EDU #2637-00 through 2646-00, 2649-00 through 2652-00,
2654-00 through 2656-00
C # 50-03
SB # 4-03

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 and on behalf of T.C.; EDIE RILEY, individually and on behalf of S.R.; ARNETTA RIDGEWAY AND CHRISTOPHER GLASS, individually and on behalf of J.G., F.G., AND D.G.,	:	
PETITIONERS,	:	STATE BOARD OF EDUCATION
BUENA REGIONAL, CLAYTON, COMMERCIAL, EGG HARBOR CITY, FAIRFIELD, LAKEHURST, LAKEWOOD, LAWRENCE, MAURICE RIVER, AND WOODBINE SCHOOL DISTRICTS,	:	DECISION
PETITIONERS-APPELLANTS,	:	
AND	:	
HAMMONTON, LITTLE EGG HARBOR, OCEAN, QUINTON, SALEM CITY, UPPER DEERFIELD, AND WALLINGTON SCHOOL DISTRICTS,	:	
PETITIONERS,	:	
V.	:	
NEW JERSEY STATE DEPARTMENT OF EDUCATION,	:	
RESPONDENT-RESPONDENT.	:	

Decided by the Commissioner of Education, February 10, 2003

Decision on motion by the State Board of Education, July 2, 2003

Decision on motion by the State Board of Education, November 5, 2003

Decision on motion by the State Board of Education, March 3, 2004

For the Petitioner-Appellant Lakewood Board of Education, Michael I. Inzelbuch, Esq.

For the Petitioners-Appellants Buena, Clayton, Egg Harbor, Fairfield, Lakehurst, Lawrence and Woodbine Boards of Education, Jacob, Ferrigno & Chiarello (Frederick A. Jacob, Esq. and Kathy Balin, Esq., of Counsel)

For the Respondent-Respondent, Marta Kozlowska and Michael C. Walters, Deputy Attorneys General (Peter C. Harvey, Attorney General of New Jersey)

For the Amicus Curiae, Gibbons, Del Deo, Dolan, Griffinger & Vecchione (Shavar D. Jeffries, Esq., of Counsel)

In Abbott v. Burke, 119 N.J. 287 (1990) ("Abbott II"), the New Jersey Supreme Court held that the Public School Education Act of 1975 was unconstitutional as it had been applied to property-poor urban school districts. While declining to find the Act unconstitutional as to any other category of school districts on the basis of the record before it, the Court recognized the possibility that at some other time a different record might lead to a conclusion of constitutional inadequacy in non-urban school districts.

The school districts involved in the matter now before us are property-poor school districts which, like the "special needs districts" under the Quality Education Act ("QEA")[1] and the Abbott Districts as defined by the Comprehensive Educational

[1] The Quality Education Act was the statutory scheme for financing New Jersey's public schools that was enacted in response to the New Jersey Supreme Court's decision in Abbott II and which superseded the financing provisions of the Public School Education Act of 1975. The QEA established a category of

Improvement and Financing Act ("CEIFA"), which is the statutory scheme currently in effect,[2] are classified by the Department of Education on the basis of socioeconomic data provided by the 2000 census as being in the poorest category, District Factor Groups A and B.[3] However, in contrast to those districts, the school districts involved in the case before us are not urban. Hence, for the first time, the State Board of Education is being called upon to scrutinize the effect of the statutory mechanism for funding public education in New Jersey on school districts which, although poor, are not urban.

We recognize that not all of the districts that initiated this litigation appealed to the State Board from the Commissioner's determination that they were not entitled to "special needs status." Nonetheless, the questions being raised are such that resolution of this appeal potentially could affect not only those districts which are not involved in the appeal, but also districts which were not involved in the proceedings before the Commissioner. Accordingly, we approach this matter with both an awareness of our jurisdictional limitations and an understanding of the educational implications of our decision.

I

This matter was initiated by a complaint filed on December 7, 1997 in New Jersey Superior Court, Chancery Division, Cumberland County, on behalf of 17 school districts. The districts are located in six counties and are classified as belonging to

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school districts designated as "special needs districts," which were those districts classified on the basis of socioeconomic data as needing additional financial assistance due to the degree of poverty.

[2] As subsequently discussed, CEIFA established a category of districts that initially included only those districts that were part of the list appended to the Court's decision in Abbott II.

[3] The New Jersey Department of Education introduced the system of District Factor Groups ("DFG") in 1975. District Factor Groups provide a means of ranking school districts by their socioeconomic status. Based on new census data, revisions in the system were made 1984, 1993 and 2004.

District Factor Groups A and B. The complaint named as defendants the New Jersey Department of Education, the Commissioner of Education, the Director of Management and Budget, the State Treasurer and the Governor. The plaintiff school districts sought a determination that CEIFA was unconstitutional as applied to them. By consent order of February 6, 1998, the matter was transferred to the Commissioner of Education with the direction that the complaint serve as a basis for a petition of appeal to the Commissioner.

On March 2, 1998, a petition of appeal in the form of an amended complaint was filed with the Commissioner on behalf of the 17 school districts that had initiated the complaint filed in Superior Court. In addition, three other school districts joined in the matter.[4]

Again, all of the petitioning districts are non-urban districts in District Factor Groups A and B. Based largely on statistical data, the petitioning districts asserted that the educational conditions in their districts were similar to those in the 28 districts that had been categorized under CEIFA as Abbott Districts. They alleged that the children attending school in their districts were at least as disadvantaged as those attending school in the Abbott Districts, and that, despite the fact that they were using their fiscal resources efficiently, they were unable to provide their students with a thorough and efficient education. They asserted that the municipal tax burdens in their districts were such that when combined with inadequate state funding, they were not able to spend an amount equivalent to the school districts in District Factor Group IJ, which they contended provided the standard for determining whether a thorough and efficient

[4] The other districts were Clayton, Hammonton and Wallington.

education is being provided. The petitioning districts sought a declaration that CEIFA was unconstitutional as applied to them and a directive that they be provided with funding equivalent to that available to the school districts in District Factor Group IJ, which is comprised of the wealthiest school districts.

The State respondents moved to dismiss the petition, arguing that the allegations set forth therein did not provide a basis for concluding that the petitioning school districts were entitled to the increased funding awarded to Abbott Districts under CEIFA. They argued that the statistical comparisons alleged in the petition were insufficient to sustain the relief being sought and that, before the petitioning school districts would be entitled to any increased state aid, they would have to implement the provisions of CEIFA.

On May 4, 1998, petitioners filed a second amended complaint setting forth allegations relating to the conditions of poverty in the petitioning school districts and seeking relief in the form of a ruling that each plaintiff district was a "special needs district" that was being inadequately funded under CEIFA and a directive that each district receive funding equivalent to that available to the students in school districts within District Factor Group IJ.

The State respondents again moved for dismissal of the matter, arguing that the petitioning districts did not have the standing to litigate the claims pertaining to whether the students attending school in their districts were being provided with a thorough and efficient education ("T&E") as is mandated by the Education Clause of the New Jersey Constitution. The respondents also contended that dismissal was required because

petitioners had not alleged the requisite educational inequities to establish a basis for a determination that they should be classified as Abbott Districts.

In response, petitioners filed a third amended petition adding as petitioners individual students from the petitioning school districts.

The State respondents again moved for dismissal.

By letter of December 3, 1999, the Commissioner of Education denied the motion to dismiss as to Lakewood, Salem City and Wallington, districts that had not been certified as providing a thorough and efficient education to their students. He notified the parties that he intended to transmit the petition as it pertained to those districts to the Office of Administrative Law for hearing, but directed further submissions relating to the other 17 school districts that were certified.

After reviewing the papers filed in response to his directive of December 3, 1999, the Commissioner issued a letter decision on February 24, 2000 denying the State respondents' motion to dismiss the matter as to the 17 school districts that had been certified. Although the Commissioner found that the pleadings as they had been supplemented provided a sufficient basis to proceed, he determined that the petitioners could not challenge the application of CEIFA without first demonstrating that they had fully effectuated its provisions. The Commissioner further determined that if the petitioning school districts succeeded in establishing that they had properly effectuated the law, they then could seek to establish that they were unable to provide a thorough and efficient education despite that fact.

By letter of April 18, 2000, the Commissioner notified the parties that he was transmitting the file as a multiple matter that would include a transmittal memo

identifying a petitioning parent and/or a petitioning school district with a letter designation following the docket number for each of the 20 school districts involved in the case. However, prior to hearing, Lower Township, Lower Cape May Regional and South River withdrew from the matter.

Following proceedings at the Office of Administrative Law, the Administrative Law Judge ("ALJ") found that each of the petitioning districts had established that it was using its CEIFA funding appropriately and, therefore, that each was entitled to proceed to the next phase of hearing.[5]

In his decision of February 9, 2001, the Commissioner concurred with the ALJ that each petitioning district had made a sufficient showing so as to be entitled to proceed to the next phase of hearing during which each district could attempt to prove that it was unable to provide a thorough and efficient system of public education within the funding level established by CEIFA. Keaveny, supra, slip op. at 21. The Commissioner, however, determined that for the second phase of hearing, the effectiveness of each of the petitioning district's decisions concerning programmatic and fiscal allocation could not be presumed or inferred from the fact that its expenditures had been lawful or its proposed budgets had been approved by the county superintendent. Id. Hence, the Commissioner held that in order to prevail in the second phase of hearing, a district was required to first prove that educational deficiencies

[5] We note that during this phase of the litigation, the matter was captioned Joshua Keaveny, et al. on behalf of Themselves and All the Children in a Class of "A" and "B" Non-Abbott Districts Listed Below: Buena Regional, Clayton, Commercial Township, Egg Harbor City, Fairfield Township, Hammonton, Lakehurst, Lakewood, Lawrence Township, Little Egg Harbor, Maurice River Township, Ocean Township, Quinton, Salem City, Upper Deerfield, Wallington, and Woodbine School Districts v. New Jersey State Department of Education, Leo Klagholz, Commissioner of the New Jersey State Department of Education; Elizabeth L. Pugh, New Jersey Director of Management and Budget; James Dieleutorio, New Jersey State Treasurer; and Christine Whitman, Governor (hereinafter "Keaveny").

existed and then to show that such deficiencies could not be remedied under the current law and funding levels by different programmatic and fiscal choices. Id. at 22.

The 17 cases were returned to the Office of Administrative Law where, although not formally consolidated, they were heard by the ALJ seriatim. After 42 days of hearings and the submission of post-hearing briefs, the ALJ disposed of all 17 cases in a single opinion.[6]

As set forth above, some individual parents acting on behalf of their children had joined the petitioning school districts. However, the matter was litigated on behalf of the school districts, and each district was seeking to obtain relief in the form of being designated as a "special needs district" and being entitled to be funded like the districts designated as Abbott Districts under CEIFA.[7]

In his Initial Decision, the ALJ determined whether each of the petitioning districts had proven that it was a "special needs district." His determinations were based on his assessment of the degree of educational failure and socioeconomic deprivation present in each district and his judgment as to whether the factual circumstances showed that the community lacked the financial capacity to provide a thorough and efficient education to the district's students given the amount of resources provided to the school district by CEIFA. On the basis of the testimony and documentary evidence, the ALJ

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[6] For this phase of the litigation, the case caption has been Rosalie Bacon, et al. and Buena Regional, Clayton, Commercial, Egg Harbor City, Hammonton, Fairfield, Lakehurst, Lakewood, Lawrence, Little Egg Harbor, Maurice River, Ocean, Quinton, Salem City, Upper Deerfield, Wallington, and Woodbine School Districts v. New Jersey State Department of Education.

[7] As the Commissioner noted in his decision, the petitioning districts were seeking a status comparable to that of the Abbott Districts, but did not wish to be categorized as Abbott Districts. Rather, they sought to be designated as "Bacon Districts" and to receive funding at the same level as the Abbott Districts while retaining a greater degree of operational and programmatic flexibility than the Abbott Districts. Commissioner's Decision, slip op. at 137 n.8.

found that the Buena Regional, Commercial, Fairfield, Salem City and Woodbine school districts had each proven that it was a "special needs district," but that none of the other petitioning districts had demonstrated that it was entitled to the status of a "special needs district." Accordingly, the ALJ recommended to the Commissioner that Buena Regional, Commercial, Fairfield, Salem City and Woodbine be granted status as "special needs districts" and funded accordingly.

