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SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

RAYMOND ARTHUR ABBOTT, et al.,)

Plaintiffs,)

Civil Action

v.)

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. The School Funding Reform Act of 2008 (SFRA) is the culmination of over five years of work by the Executive and legislative branches to replace the funding components of the Comprehensive Education Improvement and Financing Act (CEIFA).

3. The SFRA identifies the educational resources needed to provide all children with the opportunity to succeed as workers and citizens in our society. The foundation of the SFRA is the work and outcomes of panels of practitioners -- as validated by experts

and enhanced by the Department - to determine the resources needed for all students, including those with disadvantages, to achieve the Core Curriculum Content Standards (CCCS). Those resources were costed out and an elementary per pupil amount, appropriate weights for middle and high school, and appropriate weights for at-risk and limited English proficient (LEP) concentrations, were derived. See SFRA, L. 2007, c. 260, §§7, 8.

The PJP and Costing Out Process

4. In November 2002, the DOE hired the consultant firm Augenblick, Palaich and Associates (APA) to assist it in estimating the cost of providing an adequate education to all of New Jersey's students.

5. The DOE considered two separate methodologies for developing the funding formula, namely the Successful School District and Professional Judgment Panel (PJP) approaches, but ultimately decided to use the PJP process.

6. The PJP method was selected by the DOE because it identifies the needed resources and determines the cost of providing services to students that are disadvantaged as well as to those that are not disadvantaged. Moreover, the PJP process accounts for the different economies of scale experienced by districts of different sizes. Finally, the PJP process is based on input from educators that on a day-to-day basis are involved in ensuring students are able to meet the CCCS.

7. The PJP process requires the identification of a set of desired performance standards or outcomes that define the educational goals of the State; the creation of prototypical model school districts designed to reflect the characteristics of the State's school districts; the design of an educational resource model or models, including equipment, personnel and programs, that will provide an opportunity for all children to meet those goals; the costing out of the specified resources; and finally, development of a funding formula which is used to derive the cost to provide a thorough and efficient education in any school district.

8. The PJP process as it evolved in New Jersey included three rounds of practitioner panels. The first group met in January 2003 and included seven Department employees. The second round commenced in February 2003 with 40 panel members. The second group had the largest membership, most having been nominated by stakeholder groups such as the Education Law Center (ELC), New Jersey Education Association (NJEA) and New Jersey School Boards Association (NJSBA). This group included whole school reform facilitators, school business administrators, superintendents, principal, and teachers with wide cross sections of New Jersey's schools represented - including wealthy suburban and poorer urban districts. The 40 members were grouped into smaller panels, with each panel assigned to identify resources for a school district of

a particular size, i.e., very small to very large. The third and final group met the next month as a single panel comprised of eight members - five superintendents, a school board member, a school business administrator and a professor in Educational Leadership from Kean University.

9. At the time the panels met, the DOE was in the process of revising the CCCS. The panelists were provided with the latest draft of the proposed revised standards for purposes of developing the adequacy model. Ultimately, the CCCS that were adopted by the State Board had all of the same content standards as the proposed CCCS that were provided to the panels. The only differences between the proposed CCCS and those that were adopted are non-substantive changes to some of the standards that provided clarity and permitted the standards to be more concise.

10. After the panels completed their work, DOE undertook the task of costing out the resources identified in units rather than per pupil amounts. This required significant effort to refine the data sources utilized and ensure the most accurate determination of cost. DOE also updated per pupil costs identified by the panels and calculated the weights to be applied to the base elementary per pupil amount. Additionally, DOE considered various methods and scenarios for determining the State/local share allocation in a new funding formula.

11. On December 12, 2006, the DOE issued its "Report on the

Cost of Education" (RCE). The RCE was prepared by the DOE and APA and reflected the work done since 2002. It described the various methods for determining the cost of education including the SSD and PJP approach, it explained the PJP process in New Jersey and the education resource models developed through that process and it discussed the costing-out of those educational resources and the final result of the costing-out process. Provided herewith at Exhibit A is a true and complete copy of the RCE.

12. Also in December 2006, the Joint Legislative Committee on Public School Funding Reform issued its final report and recommendations. The Committee found that the "development of a predictable, transparent school funding formula is essential for school districts to plan effectively" and deliver a constitutionally sound education. The Joint Committee also recommended that "any new school funding formula must include mechanisms to control the taxing and spending behavior of school districts and to promote greater efficiencies in the delivery of education services...". Provided herewith at Exhibit B is a true and complete copy of the "Public School Funding Reform Final Report" (JLC Report).

