DENISE JONES, on behalf of herself: and her minor children; AIDA FARFAN, on behalf of herself and her minor child; NATALIE F. SEALS, on behalf of herself and her minor child; ARTINA FOSTER, on behalf of herself and her minor child; AIYSHA WILSON, on behalf of herself; and DIETRA JACKSON, on behalf of herself and her minor children,	:	COMMISSIONER OF EDUCATION
PETITIONERS,	:	DECISION
V.	:	
LEO F. KLAGHOLZ, COMMISSIONER OF EDUCATION, AND NEW JERSEY STATE BOARD OF EDUCATION,	:	
RESPONDENTS.	:	

SYNOPSIS

Petitioning parents and residents of Plainfield School District sought classification of the District as an "Abbott District" under the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA), thereby entitling it to heightened levels of State aid and mandatory spending, among other special considerations. Petitioners sought relief on the facts pled, contending that such facts demonstrated membership in the class of districts found by the Court to be entitled to extraordinary remedy and, thus, on their face entitled the District to the requested relief. Respondents sought dismissal of the petition.

Commissioner held that petitioners did not plead facts sufficient to warrant the relief sought, in that they failed to allege severe educational deficiencies or specific links to the provisions of the funding law under challenge. Commissioner dismissed petition on these grounds and on grounds of prematurity, in that no claim was made that the District attempted to utilize the applicable provisions of CEIFA or to implement identified remedial programs in order to address its alleged needs. Dismissal was made expressly without prejudice to the filing of a new appeal should petitioners allege that deficiencies of constitutional magnitude remain *after* the district has fully and fairly attempted to implement the provisions of CEIFA and the appropriate programmatic recommendations.

April 28, 1998

AGENCY DKT. NO. 280-7/97

DENISE JONES, on behalf of herself: and her minor children; AIDA FARFAN, on behalf of herself and her minor child; NATALIE F. SEALS, on behalf of herself and her minor child; ARTINA FOSTER, on behalf of herself and her minor child; AIYSHA WILSON, on behalf of herself; and DIETRA JACKSON, on behalf of herself and her minor children,	:	COMMISSIONER OF EDUCATION
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RESPONDENTS.	:	

For Petitioners, Education Law Center (David G. Sciarra, Esq.) and Crummy, Del Deo, Dolan, Griffinger and Vecchione, P.C. (James E. Ryan, Esq.)

For Respondents, Peter Verniero, Attorney General (Nancy Kaplen, DAG)

This matter was opened before the Commissioner of Education on July 31, 1997, by the filing of a Petition for Declaratory and Injunctive Relief. Therein, petitioners sought immediate inclusion of the Plainfield School District as a "Special Needs District (SND)"[1] so as to entitle it, prior to the 1997-98 school year, to the remedies ordered by the New Jersey Supreme Court in *Abbott v. Burke*, 149 *N.J.* 145 (1997) ("*Abbott IV*"). The District had been excluded from such classification by the language of the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA), which defined "Abbott district" as "one of the 28 urban districts in district factor groups A and B specifically identified in the appendix" to *Abbott v. Burke*, 119 *N.J.* 287, 394 (1990) ("*Abbott II*"), and which directed mandated spending and heightened aid

levels for such districts so as to rectify what the Court found to be their longstanding and severe educational deficiencies. In *Abbott IV,* the Court recognized the District's exclusion from "Abbott" status under CEIFA,[2] and declined to include it within the scope of ordered remedies, finding that the Legislature, State Board and Commissioner should properly determine which districts qualify as "poorer urban districts." In the latter regard, the Court held that a district which questions its classification may challenge that determination before the Commissioner; hence, the present appeal.