The Commissioner adopted the ALJ's determinations with respect to the 12 districts that the ALJ had concluded had not shown they were "special needs districts," but he rejected the ALJ's determinations that Buena Regional, Commercial, Fairfield and Woodbine had each proven that it was a "special needs district." The Commissioner, however, concurred with the ALJ that Salem City has demonstrated that it was a "special needs district," and he recommended to the Legislature that Salem City be added to the list of Abbott Districts.

In arriving at his decision, the Commissioner found that the ALJ's Initial Decision accurately reflected the testimony and evidence and that the underlying facts of the matter, as opposed to the conclusions or inferences to be drawn from them, were seldom in dispute. Commissioner's Decision, slip op. at 134. The Commissioner agreed with the ALJ that merely sharing statistical characteristics with the urban school districts in District Factor Groups A and B, which the Abbott II Court found were in need of a remedy, did not entitle a school district to such remedy. Like the ALJ, the Commissioner found that denying additional funding like that afforded to the Abbott Districts to petitioning school districts that were operating at levels slightly above that of the Abbott Districts was not a punishment for their success, but rather a recognition of it.

The Commissioner also concurred with the ALJ that an aligned curriculum does not in and of itself necessarily equate to the provision of a thorough and efficient education and that the question of whether a thorough and efficient education was being provided must be determined on the basis of the totality of the evidence for each petitioning school district rather than as a series of specific assessments of discrete areas such as music, math, science, language or gymnastics. The Commissioner added that the New Jersey Constitution does not require relief every time "the slightest deviation from T&E is found" and that Abbott status is a remedy for "poverty and educational failure so substantial, pervasive and durable that targeted efforts simply cannot produce a constitutionally sufficient result." Commissioner's Decision, slip op. at 137. Finally, like the ALJ, the Commissioner did not find that a district's location within a restricted land use zone[8] was determinative in assessing its entitlement to "special needs status." Id.

The Commissioner, however, did not accept all of the ALJ's threshold determinations. He rejected the ALJ's determination that facilities should be considered, finding that they should not be considered because the Educational Facilities Construction and Financing Act ("EFCFA"), N.J.S.A. 18A:7G-1 et seq., had been enacted to address the provision of constitutionally-adequate facilities. The Commissioner also found that as a practical matter, the ALJ had shifted the burden during the proceedings so that it had fallen to the Department to analyze each district so as to identify how each could have addressed its problems. Commissioner's Decision,

[8] Restricted land use zones include land in coastal areas that are subject to The Coastal Facility Review Act, N.J.S.A. 13:19-1 to -33, which empowers the New Jersey Department of Environmental Protection to protect the environment and regulate land use within coastal areas. They also include the Pinelands, which are subject to The Pinelands Protection Act, N.J.S.A. 13:18A-1 to -29. That Act is aimed at protecting agriculture while discouraging piecemeal and scattered development.

slip op. at 140-41. The Commissioner found that this was contrary to the standard he had established, which required that in order for a district to prevail in a claim for a constitutional remedy, it had to show that it had done all that it could with statutorily available resources and yet still could not provide a thorough and efficient education because the statutory funding scheme generated insufficient monies. Id. at 141. Hence, in reviewing the determinations made by the ALJ with respect to each individual district, the Commissioner assessed whether the district in question had "specifically demonstrated that CEIFA had not addressed and could not address, in areas other than facilities, proven deficiencies sufficiently to ensure that the district is able to provide the constitutionally required T&E." Id. at 142.

Applying that standard, as set forth above, the Commissioner adopted the ALJ's determinations with respect to the 12 petitioning districts which the ALJ found had not established an entitlement to relief and concurred with him that Salem City had demonstrated that "special needs status" was warranted in its case. However, he rejected the ALJ's determinations that Buena, Commercial, Fairfield and Woodbine had substantiated their claims.

On February 24, 2003, the School District of the City of Lakewood filed a notice of appeal to the State Board. On March 5, 2003, a notice of appeal was filed on behalf of Buena Regional, Clayton, Commercial, Egg Harbor City, Fairfield, Lakehurst, Lawrence, Maurice River and Woodbine. On July 2, 2003, the appeals that had been filed on behalf of Commercial and Maurice River were withdrawn.

On March 25, 2003, counsel representing the Education Law Center filed a motion seeking leave for the Education Law Center to appear as amicus curiae in the

matter. On July 2, 2003, the State Board granted the motion, and on July 31, 2003, the Education Law Center filed its brief.

On August 6, 2003, the Deputy Attorney General representing the New Jersey Department of Education filed a motion to strike those portions of the Education Law Center's brief that related to Commercial. That motion was denied by the State Board on November 5, 2003.

On December 31, 2003, the Deputy Attorney General filed a motion to strike those portions of appellants' reply brief that related to Commercial. On March 3, 2004, the State Board denied that motion.

The appeal filed by the Lakewood Board of Education is limited to that part of the Commissioner's decision which concluded that Lakewood had not used all funds available to it under CEIFA to support programs that were necessary to the provision of a thorough and efficient education. Lakewood contends that the Commissioner's conclusion is incorrect because the ALJ ignored the testimony of its assistant superintendent that the amount the district spent in 2001-02 on courtesy busing provided pursuant to N.J.S.A. 18A:39-1.1 had been allocated exclusively from funds included in the district's base budget pursuant to N.J.S.A. 18A:7F-5(d).

In contrast, the appeal filed on behalf of Buena Regional, Clayton, Egg Harbor City, Fairfield, Lakehurst, Lawrence and Woodbine (hereinafter "appellant districts") is not a limited one. Rather, the appellant districts are challenging all of the conclusions that provided the framework for the Commissioner's determinations as to whether each of the petitioning districts was entitled to "special needs status," as well as the findings that were the basis for the determinations that the appellant districts were not entitled to

such status. The appellant districts contend that, contrary to the Commissioner's conclusion, the condition of the facilities in the petitioning districts should have been considered notwithstanding the passage of EFCFA in 2000. Appellants also contend that the ALJ did not shift the burden of proof, but rather required that each of the petitioning districts prove their inability to remedy the deficiencies established during the proceedings through other fiscal and programmatic choices in order to prevail. They maintain that they suffer from municipal overburden and that their use of surplus to help fund the education budget has been appropriate and necessary under the circumstances. They argue that each of the districts involved in this appeal has proven that it meets the requirements for "special needs status," and they reassert their claim that CEIFA violates the equal protection clause of the New Jersey Constitution.

In its role of amicus curiae, the Education Law Center contends that the approach taken by the Commissioner is directly antithetical to the New Jersey Supreme Court's holdings in Abbott II and Abbott v. Burke, 149 N.J. 145 (1997) ("Abbott IV") because the Commissioner focused on whether CEIFA is an adequate mechanism for addressing a district's educational deficiencies rather than viewing educational failure in terms of the level of socioeconomic need. The Education Law Center argues that the Court's designation of the special needs districts in Abbott II was predicated on the degree of poverty and socioeconomic disadvantage, as well as the degree of educational failure of the education provided. Hence, the question of whether a district should be afforded "special needs status" must be judged under criteria derived from Abbott II and Abbott IV to measure the confluence of identified social, economic and educational factors that produce an environment in which the provision of a

constitutionally adequate education is effectively impossible without such status. The Education Law Center asserts that by applying that criteria to the districts which had petitioned the Commissioner in this matter, Commercial, Woodbine, Lawrence, Fairfield and Egg Harbor City were entitled to "special need status." However, the Education Law Center argues that the precise nature of the remedy requires the further development of a record of the underlying needs of each district so that the State Board should remand the matter to the ALJ for a district-specific remedial determination.

II

While the appeals in this case are on behalf of specific school districts, the overarching question is whether CEIFA as applied has fulfilled the constitutional imperative of providing a thorough and efficient system of free public schools for the instruction of all children in the state. In this respect, we recognize that CEIFA represents the fourth major legislative effort to establish a system that fulfills the constitutional mandate since New Jersey's system of financing public education was first challenged in 1970 by Robinson v. Cahill, which was initiated on behalf of children residing in property-poor urban school districts. See Robinson v. Cahill, 118 N.J. Super. 223 (Law. Div. 1972) (subsequent history omitted).

The Legislature's first attempt to enact a constitutionally sufficient funding scheme was the Bateman Act, which was enacted during the pendency of Robinson. Although the Bateman Act did not establish educational standards, it attempted to fulfill the constitutional mandate by providing a minimum financial foundation that would enable all school districts to provide the inputs essential to a constitutionally adequate education. In Robinson I, the New Jersey Supreme Court found that the Bateman Act

was inadequate because it failed to establish educational standards by which to measure the adequacy of the financial resources it provided. Robinson v. Cahill, 62 N.J. 473 (1973) (subsequent history omitted).

The litigation in Robinson ultimately resulted in the enactment of the Public School Education Act of 1975 ("Chapter 212"). In contrast to the Bateman Act, Chapter 212 established educational standards aimed at ensuring that New Jersey's school children in all districts were provided with an education that would equip them to participate as workers and citizens in the society they would enter. This concept of a thorough and efficient education is still used by the Court as the ultimate measure of whether the education being provided to the students in a particular school district is a thorough and efficient one.

Chapter 212 provided the financial resources to support the educational standards by establishing a guaranteed tax base through state aid that enabled each district to develop a base budget to support public education as if its property valuation was at or above the state average. In addition, Chapter 212 provided categorical state aid in such categories as transportation and special education. The state aid that supported the guaranteed tax base was theoretically sufficient when combined with categorical aid from the State to permit each school district, no matter how property-poor, to generate the necessary fiscal resources to provide a thorough and efficient education.

In Robinson V, the New Jersey Supreme Court found the Public School Education Act of 1975 to be facially valid. Robinson v. Cahill, 69 N.J. 449 (1976) (prior and subsequent history omitted). However, in Abbott II, the New Jersey Supreme Court

found that the evidence of profound educational failure in the poor urban districts that had been presented showed that the Public School Education Act as applied had violated the constitutional right of the students in those districts to a thorough and efficient education. In the appendix to its decision, the Court identified 28 school districts that met its criteria of the convergence of educational failure and poverty, but noted that the Commissioner or the Legislature might add to that number. Abbott II, 119 N.J. at 385-86.

In the absence of legislative guidance as to how to remedy the situation, the Court in Abbott II awarded remedial relief based on the level of education provided by New Jersey's wealthiest districts, finding that the State had to assure a per pupil expenditure for regular education in the poor urban districts that was substantially equivalent to the average per pupil expenditure in the wealthiest districts and, in addition, had to provide adequate funding to address the special educational needs of students in the poor urban districts so as to redress their extreme disadvantages. Id.

The Legislature's next effort to fulfill the constitutional mandate was the Quality Education Act of 1990, which replaced the guaranteed tax base approach of the Public School Education Act with a foundation plan intended to reduce disparities in per pupil spending between poor and wealthy districts by generating state aid based on both the property wealth of a district and the personal income of its residents. In addition, the QEA provided for "special aid" regardless of a district's wealth for transportation, special education, bilingual education and at-risk students.

Rather than defining which districts were entitled to relief under Abbott II by the listing in the appendix to that decision, the QEA created a category of districts labeled

as "special needs districts" based on the Department of Education's method of classifying school districts into "District Factor Groups" according to their socioeconomic status. Under the QEA, 30 urban school districts were identified as having "special needs" and were afforded a higher foundation budget by virtue of that status. The higher foundation budget was determined by the use of a "special needs weight," which was arbitrarily assigned by the Legislature without relying on any study of the level of funding actually needed in order for the "special needs districts" to achieve parity. The ability of the district to support its "foundation budget" from local property taxes was based on its property wealth and the income of its residents, and the State paid "foundation aid" based on the difference. Equalization in per pupil expenditures would be achieved under this system by increasing state aid to the "special needs districts" while restricting aid to the wealthiest District Factor Groups, DFG I and DFG J.

In Abbott v. Burke, 136 N.J. 444 (1994) ("Abbott III"), the New Jersey Supreme Court found that the QEA was unconstitutional as applied to the "special needs districts" because it failed to ensure parity in regular education expenditures between the 30 "special needs districts" and the wealthiest districts and because it failed to adequately address the unique needs of students in the "special needs districts." Basically, the Court found that, although it was theoretically possible for the "special needs districts" to achieve parity under the QEA, there was no guarantee that this would occur. Moreover, the Court found that the QEA failed to meet the special extra-educational needs of students in the "special needs districts" and that the weights attached to aid for at-risk students were arbitrary and not based on needs assessment by the Commissioner and study of the actual costs of providing necessary services to at-risk students.