13. Additionally, the Joint Committee made specific recommendations regarding the development of a new school funding formula. These included utilizing the PJP model "to determine the base per pupil cost of a thorough and efficient education, as well

as the additional weights for special education, at-risk and limited English proficiency students" and that a district's share of state aid "should be based on up-to-date measures of a district's ability to pay." JLC Report at 2.

14. Immediately after the release of the RCE, the Department scheduled formal hearings to invite public comment on the RCE. A total of six hearings were scheduled in various locations throughout the State, with live Webcasts of each hearing available through the Department's Web site.

15. Testimony was presented or submitted by numerous individuals and organizations, including the ELC and other public interest advocacy groups, NJEA, NJSBA, New Jersey Association for School Administrators, New Jersey Principals and Supervisors Association, individual legislators, taxpayers, school district employees and board members.

16. The most commonly expressed concerns about the RCE raised by those who testified were:

1. Salary figures should be updated and the mean rather than the median salary should be used to calculate personnel costs;
2. The cost for benefits should reflect accurate spending patterns and actual benefit rates for all staff rather than a percentage of salary;
3. The definition of at-risk students should be expanded to include students eligible for a free lunch and those eligible for a reduced price lunch;
4. The calculations contained too few security guards;
5. The actual cost of special education

- should be studied;
6. Cost of living adjustments should be based on more current data than the Chambers Geographic Cost of Education Index which some believe to be outdated;
 7. Preschool programming should not be reduced in any new formula that is developed; and
 8. The Department should not have used its staff for the first level panel.

17. During this same time period, DOE worked with APA to update the cost figures to 2005 - 2006 and to modify the calculations based on the updated costs. Also, APA created additional tables to identify the final set of educational resources developed through the PJP process and discussed in the RCE. In so doing, APA did not alter any data or resources found in the RCE. The updated calculations were published on January 19, 2007 along with the resource charts as an Updated Appendix to the Report. Provided herewith at Exhibit C is a true and complete copy of the Updated Appendix to the Report.

18. While the public hearings were being conducted, the DOE also retained three experts in the field of school finance -- Allen Odden from the University of Wisconsin, Lawrence Picus from the University of Southern California, and Joseph Olchefske from the American Institutes for Research, to review and comment on the findings and methodology in the RCE. Provided herewith at Exhibit D are true and complete copies of the curricula vitae for each of these experts.

19. Although not part of the RCE, those experts were advised

that the DOE intended to recommend a high-quality preschool program meeting the standards currently in place for Abbott districts for all at-risk three- and four-year-old children and that they should take that into consideration in their review.

20. Dr. Odden and Dr. Picus reviewed the RCE utilizing their Evidenced Based approach which identifies school based programs and educational strategies that research has shown to improve student learning. Mr. Olchefske, who does work with weighted formulas, also provided independent input. The reviews were synthesized by Dr. Odden into one report which was issued on January 19, 2007. Provided herewith at Exhibit E is a true and complete copy of the "Final Report on the Reviews of the *Report on the Cost of Education in New Jersey*," (Final Expert Report). The Report comments on the resources that it found adequate, if not generous, including class size, central office resources, and instructional materials. It also provided specific areas in which it recommended the Department make adjustments, such as the use of median salary in the costing out process. The Final Expert Report also contained suggestions for DOE to review areas such as the per diem for substitutes, as well as general suggestions, such as conducting a resource allocation study.

21. After concluding the public hearings and receiving the Final Expert Report, the DOE invited three additional experts in the field -- Thomas Corcoran from Columbia University, Susanna Loeb

from Stanford University, and David Monk from Pennsylvania State University, to form an Advisory Panel to assist in the development of a new funding formula. Provided herewith at Exhibit F are true and complete copies of the curricula vitae for each of these experts.

22. In addition to working with the Advisory Panel, the DOE conducted stakeholder and legislator meetings beginning in April 2007 and continuing into December 2007.

23. In response to the public comments and Final Expert Report and, in consultation with the Advisory Panel, the DOE made a number of changes to the funding proposal which were delineated in a final proposal of the Department. Provided herewith at Exhibit G is a true and complete copy of "A Formula for Success: All Children, All Communities" (Formula for Success), prepared by the DOE and issued on December 18, 2007.

24. Formula for Success is the foundation of the SFRA in that it sets forth the model district and educational resources that will enable all children to meet the CCCS. It sets forth the costs of those resources, yielding a base amount for a non-disadvantaged elementary school student, and appropriate weights for middle and high school students. Moreover it sets forth the additional educational resources, the costs of those resources and the resulting weights for students that are at-risk, LEP or both.