A reply to petitioners' motion for emergent relief was filed by respondents ("State"), together with a motion to dismiss the appeal in its entirety. On September 5, 1997, the Commissioner issued a letter decision denying petitioners' request for emergent relief, noting that the record remained open for the conclusion of briefing on the State's motion for summary dismissal. That motion now proceeds to determination herein.[3]

THE STATE'S POSITION ON MOTION TO DISMISS

The State initially contends that Count One of the petition should be dismissed on grounds that it was neither unfair nor arbitrary for the Legislature, in enacting CEIFA, *N.J.S.A.* 18A:7F-1 *et seq*., to have excluded Plainfield from classification as an Abbott district. The Legislature, the State argues, determined that the 28 districts designated in the appendix to *Abbott II* were those which had proven the educational inequities requisite to special remedy as directed by the Court. In designating these 28 districts, the State contends, the Court was well aware that the census data and resultant classifications based upon it were not current; however, because the Court was focusing on the long duration and severity of problems, it understood the continuing validity of the data before it and specifically excluded from remedy, for lack of sufficient factual proofs, those districts then classified in District Factor Group (DFG) C based on 1980 census figures. It was, therefore, not inappropriate for the Legislature to limit extraordinary remedy to those districts identified by the Court as suffering deprivation of Constitutional magnitude. Plainfield cannot, the State argues, claim similarity to the identified districts, in that it has not

[1]Notwithstanding the stated nomenclature, in actuality, petitioners seek inclusion as an "Abbott district" under the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA).

[2] The Plainfield Board of Education had been granted *amicus curiae* participation in the *Abbott IV* proceedings.

[3] Prior to the Commissioner's letter decision on emergent relief in this matter, the Plainfield Board of Education submitted, through its attorney, a letter supporting and endorsing petitioners' arguments and reserving the right to join in the controversy as a "party plaintiff or amicus." However, no such application was ultimately made.

proven the "glaringly clear" and "dramatic" deficiencies found to have been demonstrated by the Abbott districts in proceedings before the Court.

Neither can Plainfield, according to the State, contend that any of its claimed deficiencies are attributable to CEIFA. To the contrary, the State argues, CEIFA takes careful account of Plainfield and other similarly situated districts. This is so, the State observes, in that the very factor that caused Plainfield to be designated a Special Needs District (SND) under CEIFA's predecessor, the now-defunct Quality Education Act (QEA), generates several types of additional aid under CEIFA. Specifically, Plainfield's high concentration of low-income students qualifies it for Early Childhood Program Aid to fund required prekindergarten and full-day kindergarten for all four- and five-year olds, and for Demonstrably Effective Program Aid to fund programs and services addressing the special needs of district students. Additionally, as a low-income district with municipal overburden concerns, Plainfield qualifies for Supplemental Core Curriculum Standards Aid. Finally, CEIFA provides for an additional layer of budgetary scrutiny for districts like Plainfield, that is, non-Abbott districts which qualified as SNDs under QEA, so as to ensure on an annual basis that funds are appropriately allocated to provide a thorough and efficient system of public education (T&E). *N.J.S.A.* 18A:7F-5(g). Thus, the State concludes, petitioners cannot possibly claim legislative arbitrariness or unfairness in Plainfield's exclusion as an Abbott district.

The State next contends that the petition should be dismissed because, even accepting its allegations as true, *arguendo*, it fails to plead facts supporting the requisite determination that educational inequities exist so as to establish an entitlement to classification as an Abbott district, or to link such inequities to CEIFA. While, the State observes, petitioners cite standardized test scores, graduation rates, per pupil income, municipal overburden, low property ratables, and minority enrollment percentages, they fail to allege anything approaching the "tragically inadequate" and "significantly inferior" level of education that the Court found to exist in Abbott districts; nor do they plead low spending, one of the most fundamental facts necessary to demonstrate similarity to Abbott districts. Finally, the State argues, petitioners do not point to any aspects of CEIFA which purportedly cause the alleged deficiencies, nor can they, in view of the fact that CEIFA takes specific account, as demonstrated above, of the factors which render Plainfield eligible for special additional aids.

