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SUPREME COURT OF NEW JERSEY
DOCKET NO. 62,700

RAYMOND ARTHUR ABBOTT, et al.,)

Plaintiffs,)

Civil Action

v.)

SUPPLEMENTAL CERTIFICATION OF
LUCILLE E. DAVY

FRED G. BURKE, et al.,)

Defendants.)

I, Lucille E. Davy, of full age, hereby certify that:

1. I am the Commissioner for the New Jersey Department of Education ("DOE") and have held this position since September 2005.

2. This certification is filed to supplement my March 17, 2008, certification filed in support of the State's Motion.

Adoption of Program Regulations

3. Under the SFRA, I have the obligation to ensure that all state aid to New Jersey's public schools is being "spent effectively and efficiently in order to enable students to achieve the core curriculum content standards." L. 2007, c. 260, §18. One

of the ways that I will meet this obligation is through regulations that will guide program requirements.

4. On June 2, 2008, pursuant to the authority granted to me under the SFRA, L. 2007, c.260, §83, I filed program regulations that were deemed effective upon filing. The regulations outline the standards-based instructional priorities that all school districts must adopt, and details programs and services that must be initiated for students in high poverty/high need school districts. In sum, the regulations provide the framework for curriculum and professional development statewide. Provided herewith at Exhibit A is a true and complete copy of the program regulations codified at N.J.A.C. 6A:13.

5. More importantly, although the SFRA permits district flexibility in implementing programs, positions and services best geared to the needs of its students, the program regulations serve to limit that discretion in districts with high concentrations of poverty that are not performing well on State assessments. Such limitations on discretion at the district level will ensure that programs known to be effective with such populations of students are implemented, e.g., intensive early literacy and class size restrictions.

6. The regulations have curriculum requirements that are uniformly mandated for all districts. These uniform requirements include:

- a. implementation of a coherent curriculum aligned to the CCCS with modifications for special education students, English language learners and gifted students;
- b. a high school curriculum that contains enhanced rigor in math and science content through the requirement of courses such as Algebra I and Lab Biology to fulfill existing graduation credit requirements;
- c. professional development plans and initiatives;
- d. professional growth plans for school leaders;
- e. the collection and analysis of student achievement data and the submission of required data to NJ SMART (the Department's data warehouse); and
- f. the provision of library-media services under the direction of a certified school library media specialist.

7. The regulations also have requirements applicable to all districts with secondary schools state-wide. These requirements include:

- a. the provision of secondary education initiatives (SEI), i.e., personalized learning

environments that strengthen relationships among students, teachers, families and community, to be implemented in 2009-2010, with the exception of the Abbott districts who were previously subject to this requirement and must implement SEI in 2008-2009;

- b. school-level planning teams; and
- c. where 10 percent or more of a secondary school district's students satisfy high school graduation requirements through the Special Review Assessment (SRA), it must submit an analysis of all students who graduated by means of the SRA to the Department.

8. Additionally, the regulations have specific requirements for high-poverty districts, i.e., school districts where 40 percent or more of the students are eligible for free or reduced lunch/milk. Maximum class sizes in these districts as outlined in the regulations must be implemented during the 2008-2009 school year for Abbott districts, and beginning in the 2009-2010 school year for all other districts. The program regulations also require high-poverty districts to maintain their full-day kindergarten programs with a teacher's aid for each classroom and the class size not to exceed 21 students.

9. With regard to high-need districts, defined as a

school district in which 40% or more of the students are "at-risk" (high-poverty district) and not meeting assessment expectations as delineated in ¶10, *infra*, upon notification, each must immediately begin planning for the implementation of the designated required programs, and shall remain in the "high need" status for a minimum of three years. Abbott districts that are also "high need" districts must implement required literacy programs and services during the 2008-2009 school year.

10. The proficiency benchmarks triggering high-need status are as follows:

- a. Less than 85 percent of total students have achieved proficiency in language arts literacy on the NJ ASK 3;
- b. Less than 80 percent of total students have achieved proficiency in language arts literacy on the NJ ASK 8;
- c. Less than 80 percent of total students have achieved proficiency in language arts literacy on the HSPA;
- d. Less than 85 percent of total students have achieved proficiency in mathematics on the NJ ASK 4;
- e. Less than 80 percent of total students have achieved proficiency in mathematics on the NJ

ASK 8; and/or

- f. Less than 80 percent of total students have achieved proficiency in mathematics on the high school State assessment.