25. As stated above, the Department's proposal was informed

by stakeholder and public comment as well as the Final Expert Report. Thus, Formula for Success reflects a change over the RCE by utilizing one model district rather than six in order to simplify the formula. Moreover, maximizing efficiencies in school districts has been a legislative priority as articulated in the JLC Report in December 2006 to the enactment of CORE legislation in March and April 2007, L. 2007, c. 53, c. 62, and c. 63. Consistent with this theme, the DOE concluded that small school districts have inefficiencies that are a product of the lack of economies of scale and that the adequacy model should reflect efficient use of resources. It is also hoped that the use of a larger model as the base would provide an incentive for regionalization and the creation of larger, more efficient school districts.

26. The DOE also decided to enhance the resources in that chosen single model in a variety of ways. Additional staffing was added for maintenance and grounds employees, \$175 per pupil was added for annual capital improvements, funds for the annual audit were included and the inflation rate for utilities was adjusted to reflect the increases in energy costs that exceeded the CPI. Resources for professional development were also expanded to permit a facilitator/coach for each school and additional district-level funds for professional development that would be available for enhanced professional development for secondary initiatives. Instructional aides were also increased for at-risk populations of

over 40% to ensure an aide for each kindergarten class.

27. One of the concerns noted in the public testimony was that the PJP resources for security guards appeared inadequate, particularly for high at-risk populations. The PJP education resource model provided for no security guards at the elementary level, 1 for every 600 students at the middle school level and 1 for every 234 students at the high school level. Security was enhanced in the new funding proposal so that for a district with 40% or more at-risk students, there can be 1 security guard for every 400 students at the elementary school level, 1 for every 200 students at the middle school level and 1 for every 174 students at the high school level.

28. Another change, as recommended by the Final Expert Report as well as public comments, is that the at-risk definition was expanded for all purposes to include both free- and reduced price-lunch students. This represents a departure from prior formulas, including those in CEIFA, which provided aid that was based on percentages of low-income students using only those students eligible for free lunch.

29. As developed by the PJP process and enhanced by the Department, the resource models are extremely generous. In fact, enhanced PJP model resources for elementary, middle and high schools with a concentration of 40% at-risk students exceed those required by Abbott v. Burke, 153 N.J. 480 (1998) (Abbott V).

Indeed, should an Abbott district choose to continue the programs, positions, and services previously mandated by Abbott V, the district could easily do so. Provided herewith at Exhibit H are Comparative Charts demonstrating this conclusion. At the elementary, middle and high school, the enhanced PJP model is compared to the resources set forth in the Department's Study of Supplemental Programs and Recommendations for the Abbott Districts - the resources that were accepted by the Court in Abbott V. Because school enrollments in the enhanced PJP and Abbott V models differ, the enhanced PJP model was prorated for an accurate comparison. Upon comparison, there is no question that the enhanced PJP model exceeds the resources necessary for a district to implement the Abbott V model. However, the resources are flexible and will permit local decision-makers to select and allocate their resources in a manner that they believe will best suit the unique needs of their students.

30. With specific regard to the costing out process, the Department made other adjustments to the RCE based on public comments and the Final Expert Report. These cost adjustments include updated salaries (using actual 2006-2007 data for certificated staff, inflated by the CPI for two years and using actual May 2006 data for non-certificated staff, inflated by the CPI for three years) and other unit costs, use of the mean rather than median for salaries, calculation of benefits based on actual

costs rather than percentage of salary, and a substantial increase in the weight for vocational schools based on actual cost data.

31. The Final Expert Report commented that the per diem rate for substitutes established by the RCE - \$100 per day - seemed "low" in that it was the same as recommended in another state where overall salary levels were much lower than in New Jersey. Thus the Report recommended that the DOE review that rate for sufficiency. As recommended, the DOE reexamined the substitute per diem and ultimately determined that the substitute rate of \$100 per day was appropriate. Thus, the Department did not revise the amount, but did update the amount by the CPI.

32. The at-risk weights were adjusted by the use of a sliding scale added to the at-risk weight in recognition of the additional challenges faced by districts with higher concentrations of at-risk children. Additionally, after consulting with the Advisory Panel, the LEP and LEP/at-risk combination weights were adjusted upward. Charts of the weights, along with the ranges the weights generate, can be found at Appendix C and Appendix E of Formula for Success. These weights all exceed the weight needed to support the educational resources identified through the PJP process.