The State lastly contends that dismissal is warranted because petitioners have failed to name an indispensable party to the instant matter; that is, notwithstanding petitioners'

allegation that the Plainfield school district is failing to provide T&E, they have not named the district as a respondent. The district must be named, the State contends, both because the Commissioner must consider factual issues specific to the district, such as the quality and scope of course offerings, and because of the integral role the local district plays in partnership with the Legislature in providing T&E in accordance with the Constitutional mandate. Additionally, petitioners seek reliefs that will accord particular obligations, as well as benefits, to the district. Therefore, the State contends, the Plainfield School District has a material interest in the outcome of these proceedings and must be considered an indispensable party to them.

In reply, petitioners first reassert their claim that the Legislature's removal of Plainfield from the category of poor, urban districts, when it unrefutedly remains such a district, is inherently irrational and arbitrary. Petitioners contend that the State mischaracterizes the Court's findings in *Abbott II*, as the Court did not itself classify districts as poor and urban based on the proofs presented to it, but rather generalized from the proofs offered for specific districts to conclude that the students of *all* districts of the same State classification category (DFG A or B) were similarly deprived. Thus, petitioners argue, the *Abbott* remedies were not limited to those districts where deficiencies were most fully proven, but, rather, were extended to all members of a class sharing common educational characteristics and problems with those districts. Had more current (1990) census data been before the Court at the time it reached its conclusions, petitioners note, Plainfield would have been included within the DFG B/urban classification found by the Court to be in need of remedy. Moreover, the position taken by the State, according to petitioners, assumes that the Court did not envision that any district other than the 28 then identified would ever be classified as poor and urban, whereas, in fact, the Court expressly recognized that changes would occur and assigned responsibility for making the resultant determinations to the Legislature, State Board and Commissioner. Indeed, both the Legislature and the Commissioner previously concluded that Plainfield was a poor, urban district by including it in that category, then called "Special Needs District," under the QEA enacted in 1990 and in the 1993 DFG classifications based on 1990 census figures. It thus makes no sense whatsoever, according to petitioners, for the Legislature to have effectively "de-designated" Plainfield as poor and urban by returning to pre-QEA classifications which were no longer valid. In this latter regard, petitioners distinguish Plainfield from that category of districts expressly discussed by the Court as having "some similarities" with poor, urban districts, but not rising to the level of need

uniquely associated with that group. Plainfield, petitioners contend, is undeniably both poor and urban, and shares the requisite characteristics of that group so as to entitle it to full remedy.

Petitioners next aver that the State has once again mischaracterized the nature of the Court's decision in its contention that petitioners' pleadings are insufficient to warrant the remedy sought. The question is not, according to petitioners, whether specific proofs of deprivation of Constitutional dimension are brought forth, but, rather, whether petitioners can demonstrate that Plainfield is a member of the class to which the Court extended relief. Placed in this context, petitioners contend, there can be no doubt that both their allegations and their supporting proofs place them within this class, a placement the State itself recognized in its 1990 QEA designations and 1993 DFG assignments, as well as in its continued denial (since 1984) of State certification to the district.

Finally, petitioners assert that the State respondents are the only indispensable party to their petition, as the fundamental principle underlying all of the *Abbott* decisions is that it is the *State's* obligation to provide T&E and that the *State* must act to remedy violations of students' Constitutional entitlement. In this regard, petitioners note that the poor, urban districts were neither parties in the *Abbot* litigation nor required by the Court to participate therein. According to petitioners, that claim, like the present one, involves the failure of the State to meet its Constitutional obligation, not the failure of any individual district; moreover, the relief sought is from the State.

COMMISSIONER'S DETERMINATION

Petitioners have claimed entitlement to the reliefs directed by the Court in *Abbott IV* specifically on the facts pled, claiming that no further factual showing is necessary. They contend that Plainfield clearly belongs to the class of districts identified by the Court as warranting extraordinary remedy, that is, those districts which are both DFG A/B and urban; indeed, had DFGs already been recalculated based on the 1990 census at the time of the Court's decision in *Abbott II*, Plainfield would have been included in the Court's remedy, as it had moved from DFG C to DFG B based on that census. Additionally, they claim, the district undisputedly shares with the 28 identified Abbott districts a history of poor performance on standardized tests, a large percentage of disadvantaged students, an excessive municipal tax burden, a large percentage of students of color, and a tax base of low equalized valuation per pupil; indeed, the State itself recognized this by classifying the district as "special needs" under the funding law (QEA) developed in response to *Abbott II*. No further demonstration is needed, petitioners

contend, to require the Legislature, State Board and Commissioner to find, upon the consideration delegated to them by the Court, that the district falls within the precise scope of classification entitled to *Abbott* remedies.

