SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-2460-05T1

ROSALIE BACON, individually and on behalf of G.P., Z.P., J.B., J.B., M.B., D.B., and Z.H.; JOSEPH BARUFFI, individually and on behalf of J.B., ELIZABETH CULLEN, individually of S.R., ARNETTA RIDGWAY AND CHRISTOPHER GLASS, individually and on behalf of J.G., F.G., and D.G. Petitioner (s) BUENA REGIONAL, CLAYTON, COMMERCIAL, EGG HARBOR CITY, FAIRFIELD, HAMMONTON TOWNSHIP LAKEHURST, LAKEWOOD, LAWRENCE, LITTLE EGG HARBOR, MAURICE RIVER, OCEAN TOWNSHIP, QUINTON,UPPER DEERFIELD, WALLINGTON,and WOODBINE SCHOOL DISTRICTS Petitioner-Appellants V. NEW JERSEY STATE DEPARTMENT OF EDUCATION Respondent	CIVIL ACTION BRIEF IN SUPPORT OF NOTICE OF MOTION TO ENFORCE LITIGANT'S RIGHTS

PETITIONER(S) BRIEF AND APPENDIX

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ON THE BRIEF

PROCEDURAL HISTORY/STATEMENT OF FACTS

Suit was brought in December of 1997 in the Superior Court of New Jersey, Chancery Division by twenty (20) Petitioner Districts seeking a declaration that the Comprehensive Educational Improvement and Financing Act (CEIFA)(N.J.S.A. 18A:7F-1 et al.) was not providing sufficient funding or programs to provide the children of the Districts with a thorough and efficient education. The matter was transferred within two (2) months by consent to the Commissioner of Education who assigned an Administrative Law Judge to conduct hearings.

Administrative Law Judge Solomon Metzger held six (6) weeks of hearings in the fall of 2000. In those learnings, Judge Metzger determined that all seventeen (17) Districts[1] proved that they were competently spending the funds that they were receiving from the State. Therefore, they were entitled to a second round of hearings to prove that the education their children were receiving was not thorough and efficient as a result of inadequate funding from the State. The Commissioner affirmed that determination and remanded the matter for further hearings.

[1] Lower Township, Lower Cape May Regional and South River dropped out of the litigation prior to the commencement of the hearings.

The second round of hearings took place during a six (6) month period in 2001 and 2002. All seventeen (17) districts individually presented their proofs. At the end of the hearings, Judge Metzger recommended that five (5) of the districts - - Buena Regional, Commercial Township, Fairfield Township, Salem City and Woodbine Borough - - be adjudicated "Special Needs Districts" whose students were being deprived of a thorough and efficient education by CEIFA. The Commissioner, in a decision rendered February 10, 2003, reversed the ALJ's recommendation with regard to Buena Regional, Commercial Township, Fairfield Township and Woodbine Borough. He affirmed the ALJ with regard to Salem City and sent a recommendation to the Legislature to add Salem City to the Abbott Districts[2]. He affirmed the determination that the students of the other twelve (12) Districts had not been deprived of a thorough and efficient education.

A total of ten (10) districts then filed an appeal with the State Board of Education, but Commercial and Maurice River districts withdrew their appeals before proceedings began. The State Board of Education reversed the Commissioner's determination as to all sixteen of the Districts. The State Board found that all of them had proved their case and that

[2] Salem was added to the Abbott Districts pursuant to the Commissioners recommendation by the Legislature on February 10, 2003.

their students had been deprived of a thorough and efficient education stating:

> "The record developed before the ALJ and the educational and fiscal circumstances set forth in his Initial Decision reflect conditions every bit as daunting as those in the Abbott districts. The deficiencies in the educational programs in the appellant districts and the lack of resources to address the special educational needs of the students in these districts amply demonstrate the inadequacy of the present system as it has been applied to the students in the appellant districts. . . . [W]e conclude that CEIFA as it has been implemented has not provided a thorough and efficient education to the students in the appellant districts and that those students are entitled to a remedy that ensures that they in fact will be provided with such an education." State Board Decision, p. 61-62.

