an essential element of a sound school funding mechanism because it allows school districts to better plan, design and implement programs. Opinion at 40; D-122, page 7, ¶17; 9T15:9 to 9T16:2 (Loeb).

Funding under a supplemental remedy would be based on idiosyncratic and piecemeal applications. The State would be unable to determine its responsibilities for funding in advance, and the district would be unable to plan over a long period of time. See, e.g., 13T73:7 to 13T74:5 (Wyns). If the aggregate amounts devoted to supplemental funding were substantial, the State would further be unable to determine in advance the resources it could allocate elsewhere.

If a supplemental remedy also included some type of appeal or other litigation process, additional cost, delay and unpredictability would attend the process. See, e.g., 13T73:7 to 13T74:5 (Wyns). The process would, by its very nature, become adversarial. D-1, page 21-22, ¶53.

In the past, several Abbott districts used the supplemental remedy as a "budget filler." Opinion at 79. That is, the district determined its revenues and decided on its expenditures. If the planned expenditures exceeded the anticipated revenues, the

district would then submit a supplemental funding application to the State to fill the "gap." Opinion at 79-80. See, also, 1T100:7 to 1T101:4 (Davy); 5T91:10-22 (Attwood); 24T116:15 to 24T117:14 (Schneider); 25T41:17 to 25T42:14 (Hoover); 10T78:18 to 10T79:6 (Saylor); 21T50:6-20 (Chando). Because a district could rely on supplemental funding to at least partially fill a budget gap, the district had less incentive to achieve efficiencies by eliminating unnecessary programs or reallocating resources. Indeed, several district witnesses testified that, when confronted with the Adequacy Budget under the SFRA, they implemented efficiencies to reduce costs. See, e.g., 25T61:10 to 25T63:3 (Hoover); 21T47:18-23 (Chando). If supplemental funding were available, these districts would not have implemented these efficiencies. See, e.g., 21T47:18-23 (Chando). If districts are faced with a typical budget with fiscal constraints, they will most likely implement efficiencies to balance the budget. If districts are provided supplemental funding, they will most likely use State aid to balance the budget.

The Department, moreover, will be confronted with applications that seek funding for items that are not necessary for a thorough and efficient education. In the past, Abbott districts often sought funding for items that were not necessary to achieve a thorough and efficient education but were instead "overly aspirational" demands for optional expenditures. Opinion at 65.

School administrators in the Abbott districts necessarily will seek to obtain additional funding. Any conscientious school administrator would seek supplemental funding if given the opportunity to apply for even more resources for the district's students. Judge Doyne found, however, that those administrators often have an overly expansive idea of what is necessary for a thorough and efficient education. Opinion at 65.

In short, a supplemental funding remedy would thwart many of the important objectives that the Legislature sought to achieve by enacting the SFRA. This Court, therefore, should decline to superimpose a supplemental funding remedy on the SFRA, a funding formula that the evidence convincingly demonstrates is more than adequate.

C. Because the Evidence Convincingly Demonstrates that the SFRA Provides More Than Adequate Funding to the Abbott Districts for a Thorough and Efficient Education, the Imposition of a Supplemental Funding Remedy Is an Improper Encroachment Upon the Powers of the Legislature.

"The Legislature's role in education is fundamental and primary; this Court's function is limited strictly to constitutional review. The definition of the [thorough and efficient clause of the State Constitution] by this Court, therefore, must allow the fullest scope to the exercise of the Legislature's legitimate power." Abbott II, 119 N.J. at 304. This Court should allow the broadest possible latitude to those with the appropriate "training and authority" to exercise the day-to-day

control of the State's schools. Abbott v. Burke, 170 N.J. 537, 562 (2002) (Abbott VIII). This Court should interfere in the operation of the school system only if necessary to remedy a constitutional deficiency. Abbott VIII, 170 N.J. at 562; Robinson v. Cahill, 69 N.J. 133, 144-45 (1975). Such a necessity, moreover, must be well-established before this Court can properly interfere in the operation of the school system. Abbott II, 119 N.J. at 320. "[A] conclusion of constitutional deficiency cannot hang by a thread, it must rest on granite." Abbott II, 119 N.J. at 320. To interfere in the absence of a well-established constitutional deficiency is to improperly encroach upon the constitutional powers of the Legislature and to violate the essential constitutional doctrine of the separation of powers. Abbott II, 119 N.J. at 320; Robinson, 69 N.J. at 144-45.