Clearly, the factual information presented by petitioners in support of their claims is not materially in dispute. The question that remains, however, is whether the remedy they seek can, in fact, be granted on those facts and on the grounds upon which it is claimed. In addressing this question, the Commissioner finds that, contrary to petitioners' assertions, it is not enough to merely demonstrate membership in the basic class of districts which might potentially be entitled to *Abbott* remedies. Indeed, the very question of a change in entitlement, based upon reclassification as the result of a more recent census from DFG C to DFG B, has already been addressed by the Court. Facing arguments similar to those made herein, the Court held that such movement, alone, does not entitle a district to the remedies of *Abbott*. Rather, any petitioners seeking such remedy must demonstrate educational inequities similar to those suffered by the *Abbott* plaintiffs, and, further, link those inequities specifically to the funding formula being challenged. *Board of Education of the Borough of Carteret, Board of Education of the Town of Kearny, and Board of Education of the Township of North Bergen v. State of New Jersey et al.*, Superior Court, Chancery Division, Mercer County, Dkt. No. MER-C-0079-94, decided October 7, 1994, aff'd Superior Court, Appellate Division, Dkt. No. A-1340-94T1, decided October 3, 1995, *cert. denied*, 143 *N.J.* 329 (1996)

In the present instance, petitioners note low test performance and graduation rates, high numbers of poor and minority students, low property valuations and high tax rates; they do not, however, link these facts to underlying or resultant educational deficiencies, let alone to deficiencies of the depth and persistence found by the Court in *Abbott*. Nor do they link these facts to CEIFA, the funding formula being challenged herein; on the contrary, Plainfield has not historically been a low-spending district, thus not fulfilling the expenditure disparity criterion of *Abbott*, and no claim has been made that CEIFA will result in such disparity. Absent these links, the Commissioner cannot make a facial finding that CEIFA is unconstitutional in its failure to include Plainfield as an "Abbott district," especially given that CEIFA makes express provision for additional funds to address the very factors which resulted in Plainfield's classification as a "special needs" district under the prior funding scheme, and that the Commissioner has now, at the Court's directive, specifically identified those regular and supplemental programs that will address such factors within the parameters of CEIFA. See *A Study of Supplemental Programs*

and Recommendations for the Abbott Districts, New Jersey State Department of Education, November 1997.

This does not mean, however, that Plainfield is foreclosed from the possibility of future remedy. While nothing in the pleadings herein would entitle petitioners to the remedy sought, even accepting their factual allegations as true, the Commissioner cannot dismiss the possibility that CEIFA might in fact, when implemented in accordance with the Commissioner's guidance as set forth in the study cited above, prove to be inadequate to enable the district to meet its constitutional obligation without classification as an Abbott district. Therefore, the Commissioner rejects the instant appeal in this regard as premature, in that the record evinces no claim that the District has attempted to utilize the applicable provisions of CEIFA or to implement programs of the type identified by the Commissioner in order to address its alleged needs. Such rejection, however, is without prejudice to the filing of a new appeal should petitioners eventually be in a position to allege that deficiencies of constitutional magnitude remain *after* the district has fully and fairly attempted to implement the provisions of CEIFA and the recommendations of the Commissioner.[4]

Accordingly, the instant Petition of Appeal is dismissed for the reasons expressed herein, without prejudice to petitioners' right to file a subsequent appeal alleging insufficiency of funding notwithstanding District implementation of the provisions of CEIFA and the recommendations of the Commissioner as set forth above.[5]

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

April 28, 1998

[4] Such appeal would require the naming of the Plainfield Board of Education as an indispensable party, for the reasons given by the State in conjunction with the present appeal.

[5] This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.