The State Board also found that the CEIFA "as applied to the Appellant Districts has failed to conform to the constitutional mandate." State Board Decision, p. 70. It also felt that the critical issue for the students in the *Bacon* districts was poverty:

> "It is clear from the record in this appeal that the critical issue for the students in the districts involved in this litigation, like their counterparts in the *Abbott* districts, is poverty . . . only by developing a system that adequately addresses the context which the students come can we achieve a proper balance between educational inputs and student outcomes." State Board Decision, p. 66.

The State Board ordered the Commissioner of Education to conduct a "Special Needs Assessment" report on each of the

Districts and submit that report by February 1, 2006. It also ordered the Commissioner to devise a new funding system for all New Jersey students that would adequately and constitutionally address the holdings in their opinion:

> "The immediacy of the situation has been highlighted by our consideration of the appeal in this case. The need to begin the process that will ultimately result in the establishment of a unified system that ensures the provision of a constitutionally adequate education and equal educational opportunity for all students in New Jersey regardless of the district in which they live and the economic circumstances under which they were born is clear, and the task can no longer be avoided. We therefore have determined to initiate the process by directing the Commissioner to examine and analyze the operation of the current system on a statewide basis and to provide the State Board with her recommendations as to the educational components essential to the establishment of a unified system for public education. We further direct that she present her findings and recommendations to the State Board by its March 1, 2006 meeting." State Board Decision, p. 69.

The Commissioner initially refused to perform the Special Needs Assessments for the districts. Therefore, on May 18, 2006 Petitioners filed a Motion with the State Board to afford immediate remedies as follows:(1) give the Petitioner districts "Abbott" special needs status; (2) order the Department of Education to propose legislation appropriate to that designation; and (3) compel the Commissioner to complete and issue the Needs Assessment reports as ordered by the State

Board. In response to Petitioner's Motion, the Commissioner issued a statement that the reports were unnecessary because the new funding legislation being proposed by the Corzine Administration would address the needs of the Petitioners. See Commissioner's Statement attached(Pa-1 to Pa-4). The State Board denied Petitioners' motion. See Order attached hereto (Pa-5 to Pa-8). Following that decision, the appellant districts appealed to this court on February 23, 2006 asking for it to declare the CEIFA unconstitutional as to them;[3] to receive the monetary remedies that had been awarded to the *Abbott districts; and for the* Commissioner to be ordered to complete the Special Needs Assessments for each district.

Oral argument in Bacon v. State Dept. Of Educ., 398 N.J. Super. 600 (App.Div. 2008) was held on December 3, 2007. The legislation that became the SFRA was sent to the legislature shortly thereafter; the School Funding Reform Act (SFRA) was enacted on January 13, 2008 and subsequently codified as N.J.S. 18A:7F-43, et al. Respondents told this court at oral argument that the SFRA funding formula had been promulgated at the State Board's insistence as a result of the *Bacon* case and argued that the funding provided by SFRA would correct the constitutional deprivations that CEIFA had imposed on the

[3] In its January 4, 2006 decision, the State Board recognized that it did not have the jurisdiction to declare CEIFA unconstitutional as to the *Bacon* districts because jurisdiction lay with the Court

Petitioner districts. In support of this argument, respondents represented that the SFRA was developed to ensure that all disadvantaged school children, regardless of where they resided, had access to the special programs and services needed so that they have an equal opportunity to succeed. *Respondent Motion, March 13, 2008 p. 13-14* (Pa-9 to Pa-10).

This Court affirmed the State Board's findings that Petitioners had been deprived of a thorough and efficient education by CEIFA in a decision on March 14, 2008. Bacon v. State Dept. Of Educ., 398 N.J. Super. 600 (App. Div. 2008). It stated that the Petitioner districts had "demonstrated a constitutional deprivation unchallenged by the Department as well as an inability through local taxation to fill in the gaps created by CEIFA's inadequate funding." Bacon, 398 N.J. at 615. The Court also ordered the Commissioner to complete the Special Needs Assessments of each district within six (6) months. Bacon, 398 N.J. at 618. It declined, however, to order the same funding as the *Abbotts* were receiving. Bacon, 398 N.J. at 615.