The sole basis for Judge Doyne's recommendation that the supplemental funding remedy continue was the inability of Judge Doyne to predict how funding under the SFRA will work in the future. Opinion at 70. Judge Doyne did not conclude, and did not present any specific finding of fact that demonstrated, the SFRA will in fact fail to provide adequate funding. Indeed, Judge Doyne's essential fact finding was to the contrary. Judge Doyne was convinced the SFRA "was designed to exceed the requirements necessary to provide a thorough and efficient education." Opinion at 70.

The imposition of a supplemental funding remedy under these circumstances would be an encroachment upon the Legislature's function and a violation of the doctrine of separation of powers. The imposition of a supplemental remedy, given the lack of any real showing of a constitutional defect in the SFRA, is the assumption of legislative powers. This Court would be overriding a decision of the Legislature regarding the design of a school funding formula even though that formula contains no discernable constitutional deficiency. The Court, moreover, would be altering a funding formula that the Department developed using its particular expertise in the area of educational finance after appropriately employing a recognized, intricate and involved methodology. See Opinion at 38. The foremost expert in the nation in the use of the methodology, Dr. Augenblick of APA, oversaw the New Jersey PJP process, the critical first step in the development of the SFRA. Opinion at 21-22 and 38. In developing the SFRA, the Department relied upon the advice of six nationally recognized experts in the area of school funding. Opinion at 19-20. In short, the imposition of a supplemental funding remedy would contradict years of intense and thorough efforts by a multitude of well-qualified experts. This Court would hence expand its function beyond the strict limits of constitutional review and would participate in the Legislature's primary and fundamental role in setting education policy. See Abbott II, 199 N.J. at 304. The imposition of a

supplemental funding remedy in this case is, therefore,
inappropriate.

CONCLUSION

Judge Doyne specifically found that funding under the SFRA exceeds the requirements necessary to provide a thorough and efficient education in the Abbott districts. Judge Doyne further determined that the additional funding that the SFRA gives for at-risk and LEP students allows the Abbott districts to provide needed supplemental programs, positions and services for such students. Extensive and convincing evidence supports these findings. This Court should therefore accept Judge Doyne's assessment of the sufficiency of funding under the SFRA.

Because the SFRA provides adequate funding, both the parity and supplement funding remedies are neither necessary nor appropriate. This Court should, therefore, discontinue those remedies.

Respectfully submitted,



Anne Milgram
Attorney General of New Jersey

Dated: April 13, 2009

**Abbott v. Burke
Trial Transcript Log**

Number	Date and Time	Witnesses
1T	02/09/2009 AM	Lucille E. Davy
2T	02/09/2009 PM	Lucille E. Davy
3T	02/10/2009 AM	Justin Ryan Silverstein
4T	02/10/2009 PM	David Joye Susan Ecks
5T	02/11/2009 AM	Katherine P. Attwood
6T	02/11/2009 PM	Katherine P. Attwood
7T	02/12/2009 AM	Lawrence O. Picus, Ph.D.
8T	02/12/2009 PM	David Pittman
9T	02/13/2009	Susanna Loeb, Ph.D. Edward Jay Doolan, Ph.D.
10T	02/16/2009 AM	Joan Saylor
11T	02/16/2009 PM	Margaret E. Goertz, Ph.D.
12T	02/17/2009 AM	David H. Monk, Ph.D. Melvin Wyns
13T	02/17/2009 PM	Melvin Wyns
14T	02/18/2009	Ernest C. Reock, Jr., Ph.D. Jon Karl Erickson, Ph.D.
15T	02/19/2009 AM	Clive Belfield, Ph.D.
16T	02/19/2009 PM	Clive Belfield, Ph.D.
17T	02/20/2009 AM	Bruce D. Baker, Ph.D.
18T	02/20/2009 PM	Bruce D. Baker, Ph.D.
19T	02/21/2009	Colleen La Rocca Malleo Victoria Scott Harry Victor Gilson, Ph.D.
20T	02/23/2009 AM	Olga Hugelmeyer George M. Chando
21T	02/23/2009 PM	George M. Chando

Abbott v. Burke
Trial Transcript Log

Number	Date and Time	Witnesses
22T	02/24/2009 AM	Patrick J. Fletcher Roy R. Montesano
23T	02/24/2009 PM	Roy R. Montesano
24T	02/25/2009 AM	Charles Ottinger Shelly Schneider
25T	02/25/2009 PM	Shelly Schneider Clarence Hoover
26T	02/26/2009 AM	Dennis Clancy
27T	02/26/2009 PM	Ronald Lee
28T	02/27/2009 AM	Barbara Gantwerk Jacqueline Jones, Ph.D.
29T	02/27/2009 PM	Katherine P. Attwood
30T	03/03/2009	Summations