11. Currently, nearly all of the high poverty districts (a total of 85) meet the definition of "high-need," including the 31 Abbott districts. Focusing on the Language Arts Literacy benchmarks, 76 districts (including all Abbott districts) meet the criteria based on NJASK 3 performance, 74 districts (including all Abbott districts) meet the criteria based on NJASK 8 performance, and 45 districts (including 26 Abbott districts) meet the criteria based on HSPA performance.

12. Where high need status is triggered due to proficiency levels in Language Arts Literacy, districts must implement, as appropriate, intensive early literacy programs for preschool to grade three, intensive literacy programs for grades four through eight, and language arts literacy programs for students in grades nine through twelve. The intensive early literacy requirements include: emphasis on small group instruction; a 90-minute reading block; assessment of English language learners; the coordination of professional development by literacy coaches or certified teachers; and the involvement of parents and family members in student instruction.

13. Turning to proficiency in mathematics, 66 districts

(including all Abbott districts) meet the criteria based on NJASK 4 performance, 76 districts (including all Abbott districts) meet the criteria based on NJASK 8 performance, and 61 districts (including all Abbott districts) meet the criteria based on HSPA performance. These districts must implement a comprehensive program for mathematics, appropriately catered to the grade levels not meeting proficiency, i.e. a mathematics program that prepares all students in grades five through eight for success in Algebra at the high school level.

Clarifications Arising from the Certification of Dr. Margaret Goertz

14. I have read the Certification of Dr. Margaret Goertz (Goertz Certification) submitted in support of the plaintiffs' brief in opposition to the State's motion.

15. Dr. Goertz suggests that there were changes in the standards provided to the PJP panelists and that those changes are significant enough to render the PJP model "outdated." The listing of items provided to the panelists is set forth in the Report on the Cost of Education, attached to my initial certification as Exhibit A, at page 8 and Appendix 4. The panelists received drafts of the proposed amended CCCS (ultimately adopted in 2004), assessment criteria, school day and year requirements and credit-load graduation requirements.

16. Since the panelists received this information, some slight adjustments have occurred. For example, while the final,

adopted 2004 CCCS were better written and sequenced, the content was substantially the same as provided to the panelists. Similarly, the assessment criteria remains that 100% of students must attain proficiency by 2013-2014, although slight adjustments have been made to the proficiency percentage leading up to 2013. Finally, the changes to graduation requirements - credit requirements - are the same except that technology is required to be integrated in all content areas and no longer has a credit requirement. To the extent that any substantive details of the materials have changed, any change was minimal, at best.

Status of Early Childhood Programs for 2008-2009 and Beyond

17. I have read the brief and certifications submitted by the ELC. With specific regard to SFRA's preschool program, they suggest that the State is abandoning the quality standards that have made the Abbott program a success. The ELC is incorrect.

18. Early childhood programs for the Abbott districts will be implemented next year under budgets and plans reviewed by the DOE and approved consistent with the Abbott standards outlined by the Court and codified at N.J.A.C. 6A:10A.

19. The submission, review and issuance of decisions for Abbott 2008-2009 programs were conducted in accordance with the time lines established by the Court in Abbott v. Burke, 177 N.J. 578 (2003) ("Abbott X"). The only adjustment to the 2008-2009 process was the opportunity for each district and private provider

to submit a budget based on a presumptive per pupil increase of 2.89%. This option was explained to the districts and providers via memorandum of October, 12, 2007, attached hereto as Exhibit B. It is important to note that this option permitted a district to submit a traditional, line-item budget for its in-district/district-wide program while one or more private providers for that district exercised the presumptive option, or vice versa.

20. Of the 31 Abbott districts, 23 submitted presumptive budgets. Moreover, the Certification of Clive Belfield (Belfield Certification), at ¶31 and Exhibit C, suggests that all districts that opted for a traditional line-item approach received a per pupil increase in excess of 2.89%. However, of the 8 districts that submitted line-item budgets, two were approved for per pupil increases below that which they would have been awarded had they submitted presumptive budgets.

