



PEMBERTON TOWNSHIP SCHOOLS

TONY TRONGONE
Superintendent

January 11, 2019

Governor Phil Murphy
Office of Governor
PO Box 001
Trenton, NJ 08608

Dear Governor Murphy,

I am writing this letter to urge you to consider amending the School Funding Reform Law(S-2), specifically the provision phasing out “adjustment aid” to school districts. I have consulted with counsel who has conducted an analysis of the Constitutionality of the School Funding Reform Law (S-2), and based upon that analysis of all relevant information available, I have been advised that an extremely strong argument can be made that the elimination of “adjustment aid” is unconstitutional. Therefore it is the intention of Pemberton Township School District to challenge the Constitutionality of the School Funding Reform Law (S-2), specifically the provision which phases out adjustment aid to schools.

Our position is based on an in-depth analysis of the Abbott Decisions of the New Jersey Supreme Court, and the State’s obligation to provide a “thorough and efficient” public education for its children as required by the New Jersey Constitution. It is with urgency, I respectfully request that you reconsider the plan to phase out adjustment aid to school districts.

As you are aware, in 2008, the New Jersey Legislature passed the School Funding Reform Act (SFRA), establishing a new system of school funding of public school districts. The SFRA created aid categories separate from the Adequacy Budget for school funding. The key category at issue is “Adjustment Aid,” also known as “hold harmless” aid, which was intended to ensure that districts did not receive less state aid than under the state’s previous finance formula. N.J.S.A. 18A:7F-58(a). It was enacted with the intent to hold school districts harmless at pre-SFRA state aid levels.

The 31 designated “Abbott districts” in the State, now referred to as “SDA districts,” evolved from years of court cases brought before the New Jersey Supreme Court. The Abbott decisions were the result of an effort to equalize funding in 31 poor urban communities with wealthy suburban districts to support rigorous, standards-based, K-12 curriculum.

The Abbott decisions arose from plaintiffs challenging the “Public School Education Act of 1975.” P.L. 1975, c.212, by arguing that the law violated the “through and efficient clause” of the New Jersey Constitution and the State and federal equal protection clauses, resulting in disparities between poor urban and wealthy suburban school districts that could not meet the educational needs of their students as required by the Act. See Abbott v. Burke, 100 N.J. 269, 495 A.2d 376 (1985) (Abbott I)

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After a series of decisions, In Abbott XX, 199 N.J. 140 (2009), upon submitting the matter to a Special Master to develop a record in order to determine if the SFRA “can ensure Abbott districts have sufficient resources to enable them to provide a thorough and efficient education as defined by the [Core Curriculum Content Standards],” the Court found that the SFRA funding law proposed by the State, was constitutional as applied to students in Abbott districts as well as all districts statewide. The Court directed that the State implement the formula, and imposed two conditions that the State had to follow: (1) the State must fully fund Abbott districts as provided for under the SFRA formula during the first three years of implementation; and (2) the State must look back and review the formula after the first three years to determine if there was progress and adjust the formula as necessary. Finally, the Court granted the State’s request to eliminate the parity and supplemental funding remedies for the Abbott districts, as it determined that funding under the new formula was appropriate.

While the Abbott decisions were limited to remedies as it pertained to the 31 Abbott plaintiffs that brought the lawsuits, when the Court upheld the constitutionality of SFRA—an Act “designed as a state-wide unitary system of education funding” to address the needs of at-risk children everywhere in the State, this “relieved the State of having to adhere to the remedial orders that provided special funding to the Abbott children.” Abbott XXI, 206 N.J. at 470 (writing in concurrence). In other words, the State’s obligation extends to all school districts.

The focus on the Court’s analysis in these decisions is not on a particular component of the SFRA, such as the necessity of adjustment aid, but on whether the funding formula as a whole is sufficient to meet the constitutional mandate to provide a thorough and efficient education.

Based on the analysis of the Abbott decisions it is our position that a strong argument can be made that the proposed cuts to the adjustment aid are unconstitutional, under the premise that the SFRA-funding formulas, which include adjustment aid, were upheld as constitutional, that the proposed funding cuts do not meet the constitutional standard, and that school districts’ have relied upon SFRA-funding levels to provide for an adequate education.

The State is obligated to provide a “thorough and efficient” public education for its children as required by the New Jersey Constitution:

[t]he Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.
[N.J. Const. art. VIII, § 4 ¶ 1.]

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Although the State Legislature has the ultimate responsibility to substantively define what constitutes a thorough and efficient system of education, N.J.S.A. 18A:7F-44c, the New Jersey Supreme Court first addressed violations of this right in Robinson v. Cahill, 62 N.J. 473 (1973), finding that the then-implemented education funding plan was unconstitutional as applied to the State's poor "special needs" school districts. Whether a State funding law satisfies this standard has been further refined in the above-referenced Abbott decisions, and is based on the State's ability "to deliver a thorough and efficient education, as defined by the Core Curriculum Content Standards..." Abbott XIX, 196 N.J. 544, 564 (2008).

If the Bill is challenged before New Jersey Courts, pursuant to the New Jersey Supreme Court Decision in Abbott XXI, The State cannot make the necessary showing that the proposed funding levels can provide a thorough and efficient education as defined by the CCCS in districts with high, medium, and low concentrations of disadvantaged students solely by demonstrating the relative comparison of funding among districts or rely upon federal funds.

Please help us by addressing the school funding issue in a truly effective and equitable way. We are requesting that the State amend the proposed School Funding Reform to include adjustment aid as is included in the SFRA formula, deemed constitutional by the New Jersey Supreme Court.

I urge you to review this analysis and our position concerning the Constitutionality of the School Funding Reform Law(S-2), specifically the provision phasing out "adjustment aid" to school districts, into consideration. At a minimum we seek the adjustment aid be reinstated in the 2019-20 State Budget.

Thank you.

Sincerely,

Tony Trongone
Superintendent of Schools

c.c. Senator Stephen Sweeny
Assemblyman Craig Coughlin
Hon. Lamont Repollet, Commissioner of Education
Daryl Minus Vincent, County Superintendent of Schools

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