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Attorneys for Defendants

RAYMOND ARTHUR ABBOTT, et al.,
Plaintiffs,

v.

FRED G. BURKE, et al.,

Defendants.

SUPREME COURT OF NEW JERSEY

Docket No.

Civil Action

ORDER

THIS MATTER, having been opened to the Court upon motion by Greenberg Dauber Epstein & Tucker, P.C., Edward J. Dauber, Esq., counsel for the Commissioner of Education ("Commissioner"), for an order modifying the Court's prior orders in Abbott v. Burke, 199 N.J. 140 (2009) ("Abbott XX") and Abbott v. Burke, 206 N.J. 332 (2011) ("Abbott XXI");

AND this Court having previously recognized in Abbott XX that school funding decisions must be tied to educational

programs and standards, along with the need for periodic review of outcomes;

AND the Commissioner having demonstrated that although the State has provided nearly \$100 Billion in State funding to the SDA Districts since 1985, there has not been sufficient improvement in student performance to conclude that the goal of eliminating disparities in those districts as compared to other districts across the State of New Jersey has been met, as measured by standardized test results and graduation rates;

AND the Commissioner having further demonstrated that a principal factor in improving educational outcomes is the effectiveness of the teachers along with the amount of teacher/student contact time;

AND this Court having recognized that the New Jersey Constitution's guarantee of a thorough and efficient system of education protects a fundamental right of school children in New Jersey;

AND it appearing that certain statutory and contractual limitations impede the ability of certain SDA Districts to affect changes that would allow those schools the flexibility to raise the level of teacher effectiveness, increase teacher/student contact time, and otherwise improve the ability

of such SDA Districts to provide a thorough and efficient education;

AND it appearing that in some SDA Districts, a provision of the Tenure Act, N.J.S.A. 18A:28-1 et al., specifically, N.J.S.A. 18A:28-10 (known as the "LIFO Statute"), and certain provisions of collective negotiation agreements effectively limit the Districts' freedom to provide the students with the most qualified teachers, to introduce new programs or to increase total teacher/student contact hours, which would be in the best interest of the school children;

AND it appearing that certain statutory and contractual provisions, which impede the State's ability to fulfill the guarantee of a thorough and efficient system of education for all public school children, are unconstitutional as applied in certain SDA Districts;

AND this Court having recognized that the Commissioner not only has significant responsibilities and duties to ensure the provision of a thorough and efficient education but also has broad discretionary authority to act in furtherance of that constitutional mandate;

AND this Court having recognized the specialized expertise of the Commissioner in identifying the unmet needs of at-risk students that impede their ability to succeed academically, as

well as the Commissioner's expertise in identifying the programs and modalities that can best meet those needs;

AND this Court having in mind the constitutional roles of the co-ordinate branches of Government and the deference due each branch under separation of powers principles;

AND it being evident that any system for the provision of education cannot significantly improve educational outcomes for students in the absence of effective teachers with sufficient teacher/student contact time;

AND it being evident that with relief from certain statutory and contractual impediments that are determined to be unconstitutional as applied in certain SDA Districts, a reassessment of State funding to the public schools, and its distribution among the State's districts, will need to be undertaken in order to assess the financial impact of the qualitative changes necessary to achieve measurably improved educational outcomes and reduce the disparity in outcomes between the SDA Districts and others;

AND it being evident that failure to address the aforementioned constitutional infirmities as quickly as possible will have an adverse effect on students whose futures might be placed in jeopardy, and the State therefore seeking review of this application on an emergent or otherwise accelerated basis;

AND further good cause appearing:

IT IS on this _____ day of _____, 2016 ORDERED:

1. That the Commissioner is granted the authority to waive statutory requirements and provisions of collective negotiation agreements in SDA Districts that serve as impediments to a thorough and efficient education, consistent with the Court's opinion in this matter;
2. The Court hereby vacates its previously ordered remedy to the extent that it contemplated funding of the School Funding Reform Act of 2008 in accordance with its terms; and
3. The Court orders funding for SDA districts to be held at current levels while the Legislature and Executive Branch develop a new system for providing education to students that is fair and constitutionally sound and that can be implemented in time for the 2017-2018 school year. If a new system is not timely implemented, the Court will entertain further applications for appropriate relief.