Nonetheless, the Court declined to direct affirmative remedial relief at that juncture because there had been a substantial increase in state aid to the 30 "special needs districts" since the Abbott II decision. In addition, the Legislature had begun to renew its efforts to address its obligation to effectuate the constitutional mandate for the provision of a thorough and efficient system of education and, after considering a motion filed by plaintiffs in 1996, the Court ultimately determined to withhold further relief unless appropriate legislation was not enacted by December 31, 1996.

The Comprehensive Educational Improvement and Financing Act of 1996 was the Legislature's next effort to effectuate the constitutional mandate and, with amendments, is the statutory scheme now in effect. It differs from the QEA in several ways. Most significantly, it takes a narrower approach than did the QEA in determining which districts might be afforded the relief that the Court determined was necessary to remedy the educational deficiencies in the property-poor urban districts. While the districts that had been classified as "special needs districts" under the QEA had been specified by the Legislature, the classification was criteria-based and included 30 districts rather than the 28 listed in the appendix to Abbott II. Additionally, because inclusion rested on census data and classification under the Department of Education's method of categorizing districts into "District Factor Groups," change in census data or revision of the criteria for determining into which "District Factor Group" a specific district was to be placed theoretically would impact a given district's status as a "special needs district."

There are no "special needs districts" under CEIFA. Rather, CEIFA affords parity aid and other remedies designed to meet the Court's requirements in Abbott II to a

category of districts designated as Abbott Districts. When CEIFA was enacted in 1996, that category was by definition limited to the 28 urban districts in District Factor Groups A and B specifically identified in the appendix to the New Jersey Supreme Court's decision in Abbott II.[9] Given the structure of CEIFA, the dilemma presented by an appeal such as the one now before us was inevitable.

III

The conceptual framework of CEIFA is different from the previous statutory schemes for funding public education in New Jersey. With this effort, the Legislature undertook the ambitious task of establishing a definition of a through and efficient system of public education uniformly applicable to all districts that specifies what must be learned with reference to academic standards which must be achieved by all students. N.J.S.A. 18A:7F-2(b)1. Those goals are the underpinnings of CEIFA. With those goals as its starting point, the Legislature sought to provide through CEIFA the types of programs and services to accomplish them "in a manner that is thorough and efficient," N.J.S.A. 18A:7F-2(b)2, a level of financial support sufficient to provide those programs and services, and a funding mechanism to ensure their support, N.J.S.A. 18A:7F-2(b)3 and 4. The Legislature also sought to provide a system that ensures

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[9] Since CEIFA was originally enacted, the statutory definition of an Abbott District has been amended to include any district that was classified as a "special needs district" under the QEA. In addition, following the issuance of the Commissioner's decision in this case, Salem City was added to the list of Abbott Districts. The statutory definition is now codified in N.J.S.A. 18A:7F-3 as follows:

> "Abbott district" means one of the 28 urban districts in district factor groups A and B specifically identified in the appendix to Raymond Abbott, et al. v. Fred G. Burke, et al. decided by the New Jersey Supreme Court on June 5, 1990 (119 N.J. 287, 394) or any other district classified as a special needs district under the "Quality Education Act of 1990," P.L. 1990, c. 52 (C. 18A:7D-1 et al.), or Salem City School District.

sound management and accountability and which includes mechanisms for enforcement in the event that a district fails to meet the substantive standards. N.J.S.A. 18A:7F-2(b)5.

The substantive educational standards form the foundation of CEIFA. They are embodied in the Core Curriculum Content Standards that provide achievement goals applicable to all students in nine core academic areas: 1) visual and performing arts, 2) comprehensive health and physical education, 3) language arts literacy, 4) mathematics, 5) science, 6) social studies, 7) world languages, 8) technology literacy, and 9) consumer, family and life skills. Infused throughout the core academic areas are "cross-content workplace readiness standards," which are designed to incorporate skills such as career-planning, critical thinking, and decision-making and problem solving.

The Core Curriculum Content Standards define the results expected from students but do not prescribe a curriculum. Rather, the task of developing a curriculum that will enable students to meet the achievement levels required by the standards remains with the district board of education.

Although CEIFA does not prescribe a curriculum, it contains performance indicators to ensure that students are being effectively taught the required content. Under CEIFA, the Commissioner is responsible for implementing a system of statewide assessments to evaluate the extent to which students are achieving the Core Curriculum Content Standards. Currently, the statewide assessments include 1) the Elementary School Proficiency Assessment ("ESPA"), 2) the Grade Eight Proficiency Assessment ("GEPA"), and 3) the High School Proficiency Assessment ("HSPA"). In

addition, the Special Review Assessment ("SRA")[10] and the Alternate Proficiency Assessment ("APA")[11] are available to those students whose achievement cannot accurately be assessed by the standard assessment instruments.

The funding provisions of CEIFA are designed to assure that school districts have the financial support necessary to provide an education to their students that enables them to achieve the educational standards established under CEIFA. CEIFA seeks to accomplish this by establishing the fixed per pupil cost of providing the educational opportunity necessary for students to achieve the standards. This prescribed amount is the "T&E amount," which represents the cost per elementary school pupil of delivering the Core Curriculum Content Standards and the extra-curricular and co-curricular activities necessary to a thorough and efficient education in all school districts. This amount is then weighted to account for the costs of delivering the required education at the elementary, middle and high school levels respectively.

The initial "T&E amount" was established by the Commissioner on the basis of a computer model built on a hypothetical school district that contained an elementary school of 500 students, a middle school of 675 students, a high school of 900 students and a central office. The model school district was built on certain assumptions about the number of teachers, teachers' aides, instructional minutes, professional and technical staff, administrative staff, textbooks, supplies and equipment that were

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[10] The Special Review Assessment is an alternative assessment that measures achievement of the Core Curriculum Content Standards.

[11] The Alternative Proficiency Assessment is used to determine cumulative student achievement of the knowledge and skills specified by the Core Curriculum Content Standards for students with disabilities who are unable to participate in the elementary component of the statewide assessment for grades three through seven, the GEPA or the HSPA.

required to provide an education in conformity with the content standards. Once the model was established, the Commissioner determined the actual costs of these inputs based on statewide averages and assigned costs to the level of inputs assumed to be necessary by the model. After the first year, the "T&E amount" and the school level weights were to have been established biennially in a "Report on the Cost of Providing a Thorough and Efficient Education."

Under CEIFA, a "T&E range" is established for regular education spending on the basis of the "T&E amount." This range is expressed in terms of per pupil expenditures for elementary students and calculated by adding or subtracting from the "T&E amount" the "T&E flexible amount," which represents the range established to reflect regional cost differences throughout New Jersey.

Under CEIFA, the basic state aid is "core curriculum standards aid." Each school district's "core curriculum standards aid" is calculated by subtracting its "local share" from its "T&E budget." The "local share" is determined by a formula that takes into account the district's property wealth as measured through equalized valuation in the pre-budget year and income. The formula includes a property value multiplier and an income multiplier that are determined annually by the Commissioner, and a district may appeal its "core curriculum standards aid" to the Commissioner on the basis that the calculation of its income does not accurately reflect its income.

In addition to "core curriculum standards aid," school districts may receive other categories of state aid based on meeting specified eligibility requirements. These categories of aid include: 1) Early Childhood Program Aid distributed to school districts with 20 percent or more low income students to support full-day kindergarten, preschool

classes and other early childhood services, 2) Supplemental Core Curriculum Standards Aid for districts and vocational school districts with concentrations of low income students in excess of 40 percent and an estimated equalized tax rate which exceeds that of the state as a whole by more than ten percent and districts with resident enrollments in excess of 2,000 where the district's equalized valuation per pupil is not more than twice the statewide equalized valuation per pupil, 3) Demonstrably Effective Program Aid for districts with 20 percent or more low income students in a given school to provide instructional, school governance, and health and social service programs to students in those schools, 4) Instructional Supplement Aid for districts and county vocational school districts with concentrations of low income students between five and 20 percent to provide supplemental services to low income families, 5) Special Education Aid under a four-tier system based on the number of classified students receiving special education services in specified categories, 6) Bilingual Education Categorical Aid based on the number of students in the district enrolled in a bilingual or English as a second language program approved by the State Board of Education, 7) County Vocational Categorical Aid provided to each county vocational school district based on the number of students enrolled on either a full- or shared-time basis, 8) Adult and Post-Secondary Education School Aid to districts that have students enrolled in approved adult high schools, post-graduate programs, or post-secondary programs provided by county vocational schools, 9) Distance Learning Network Aid for uses necessary for the establishment of effective distance learning networks, and 10) Transportation Aid to each district and county vocational school district for mandated transportation for all public and non-public school students except for preschool

students eligible for Early Childhood Program Aid. In addition, CEIFA offers Stabilization Aid to minimize the impact of an extreme decrease in total state aid from one year to the next and for districts with students placed in special services school districts or with large senior citizen populations.

Like the QEA, CEIFA limits how much a district's budget may grow from one year to the next, although adjustments to such limitation are available for changes in enrollment, certain capital outlay and transportation expenditures, expenses incurred with respect to the opening of a new school during the budget year, and special education costs in excess of $400,000. A district may also submit a separate proposal to the voters to authorize raising an additional tax levy to support specified programs beyond what is essential for a thorough and efficient education. CEIFA also requires that any undesignated general fund balance in excess of specified amounts must be appropriated by the district the following year in preparing its budget.

In addition to state aid received pursuant to the statutory provisions of CEIFA, Abbott Districts have received additional state aid in the form of "parity aid"[12] provided by the Legislature through annual appropriations bills. "Parity aid" is designed to support the per pupil expenditure level of the Abbott Districts at the level of the districts in DFG IJ, the highest District Factor Group, and its use is not restricted. Abbott Districts have also been able to request supplemental program aid to support specific

[12] "Parity aid" is now referred to as "Equal Opportunity Aid."

programs[13] and, for the last three years, have received additional aid from the Legislature to support their preschool programs.[14]

Thus, since the enactment of CEIFA, the needs of the Abbott Districts resulting from their high concentrations of low income students and low property valuations have been met by the combination of state aid received pursuant to those provisions in CEIFA designed to address the educational needs resulting from poverty of students in all school districts with concentrations of such students and by additional aid appropriated annually by the Legislature. By virtue of the aid that has been afforded them since CEIFA's enactment, Abbott Districts have been able to maintain their per pupil expenditures at the level of New Jersey's wealthiest school districts and also to provide programs designed to redress the educational disadvantages resulting from the socioeconomic conditions shown by the litigation in Abbott II. At the same time, under CEIFA, the state's wealthiest districts have continued to meet their educational needs largely by reliance on the financial resources generated by their property values.

IV

Central to the claims of the appellant school districts is their contention that they do not have the property wealth of New Jersey's wealthier districts so as to be able to meet the educational needs of their students by relying on property taxes to generate adequate per pupil expenditures and that they need even more financial resources than the wealthier districts in order to provide educational programs and services required to

[13] Like "parity aid," this aid is now referred to as "Equal Opportunity Aid," although the use of this aid is restricted to the support of the program to which it is allocated.

[14] This aid is referred to as "Preschool Expansion Aid."

address the special educational needs of their students resulting from socioeconomic conditions present in their districts. In short, the appellant districts are arguing that although CEIFA does provide aid based on concentrations of poverty, the conditions in their districts are such that they need the same resources, beyond those afforded pursuant to CEIFA's statutory provisions, that have been provided to the Abbott Districts through additional legislative appropriations.

As we assess the validity of the claims being made by the appellant school districts, we cannot ignore the fact that for the last four years, the amount of state aid that has been awarded to New Jersey's school districts has not been determined by applying the formulas set forth in CEIFA's statutory provisions. Had the formulas been applied, state aid would have been based on the calculation of the cost of providing the actual number of students enrolled in a given school district with educational inputs which correlated with the educational standards established under CEIFA. However, this has not been the case. Rather, state aid has been awarded for the last four years strictly on the basis of appropriations made by the Legislature that have been based on percentage increases added to the state aid awards that had been calculated under CEIFA in the first year of its operation. See P.L.2004, c. 71. This means that state aid received by a particular district will not account for any significant increases or decreases in student enrollment in that district and will not reflect the actual cost of the educational inputs necessary to provide an education that will enable the students of that district to achieve the educational standards that are now in effect.

Nor can we ignore the fact that the educational standards we have established under CEIFA have evolved significantly since CEIFA was enacted. Hence, the

educational inputs that were the basis for the model upon which the "T&E amounts" were initially determined when CEIFA was enacted are not necessarily the same inputs that will guarantee that a district can provide its students with an educational opportunity that will enable them to meet the current standards.