21. After the review of all district and provider plans and budgets, one appeal was taken of DECE's decision. That appeal by the Elizabeth school district was heard in the Office of Administrative Law. Consistent with Abbott X time lines, I issued my decision, attached hereto as Exhibit C, on April 18, 2008. The matter has been appealed by Elizabeth and is now pending in the Superior Court, Appellate Division. See Exhibit D, Notice of Appeal filed by Elizabeth with the Appellate Division.

22. Much like the program regulations recently

promulgated, I will be promulgating preschool program regulations. I anticipate the preschool regulations will be filed with the Office of Administrative Law by June 13, 2008.

23. The preschool program regulations will ensure that the Abbott standards of quality are maintained in the Abbott districts and achieved by all other districts with eligible children. These quality standards include an appropriately certified teacher and a teacher assistant for no more than 15 students in a class, a full-day, full-year program (180 days), preschool intervention and referral teams, Master Teachers, Social Workers and Family Workers/Community Involvement Services. They also require a research-based, comprehensive preschool curriculum and assessment, a seamless transition from program entry through third grade, the use of developmentally-based early childhood screening upon student enrollment and the use of a Department-approved reliable classroom observation instrument to evaluate all classrooms in provider and in-district settings.

24. The regulations will also provide the general framework for the preschool program, including requirements for student eligibility, enrollment, and the calculation of the eligible universe of students. Moreover, the regulations will permit mixed delivery systems, thereby allowing districts the option to serve students in-district, in a provider setting, or through other arrangements to share services, i.e., utilization of

available seats in a neighboring school district. It is hoped that the mixed delivery system will result in more preschool students being served in districts other than Abbott districts, in a shorter time frame than the six-years permitted by the SFRA.

25. Additionally, since the enactment of the SFRA, the DECE has provided regional preschool expansion overview sessions and written notification to districts to get the word out on the opportunities for preschool expansion by former ECPA districts in 2008-2009 and for all other districts with eligible students in the year thereafter.

26. The Department received nine applications for expansion by ECPA districts in 2008-2009. Decisions on those applications, including approvals for expansion are anticipated to be issued by the end of the month.

27. Additionally, I asked the fiscal staff in the Division of Early Childhood Education (DECE) to review Exhibit C of the Belfield Certification because the percentage increases/decreases and amounts contained therein did not seem consistent with the presumptive methodology. DECE staff have advised me of problems with the assumptions and methodologies of his analysis and Exhibit C.

28. First, Dr. Belfield appears to misunderstand the presumptive approach. The presumptive option was for a per pupil increase over 2007-08, not an aggregate increase that would not

account for changes such as enrollment increases/decreases. Moreover, because a district could have opted for presumptive and the private providers serving that district could have submitted line-item budgets, it should not be expected that there is a 2.89% increase for each district over 2007-2008. Next, it appears that Dr. Belfield may not have used final 2007-2008 approved budgets and enrollments. Where a district, such as Hoboken, is able to recruit and enroll significant numbers of preschool students beyond their approved projections, budgets and enrollments are amended accordingly. Also, it appears he did not reduce the approved actual budgets for 2007-2008 and 2008-2009 by all of the special education funding and/or he improperly calculated per pupil amounts using total enrollment instead of general education enrollment.

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



Lucille E. Davy

Dated: June 9, 2008



Exhibit A

State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

JON S. CORZINE
Governor

LUCILLE E. DAVY
Commissioner

June 2, 2008

TO: Mark J. Stanton, Manager
Office of Administrative Law
Division of Administrative Rules

FROM: Lucille E. Davy *LED*
Commissioner

SUBJECT: N.J.A.C. 6A:13, Programs and Practices to Improve Student Achievement

On June 2, 2008, the Commissioner of Education approved a special adoption of N.J.A.C. 6A:13, Programs and Practices to Improve Student Achievement, for publication in the *New Jersey Register*.

The attached special adoption is effective upon filing pursuant to the School Funding Reform Act, P.L. 2007, c. 260 and should appear in the next available *New Jersey Register*.