The Commissioner failed to meet that September 14, 2008 deadline but sought and obtained an extension by consent for an additional six (6) months (Pa-11 to Pa-17). The new deadline of March 14, 2009 again was not met. Therefore, petitioners filed a Notice of Motion to Enforce Litigant's Rights and hold the Commissioner in contempt of Court for

failing to issue the needs assessments.[4] On September 23, 2009, while the Motion was pending, the Commissioner issued the reports. (Pa-18 to Pa-158). This Court subsequently denied Petitioner's Motion on September 23, 2009. (Pa-159)

STATEMENT OF LAW

I. THE NEEDS ASSESSMENTS ABJECTLY FAILED TO RECOMMEND REMEDIES TO CURE THE CONSTITUTIONAL DEPRIVATIONS FOUND BY THE STATE BOARD AND THIS COURT.

None of the Special Needs Reports for any of the sixteen districts recommended providing any financial assistance whatsoever to any of the Districts. Every report included statements that the SFRA would provide sufficient funding to cure the past deprivation. However, the SFRA has never been fully funded. As a result the constitutionality deprivation at their students remain. Petitioners now seek an order that the SFRA be fully funded as to the Bacon districts just as the Supreme Court has ordered full funding for the former Abbott districts.

The Needs Assessment reports from the Commissioner (Pa-18 to Pa-158)were issued eighteen (18) months after the original Appellate Division deadline and forty-four months(44) months after the original State Board of Education deadline. The

[4] Petitioners assumed that the remedial fiscal needs arising from nine years of unconstitutional deprivation by CEIFA would be addressed in the Needs Assessment reports that the State Board had first ordered and this Court again ordered. Jacob Cert. p. 12, para. 31.

reports read like a broken record, repeating themselves in each report. The Commissioner uniformly complimented each District for doing very well with the resources available[5] contended that the financial resources were adequate now that SFRA funding was available[6]; believed that simple consulting type help through the Mid-Atlantic Regional Educational Lab ("REL"), Learning Resource Center ("LRC"), and the Department's Office of Special Education Programs ("OSEP"), etc. would remedy what problems that remained[7]; and contended that redistricting and consolidation under the CORE legislation would be the real "magic bullet" that would solve most of the problems. CORE, which is certified at N.J.S. 18A:7F-4.1 et al., went in effect simultaneously with the SFRA, on January 13, 2008.

Buena was told "the district needs to ensure that future

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[5] In with compliments, the Commissioner made four criticisms: Buena Regional (teachers spending minimal amount of time involved in instructional activities; State aid used for tax relief), Hammonton (teachers only required to provide 3 hours and 50 minutes of instructional time a day) and Lakewood (money spent on non-mandated courtesy busing for nonpublic students) stating they could do more with the resources currently available to them if those situations were corrected.

[6] The following comment in the Eff Harbor City Needs Assessment was essentially made in all of them: "The [Bacon District] is a district facing numerous challenges given the significant number of at-risk and LEP students. . . . The SFRA along with other complementary statutes such as CORE and EFCFA can provide the necessary tools to address those challenges but the regionalization study is a critical step in doing so." Egg Harbor City Needs Assessment, p. 9.

[7] REL, LRC and OSEP are all programs of the DOE available to all districts in State and are not unique to the issue of poverty children. (Whitaker Cert p. 10-11, para. 16.)

State aid increases are first used to address the critical educational deficiencies", yet it is not mentioned if the SFRA will cure these deficiencies or not. (Pa-27) Similarly, Hammonton was told to direct state and federal aid "most effectively to meet the educational needs of the students." (Pa-78)

A. THE REGIONALIZATION RECOMMENDATION IS IMPOSSIBLE TO IMPLEMENT UNDER CURRENT LEGISLATION.

1) Clayton, Maurice River, Ocean Township, Quinton, Upper Deerfield, and Wallington were all told by the DOE that, due to their small size, they would be "treated as a high priority and will be placed in the first group of districts for regionalization studies, which will begin in September 2009 and conclude by December 2009" The Bacons were indeed the very first districts analyzed for regionalization. Unfortunately, no follow up legislation to implement or incentivize regionalization was ever proposed by the DOE after the studies were done. Most Bacon districts would be very pleased to regionalize with a more notable property rich neighboring district. Because of their low tax ratable base, and

high number of "special needs" students, however, neighboring districts do not wish to combine with them.

