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Attorneys for State-operated
School District of the City of Newark

RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs,

vs.

FRED G. BURKE, ET AL.,

Defendants.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

CIVIL ACTION

NOTICE OF MOTION

019
RECEIVED

**SUPREME COURT
OF NEW JERSEY**

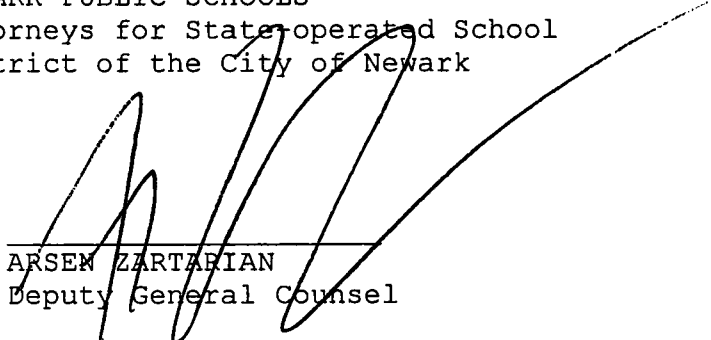
TO: ALL PARTIES OF RECORD

COUNSEL:

PLEASE TAKE NOTICE that the State-operated School District of the City of Newark hereby moves, pursuant to Rule 1:13-9, before the Supreme Court of New Jersey for an Order granting leave to appear as amicus curiae and in support of this motion shall rely upon the letter memorandum and Certification of Valerie V. Wilson submitted herewith.

OFFICE OF THE GENERAL COUNSEL
NEWARK PUBLIC SCHOOLS
Attorneys for State-operated School
District of the City of Newark

By:


ARSEN ZARTARIAN
Deputy General Counsel

Dated: September 20, 2010
Newark, New Jersey

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September 20, 2010

RECEIVED

Mark Neary, Clerk
 Supreme Court of New Jersey
 Hughes Justice Complex
 25 Market Street
 Trenton, New Jersey 08625-0970

**SUPREME COURT
 OF NEW JERSEY**

Re: Abbott, et al. v. Burke, et al.
Docket No.42,170

Dear Mr. Neary:

Please accept this letter memorandum in lieu of a more formal brief on behalf of the State-operated School District of the City of Newark (the "District" or "Newark") for leave to appear as amicus curiae in the above-captioned proceeding pursuant to R. 1:13-9.

In accordance with the standards of that rule, the District's participation in this matter will assist the Court in reaching a resolution of the issues presented and will not prejudice any party. In support of this motion, the District submits herewith the Certification of Valerie V. Wilson ("Wilson Certification"), the District's School Business

Changing Hearts and Minds to Value Education

The Newark Public Schools
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Administrator/Chief Financial Officer, that sets forth the reductions in District staff and resources resulting from State formula aid cuts below the levels required in 2010-2011 by the School Funding Reform Act of 2008 ("SFRA") and by this Court's decree in Abbott v . Burke, 199 N.J. 140 (2009) ("Abbott XX").

PRELIMINARY STATEMENT

Plaintiffs' motion in aid of litigants' rights sets forth in detail the background of the magnitude of the unprecedented reduction in State school aid for the 2010-2011 school year, an action which topples the pillars of the foundation of the Court's determination that the SFRA was constitutional. Shortly thereafter, several urban school districts joined this application, eloquently outlining the issue before this Court:

The Boards' experiences exemplify the harsh and unconstitutional results of the funding cuts on the educational and supplemental programs needed to provide disadvantaged, largely minority, students in New Jersey's urban with the constitutionally-mandated Thorough and Efficient Education.. The dramatic cuts in educational programs, supportive services and supplemental programs only exacerbate the social, academic and economic obstacles confronting the most disadvantaged students in the State. These districts have nowhere else to seek relief since the Executive Branch and the Legislature have been unresponsive to their pleas for full funding of the SFRA, even though the statute was trumpeted a year ago as an appropriate constitutional substitute for the Abbott remedies that would provide every student, regardless of where he or she lived, a Thorough and Efficient Education.

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[August 6, 2010 letter from Richard E. Shapiro, Esquire, at 2-4].

Newark alone was shorted a staggering \$42,424,847.00 below the formulaic amounts required by SFRA to provide our disadvantaged students with a thorough and efficient education. As a result, in addition to the elimination of educational programs, supervisory positions, and a Civil Service reduction in force that resulted in the termination of one hundred ninety-nine (199) employees, the District was forced to institute severe cuts in its educational personnel, including the elimination of three hundred ninety-four (394) individuals who provided direct educational services to children and forty-seven (47) who provided instructional support and staff development. The District was also forced to abolish thirty-two (32) substance awareness coordinators and six (6) health and services coordinators, service providers that assisted youth in peril. Further, even though the District is under intense scrutiny for special education compliance and a Defendant in a federal class action law suit, the District was forced to eliminate twenty-six (26) child study team positions.