Nonetheless, CEIFA's funding provisions are not the point of departure for resolving the case now before us. Rather, the constitutional mandate is for the provision of a thorough and efficient education and, hence, our first task is to evaluate the sufficiency of the education being provided to the students in the appellant school districts.

We recognize that the adequacy of the education being provided by a given school district cannot be judged solely on the basis of student performance on standardized tests. It would be even more problematic to rely solely on the results of the system of statewide testing currently in place to judge the overall adequacy of the educational opportunity being offered by a particular district. While we have established core curriculum content standards in nine areas, the assessment system currently measures achievement only in language arts, mathematics and science. Although these areas are critical to a thorough and efficient education, a thorough and efficient education encompasses far more than these three subject areas. Since standardized tests do not assess student achievement in all of the content areas that define a thorough and efficient education under CEIFA, we cannot utilize the results on standardized tests as the sole measure of the adequacy of the education being provided. That being the case, in addition to performance on standardized tests, we turn for guidance to the standards articulated by the New Jersey Supreme Court in

assessing the sufficiency of the education being provided by the appellant school districts.

V

In Abbott II, the New Jersey Supreme Court evaluated the quality of education in the poorer urban school districts both in terms of the absolute level of education in those districts, i.e., adequacy, and by comparison to the education provided by the affluent suburban school districts, i.e., equity. In doing so, the Court rejected the State's position that the adequacy of the education being provided should be measured against the educational goals adopted by the State Board of Education rather than by assessing educational inputs. In this respect, the Court found that, like the situation with which we are now confronted, there were standardized tests to measure student achievement with respect to only a few of the educational goals that been established by the State Board under the Public School Education Act of 1975. Consequently, the Court turned to the educational inputs being provided to assess the adequacy of the education being provided by the poorer urban districts. Without any way to measure the adequacy of the inputs in absolute terms, the Court measured their adequacy by comparing the educational inputs provided by the poor urban districts with those afforded by the affluent suburban districts.

The Court's conclusion that the level of education offered to students in some of the poorer urban districts was "tragically inadequate," Abbott II, 119 N.J. at 359, was based on comparison between the educational opportunities offered to students in the poor urban districts and those offered to students in the affluent suburban districts as reflected in the educational inputs in those districts. Id. at 359-62. Such opportunities

included access to computers and computer education, access to well-equipped science laboratories, foreign language instruction in a variety of languages beginning in the lower grades, high quality music and art programs, access to well-equipped vocational education programs and high quality physical education programs. Id. The Court also found that a thorough and efficient education required adequate physical facilities that provide an environment in which children can learn and an environment that is clean and safe and conducive to learning. Id. at 362.

The Court found that providing a thorough and efficient education meant more than teaching the skills needed to compete in the labor market, and that it also included teaching those skills required in order for an individual to participate fully in society, such as the ability to appreciate art, music and literature, and the ability to share that with friends. Id. at 363-64. Hence, the Court rejected the State's contention that intensive training in basic skills constituted a thorough and efficient education for students in the poorer districts. Rather, quoting favorably from the Public School Education Act of 1975, the Court expressly found that a thorough and efficient education requires a breadth of program offerings designed to develop the individual talents and abilities of the students. Id. at 365. The Court also found that such programs included more advanced academic offerings. Id. at 365-66.

In addition, the Court looked to other indicators to measure the sufficiency of the substantive education being provided by the poorer urban districts, including teacher-student ratios, percentage of teachers with advanced degrees, and the experience level of teaching staff members. Id. at 366-68. Again, the Court measured the adequacy of the educational inputs of the poorer urban districts in these areas by comparison to

those of the affluent suburban districts, finding that as the socioeconomic status of a district increased, the percentage of teachers with advanced degrees and the experience level of the teaching staff increased while the student-teacher ratios decreased. Id. at 367.

The Court also looked to student performance levels to evaluate the level of need on the part of the students in the poor urban districts, finding that students in the poorer urban districts had greater needs than students in wealthier districts. Id. at 369. In this regard, the Court pointed to the fact that for 1985-86, every district in DFG A had failed to achieve the state standard in the High School Proficiency Test and that all but two districts in DFG B had failed to meet the standard. Id. Since this test was not intended to measure whether a thorough and efficient education had been provided, but rather to measure the achievement of basic skills that were the prerequisite to a thorough and efficient education, the Court found that the performance of the poorer urban districts demonstrated that their students had greater needs than those from wealthier districts. Id. This, in combination with high drop-out rates led the Court to conclude that the needs of students in the poorer urban districts were such that a significantly different approach to education, one that addressed the specific needs of disadvantaged students, was required if the students in these districts were to succeed. Id. at 370-72. The Court found it to be clear that a constitutionally sufficient education for students in the poorer urban districts required an educational offering that contained elements over and above those found in affluent suburban districts. Id. at 374. In addition to adequate libraries and media centers, such elements included guidance programs to provide special assistance and individual attention, counseling services to address both social

problems and career needs from elementary through high school, alternative education programs for potential drop-outs, and intensive preschool and all-day kindergarten. Id. at 373-74.

Under this analysis and based on the record before it, the Court in Abbott II identified 28 districts that were entitled to relief and included them in a list appended to its decision. These districts were categorized under CEIFA as Abbott Districts when CEIFA was enacted. The number of Abbott Districts was subsequently expanded to include two more districts when CEIFA was amended to provide that the Abbott Districts also include any district that had been classified a "special needs district" under the QEA. In addition, the Salem City school district is now considered to be an Abbott District as a result of action by the Legislature following issuance of the Commissioner's decision in the case now before us. As set forth above, these districts have been afforded state aid beyond that allocated to them under CEIFA through annual appropriations by the Legislature to enable them both to provide educational inputs at the level of the affluent suburban districts and to meet the specific needs of their students attributable to their socioeconomic deprivation.

In order to properly resolve the appeal in this case, it is critical that we remain mindful of the fact that the remedial aid the Abbott Districts receive is as a result of the Court's determinations in Abbott II that the education provided to the students in the poorer urban districts was inadequate and the socioeconomic circumstances of the students in those districts were such that additional educational inputs were required to meet their special needs. Accordingly, the first step in resolving this case is to

determine under the standards expressed by the Court in Abbott II whether the education being provided to the students in the appellant school districts is adequate.

VI

We reject the Commissioner's conclusion that facilities should not be considered in determining whether the students in the appellant districts are receiving a thorough and efficient education. The New Jersey Supreme Court has made it abundantly clear that adequate facilities are essential to the provision of a thorough and efficient education. The enactment of the Educational Facilities Construction and Financing Act does not alter the reality of the physical conditions as established in the record with respect to the appellant school districts and does not change the fact that these are the conditions under which the children of these districts are being educated. As the ALJ concluded, the fact that the models adopted by the Department of Education allocate square footage for administrative functions such as guidance counselors, social workers, parent liaisons, technology coordinators and security officers, and for instructional spaces such as art/music rooms, media centers, gymnasiums and science labs indicates that these functions are vital. Accordingly, it would be disingenuous to ignore whether the facilities to provide these functions are available in the appellant school districts. Further, to the extent that the facilities provided by the appellant school districts are not consistent with the provision of a thorough and efficient education, the question of whether the Educational Facilities Construction and Financing Act provides them with an adequate remedy cannot be ignored. In this respect, we concur with the ALJ that issues relating to facilities are a legitimate part of the overall assessment of whether the education being provided by the appellant districts is constitutionally

adequate. These issues include the educational implications arising from the amount of financial support for facilities that is afforded to the appellant school districts under EFCFA.[15]

We recognize that we do not have the jurisdiction ultimately to resolve the question of whether CEIFA as applied to the students in the appellant school districts fulfills the constitutional imperative of the Education Clause. Such jurisdictional limitations exist regardless of whether we consider the adequacy of the facilities in the appellant school districts. However, our jurisdictional limitations do not alter our responsibility to assure that all of the children of this state are provided with a constitutionally adequate education. Fulfilling that obligation in this context requires that we apply our expertise to the proofs in this case so as to assess the adequacy of the educational opportunity provided to the students in the appellant school districts under the statutory scheme currently in effect.[16]

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[15] In its exceptions to our Legal Committee's Report, the respondent Department of Education ("DOE") argues that it is "illogical to consider evidence related to the condition of the districts' facilities since EFCFA, not CEIFA, is intended to address such deficiencies." Exceptions, at 34-35. We reject this argument. In doing so, we fully agree with the ALJ that "[p]hysical plant issues are merely part of petitioners' overall argument concerning T&E. These districts are not entitled to 100 percent funding under the Facilities Act and may seek to show that they cannot afford the difference. Additionally, A and B districts travel an uncertain road under the Facilities Act to obtain 100 percent funding. The voters must twice defeat referenda on school construction, the Commissioner must then be persuaded of the need and then the Legislature is under no obligation to accede to these pleas." Initial Decision, slip op. at 27.

[16] We note that while we do not have the jurisdiction ultimately to decide the appellant districts' claim that CEIFA as applied to them is unconstitutional, as articulated by the New Jersey Supreme Court in Abbott v. Burke, 100 N.J. 269 (1985) ("Abbott I"), we do have the obligation to apply our expertise to the controversy before us to develop a complete and informed record reflecting determinations of the administrative issues as well as to resolve factual matters material to the ultimate constitutional issues. Abbott I, 100 N.J. at 303.

Abbott v. Burke involved the claim that the statutory framework as applied to the property-poor urban districts was unconstitutional. In that case, the New Jersey Supreme Court rejected the plaintiffs' assertion that the matter should not be the subject of an administrative proceeding because a constitutional issue "invokes solely the jurisdiction of the courts." Abbott I, 100 N.J. at 297. Rather, the Court concluded that the presence of constitutional issues and claims for ultimate constitutional relief did

Again, the school districts directly involved in this appeal include Buena Regional, Clayton, Egg Harbor City, Fairfield, Lakehurst, Lawrence and Woodbine. Commercial Township and Maurice River initially appealed the Commissioner's decision, but withdrew their appeals. Lakewood filed a limited appeal challenging only that portion of the decision relating to courtesy busing. Of these districts, the ALJ found that Buena Regional, Commercial, Fairfield and Woodbine had shown that they should be afforded status as "special needs districts."

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not, in the context of that litigation, preclude resort in the first instance to administrative adjudication. Id. Concluding that the case could and should be considered in the first instance by the "appropriate administrative agency," the Court therefore remanded and transferred the matter to the Commissioner of Education. In doing so, the Court recognized that "although an agency may base its decision on constitutional considerations, such legal determinations do not receive even a presumption of correctness on appellate review." Id. at 299. However, the Court stressed that a court may need a factual development that will help it resolve the constitutional issue so that the New Jersey Supreme Court had at times required plaintiffs to exhaust their administrative remedies notwithstanding allegations of a statute's constitutional deficiencies. Id. In this regard, the Court pointed out that in previous education cases raising or implicating constitutional issues, the New Jersey Supreme Court had required the exhaustion of administrative remedies when administrative adjudication served "to develop a fully informed factual record and maximize the soundness of determinations through the agency's expertise." Id.

In the case before it, the Court found it apparent that the "issues of educational quality and municipal finance may be more effectively presented, comprehended, and assessed by a tribunal with the particular training, acquired expertise, actual expertise, and direct regulatory responsibility in these fields." Id. at 300. Citing numerous cases, the Court stressed that it had "repeatedly acknowledged and approved the administrative handling of educational controversies that arise in the context of constitutional and statutory litigation." Id.

The Court found that a remand to the administrative agency was particularly appropriate in the case before it and in remanding the matter "anticipate[d] that the OAL [Office of Administrative Law] [would] conduct a thorough hearing, where the parties [would] present all their evidence relevant to the constitutional claims and defenses." Id. at 303. The Court intended that the proceedings would "promote the development of a complete and informed record, which will reflect determinations of appropriate administrative issues as well as the resolution of factual matters material to the ultimate constitutional issues." Id.

Hence, while we recognize that it is the Court, not the administrative agency, which has the jurisdiction ultimately to decide the constitutional claim here, by our decision we fulfill both our obligation to the Court and our responsibility to insure that the statutory framework as implemented in fact results in the provision of a thorough and efficient education.

We concur with the ALJ's factual findings with respect to the education being provided by the appellant districts and the socioeconomic circumstances that characterize them. However, as subsequently discussed, these findings have led us to different conclusions as to the adequacy of the education being provided to the students of these districts and how to remedy the educational deficiencies revealed in the record.