2) Commercial, Egg Harbor City, Fairfield, Lakehurst, Lawrence, and Woodbine were all told by the DOE that "[t]he SFRA specifically provides for significant additional resources for districts . . . that have very high percentages of at-risk students; however, the statute was not designed to support the delivery of educational services in school districts this small..." Therefore, due to their small size each "is being treated as a high priority and will be placed in the first group of regionalization studies;" and "[t]he SFRA and complementary statutes . . . can provide the necessary tools to address those challenges." (Pa-48 to Pa-49); (Pa-58 to Pa-59); (Pa-67 to Pa-68); (Pa-88 to Pa-89); (Pa-97 to Pa-98); (Pa-157 to Pa-158)

3) Consolidation, the cornerstone of most of the Needs Assessment reports, may be an admirable goal. However, it is extremely difficult to get districts to agree to

consolidate and impossible at this point to compel them to do so. The SFRA compels each executive county Superintendent to make a recommendation for consolidation. If such a recommendation is made, however, each of the districts recommended to consolidate must agree to same. Few surrounding districts would wish to consolidate with Petitioner districts, since the property tax values in petitioning districts are among the lowest in the State. The taxpayers of the consolidating districts would almost certainly have to pay more in property tax if the small tax base of any of the Petitioner Districts were added. (Jacob Cert. p. 11, para. 27.)

B. THE CONSULTING HELP REMEDIES HAVE NEVER MATERIALIZED AND WERE ALWAYS AVAILABLE BEFORE.

1. The Department claimed to have made arrangements with REL to work with each of the *Bacon* districts to meet their needs for staff development in various content areas as well as special needs children. However, no parameters or time frames were established for the provision of this

assistance and no such help has been forthcoming to date. The Commissioner also broadly stated that the DOE would help the districts coordinate professional development training through the LRC and directed the OSEP to determine whether there had been any violations of the IDEA's Child Find requirements. Again, nothing has ever happened since the statements were made. (Whitaker Cert. p. 10-11, para. 16; Jacob Cert. p. 10-11, para. 26, 29.)

C. NO FISCAL RESOURCES OR REMEDIES WERE OFFERED.

1) All districts were assured that "[t]he SFRA and other complementary legislation such as EFCFA and CORE will provide the necessary resources for the district to continue to improve the educational opportunities available to its students" (Pa-37 to Pa-38); (Pa-115); (Pa-123); (Pa-131); (Pa-139); (Pa-147). (Jacob Certification, p. 10-11, para. 26, 29).

2) Aside rom the SFRA formula, however, the Commissioner recommended zero (0) additional money for the Districts. Not one was found

deserving of additional funds, despite the fact that these Districts were deprived by CEIFA for over ten (10) years (the start of litigation in December 1997 until the passage of the SFRA on January 13, 2008). According to the Commissioner, no remedial dollars were necessary to make up for this ten (10) plus years of constitutional deprivation in facilities, equipment and curriculum development.

3) The Commissioner had also found against the sixteen (16) districts needing any additional funds in 2003 and was soundly reversed by the State Board of Education in 2006.[8] Petitioning districts will not get any financial relief unless this Court orders the legislature to fully fund SFRA for them. After all, the Departments' own Special Needs Assessments touted a fully funded SFRA as being the remedy that would provide the "tools to address these challenges."

[8]One component of the SFRA was to strip the State Board of its judicial power to reverse Commissioner decisions.

II. THE STATE FAILED TO DELIVER ON ITS PROMISE TO FULLY FUND THE SCHOOL FUNDING REFORM ACT FOR THE FIRST THREE (3) YEARS OF IMPLEMENTATION.

In 2009 the State went proudly to the Supreme Court claiming that the SFRA satisfied constitutional requirements for all at-risk children in New Jersey, not just the former Abbott districts. Abbott v. Burke, 199 N.J. 141, 145 (2009) (*Abbott XX*); Abbott v. Burke, 206 N.J. 322, 347 (2011) (*Abbott XXI*). The Court ruled that the funding formula set out in the SFRA was "presumptively" constitutional in *Abbott XX*, based upon the State's promise that a fully funded SFRA would provide adequate resources to all New Jersey school children to master the Core Content Curriculum Content Standards ("CCCS"). That ruling was premised on two express caveats. The Court required the State to: (1) fully fund the SFRA for the first three years of its implementation; and (2) retool the formulaic parts at designated times. Abbott XX, 199 N.J. at 146.