The State's blatant disregard of the Court's decree in Abbott XX requires the Court to immediately grant the relief sought by Plaintiffs so that the vulnerable children of the City of Newark can receive the funding this Court only just over a

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year ago deemed necessary to deliver the constitutionally mandated thorough and efficient education.

PROCEDURAL AND FACTUAL BACKGROUND

As all filings in this matter have recognized, the Court's May 28, 2009 holding that the SFRA passed constitutional muster was predicated upon the "caveat" that the State would continue to provide school funding aid for the 2008-09, 2009-10, and 2010-11 school years. Abbott v. Burke, 199 N.J. 140, 145-46 (2009) ("Abbott XX"). As the Court is aware and the State has conceded, that did not occur.

On or about June 8, 2010, Plaintiffs filed a motion in aid of litigants' rights, seeking to enjoin the State from providing school funding aid to districts for the 2010-11 school year in an amount less than the aid levels required by the provisions of SFRA, as mandated by Abbott XX.

On or about August 6, 2010, the Boards of Education of City of Bridgeton, City of Burlington, City of East Orange, Jersey City Public Schools, City of Perth Amboy, Town of Phillipsburg, and City of Trenton filed an application seeking intervenor status. The Certifications of Superintendents from those Districts demonstrate the depth and breadth of the cuts compelled by the State's failure to fully fund the SFRA and comply with this Court's Abbott XX decision, detailing the

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reductions impacting all facets of the educational and supplemental student support services in those districts. By way of this application and the Wilson Certification filed herewith, Newark highlights for the Court's record the specifics of the cuts in the State's largest school district.

LEGAL ARGUMENT

THIS COURT SHOULD ORDER THE STATE TO COMPLY WITH THE FUNDING MANDATE OUTLINED IN ABBOTT XX.

This Court has long recognized that as "the right of children to a thorough and efficient system of education is a fundamental right guaranteed by the Constitution, it follows that the Court must afford an appropriate remedy to redress a violation of those rights." Robinson v. Cahill, 69 N.J. 113, 147 (1975). After a lengthy process that created the SFRA, and a subsequent legal battle in this Court defending the constitutionality of the statute, the State has now deliberately ignored the formula that the State itself argued was needed to provide children the constitutionally mandated thorough and efficient education. In the process, the State has also deliberately ignored this Court's edict in Abbott XX, compelling districts to slash and restructure programs well below the amounts found by this Court required to be deemed constitutionally sufficient.

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It is axiomatic that the Court's May 28, 2009 holding that the SFRA passed constitutional muster was predicated upon the "caveat" that the State would continue to provide school funding aid for the 2008-09, 2009-10, and 2010-11 school years. Abbott XX, 199 N.J. at 145-46. The State has conceded that the SFRA has not been fully funded in 2010-2011 (Sb 4-6).

In Newark, had the formulaic State aid funding categories in the SFRA had been fully funded in FY2011 in accordance with the SFRA's provisions, the District would have received state formula aid in the amount of \$714,990,694.00. Because of the reductions in formulaic aid in the FY2011 budget, the District will receive State aid in the amount of \$672,565,847.00 (exclusive of preschool aid), or a reduction of \$42,424,847.00 below the formulaic amounts required by SFRA and deemed necessary under the SFRA to provide our disadvantaged students with a thorough and efficient education. Wilson Certification, para. 3.

Once the proposed Newark budget detailing all the cuts was presented to the public at the March 29, 2010 Public Budget Hearing, the District's Advisory Board passed a resolution determining that the cut in State aid "will have a severe impact on the provision of necessary programs, staff, services and extracurricular activities, and significantly impair the ability of the Newark Public School District to ensure T & E [a thorough

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and efficient education] to students." Wilson Certification, para. 7, Exhibit A.

While all the programmatic and personnel cuts are outlined in the Wilson Certification submitted herewith, the most inescapable highlight is the sheer number of school level instructional and educational services personnel lost in the reduction. The Court cannot turn a blind eye to the fact that the State's failure to follow judicial decree has resulted in the elimination of three hundred ninety-four (394) individuals who provided direct educational services, and another forty-seven (47) who provided instructional support and staff development. Wilson Certification, para. 8.

Further, the District is under intense scrutiny for special education compliance, including intense state monitoring and corrective action plans. The District is also a Defendant in a federal class action law suit in which it is alleged that students with disabilities have not been identified or evaluated on a timely basis. As a result of the depth of the aid reduction, the District was unable to avoid reducing positions in the area of special education. Special education service provider positions eliminated as a result of the reduced aid included: (i) twelve (12) child study team social workers; (ii) four (4) child study team psychologists; (iii) nine (9) child study team learning disabilities-teacher consultants; and (iv)

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one (1) child study team coordinator. Wilson Certification, para. 9.