We stress that, as recognized by both the ALJ and the Commissioner, the determination as to whether a district is providing a thorough and efficient education is one that must be based on the totality of the evidence. Initial Decision, slip op. at 10. While we concur with the ALJ's factual findings, we have assessed those facts differently than the ALJ in some instances and have arrived at different conclusions than he did concerning the adequacy of the educational opportunity being provided by some of the appellant districts. However, in no instance have we disregarded or rejected the ALJ's factual findings.[17]

Additionally, we stress that the ALJ's findings were focused on arriving at a determination of whether a specific district had "proven that it is an SND." Initial Decision, slip op. at 43. In that sense, the ALJ's point of departure was the remedy afforded by the Court in Abbott II to urban districts in District Factor Groups A and B. As a consequence, the ALJ's determinations were based on his judgment as to the degree to which the educational and socioeconomic conditions present in each individual

[17] In its exceptions to our Legal Committee's Report, the DOE contends that the Report fails to comply with the Administrative Procedure Act "in that it implicitly rejects the findings of fact and explicitly rejects conclusions of law of the ALJ" regarding each of the districts which the ALJ found had not proven that it was a "special needs district." Exceptions, at 8. There is no merit to this contention. As set forth above and throughout our decision, we have adopted and relied upon the ALJ's factual findings in arriving at our conclusions. Moreover, as the Commissioner recognized in his decision, the underlying facts in the matter, as opposed to the conclusions and inferences to be drawn from them, were seldom in dispute. Commissioner's Decision, slip op. at 134.

district matched those present in the Abbott Districts. Hence, neither the ALJ nor the Commissioner assessed the sufficiency of the education being provided by any of the petitioning districts in its own terms and did not consider whether CEIFA as applied had fulfilled the constitutional mandate with respect to the petitioning districts as a group.

In contrast, we have rejected the view that the starting point for deciding this case properly is the remedy. We have also rejected the view that this case can be properly resolved by focusing on whether each district individually is entitled to a particular remedy. Rather, while we have examined the education being offered by each of the appellant districts and the socioeconomic conditions present in each, we also have looked to the factual record and have relied on the ALJ's factual findings to evaluate the adequacy of the educational opportunity being provided under CEIFA to the students in the appellant districts individually and as a group and to the students in the broader category of school districts represented in this litigation by the appellant districts – non-urban districts in District Factor Groups A and B.

In evaluating the adequacy of the educational opportunity being afforded to the students in the appellant districts, we have rejected the view that standardized test scores alone can be dispositive of the sufficiency of the educational opportunity being offered by a given school district. First, as set forth above, not all content areas are tested and, even if it were practical to do so, it is doubtful that the quality of the education provided by a district can be fully assessed solely through standardized testing. Secondly, the data in the record with respect to standardized test scores is not sufficient for drawing definitive conclusions as to the adequacy of the education being provided by these districts. In this respect, we cannot ignore the fact that not only does

the data report student performance for an extremely limited time frame,[18] but test results for special education students were generally not included. See, e.g., Initial Decision, slip op. at 78. The fact that such a high proportion of the students in the appellant districts were classified limits the inferences that can be drawn from the standardized test results for those districts. Thirdly, the districts involved here are largely K-8 and, hence, their students take only the ESPA and GEPA while attending school in the district. The HSPA is administered to them by the receiving districts where they attend high school, and the record generally does not include disaggregated data from the receiving schools showing their performance at the high school level. The scores of students from the K-8 districts involved in this matter on the HSPA are pertinent in that the adequacy of the education provided by the sending district at the elementary and middle school levels may well affect the performance of these students when they attend high school in another district.

Nonetheless, student performance on standardized tests is not irrelevant. However, even if we limited our assessment of the education being provided to the students in the appellant districts strictly to student outcomes as measured by standardized tests, we find that those results could not sustain a conclusion that the students in the appellant districts were being provided with an adequate education.

For example, as the ALJ found, the standardized test scores for students attending school in Buena Regional were weak, particularly in math, which had been chronically substandard since the 1995 monitoring cycle. Initial decision, slip op. at 35-

[18] There is comparison data in the record only for 1998 and 1999, and the test scores included are for 1998 through 2000.

36. As the ALJ recognized, while the district's HSPT scores were roughly at the state averages, these scores had to be read in conjunction with the district's ESPA and GEPA results. Id. at 36. As he concluded, those scores have consistently been below the state averages and well below those of the IJ districts. Id. Likewise, after considering the testimony of the witnesses that little time was spent on science in the early grades, and the science lab in one middle school was of marginal utility, we, like the ALJ, rejected the inference that Buena's scores in science showed a district emphasis on science and agree with him that Buena's standardized test scores for science were of dubious validity. Id. In addition, not one of the district's fourth-grade students who took the ESPA in 2000 and none of the eighth-grade students who took the GEPA in 2000 or 2001 scored high enough to be classified as "advanced proficient" in language arts. Id. at 31.

Similarly, the record shows that while Clayton's HSPT scores for 1999 and 2000 were only slightly below the state average, its ESPA and GEPA results in language arts have been mixed, and its math scores uniformly low. Id. at 38, 41. The record shows that Fairfield's performance has also been poor, id. at 57-59, and that Woodbine's scores for the ESPA and GEPA have been as abysmal as those of the Abbott Districts. Id. at 109. In addition, although it has withdrawn its appeal, we note that Commercial's scores for the ESPA and GEPA generally fall well short of the state averages, with mixed results in language arts and scores in math that are significantly below the state average.[19] Id. at 43-44, 47, 50.

[19] Commercial is a K-8 district in DFG A whose students take only the ESPA and the GEPA. As set forth above, Commercial originally filed an appeal to the State Board from the Commissioner's determination rejecting the ALJ's conclusion that it was a "special needs district." However, Commercial subsequently

In short, while the test scores for the districts involved here are generally not as abysmal as those in the Abbott Districts, they are nonetheless consistently below the state average and dramatically below those of the DFG IJ districts. Moreover, in evaluating the test results for the appellant districts, we cannot disregard the fact that while the percentage of classified students in those districts is extremely high, the test results in the record do not include results for most special education students. Nor can we disregard the fact that the proportion of students from the appellant districts who achieved advanced proficiency on the state standardized tests was extremely low. Hence, if we were to judge the quality of the education provided to the students of these districts solely on the basis of the districts' scores on standardized state tests, we would no doubt conclude that it is generally below the quality of the average education provided to most New Jersey students and inadequate in comparison to that provided to the students in the DFG IJ districts.

However, again, we find that any judgment of the adequacy of the education being afforded to students of a given district must be based on more than an evaluation of scores on standardized tests. As in Abbott II, attendance, drop-out rates and suspension rates are indicative of educational adequacy, as is the number of students who attend four-year colleges. In addition, educational inputs must be considered both in absolute terms and in comparison to the opportunities afforded to students in the wealthier districts. Such inputs include teacher-student ratios and the education and

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withdrew its appeal. Hence, we have not considered Commercial as one of the appellant districts. In this regard, we note that while a parent represented in the proceedings before the Commissioner has urged the State Board to consider the merits of Commercial's claim before the Commissioner, the appeal that was filed with the State Board was on behalf of the school district and no appeal was filed on behalf of any of Commercial's students. However, as reflected by our opinion, we have reviewed the entire record in this case in arriving at our decision, including information relating to Commercial.

experience level of the professional staff, as well as facilities to accommodate appropriate class sizes, science labs, media centers and libraries, and the availability of advanced placement courses and programs for gifted students, art and music programs and quality physical education programs.

As did the Court in Abbott II, we reject the view that whether a district possesses state certification under the current monitoring process is determinative of whether the education provided is a constitutionally adequate one. Like the monitoring system in effect when the Court rendered its decision in Abbott II, although the current monitoring system "may have been designed to measure and achieve a thorough and efficient education, in practice it has not achieved that goal." Abbott II, 119 N.J. at 353. First, under the current system, school districts in New Jersey are monitored only once every seven years. Secondly, the current system, like its predecessor, does not measure the actual quality of the education being delivered either in absolute terms or in comparison with that offered by other districts, but rather measures the presence of particular elements such as the existence of a written curriculum aligned with the core curriculum content standards. Id. at 352-53. In addition, the adequacy of the education being offered is not evaluated in terms of the particular needs of the district's students, and like its predecessor, the current system operates largely as a self-improvement system. Id. at 353.

Measuring the education being provided to the students of the districts involved in this appeal under the standards established in Abbott II on the basis of the record in this case, we can only conclude that the students of these districts are not being

afforded a thorough and efficient education.[20] As the ALJ's findings show,[21] while these districts generally do not have high drop-out rates, they have high suspension rates, large class sizes, limited programming, and a lower proportion of faculty members with advanced degrees than in the DFG IJ districts. Exhibit P-1, in evidence. Special education populations tend to be large while the number of child study teams tends to be inadequate. In addition, specific conditions are present that vary from district to district and which impact the quality of education. For example, as subsequently discussed, Buena Regional is significantly overcrowded, so that class sizes are large. Initial Decision, slip op. at 29, 34. At the same time, the educational impact of large class sizes is magnified for Buena's students because of the socioeconomic conditions in the district. Id. at 30-31, 34.

We also conclude from this record that these districts do not offer an adequate breadth of programming. Their art and music programs are inadequate, and media and library facilities are insufficient. See id. at 31, 39, 53, 58, 65, 77, 109. World language programs are inadequate or nonexistent. See id. at 17, 38, 65, 77, 110. Adequate science labs are not available. See id. at 32, 65, 110.

In this respect, we stress that as the Court made abundantly clear in Abbott II, a thorough and efficient education requires "a breadth of program offerings designed to develop the individual talents and abilities of students." Abbott II, 119 N.J. at 365. As the Court emphasized, however desperately some children may need remediation in basic skills and regardless of state testing requirements, every child is entitled to a

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[20] See supra n. 16.

[21] See supra n.17.

chance to excel. Id. at 365-66. Such an opportunity requires that a district offer advanced academic courses and that it afford its students meaningful opportunities in areas like art, music, drama, athletics, science and social studies. Id. at 364-65. As the record before us shows, the opportunities in these areas being provided to the students in the appellant districts are sadly limited. For example, not only is there no gifted-and-talented program available to students attending school in Lawrence, but there are only a few basic after-school sports programs, no school band or chorus, and no art or music room. Initial Decision, slip op. at 77. The fact that standardized test results in a given district may be marginally adequate cannot negate the right of students in that district to an education that includes these educational opportunities.[22]

Further, it is clear from the record that the children in these districts have special needs arising from the socioeconomic conditions in the districts. The fact that they are categorized in either DFG A or B establishes that these districts are poor both in terms of property wealth and income. The record shows that a high proportion of the students are from broken homes and/or dysfunctional family situations, id. at 29, 109, that there is a high mobility rate for students from these districts, id. at 17-18, 22, 51, 59, 64-65, 108, and that a significant number come from homes where unemployment is common and the income levels are below the poverty level. Id. at 34, 51, 52, 56, 57, 59, 108. Attendance in some instances is affected by high truancy rates and occurrences such as head lice infestations. Id. at 45. As reflected in the record, many of these districts

[22] As subsequently discussed, the ALJ concluded that while Lawrence was poor, it was not a "special needs district" because there was not "a sense of serious underperformance." Initial Decision, slip op. at 78. This conclusion was based on his assessment that the district's test results, which were close to the State averages, suggested "some need for improvement, but [were] far from failure." Id. at 79. As set forth in this opinion, we have assessed the educational import of Lawrence's test scores differently than did the ALJ.

border Abbott Districts and many of the students from the K-8 districts will attend high school in an Abbott District. Id. at 75, 108. As shown by the testimony, the conditions under which these students live mirror those of the students in the Abbott Districts, which in some cases are only blocks away. Id. at 16, 27, 30, 36, 58, 78.

It is well established in the record that the districts involved in this appeal are not offering the programs necessary to address the socioeconomic conditions that confront them. As stated, generally, they do not have adequate child study teams, drug counseling or alternative education programs. Id. at 31, 35, 38, 57, 58, 65, 76-77, 109. Despite the need, they do not offer any programs for three-year-olds and only half-day programs for four-year-olds. Id. at 32, 35, 63, 77, 109.

Examination of the findings relating to each of the appellant districts on an individual basis reinforces our conclusions.