Three years have now passed and the State has failed to fulfill its promise to fully fund the SFRA. A fully funded SFRA for 2009-2010 would have given Buena Regional, one of the Petitioner districts, $21.8 million in state aid. Buena actually received $19.8 million in state aid, a two million dollar difference. In 2010-2011 a fully funded SFRA would have given Buena Regional $22.5 million in state aid. Buena actually received $17.9 million in state aid, a $1.8 million reduction

and a $4.6 million dollar difference. (See Whittaker Cert. p. 2-3, para. 4.)

In May of this year the Supreme Court ruled that the State had "breached the very premise underlying the grant of relief it secured in *Abbott XX*." Abbott XXI, 206 N.J. at 341. The Appropriations Act for 2010 allotted $1.6 billion less to kindergarten through twelfth (K-12) programming to districts than a fully funded SFRA would have. Abbott XXI, 206 N.J. at 344-45. (See Appendix Pa-233 to Pa-281)

The reductions for the 2010-2011 school year were a direct result of a series of calculations that diverted from the original SFRA formula. Three components in particular were altered. First, the Act set the Consumer Price Index ("CPI") to zero (0), although the original SFRA set the CPI at 1.6. Second, the State Aid Growth Limit was also set to zero (0) in the Act; the original SFRA formula capped aid increases at 20% for districts spending below adequacy and 10% for districts at or above adequacy spending. Lastly, the Act held Education Adequacy Aid for all districts at the 2009-2010 level, despite the SFRA's original purpose of bringing districts spending below adequacy up to adequacy spending within three (3) years. Abbott XXI, 206 N.J. at 345.

If the SFRA were fully funded for fiscal year 2011, the funding would have amounted to $8,450,619,035 in state aid. Actual state aid that was provided to school districts, however,

amounted to $6,848,783,991, a nineteen percent (19%) reduction. Abbott XXI, 206 N.J. at 453.

The Education Law Center brought a motion in aid of litigant's rights before the Supreme Court. The motion sought relief in the form of full funding of the SFRA for all New Jersey school districts, including the Petitioner districts.

Before issuing its ruling in response to the motion of the Education Law Center, the Supreme Court remanded the matter to a Special Master, Judge Peter E. Doyne. It asked Judge Doyne to determine whether or not the current SFRA funding levels could provide for a thorough and efficient education to all New Jersey schoolchildren. The burden was placed on the State to show that current funding levels to school districts with high, medium and low concentrations of at-risk students could provide a thorough and efficient education measured by the CCCS.[9] Of the 581 school districts in New Jersey, 114 have a high concentration of at-risk students, 142 have a medium concentration and 352 have a low concentration.

The motion sought restored funding for all underfunded districts, not just the Abbott districts. Judge Doyne conducted eight days of hearings and received testimony from seven witnesses for the State and ten witnesses for the Education Law

[9]The SFRA, relied on so heavily in the Needs Assessment as the financial cure for the ten years of unconstitutional deprivation defined "high" as 40% or more at risk children; "medium" at 20 to 40% and "low" at under 20%. All Bacon districts are in the high category.

Center. Six of the ten Education Law Center witnesses were superintendents from school districts with varying concentrations of at-risk students. One of the superintendents who testified for the Education Law Center was Walt Whitaker, superintendent of one of the Petitioning districts, Buena Regional School District. Buena Regional is a District Factor Group (DFG) "A" district. Judge Doyne referred to Buena Regional as "an Abbott district, but for the accident of geography." (See Whitaker Cert. p. 11, para. 18.) One *Abbott* Superintendent, Dr. Harry Victor Gilson of Bridgeton City, testified. Bridgeton City is also a DFG "A" district. The other four superintendents were Robert L. Copeland from Piscataway Township, a G/H district; Dr. John A. Crowe from Woodbrige, a DFG D/E district; Earl Kim from Montgomery Township, a DFG J district; and Richard Tordalo from Clifton, a DFG C/D district.