33. Also adjusted was the cost index that was utilized in the RCE to account for geographic impacts on educational costs. As set forth in Formula for Success, the previous index was criticized for being "outdated". Thus, the Department looked to an alternative

index by Lori Taylor and William Fowler Jr. that was published in May 2006. The Taylor/Fowler method is a "comparable wage approach" that is a regional index based on 2000 census data. The DOE replicated Taylor/Fowler's methods to create an index unique to New Jersey -- a current county-specific geographical cost adjustment scale using 2000 and 2005 census data (Geographic Cost Adjustment)

34. A major revision to the RCE was also made in the area of special education funding by moving to a census-based methodology to calculate the additional resources for every special education student. This decision was based, in part, on a study by the Center for Special Education Finance which noted significantly above-average expenditures in New Jersey as compared to the national average and a substantial misunderstanding by school districts regarding the category or "tier" in which to place a disabled student for state aid classification.

35. Aid under the census method is based on the average classification rate in the State and the average excess cost of educating special education students statewide. The DOE used actual costs in the State for special education students except for students that only receive speech services. With regard to actual speech-only costs, those could not be separately identified because they did not need to be accounted for as special education expenditures in a district's budget. As a result, the PJP resource model was used to determine speech-only costs. The excess cost for

general special education was determined to be \$10,898; an amount far in excess of all but the highest tier, i.e., CEIFA's Tier IV, which includes those classified pupils receiving intensive services. Under CEIFA, speech only students did not generate additional funds. Utilizing the PJP process to determine speech-only costs, the excess cost for this category is \$1,082.

36. Although the RCE recommended that special education aid be wealth-equalized, i.e., provided to districts based on the districts' relative wealth, the final DOE proposal recommended that only two-thirds of the excess costs be wealth equalized; the remainder was to be provided as a categorical aid (aid provided to districts regardless of wealth).

37. Additionally, extraordinary aid, which supports per-pupil special education cost over a certain threshold, is also considered categorical aid under the Department's proposal. However, this aid is projected and is ultimately distributed to districts as a reimbursement for extraordinarily high costs of special education placements. As provided in the SFRA, the reimbursement is 90% of the costs for direct instructional and support services over \$40,000 for in-district placements, and 75% of the costs for direct instructional and support services over \$40,000 for public placements. SFRA further provides that 75% of tuition costs over \$55,000 for private out-of-district programs will be reimbursed. However, the Governor, in his Budget for Fiscal Year 2009, has

modified the reimbursement formula to provide reimbursement of 95% of the costs over \$40,000 for in-district programs, 85% of the costs over \$40,000 for separate public programs and 85% of the costs over \$55,000 for separate private school programs.

38. After the final educational resources and the cost for providing those resources -- including the application of the Geographic Cost Adjustment, see ¶33, and the weights to be used for grade level, at-risk and LEP -- are determined, an Adequacy Budget can be generated for each school district. This budget will reflect the particular demographics of that school district and the fiscal resources needed to provide the educational resources in the PJP model as well as the additional fiscal resources provided for at-risk and LEP students.

39. Almost all aid in SFRA is wealth-equalized, i.e., determined by each district's ability to raise enough local revenue to support their individual budget. Four categories comprise the wealth-equalized portion of the formula and constitute the Adequacy Budget: (1) the base amount for elementary, middle and high school students; (2) the additional weights for at-risk and LEP students, and vocational districts; (3) two-thirds of the census-based cost for general special education; and (4) all of the census-based costs for speech.

40. The formula to determine a district's contribution to the Adequacy Budget, i.e., a district's local fair share considers

equally both a community's property wealth and aggregate income indexed by statewide multipliers to ensure an equalized local tax effort. This portion of the funding formula is applied uniformly to all districts across the State, with aid distributed based on each community's ability to pay relative to others in the State. The amount of the Adequacy Budget that the formula determines can be raised through the local levy is designated as the local fair share; the difference between the local fair share and the Adequacy Budget is provided through Equalization Aid.

41. Categorical aid is provided in addition to Equalization Aid and is allocated regardless of a district's ability to raise local revenue, with the amount of aid generally determined by multiplying the cost factor for a particular aid category by the number of students eligible for the aid. Categorical aid includes: (1) one-third of the census-based cost for general special education; (2) Security Aid; (3) Preschool Aid; and (4) Extraordinary Aid for special education.

42. The new funding formula also provides for transportation aid, choice aid and debt service aid in a similar manner as had been previously provided under CEIFA. The categorical aid for transportation is funded at the same level Statewide as in 2007-2008, but will be prorated and distributed based on the District Report for Transported Students (DRTRS) mileage data of October 2007. Under the SFRA, each executive county superintendent must