Buena Regional, a K-12 district bordering Vineland, is a DFG A district, which, as the ALJ observed, "positions it among the most deprived districts in the state." Id. at 34. As the ALJ found, Buena Regional is significantly overcrowded, it has one social worker for the entire district, and it does not have a home/school liaison. Id. at 35. Further, despite a special education population of 19 percent, as the ALJ found, there are not enough child study team members. Id. Similarly, although the district's suspension rate is 20.7 percent, it has no alternative programs. Id. As the ALJ found, at the time of hearing, little effort was spent with science in the early grades, and the one middle school science lab was of marginal utility. Id. Despite the extreme degree of socioeconomic disadvantage of Buena's children, there is no program for three-year-

olds and its program for four-year-olds was only half-day. Id. As previously discussed, it is not surprising that Buena's standardized test scores have been consistently weak.

The ALJ's conclusion that Buena was a "special needs district," id. at 36, reflects his judgment that the district's students are not being provided with a thorough and efficient education. Based on his findings and our own review of the record, we fully agree with that judgment.

Clayton is a rural K-12 district classified in DFG B. The ALJ found that that the data suggested that socioeconomic conditions in Clayton were "not quite as difficult as they are in the Abbotts." Id. at 41. At the same time, he recognized that Clayton was a "relatively poor community" and that its property tax rate was "undoubtedly burdensome." Id. Similarly, while the ALJ found that Clayton had an experienced faculty, he also found that faculty salaries were $10,000 below the norm and that such underpayment was consistent with testimony that 31 of the 50 faculty members in the middle school had left in the past two years. Id. The ALJ also found that the testimony pointed to a district skimping on personnel to save money, that there was one child study team, two guidance counselors in the middle/high school, and no parent liaisons or school/home counselors. Id. at 42. The ALJ specifically found that in a district with a special education population of between 13 and 15 percent, a suspension rate of 19.1 percent, and no alternative school, "this means the students in difficulty are not getting needed attention." Id. The ALJ also found that the physical plant in Clayton had deficiencies, including that Clayton was the only high school in the state without an auditorium, class size was approaching 28, and there was no art room. Id. The ALJ

further found that Clayton, while not quite at the level of the Abbott Districts, "labors under significant socioeconomic burdens." Id.

Despite these deficiencies, the ALJ concluded that Clayton had "through hard work produced some achievement" and that the data did not "project the impression of a failing district in a failing community." Id. However, the ALJ's conclusion was not based on a determination that the educational program being provided to Clayton's students was adequate. Rather, his conclusion was based largely on the district's standardized test scores, and he characterized the district as one "that is struggling toward average status, but that has built some distance between itself and failure." Id. at 41.

Based on our assessment of the same facts, we have arrived at a different conclusion as to the adequacy of the education being provided to Clayton's students. The deficiencies in educational inputs identified by the ALJ are not insignificant, and as he found, in a district with a large special education population, high suspension rates and no alternative school, the faculty turnover and the fact that there was only one child study team, two guidance counselors in the middle/high school, and no parent liaisons or school/home counselors meant that students in difficulty were not getting needed attention. Id. at 42.

The ALJ's findings are consistent with the testimony of Clayton's superintendent, and consideration of that testimony reinforces our judgment that the students in Clayton and not being provided with a thorough and efficient education. Clayton's superintendent testified that because there was no alternative program, students who exhibited discipline problems were suspended and eventually classified, that there was no world language teacher in the elementary school, that there was one technology

coordinator for the entire district of 1,000 students K-12, that there were no security guards, that music and art were not taught in the middle school, that there were no funds with which to acquire instruments, that there was no money for field trips, that the books in the small library were outdated, and that there was no budget for new books. Id. at 38-39.

We find that the fact that socioeconomic conditions in Clayton are not as extreme as in the Abbott Districts does not mean that Clayton's students should be deprived of the educational inputs that are requisite to a thorough and efficient education. As set forth in this decision, such differences in degree must be taken into account when arriving at a remedy for the educational deficiencies revealed by these proceedings. However, they cannot be used to ignore the fact that the education being provided is not adequate. In this regard, we stress that the ALJ did not conclude that Clayton's students were being provided with an adequate education. Rather, he determined that Clayton should not be granted the status of a "special needs district" because adding Clayton to "the list of SNDs would tend to widen the group of potential eligibles." Id. at 42.

Again, as set forth above, we have rejected the conclusion that granting status comparable to an Abbott District is the proper remedy for the educational deficiencies reflected in the record. That does not mean that we can ignore the existence of these deficiencies or minimize their import. In this instance, the ALJ's factual findings provide more than a sufficient basis upon which to conclude that the education being provided to the students in Clayton under CEIFA as it has been implemented is not adequate.

Egg Harbor City is a K-8 district classified in DFG B whose high school students attend the Greater Egg Harbor Regional High School District. As a cost cutting measure, Egg Harbor City's superintendent also serves as a principal of the middle school. Id. at 52. The superintendent testified that 25 percent of the Egg Harbor City student body is classified and that the mobility rate in the district is 25 percent. Id. He also testified that when he was assistant principal at Absegami High School, which is part of the Greater Egg Harbor Regional High School system, roughly 25 percent of the students from Egg Harbor City dropped out annually because they were not academically prepared and could not compete with students coming from other districts. Id. He testified that the middle school was constructed in 1923 with additions in the 1950's and that it is cold in the winter because he cannot afford to replace obsolete boilers. Id. He also testified that there is no library and only one antiquated science lab. Id. Further, the gym is also used as a cafeteria and auditorium. Id.

Consistent with the testimony, the ALJ found that the education being provided by Egg Harbor City was deficient. In this respect, he specifically found that between 1997 and 2000 money had been budgeted to align Egg Harbor's curriculum and to infuse technology and train teachers, id. at 54, but that as shown by the testimony, major curriculum areas were not aligned until 2001, and alignment was not yet complete at the time of hearing. Id. at 53.

The ALJ recognized that the district's mobility rate was 25 percent and that some 25 percent of the student body was classified. Id. However, he found that while "the socioeconomic factors driving the [district's] high mobility rates, large special education population and elevated suspension rates play a significant role" in the district's

educational failure, "the mismanagement issue has clouded petitioner's proofs to the point that it cannot isolate underfunding as one cause for its disappointing outcomes." Id. at 55. We do not agree.

While the record shows administrative failure with respect to curriculum alignment, we find that this is not the determinative factor in Egg Harbor City's general failure to provide its students with a thorough and efficient education. Given the socioeconomic circumstances of this district, its high mobility and suspension rates, the rate at which its high school students drop out from Absegami High School, the condition of the district's facilities and the fact that there is no library, we find that administrative skill alone cannot redress the deficiencies established in this record.

Based on his findings, the ALJ found that Fairfield had proven that it was a "special needs district." The district is a K-8 district classified in DFG A and, as found by the ALJ, the poverty of this district by any measure equals that of the Abbott Districts. Id. at 59. The percentage of the population without a high school diploma exceeds all of the Abbott averages, and the combined suspension rate for the primary and middle schools averaged 36 percent. Id. Between 1997 and 2000, however, the suspension rates for the middle school alone were 91 percent, 88.9 percent, and 77.7 percent respectively. Id. As the ALJ found, the students were performing poorly on standardized tests, the district's buildings were in disrepair, and teacher salaries and advanced education fell well below the state averages. Id. While recognizing that CEIFA had provided Fairfield with considerable support as illustrated by the fact that its net per pupil budget was close to the average for the districts in DFG IJ, the ALJ found funding was inadequate given the combination of socioeconomic conditions in the

district and its long-term educational failure. Id. The ALJ found that under these circumstances, it was necessary for the district to provide full-day programs for three- and four-year-olds, an alternative school, extra teaching and social services personnel, and infrastructure improvements. Id. We fully agree with the ALJ's judgment that the education being provided to Fairfield's students is not adequate.

Lakehurst is a DFG B district whose students attend Manchester High School. In contrast to Fairfield, the ALJ found that "the Lakehurst data present a mixed picture." Id. at 66. He found that the community was relatively poor and had a tax rate that was historically well above the state average. Id. The ALJ acknowledged that "additional State assistance to modernize facilities, hire more teachers and purchase new textbooks would bring welcome relief," but pointed out that poverty in Lakehurst "appear[ed] to fall at or near the upper end of the Abbott spectrum." Id. The ALJ recognized that the district's mobility rate of 21.4 percent, its suspension rate of 13.6 percent, and the 27 percent classification rate for special education were well within the averages for the Abbott Districts and also recognized that "these school dynamics often presage underachievement." Id. at 66-67. The ALJ, however, pointed to Lakehurst's 2001 ESPA and GEPA scores and the fact that standardized testing as far back as the Early Warning Tests revealed performance that was generally at or near the state average, as well as the fact that student attendance rates meet or exceed the state average and teachers salaries are above the median, to conclude that "Lakehurst appears to be a relatively poor working class community that is performing reasonably well." Id. Citing to the fact that the data showing net per pupil spending slightly exceeding the IJ average and, as he did with respect to Clayton, stating that "placing

Lakehurst among the SNDs would tend to expand the ambit of the Abbott holdings," the ALJ found that Lakehurst was not a "special needs district."

As we concluded with respect to Clayton, the degree of socioeconomic deprivation may shape the remedy that would be effective in a district such as Lakehurst, but the fact that the poverty level in Lakehurst may "fall at or near the upper end of the Abbott spectrum," id., cannot be used to deprive the students of an education that will equip them to participate and compete in the society which they will enter. Similarly, the fact that Lakehurst's students have performed "reasonably well" on standardized state tests, id., does not mean that they should be deprived of the educational inputs requisite to a thorough and efficient education. In this respect, we again stress that the adequacy of the education being provided by a district cannot be measured solely on the basis of standardized test results. Moreover, standardized test results for the years in question did not include most classified students, and the fact that 27 percent of Lakehurst's students were classified means that the performance of a significant number of the district's students was not included in the standardized test results. This further limits the utility of relying on the standardized test results in arriving at a judgment as to the adequacy of the education being provided.

We agree with the ALJ that the "Lakehurst data present a mixed picture." Id. at 66. However, regardless of the standardized test results, the testimony of Lakehurst's superintendent concerning the inputs being provided to the district's students calls into question the adequacy of the education being provided, and, as previously stated, the sufficiency of the educational inputs is critical to a determination of educational adequacy.

As the superintendent testified, while 27 percent of Lakehurst's student population was classified, there are not enough basic skills teachers for the special education students. Id. at 65. Despite a suspension rate of 13.6 percent, there are no alternative programs and no family liaison. Id. Art and music are delivered on a cart because there are no art or music rooms. Id. Many textbooks are dated and there are no textbooks in some subjects. Id. While the curricula are largely aligned, some of the textbooks are not. Id. There are no world language textbooks for grades four, five and six and no science room for the kindergarten through sixth-grade students. Id. The district has no security personnel and there are no security devices in place. Id. The roof on the district's school building is in disrepair, there is an asbestos problem, and the boilers are in need of maintenance. Id.

Again, the focus of the ALJ's analysis was whether each individual district involved in the litigation should be afforded the status of a "special needs district" so as to receive the funding remedies that have been conferred on the Abbott Districts under CEIFA. As with Clayton, the ALJ found that "[a] decision placing Lakehurst among the SNDs would tend to expand the ambit of the Abbott holdings." Id. at 67. Our focus here, however, is on the adequacy of the education being provided rather than on the remedy, and while factors such as the degree of socioeconomic deprivation, and student achievement and the strength of educational programs offered by a district in particular areas will shape the remedies that will be effective in given district, they do not negate the need to address the educational deficiencies revealed by this litigation. As was the case with Clayton, we find that the record shows inadequacies in the

education being provided to Lakehurst's students under CEIFA that cannot be swept aside.

Lawrence Township is a K-8 district classified in DFG A, and its high school students attend either Millville or Bridgeton High School. Consistent with its status as a DFG A district, the ALJ found that "if poverty were the chief determinant of SND status Lawrence would prevail." Id. at 78. However, the ALJ concluded that Lawrence had not proven that it was an "SND." This conclusion was largely based on the district's results on standardized tests, which the ALJ found "suggested some need for improvement" but were "far from failure." Id. at 78-79. In addition, the ALJ pointed to the fact that the district's state aid had increased significantly under CEIFA so that its net budget per pupil slightly exceeded the average for the Abbott Districts.

As the ALJ found, although the test results for the ESPA and GEPA were below the state averages in 1999 and 2000, they were generally within 10 percentage points of the averages. Id. at 76. However, as previously discussed, we find that the adequacy of the education being provided to the district's students cannot be based solely on the basis of standardized test scores. Further, we cannot ignore the testimony of the Cumberland County Superintendent that when ESPA and GEPA scores improved in 2001, close to half the students were classified and those results were not included in the data. Id. at 78. When viewed in conjunction with the fact that the district contracts for child study team services, that there are no alternative programs and no gifted-and-talented programs, that there were no music or art rooms, that there is no school band or chorus, and that the program for four-year-olds is only half-day, we find that a conclusion of educational adequacy cannot be sustained. Id. at 76-77. To the contrary,

the limitations of the district's educational program combined with the fact that faculty salaries are well below the state average and that only 11 percent of the faculty hold masters degrees, id. at 75, lead us to conclude that Lawrence's students are not being provided with a thorough and efficient education.