As a result of state aid reductions, Buena in 2010-2011 was forced to eliminate twenty-two staff members; the middle school and freshman sports programs; BOOST, a highly effective after-school program; and the World Language program for grades K-5. In addition, the elementary and middle school art and music programs were severely cut and elementary students received only one hour of art instruction every twelve days and a half hour of music instruction every 6 days. (See Whittaker Certification page 4-6.)

On March 22, 2011, Judge Doyne issued his Opinions/Recommendations to the Court. He concluded that the CCCS could not be achieved under current levels of funding "despite the best efforts of the Superintendents." Abbott XXI, 206 N.J. at 443. Judge Doyne also concluded that the objective of the SFRA was to ensure a thorough and efficient education to all at-risk children, not just those residing in the former Abbott districts. The Supreme Court summarized his findings in its Abbott XXI opinion as follows:

> The Supreme Court directed the remand hearing [to] address whether current levels of funding for FY 11, through the SFRA formula, can permit our school districts to provide a thorough and efficient education to the children of our State. Given the proofs adduced as heretofore related, the answer to this limited inquiry can only be "no." . . .
>
> The core objective of SFRA was to create a unitary funding scheme to ensure all students are provided with a thorough and efficient education, not just those students who by happenstance reside in the Abbot districts. There were a significant number of at-risk students in non-Abbott districts who were deprived of the benefits of the Abbott remedial measures. To address this inequity, the State proposed the SFRA formula. Professionals, capable educations, and community leaders came together to determine what was fiscally necessary to deliver a thorough and efficient education to all the school children of New Jersey, not just those in Abbott districts. Abbott XXI, 206 N.J. at 463.

In its decision issued on May 24, 2011, the Supreme Court noted that the Special Master's report distilled the evidence

into four major findings: (1) to fully fund the SFRA for fiscal year 2011 would have required an increase of $1.6 billion; (2) state aid reductions fall heaviest on school districts with a high concentration of at-risk students; (3) the state aid reductions from fiscal year 2010 to fiscal year 2011 moved districts who were already spending below adequacy further from adequacy; and (4) the greatest impact of state aid reductions fell on at-risk students all over the state. Abbott XXI, 206 N.J. at 358.

Districts with high concentrations of at-risk students lost $687 million or $1,530 per pupil in state aid for fiscal year 2011. Medium concentration districts lost $329 million or $1,158 per pupil. Low concentration districts lost $585 million or only $944 per pupil. The Court noted that:

> "The Special Master's finding that the impact of the reductions is being felt most significantly in high concentration districts [of at-risk students] is the most telling. It reveals that the cuts . . . were not of a de minimus or inconsequential nature that could, or should, be greeted by this Court with indulgence. Nor . . . can we view this as an aberrational or temporary alteration in the State's responsibilities." Abbott XXI, 206 N.J. at 360.

The State argued that those school districts who failed to increase their tax levy by the maximum amount (4%) acted inefficiently with the funds they do have. The Court rejected this argument by noting that the SFRA does not require districts spending below adequacy to increase its local tax levy to bring

it above adequacy. Therefore, those districts who did not raise the tax levy to the full 4% did not act inefficiently. Abbott XXI, 206 N.J. at 438-439.

The Court also rejected the State's argument that non-SFRA funds received by the districts were able to mitigate the impact of the reduction in state aid. The Court rejected this argument because the State compared the amount of non-SFRA funds to the sum of state aid reduced from fiscal year 2010 to fiscal year 2011 and failed to consider the sum of state aid from a fully funded SFRA in fiscal year 2011. The former equaled approximately $256 million and the latter $402 million. Therefore, non-SFRA funds fell well short in aggregate of replacing lost aid. Abbott XXI, 206 N.J. at 365-66.

III. THE STATE MUST BE ENJOINED FROM FAILING TO FULLY FUND THE SFRA AS TO THE BACON DISTRICTS JUST AS THE SUPREME COURT SO ORDERED BY THE SUPREME COURT TO FULLY FUND IT FOR THE FORMER ABBOTT DISTRICTS.