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Attachments

c: Members, State Board of Education

Willa Spicer

John Hart

Erika Leak

Kim Belin

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NEW JERSEY DEPARTMENT OF EDUCATION

COMMISSIONER OF EDUCATION

Programs and Practices to Support Student Achievement

Special Adopted Rules: N.J.A.C. 6A:13

Adopted: June 2, 2008

Filed: June 2, 2008

Authority: P.L. 2007 c. 260

Effective Date: June 2, 2008

Expiration Date: June 2, 2009

Take notice that the Commissioner of Education promulgated new rules to implement the School Funding Reform Act, P.L. 2007, c. 260.

These rules require that school districts:

- Implement a coherent curriculum that is aligned to the Core Curriculum Content Standards;
- Provide professional development for teachers and school leaders;
- Use State assessment data to make instructional decisions; and
- Provide for an academically rigorous, personalized environment to prepare students for post-secondary education and/or careers after graduation.

School districts with a high concentration of students taking the Special Review Assessment (SRA) to meet graduation requirements must conduct a study to determine the causes for the high rate of SRA graduation and to develop a plan for reducing the number of students graduating through the SRA.

The rules address class size in high poverty school districts. The rules also require high need school districts to implement an intensive literacy program in preschool through grade 12 and a comprehensive mathematics program in grades three through 12.

SUBCHAPTER 1. GENERAL PROVISIONS

6A:13-1.1 Purpose and applicability of rules

(a) These rules are promulgated pursuant to the School Funding Reform Act, P.L. 2007, c. 260 to ensure that all students receive the educational entitlements guaranteed them by the New Jersey Constitution. These rules shall ensure that all districts provide students with a rigorous curriculum that is based on the Core Curriculum Content Standards; that relies on the use of State assessments to improve instruction; and that is supported by a professional development plan for teachers and school leaders. In addition, school districts shall provide students with an academically rigorous personalized environment to prepare them for post-secondary education and/or careers after graduation. These rules also address class size in high poverty school districts and focus on improving instruction in literacy and mathematics in high need school districts.

(b) These rules shall supercede the rules in N.J.A.C. 6A:10 and N.J.A.C. 6A:10A where inconsistencies occur.

SUBCHAPTER 2. STANDARDS-BASED INSTRUCTIONAL PRIORITIES

6A:13-2.1 Standards-based instruction

(a) All school districts shall implement a coherent curriculum for all students, including English language learners (ELLs), gifted and talented students and students with disabilities, that is content-rich and aligned to the most recent revision of the Core Curriculum Content Standards (CCCS). The curriculum shall guide instruction to ensure that every student masters the CCCS. Instruction should be

designed to engage all students and modified based on student performance. Such curriculum shall include:

1. Interdisciplinary connections throughout;
2. Integration of 21st century skills;
3. A pacing guide;
4. A list of instructional materials, including various levels of text at each grade;
5. Benchmark assessments; and
6. Modifications for special education students, for English language learners in accordance with N.J.A.C. 6A:15 and for gifted students.

(b) All schools and school districts shall develop and implement professional development plans for teachers aligned with the requirements and the Professional Development Standards set forth at N.J.A.C. 6A:9-1 et seq. Professional development activities shall:

1. Improve teachers' understanding of the content and pedagogy related to their teaching assignment;
2. Promote individual and collaborative professional learning with adequate and consistent time for teachers, including English as a second language, gifted and talented, bilingual and special education teachers, to work together in and across content areas and grade levels to review student work, analyze classroom assessments and other achievement data, critique lesson plans, and solve instructional problems;
3. Include evaluation and analysis of professional development results in order to improve professional development by reviewing the following:
 - i. Student test scores, work products and attitudinal measures;
 - ii. Progress made in achieving professional development goals;

iii. Staff feedback on the effectiveness of professional learning activities and Professional Development Plans; and

iv. Analysis of the costs associated with professional development opportunities in relation to the impact on student achievement and district goals;

4. Include ongoing analysis by administrators and teachers regarding the effectiveness of implementation of professional development initiatives; and

5. Include school district support through policies and adequate resources.

(c) All school leaders shall develop and implement a professional growth plan aligned with the requirements and the Professional Development Standards set forth at N.J.A.C. 6A:9-1 et seq.