Woodbine is a predominantly rural K-8 district in DFG A whose high school students attend Millville High School. As the record shows, Woodbine has the second lowest per capita income in New Jersey after Camden, and it is ranked among the 15 percent most distressed municipalities by the federal government. Id. at 108. As the ALJ found, Woodbine's mobility rate of 57.8 percent is "astounding," id. at 111, it has a suspension rate of 31.6 percent, and yet it does not have an alternative school. Id. As the district's superintendent testified, large numbers of students come to school "hungry, angry, and unprepared to learn." Id. In fact, the district superintendent testified, many of the children get both breakfast and lunch at school and without the winter coat drive organized annually by the teachers, many of the children would not have a winter coat. Id. at 109. Given these conditions, it is not surprising that, as the ALJ found, the district's standardized test scores were "pitiful." Id.

In addition, approximately 20 percent of the district's students are classified, but the district does not have a full-time child study team or a guidance counselor. Id. It has only a half-day program for its four-year-olds, its facilities are inadequate, there is no world language teacher and no science lab in the building. Id. at 109-10. Faculty salaries are $15,000 below the state average, and teacher turnover is high. Id.

Indeed, despite the fact that the district was fully certified for seven years in 1999, id. at 110, the education being provided to the students in Woodbine was so

inadequate that, as the ALJ found, even the DOE's own witnesses could not bring themselves to say that the district was providing a thorough and efficient education. Id. at 111.

The ALJ's conclusions in this case with respect to the individual districts are the product of the character of his inquiry. As discussed, the ALJ's findings focused on the degree to which each individual district matched the Abbott Districts. On that basis, the ALJ arrived at a determination as to whether a given district had proven that it was an "SND," and in each instance in which he concluded that the district was an "SND," his recommended remedy was to grant to the district funding like that provided to the Abbott Districts.

We have taken a different approach. As set forth previously, we find that the threshold question is whether the students attending school in the appellant districts are being provided with a thorough and efficient education. We have addressed that question by considering the totality of the evidence under the standards established in Abbott II. Hence, we have examined the adequacy of the educational inputs being provided in the context of the socioeconomic circumstances of the students as well as the limited data in the record with respect to student performance on standardized tests.

Generally, we cannot accept as adequate the education being offered by the districts involved here whether we judge adequacy in terms of student performance or educational inputs. In this respect, we recognize that CEIFA has provided these districts with more fiscal resources than had been available to them previously, both to support educational programming and to improve their facilities. We also recognize the progress that has been made under CEIFA to improve the quality of the education being

offered. However, as stated, the educational opportunity being provided to the students from these districts simply cannot be considered adequate, and no matter from which perspective we approach the situation, we cannot avoid the conclusion that it will be necessary to dedicate more resources to providing the educational inputs necessary to correct the situation for these children.

We find that, as Dr. Ernest Reock testified, the districts involved here generally suffer from municipal overburden. Hence, it is not realistic to expect them to fund such needed programs as full-day programs for four-year-olds and alternative education programs by increasing local taxes. In this respect, as the ALJ found and the record shows, these districts have used the resources provided under CEIFA in accord with the statutory and regulatory framework. While it is conceivable that different programmatic choices might increase the effectiveness of the resources now available, we do not believe that the problems shown by this record can be remedied simply by making different choices as to what to do with existing resources. Indeed, as the ALJ observed, the Department of Education did not offer any suggestions during this litigation as to how this could be accomplished.

VII

Lakewood's appeal is limited to the Commissioner's determination that the district must use all of its available funds for educational programming, including monies that it is using to support courtesy busing, before it can claim that it is entitled to status as a "special needs district."[23] In support of its position, Lakewood argues that the ALJ

[23] In its exceptions to our Legal Committee's Report, respondent DOE raises the question of whether Lakewood is to be included among the appellant districts. Given the limited nature of Lakewood's appeal, it is not part of that category. However, as subsequently discussed, we have concluded that the

failed to consider the January 3, 2002 testimony of its Assistant Superintendent that Lakewood had funded its courtesy busing for 2001-02 through a Statutory Growth Limitation Adjustment ("SGLA") pursuant to N.J.S.A. 18A:7F-5(d), which is one of two acceptable methods for funding courtesy busing. Lakewood further argues that the Commissioner's determination should be reversed because the entire cost for courtesy busing in 2001-02 was attributable to the SGLA, which represents amounts above the district's maximum T&E budget, and that, in fact, the district ultimately used $415,000 of that money to fund the district's base budget.

The Assistant Superintendent testified that the district transports about 4,000 students who live remote from their schools and approximately 6,000 who do not live remote from their schools. He testified that the district provides the non-remote transportation due to hazardous routes and that, although it is not required to do so, it provides non-remote transportation to non-public school students as well as public school students. Tr. 1/3/02, at 38-39.

The Assistant Superintendent also testified that Lakewood had used a SGLA instead of placing a separate question on the ballot because if it had done so, the religious community and senior citizens would have voted the question down. Id. at 29-30. He further testified that members of the religious community sit on the Lakewood Board, id. at 30, and that the determination to fund courtesy busing for 2001-02 through an SGLA was made in conjunction with the "State" because of

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educational needs of the students in all of the districts involved in the litigation before the Commissioner must be assessed, including Lakewood.

Lakewood's deficit situation in 2000-01, which had resulted in close scrutiny of the district's budget by the State Department of Education. Id. at 28-29.

The ALJ concluded that Lakewood had not demonstrated that the provision of courtesy busing to students living non-remote from school was necessitated by the presence of hazards on the routes to school. He, however, found that, in any event, the municipality had the responsibility to address the presence of hazards by such mechanisms as by providing crossing guards. He further found that, in general, the Lakewood Board deferred too much to the municipality with respect to its budgetary needs for education. The ALJ found, and the Commissioner agreed, that the community was capable of supporting education to a greater degree and that the Lakewood Board could not claim to need more funding when it routinely chose to use substantial funds for courtesy busing for a large non-public school population rather than for addressing pressing facilities and programmatic needs.

Based on our review of the record, we reject the arguments that Lakewood has made in support of its appeal. We fully concur with the ALJ and the Commissioner that the Lakewood community is able to support the public schools to a far greater degree than it has thus far, and we reject any suggestion that the Lakewood Board is somehow obligated to bear the cost of transporting large numbers of students who live non-remote from their schools. In this respect, we stress that it is well settled that the Lakewood Board has no legal obligation to provide courtesy busing to non-public school students even if it chooses to provide such transportation to its public school students. E.g. M.J.K.D. and A.W.D., on behalf of minor child, A.K.D. v. Board of Education of the Township of Piscataway, decided by the Commissioner of Education, September 29,

1999. Moreover, under the education statutes, the cost of non-remote transportation may be supported by charging for the transportation rather than funding it through the education budget. See N.J.S.A. 18A:39-1.2 (municipalities are authorized to enter into contracts and pay for transporting non-remote students for safety reasons and to charge for that transportation, except for those students who meet statewide eligibility standards established by the State Board for free or reduced price lunches) and N.J.S.A. 18A:39-1.3 (district boards are authorized to charge for courtesy busing provided through their remote transportation systems on a space-available basis for students attending public and non-public schools). Hence, the Lakewood Board cannot claim that it must support the cost of the courtesy busing it has chosen to provide while seeking additional funds to support educational programming for its public school students.

VIII

We have concluded that despite the gains made under CEIFA, its implementation has not resulted in the provision of a thorough and efficient education to the students of the districts involved in this appeal either in terms of absolute adequacy or in comparison with the wealthier suburban districts. We have also concluded, as did the Court in Abbott II, that a new approach is needed if the students of these districts are to be afforded an educational opportunity that satisfies the mandate of the New Jersey Constitution. However, our conclusions in this regard do not lead to the relief that the appellant districts are seeking.

Again, we stress that, ultimately, we do not have the jurisdiction to determine the constitutionality of CEIFA. That jurisdiction lies with the Court. Nor do we have the

authority to direct that additional resources be provided to any school district in New Jersey or to adopt a funding system to replace the current one. That power lies with the Legislature. However, we do have the responsibility to identify areas of educational concern with the present system as it has been implemented and to recommend from an educational perspective the approach that we would take to address these concerns.

We do not believe that merely providing the appellant districts with the same fiscal resources that are provided to the Abbott Districts will ensure that the students of these districts are in fact afforded the educational opportunity to which they are entitled. While poor, the districts involved here are not identical to the districts that have been classified as Abbott Districts. The very fact that they are not urban means that they face a unique set of circumstances that are different from those confronting the poor urban districts. As reflected by the appellant districts' classification in DFG A and B, the students from those districts share many characteristics with their counterparts who attend school in the urban districts in DFG A and B. However, addressing the effects of poverty in non-urban and rural districts is complicated by the distances involved and a level of community services far below those available in the urban areas. In addition, each district involved must confront a particular set of circumstances not necessarily shared by other poor districts whether urban or not, as, for example, a significant number of students whose parents earn their living through migrant labor. Consequently, in many instances, different approaches will be required than those utilized in poor urban districts if the deficits in the education now being provided by the appellant districts are to be corrected. Hence, regulatory requirements to ensure accountability may differ from those applicable to the Abbott Districts, and the fiscal

resources to support the necessary educational inputs may not be the same. In our view, an assessment of the educational needs and the identification of the approaches that will successfully address those needs is a prerequisite to ensuring that adequate resources, including fiscal resources, are provided and appropriate accountability for their use is guaranteed.

We do not shrink from the implications that follow from our conclusions. In this respect, we believe that a systemic approach is called for if the students of the districts involved in this litigation are to be afforded the educational opportunity mandated by the Education Clause of our State Constitution. The fact that the students in the appellant districts are performing somewhat better on the statewide standardized tests than those students in the Abbott Districts does not negate their right to an education that includes music and art programs, world languages, advanced placement courses and adequate physical education programs. They are no less deserving than their counterparts in the urban districts in District Factor Groups A and B and in the suburban districts in District Factor Groups I and J and, like them, have a right to adequate facilities, libraries and science labs. They deserve the benefit of smaller classes and experienced teachers. These are elements of a constitutionally adequate education, and every student in this state has a right to an educational opportunity that includes them.

It is impossible for us to determine definitively whether CEIFA, if properly implemented, would have afforded the students in the appellant districts the educational opportunity envisioned by the Constitution. The reality is that CEIFA's fiscal provisions have not even been fully implemented for the past four years. As previously discussed, this fact negates the possibility of correlating the current educational standards that

have been established under CEIFA to the actual costs of the inputs essential to a thorough and efficient education.

Moreover, as the New Jersey Supreme Court recognized in Abbott IV, even when first enacted CEIFA did not link the content standards to the actual funding needed to deliver that content. Abbott IV, 149 N.J. at 169. In this respect, we stress, as did the Court in Abbott IV, that the efficiency standards undergirding CEIFA's funding provisions were derived from a model district that had few, if any, of the characteristics of any of New Jersey's successful districts. Id. Further, the model district assumed, as the basis for its resource allocations and cost projections, conditions that do not exist in the appellant districts. Id. at 172. Hence, even if CEIFA was fully funded, it would not provide a "constitutional measuring stick against which to gauge the resources needed to provide [the] educational opportunity" envisioned by the core curriculum content standards. Id. at 176.

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. On the basis of the record before us, we 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.[24]

However, as stated, we have found that ensuring that the students in these districts are provided with a thorough and efficient education cannot be accomplished merely by granting monetary relief to the appellant school districts. To the contrary, the starting point for remedying the educational deficits shown by the record is to assess the educational needs of the students in each district and identify the approaches that will effectively address those needs.

In addition, the record developed before the ALJ as to the other districts involved in the litigation before the Commissioner shows that the educational needs of the students in those districts are not being met and that CEIFA as it has been implemented has not guaranteed that the students in those districts receive a constitutionally adequate education. Moreover, the socioeconomic circumstances established in the record as to the 17 districts involved in the litigation demonstrate the immediacy of the need to address the educational deficits in those districts. Given the record in this matter, we conclude that the mandate of the New Jersey Constitution and our statutory responsibility for the general supervision and control of public education in this state, N.J.S.A. 18A:4-10, require that we exercise our authority now to ensure that the students in all of the districts involved in the litigation are provided with a constitutionally adequate education.[25]

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[24] See supra n. 16.