The Education Law Center ("ELC") brought a motion before the Supreme Court and sought full funding of the SFRA to all New Jersey school districts, not just the former *Abbotts*. The Supreme Court, however, limited its relief in *Abbott XXI* to only the former *Abbotts*. It reasoned that "[o]nly they have the historic finding of constitutional deprivation" and "[t]heir right to full funding is a constitutional mandate, supported by judicial findings and past orders." Abbott XXI, 206 N.J. at 370. As a result, the Court only ordered full funding of the SFRA to

the former Abbott districts for fiscal year 2011-2012[10] and for the State to do a look back analysis that is relevant to the former Abbott districts to ensure the SFRA continues to operate optimally.

The Court was aware of the impact on all districts "of the unpredictability and disruption to instructional planning, services, and programming, that has resulted in districts of all socioeconomic types due to the Legislature's failure to abide by SFRA's formulaic terms." Abbott XXI, 206 N.J. at 370. However, it was obviously unaware that the *Bacon* districts had also been previously determined to be "special needs districts" by the State Board and "constitutionally deprived" by the CEIFA by this Court.

The State Board, in its 2006 opinion, found that all of the *Bacon* districts proved that their educational and fiscal circumstances "reflect conditions every bit as daunting as those in the *Abbott* districts." State Board Decision, p. 61. This court in 2008 agreed with the State Board and found that the districts had "demonstrated a constitutional deprivation unchallenged by the Department as well as an inability through local taxation to fill in the gaps created by CEIFA's inadequate funding." Bacon,398 N.J. Super. at 615.

[10] Justice Albin, in his concurring opinion, noted that he would order full funding of the SFRA to all districts spending below adequacy. He argued that fully funding just the Abbott districts is not sufficient to remedy the constitutional violations found by Special Master Judge Doyne. Abbott XXI, 206 N.J. at 468.

It makes no sense that sixteen (16) districts of the seventeen (17) whose constitutional deprivation led to the scuttling of the CEIFA and the enactment of the SFRA are now to be deprived of being fully funded by the SFRA. This is particularly true when the DOE's own Needs Assessments of each individual district relied on a fully funded SFRA to provide the resources to overcome the past deprivation. The Supreme Court cannot have intended this result.

This Court denied Petitioner's request in 2008 to automatically be awarded the same financial resources as their urban counterparts, the Abbott districts, because an alternative remedy, the needs assessments was available. They would provide "comprehensive and systematic relief", Bacon, 398 N.J. Super. at 617.

That relief would include "financial relief", Bacon at 617. No such relief has been forthcoming. This court also noted as to SFRA as follows: "[w]hether the legislation just recently enacted delivers on that promise, and . . . responds to the individualized, unique circumstances of the Bacon districts, remains to be seen." Id. at 617.

The SFRA has now been in place for three (3) years and has yet to be funded as promised for these districts in accordance with the formula enacted. As a result of that under funding, it has failed to deliver on its promise of funding the Bacon districts to the level needed in order for New Jersey

schoolchildren to master the CCCS. Since it has failed, we ask this court to re-examine the constitutional deprivations proven by the Petitioner districts and order the State to fully fund the SFRA as to the Petitioner districts, just as the Supreme Court did for the former Abbott districts.

IV. EMERGENCY RELIEF IS APPROPRIATE, BECAUSE IMMEDIATE SUBSTANTIAL AND IRREPARABLE HARM WILL OCCUR TO THE DISTRICTS UNLESS FULL FUNDING OF THE SFRA IS ORDERED AS TO THEM FOR 2011-2012.

This school year will begin on September 8, 2011. Final funding figures need to be provided to the State by October 14, 2011. That is the dated by which State funding for the coming year is set, based upon the number of students, their economic demographic district property wealth and district income. (Whitaker Certification, p. 13, paragraph 21). It is extremely important therefore that an Order be in place before October 1, 2011.

This request for emergency relief is appropriate pursuant to R.1:10-3 and R.2:8-1. The Supreme Court has, on numerous occasions, ordered an expedited briefing schedules and expedited oral arguments in many of the Abbott v. Burke cases. Most recently, it was ordered in Abbott v. Burke, 206 N.J. 332 (2011)(Abbott XXI)

CONCLUSION

For all the reasons stated, an Order should be entered

enjoining the State from failing to fully fund the SFRA for Petitioner districts in advance of the October 14, 2011 funding calculation deadline.

Respectfully submitted,
JACOB & CHIARELLO, LLC

By: _____
Frederick A. Jacob, Esquire

Dated: August 29, 2011