(d) All schools and school districts shall collect and analyze student achievement data by subgroups (such as economically disadvantaged, race and ethnicity, students with disabilities, English language learners) and make educational decisions based on such data.

1. The school district shall transmit required student, faculty, school and school district data to New Jersey Standards Measurement and Resources for Teaching (NJ SMART), the New Jersey Department of Education's (Department) data warehouse, on a schedule and in a form specified by the Department;

2. The schools and school district shall use NJ SMART and its data query resources to track student progress year-to-year and school-to-school and to identify continuously enrolled students by school and school district;

3. The school district shall ensure that teachers, school administrators and central office supervisors receive training in NJ SMART and its data query resources;

4. The schools and school district shall analyze assessments of student progress in relation to curricular benchmarks and the results of State and non-State year-end tests reported by subgroups (such as economically-disadvantaged, race and ethnicity, students with disabilities and English language learners); and

5. The school district central office shall prepare data on comparative performance for all schools in the district and make them available to the schools. This analysis shall include the following comparisons using State assessment data:

i. Each grade level across all schools within the district;

ii. Schools within the district;

iii. Comparable districts by district factor groups; and

iv. Data with State averages.

(e) All school districts shall ensure that a free appropriate public education is available to all students with disabilities according to the Individuals with Disabilities Education Act (IDEA)(20 U.S.C. § 1400 et seq.); and N.J.A.C. 6A:14.

(f) All school districts shall provide English language learners with instructional services pursuant to N.J.A.C. 6A:15.

(g) All school districts shall provide gifted and talented students with appropriate instructional services pursuant to N.J.A.C. 6A:8-3.1.

(h) All school districts shall provide library-media services that are connected to classroom studies in each school building, including access to computers, district-approved instructional software, appropriate books including novels, anthologies and other reference materials, and supplemental materials that motivate students to read in and out of school and to conduct research. Each school district shall provide these library-media services under the direction of a certified school library media specialist.

6A:13-2.2 Secondary Education Initiatives

(a) The secondary education initiatives in this section shall apply to all secondary school districts, which shall be defined as school districts that include students in at least two of the grades from six through 12. Where applicable, secondary school districts shall collaborate with sending and receiving districts to implement the secondary education initiatives in this section.

(b) All secondary school districts shall develop a plan in 2008-2009 for implementing the secondary education initiatives specified in N.J.A.C. 6A:13-2.2 (c) through (e) by the 2009-2010 school year, except that secondary school districts previously subject to N.J.A.C. 6A:10 and 6A:10A shall immediately comply with the secondary education initiatives specified in this section.

(c) Secondary school districts shall have a school-level planning team to guide the development and implementation of the secondary education reforms described in this subsection. A representative group of teachers and administrators shall determine team membership and operating procedures.

(d) Secondary school districts shall provide instructional services, professional development and other support to assist secondary schools with the implementation of the secondary education initiatives specified in this section.

(e) Secondary school districts shall create personalized learning environments that strengthen relationships among students, teachers, staff members, families and the larger community for students in grades six through 12. These may include:

1. Small learning communities in free-standing facilities or within larger facilities;
2. Ninth grade academies where freshman students remain together and are provided with a supportive environment to enhance their successful transition to high school;
3. Student support systems where students are assigned an adult mentor or team of adults who know(s) them and can support student efforts in achieving goals and solving problems;
4. Academies with a career focus;
5. Multi-grade academies where students at various grade levels may remain with a core group of teachers for multiple years in an academy-type format which may be organized around a particular theme and involve interdisciplinary teaming; or
6. Other practices for personalizing learning environments that strengthen relationships among students, teachers, staff members, families and the larger community.

(f) All secondary school districts shall implement academic coursework aligned to N.J.A.C. 6A:8-5.1 that prepares all students for success in postsecondary education and/or careers after graduation, including the development of academic skills integral to success in rigorous high school courses. Beginning in 2008-2009, all students entering grade nine shall complete by the end of their high school education, at a minimum, coursework in language arts literacy, mathematics and science. These shall include college level preparatory English I, II, III and IV, Algebra I, Lab Biology or the equivalent