[25] In its exceptions to our Legal Committee's Report, the Department of Education contends that we do not have the statutory authority to consider the record as it pertains to Hammonton, Little Egg Harbor, Ocean Township, Upper Deerfield and Wallington because they did not file an appeal to the State Board

We therefore direct that, under the Commissioner's supervision, the Department of Education begin immediately to develop a design for a needs assessment to be performed in each of the districts involved in the litigation before the Commissioner. In addition to assessing the adequacy of the educational inputs and programming currently being provided, we direct that the design proposed to us include elements that will identify the unique educational needs of the students in those districts requiring additional programs to address them. We direct that the Commissioner present her proposed design to the State Board by our February 1, 2006 public meeting and that she include in her proposal a timetable for conducting the needs assessment that gives priority to the appellant districts.

In directing the measures that must now be taken to begin the process of addressing the educational deficits in the districts involved in this litigation, we note that in his decision in this matter of February 10, 2003, the Commissioner directed that remedial measures be taken with respect to Buena Regional, Commercial Township, Fairfield, Salem City and Woodbine.[26] Specifically, the Commissioner directed the

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pursuant to N.J.S.A. 18A:6-27 and -28. Similarly, DOE urges us to reject those portions of the Report that pertain to Commercial and Maurice River because those districts withdrew the appeals that they had filed with the State Board.

We reject these contentions. As set forth above, by exercising our supervisory authority to direct the inclusion of these districts in the development of needs assessments designed to address educational needs such as those brought to our attention as a result of our review of the record in this case, we are acting to fulfill our constitutional obligations with regard to the education of all children in New Jersey. Ignoring the existence of such needs would be an abrogation of our responsibility.

[26] In its exceptions to our Legal Committee's Report, the Department of Education argues that a determination that CEIFA is unconstitutional as applied to Buena, Commercial, Fairfield and Woodbine cannot properly be made until the remedial provisions of CEIFA are implemented. We find this argument to be disingenuous in the face of the ALJ's factual findings and given that, as set forth above, the Commissioner in his February 2003 decision invoked N.J.S.A. 18A:7F-6(b), which is the very remedial measure cited by the DOE in its exceptions. Exceptions, at 32-33. We also note that DOE has not provided any indication as to whether these remedies have been effective, and, while it points to N.J.S.A.

Atlantic County Superintendent to undertake a thorough review of Buena Regional's 2003-04 budget and to make recommendations to the Commissioner as to actions to be summarily taken pursuant to N.J.S.A. 18A:7F-6(b) in the event that the district had had three consecutive years of failing test scores. The Commissioner also directed the Cumberland County Superintendent to perform such a review with respect to Commercial and Fairfield and the Cape May County Superintendent to do so with respect to Woodbine. In addition, although the Commissioner determined to recommend to the Legislature that Salem City be included as an "Abbott District" under N.J.S.A. 18A:7F-3,[27] he also directed that the Salem County Superintendent intensify his involvement in the district and that he review the district's 2003-04 budget and take such actions as might be necessary, as well as make recommendations to the Commissioner for actions under N.J.S.A. 18A:7F-6(b). Accordingly, we also direct that the Commissioner report to us by the February 1, 2006 State Board meeting as to the actions taken pursuant to these directives.

IX

In deciding this appeal, we cannot ignore the fact that there are students in other school districts not involved in this litigation who are suffering similar educational inadequacies and whose communities do not have adequate resources to address those inadequacies. To do so would be a denial of our obligations under the New Jersey Constitution and our responsibility for the supervision of public education in this

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18A:7A-14 as providing the Commissioner with the authority to remedy noncompliance, there is no indication that such authority has been exercised.

[27] We note that, as the Commissioner recommended, the Legislature acted to include Salem City as an "Abbott District."

state. N.J.S.A. 18A:4-10. See Englewood Cliffs v. Englewood, 257 N.J. Super. 413 (App. Div. 1992), aff'd, 132 N.J. 327 (1993). See also Bd. of Educ. v. Bd. of Educ., 170 N.J. 323 (2002). Furthermore, awarding piecemeal relief to some districts while ignoring others would be to contribute to the perpetuation of a fragmented system that does not conform to the constitutional mandate.

CEIFA was intended to define the components of a thorough and efficient education and to provide for financial resources to support such an education based on actual costs. When it enacted CEIFA, the Legislature in its findings recognized its responsibility under the New Jersey Constitution to substantively define what constitutes a thorough and efficient education. N.J.S.A. 18A:7F-2. The Legislature further found that in spite of repeated legislative efforts, New Jersey's education funding system had permitted disparate spending levels among districts without establishing specific educational standards. Id. The Legislature expressly found that "every child in New Jersey must have an opportunity for an education based on academic standards that meet the constitutional requirement regardless of where the child resides…." Id.

It is impossible at this point to avoid the conclusion that CEIFA is not accomplishing its intended purpose. Rather, as it has been implemented, CEIFA has resulted in the fragmentation of New Jersey's system of public education so that there is not a single unified system operating throughout the state. As reflected in this litigation, the Abbott Districts are operating under one system with funding and regulatory provisions applicable only to those districts while the rest of New Jersey's school districts are functioning under another system, one that has continued to allow

significant disparities in both educational inputs and educational outcomes and which has not produced educational adequacy for all districts.

The appeal now before us, as well as the litigation that preceded it, is the product of this situation. We believe that the time has come to reexamine our entire educational system and the premises upon which it rests.

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. The record in this matter is replete with examples of poverty as real as in the poor urban districts. While the approaches that must be taken to address poverty in the non-urban districts may be different, growing up in poverty is basically the same regardless of the district, as are the difficulties that confront such students in overcoming educational impediments resulting from poverty.

No educational system can erase totally the effects of poverty. Moreover, at this point it is clear that money alone is not the solution to ameliorating the educational impact of poverty. However, as reflected in Abbott II, a system of public education cannot be successful and a truly equal educational opportunity cannot be provided without accounting for the socioeconomic conditions that provide the context in which educational inputs will be delivered. Only by developing a system that adequately addresses the context from which the students come can we achieve a proper balance between educational inputs and student outcomes.

Beginning with the enactment of the Public School Education Act of 1975, our education system rested on the assumption that an adequate education would be provided if all students were exposed to the same educational process and sufficient

funding was provided to support generalized educational inputs. This approach largely ignored questions of socioeconomic context and, as recognized by the Court in Abbott II, produced great disparities between the poor urban districts and the wealthiest suburban districts with respect to both educational inputs and student outcomes. As the result of the Court's decisions in the ongoing Abbott litigation, the Abbott Districts, since the enactment of CEIFA, have been provided with both parity aid and supplemental funding to allow them to address the educational impact of poverty. However, success has been limited even in these districts. Further, as previously discussed, the piecemeal approach taken under CEIFA has further fragmented the education system.

It is time for a new approach, one that is educationally based. It is time to establish a unified system, one that properly balances New Jersey's tradition of home rule and the diversity of our 611 school districts with the need for a statewide system that guarantees equal educational opportunity for students in all districts and which ensures the adequacy of the education provided by every district. We need a system which equalizes the depth and breadth of educational programming and which allocates resources so that students have the benefit of such programming regardless of the municipality in which they live. To achieve this, we need to examine anew our delivery system.

We need to determine what constitutes equal educational opportunity in the context of the diversity of our student population. Again, it is clear that money alone does not ensure that such an opportunity is provided to all students, and it is time to abandon our reliance on money as a surrogate for either educational equity or

adequacy. We need to gain a clearer vision of the issues from careful consideration of educational research and to shape our educational processes on that basis.

We need to reexamine the adequacy of our accountability system. Under CEIFA, education budgets and state funding are based on a model. Not only is there no individualized assessment under such a system, but as discussed previously, as CEIFA has been implemented, any correlation between expenditures identified as necessary to a thorough and efficient education and the core curriculum content standards has been eliminated. This situation makes any real fiscal accountability impossible.

The lack of any real fiscal accountability impacts our ability to assess the effectiveness of the educational inputs being provided. Further, educational accountability has been undermined by fragmentation in our monitoring system and the fact that it does not provide for any meaningful qualitative assessment.

In short, it is essential at this point to reexamine the meaning of a thorough and efficient education and to establish a unified system for the provision of such an education. We believe that, as the head of the Department of Education and the body responsible for education policy, we must take responsibility for redefining the meaning of a thorough and efficient education in educational rather than financial terms.

While we recognize that we cannot accomplish this task alone, given the nature of our responsibility for ensuring that all students in New Jersey are provided with a thorough and efficient education, it is appropriate that we initiate the process. Only through such a discussion can the educational opportunity promised by the New Jersey Constitution be translated into a unified educational system that will ensure educational

adequacy and equity in a meaningful way on a statewide basis. Moreover, this discussion is necessary if the Legislature is to be able to establish a funding mechanism to provide adequate financial support to guarantee that the necessary inputs are provided.

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.

In initiating this process, we recognize that the State Board of Education does not have the ability to change the system by itself. The efforts of both the legislative and executive branches of state government will be required to accomplish that. Moreover, the socioeconomic conditions that have produced barriers to education for those students living in poverty must be addressed, and this will require the involvement of other agencies with the expertise to develop the kind of programs necessary to ameliorate those conditions. However, again, we believe that our responsibility to

ensure that all of New Jersey's students are provided with a constitutionally adequate education requires that we act now to initiate the process that will produce the necessary changes.

CONCLUSION

In sum, we have found that CEIFA as applied to the appellant districts has failed to conform to the constitutional mandate. We, however, have concluded that providing them with funding as if they were Abbott Districts is not the proper approach for remedying the situation. Instead, we have concluded that the proper course to follow to ensure that the situation is remedied as to these districts is to direct that the Commissioner begin immediately to develop a design for a needs assessment to be performed in each of the appellant districts. We have further concluded that the mandate of the New Jersey Constitution and our statutory responsibility for the general supervision and control of public education in this state require that we exercise our authority now to ensure that the educational deficits shown by the record as to the other districts involved in the litigation before the Commissioner are addressed. We therefore direct that, in addition to the appellant districts, the needs assessment be performed in each of the other districts involved in the litigation before the Commissioner. In addition to assessing the adequacy of the educational inputs and programming currently being provided, we direct the Commissioner to include in her proposed design elements that will identify the unique educational needs of the students in these districts requiring additional programs to address them. We further direct that the Commissioner submit her proposed design for a needs assessment to us by the February 1, 2006 State Board meeting and that she include in her proposal a timetable for conducting the needs

assessment that gives priority to the appellant districts. We also direct that she report to us by the February 1, 2006 meeting the results of the remedial measures which, in the Commissioner's decision of February 10, 2003, the Commissioner directed to be taken with respect to Buena Regional, Commercial, Fairfield, Salem City and Woodbine.

We have further found that our obligations under the New Jersey Constitution and our responsibility for the supervision of public education require that we do more than decide the appeal in this case and preclude us from ignoring the fact that there are students in other school districts not involved in the litigation who are suffering similar educational inadequacies and whose communities do not have sufficient resources to address them. We have also found that to do so would be to contribute to the perpetuation of a fragmented system that does not conform to the constitutional mandate. We have concluded that it is necessary 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 or the economic circumstances under which they were born. Given the immediacy of the need, we have determined to initiate the process by directing the Commissioner to examine and analyze the operation of the current system on a statewide basis. We direct that the Commissioner report to the State Board by our March 1, 2006 meeting and that she provide the Board with her findings and recommendations as to the educational components essential to the establishment of a unified system for public education that "will equip all of the students of this state to perform their roles as citizens and competitors in the same society." Abbott II, 119 N.J. at 389.

In initiating this process, we recognize that the State Board by itself cannot effectuate the changes that are necessary to establish a unified system for public education that fulfills the constitutional mandate both with respect to the substantive education that must be provided and the resources necessary to support such a system. Nonetheless, by our decision, we take the first step toward achieving that goal.

Finally, while the State Board's decision will constitute the final agency decision with regard to issues that are solely legal issues, we retain jurisdiction over implementation of the decision.

Arcelio Aponte, Ronald K. Butcher, Debra Casha, Maud Dahme, Kathleen Dietz, Josephine E. Figueras, John A. Griffith, Frederick J. LaGarde, Jr., Arnold G. Hyndman, Ernest P. Lepore, and Edward M. Taylor join in the decision of the State Board of Education.

Attorney exceptions are noted.

January 4, 2006

Date of mailing _____