

Newark Public Schools
Office of the General Counsel
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Attorney for State Operated School District
of City of Newark

RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs,

v.

FRED G. BURKE, ET AL.,

Defendants.

SUPREME COURT OF NEW JERSEY

DOCKET NO. 42,170

Civil Action

NOTICE OF MOTION TO INTERVENE
PURSUANT TO R. 4:33-1

To: Anne Milgram, Attorney General of New Jersey
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Attorney for Vineland School District - Proposed Intervener

PLEASE TAKE NOTICE that the State Operated School District City of Newark will move to intervene in the above-reference litigation as a matter of right.

In support of this motion, the movant relies on the attached Letter Brief, Certification of Newark Superintendent, Marion A. Bolden, as well as the previously filed briefs by Richard Shapiro, Esquire on behalf of other Abbott school districts and David Sciarra, Esquire of the Education Law Center on behalf of students of Abbott districts.

Respectfully submitted,

Perry L. Lattiboudere

Perry L. Lattiboudere
Attorney for State Operated School
District City of Newark

DATE: May 23, 2008

Perry L. Lattiboudere
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RAYMOND ARTHUR ABBOTT, et al., : SUPREME COURT OF NEW JERSEY
Plaintiffs, : DOCKET NO. 42,170
v. :
FRED G. BURKE, et al. : CIVIL ACTION
Defendants. :
: CERTIFICATION OF SERVICE

I, Perry L. Lattiboudere, an attorney for the proposed
movant-intervenor, hereby certify that on this date, I served
two copies of the Notice of Motion seeking leave to intervene;
supporting Letter Brief, Certification of Marion A. Bolden, and
this Certificate of Service to be Hand Delivered upon:

Anne Milgram, Attorney General of New Jersey
Hughes Justice Complex
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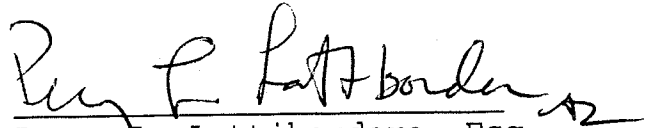
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Attorney for Vineland School District - Proposed Intervener

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Perry L. Lattiboudere, Esq.
Attorney for State Operated School
District City of Newark

Dated: May 23, 2008



The Newark Public Schools
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Dr. Marion A. Bolden
State District Superintendent

Lucille E. Davy
Commissioner of Education

Perry Lattiboudere, Esq.
General Counsel

Arsen Zartarian, Esq.
Adam S. Herman, Esq.
Sr. Associate Counsel

May 23, 2008

Mr. Stephen W. Townsend, Esq.
Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0970

Re: Abbott v. Burke, Docket No. 42,170

Dear Mr. Townsend:

Please accept this Letter Brief in support of the State Operated School District of the City of Newark's (hereafter "District" or "NPS") motion to intervene and seek denial of the State's motion to the extent that the State requests to eliminate the District's present right to appeal for supplemental funding established by this Court's decision in Abbott v. Burke, 153 N.J. 480, 526-27 ("Abbott V"). In support of this motion, the Board submits the Certification of Marion A. Bolden, Superintendent of the Newark Public School District. In addition, in this Letter Brief NPS adopts the statement of facts and relies upon the legal argument presented by Plaintiffs', the Abbott public schoolchildren, as well as the brief filed by Richard E.

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Shapiro, Esq., on behalf of twelve other Abbott school districts. The Board seeks leave to intervene in these proceedings under R. 4:33-1 (Intervention as of right) or R. 4:33-2 (Permissive Intervention). The District meets the criteria for intervention under both of those Court Rules, thus the Court should grant the Board's motion to intervene.

Under R. 4:33-1, there are four criteria for determining intervention as of right. The applicant must: (1) claim "an interest relating to the property or transaction which is the subject of the transaction," (2) show it is "so situated that the disposition of the action may as a practical matter impair or impeded [its] ability to protect that interest," (3) demonstrate that the "applicant's interest" is not "adequately represented by existing parties," and (4) make a "timely" application to intervene. Meehan v. K.D. Partners, L.P. and Planning Board of the Borough of Longport, 317 N.J. Super. 563, 568 (App. Div. 1998) (citation omitted). This rule has been construed liberally and "the test is whether the granting of the motion will unduly delay or prejudice the right of the original parties." Id. (citation omitted). The Board's application meets all four criteria and, therefore, intervention as of right should be granted.

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As evidenced by the attached certification, as well as the Statement of Facts as set forth in Plaintiff's and Richard E. Shapiro's brief in support of their Opposition to Defendants' motion, the Board has obvious programmatic and fiscal interests in the continued mandate of the Abbott remedial measures, so that it can continue to address the needs of its disadvantaged students. The State's application, if granted, would have a direct adverse impact on the Boards' ability to provide the programs, services, and positions needed by their disadvantaged students. Specifically, the School Funding Reform Act of 2008's ("SFRA") elimination of the Abbott districts' right to apply, in the 2008-09 school year, for supplemental funding based on a demonstration of particularized need under Abbott V and as guaranteed by the Commissioner's Court-mandated Abbott regulations. Abbott V, 153 N.J. at 526-27; N.J.A.C. 6A:10-2.8. As the certification of Marion A. Bolden makes clear, the elimination of this remedy will force Newark Public School District to cut current programs, services, and positions in future school years.

Moreover, the State's application ignores the Newark Public School District's daily efforts to improve the educational opportunities of its students and to remedy their disadvantages. The District should be able to fully

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participate in these proceedings as an interested party and the only party capable of presenting the specific impact that SFRA will have on the schoolchildren in Newark Public School District. NPS further needs to actively participate in these proceedings so that the Court has an inside and ground-level view of the harm to the Newark Public School District that cannot be provided by Plaintiffs who lack ready access to the critical information and data in the individual districts that needs to be presented to the Court to ensure that the Court fully understands the devastating impact SFRA's implementation would have in Newark.

The District was not served with the State's motion and has sought to file this application shortly after the receipt of the Superintendent's Certification. This motion will not delay these proceedings because the Board is filing this motion in advance of the State's reply to Plaintiffs' opposition. Therefore, the Court should approve the Board's motion under R. 4:33-1 and allow the movant, who has a vital and unique interest in these proceedings, to intervene and supplement the record with facts specific to the Newark Public School District. Chesterbrooke Ltd. Partnership v. Planning Bd., 237 N.J. Super. 118, 124 (App. Div. 1989).

The District also meets the standards for permissive intervention under R. 4:33-2 and our submission should not

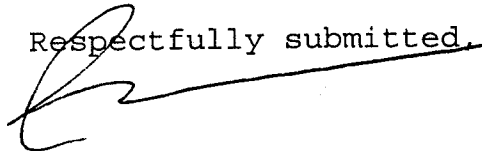
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delay or prejudice the Court's decision on the State's application. In addition, the public interest and the importance of the public issues raised by the State's motion support the strong need for the District's active participation in these proceedings. Evesham Tp. Board of Adj. v. Evesham Tp., 85 N.J. 295 (1981). Therefore, intervention is also justified under R. 4:33-2.

For the foregoing reasons set forth in this Letter Brief, the Newark Public School District respectfully requests that this Court grant its motion to intervene and seek denial of the State's motion so far as the State requests to eliminate the district's present right to appeal for supplemental funding in future school years.

Respectfully submitted,



Perry L. Lattiboudere, Esq.
Attorney for Newark Public School

District Movant-Intervenor

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SUPREME COURT OF NEW JERSEY

DOCKET NO. 42,170

CIVIL ACTION

CERTIFICATION OF MARION A. BOLDEN

DR. MARION A. BOLDEN, of full age, certifies as follows:

1. I am the Superintendent of the State-operated School District of the City of Newark ("District"), which is the largest Abbott district in the State. I make this Certification in support of the Motion of the Movant-Intervenor: (1) to intervene in this action in opposition to the State's motion for a Court Order declaring that the School Reform Funding Act of 2008 ("SFRA") is constitutional and that the Abbott remedial orders are no longer required; and (2) for an immediate Order that the procedural protections established by Abbott v. Burke, 153 N.J. 480, 526-27 (1998) -- including the right of Abbott

districts to seek on appeal additional funding based on a showing of demonstrated or particularized need -- shall remain in effect pending a final decision on the State's Motion.

2. I have overall responsibility for implementing the Abbott programs and reforms in the District to enable all students to achieve the New Jersey Core Curriculum Content Standards ("NJCCCS"). This includes the submission of requests in prior years for supplemental funding, based on a demonstration of particularized need, to support existing and supplemental programs, services and positions, as well as additional, demonstrably-needed programs, services and positions. The District has also sought such additional funding through the Abbott V administrative and judicial process when the Department of Education ("DOE") denied needed funding.

3. As Superintendent, I am familiar with the demographics of the District and our student population that support the continuation of the Abbott designation. I am also familiar with the features of our schools that are very different from the hypothetical school district that provides the foundation for the SFRA's formulas; with the supplemental programs and services that have been successful in the districts; with the District's prior experience in requesting supplemental funding and

appealing DOE denials of that funding; and with the impact of the SFRA on the education of our students in the coming years.

4. In past years, when the District sought supplemental funding, the District and the DOE worked collaboratively to reach agreement on a supplemental funding amount that would support the District's DOE-approved budget, which included funding for effective and efficient needs-based programs, services and positions. This process enabled the District and the DOE to engage in a constructive dialogue about the educational needs of our students and to discuss specific programs, positions, and services that would be needed to help our students achieve the CCCS and to overcome our students' socio-economic disadvantages.

5. In those few instances when the District and the DOE could not reach agreement on the appropriate amount of supplemental funding, the District had the opportunity to seek review of DOE's decision through the administrative and judicial process established by the Court and by the DOE regulations.

6. The opportunity to discuss with the DOE the need for supplemental funding for specific programs, services, and positions needed for our students, and the ability to have full administrative and judicial due process to challenge DOE denials of that needed funding, have been integral to the District's

efforts to provide our students with a thorough and efficient education. Supplemental funding has also been essential to meet important needs of our students so that they can overcome the significant impediments to education as a result of our students' socio-economic disadvantages, and so they can benefit from the District's educational programs.

7. Contrary to the DOE's claims in the motion, the administrative and judicial appeals process has successfully worked to facilitate a productive dialogue between the DOE and our District on supplemental funding needs for our students. The mandated funding formula dictated by the SFRA provides no opportunity for the District to seek additional funding based on the demonstrable needs of our students, no matter how substantial or compelling the needs of our students are and no matter how great the obstacles that they must still overcome to benefit from our educational program.

8. Our students will suffer if the formulaic amounts fail to provide the needed funding for programs, services, and positions that are essential for our students' success. If the SFRA will provide the needed funding to continue all of the programs, as the DOE claims, services and positions to address the special disadvantages of our students, then there would be few, if any, appeals. However, if the SFRA fails to provide