Moreover, the District was also forced to abolish the following educational services: (i) thirty-two (32) substance abuse coordinators, and (ii) six (6) health and social services coordinators. At the June 15, 2010 Newark Advisory Board public meeting, members of the public spoke for almost two hours on the reductions of these positions, many of whom gave powerful testimonials to the manner that the substance awareness coordinators had saved them from incarceration, institutionalization, or rebounding into gang involvement, alcohol or drug abuse. The elimination of these positions results in the transfer of this important and sensitive workload and responsibility to social workers and nurses, who also have other code-mandated duties. Wilson Certification, para. 11.

Newark has a total enrollment of 44,998 students. The student population is 56% Black, 36% Hispanic, 7% White, and 1% Asian. A total of 79.46% of the students qualify for free or reduced lunch. Wilson Certification, para. 3. This Court has long espoused that "[t]he lessons of the history of the struggle to bring these children a thorough and efficient education render it essential that their interests remain prominent, paramount, and fully protected." Abbott v. Burke, 153 N.J. 480,

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527-28 (1998). The State's outright defiance of the Court's Order compels this Court to act again.

CONCLUSION

For the reasons stated above, the District respectfully requests that this Court issue an Order: (1) granting the District's motion for leave to participate as amicus curiae; and (2) enjoining the State Defendants from providing State school aid to New Jersey school districts for the 2010-2011 school year that is less than the aid levels required by the provisions of the School Funding Reform Act of 2008 ("SFRA") and less than the "full funding" required by this Court's decision in *Abbott v. Burke*, 199 N.J. 140 (2009) ("Abbott XX").

Respectfully submitted,


ARSEN ZARTARIAN

cc: Nancy Kaplen, Esq.
David Sciarra, Esq.
All Counsel on Attached Service List

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SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

CIVIL ACTION

CERTIFICATION OF VALERIE V. WILSON

VALERIE V. WILSON, of full age, certifies as follows:

1. I currently serve as School Business Administrator/Chief Financial Officer of the State-operated School District of the City of Newark (the "District") and I submit this Certification in support of the District's motion for leave to appear as amicus curiae in the above-referenced proceeding, pursuant to R. 1:1:13-9.

2. In my capacity as School Business Administrator/Chief Financial Officer, I am familiar with all the facts and financial data relevant to the District budget, and the application of the funding formula contained in the School Funding Reform Act of 2008 ("SFRA").

3. The District has a total enrollment of 44,998 students. The student population is 56% Black, 36% Hispanic, 7% White, and 1% Asian. A total of 79.46% of the students qualify for free or reduced lunch.

4. Through Executive Order, the State took the position that any excess surplus reported in the 2008-09 audit would be used to plug the impounded state aid loss, but the State failed to realize that excess surplus funds reported in the 2008-09 audit are used as a revenue source for the 2010-11 budget and could not be used to plug the loss of state aid in 2009-10. By virtue of this action, the amount of \$10,373,157 of audited excess surplus was taken from the District, as well as an additional \$1,507,019 in estimated un-audited surplus. This resulted in a decrease in fund balance for the District for the 2010-11 school year, which increased the

budget gap and accordingly aggravated the amount of staff and program reductions.

5. If the formulaic State aid funding categories in the SFRA had been fully funded in FY2011 in accordance with the SFRA's provisions, the District would have received state formula aid in the amount of \$714,990,694.00. Because of the reductions in formulaic aid in the FY2011 budget, the District will receive State aid in the amount of \$672,565,847.00 (exclusive of preschool aid), or a reduction of \$42,424,847.00 below the formulaic amounts required by SFRA and deemed necessary under the SFRA to provide our disadvantaged students with a thorough and efficient education. If the District had received flat funding for the 2010-11 school year, the District would still have had a shortfall of approximately \$35 million because of increases in nondiscretionary expenditures and the loss of fund balance. It should be noted that the total budget gap for the District was \$77.4 million, which resulted in the reductions outlined below.

6. Once the State aid numbers were provided to the District by the Department of Education on or about March 19, 2010, my staff and I prepared a proposed 2010-11 budget which featured significant staff and program reductions. As required by law, a balanced budget was presented to the District's Advisory Board at the public budget meeting on March 29, 2010.

7. After the presentation on that night, the District's Advisory Board passed a resolution determining that the cut in State aid "will have a severe impact on the provision of necessary programs, staff, services and extracurricular activities, and significantly impair the ability of the Newark Public School District to ensure T & E [a thorough and efficient education] to students." A true and correct copy of the Resolution is annexed hereto as Exhibit A.

8. The teaching staff positions eliminated as a result of the reduced aid included: (i) two hundred eighty-three (283) classroom teachers at a cost of \$19,780,605; (ii) one hundred eleven (111) tutors for a reduction of \$5,768,977; and (iii) forty-seven (47) resource teacher coordinators for a reduction of \$2,796,510. These individuals provided direct

educational services to our students and also instructional support and staff development for teachers.

9. The District is under intense scrutiny for special education compliance, including intense state monitoring and corrective action plans. The District is also a Defendant in a federal class action law suit in which it is alleged that students with disabilities have not been identified or evaluated on a timely basis. As a result of the depth of the aid reduction, the District was unable to avoid reducing positions in the area of special education. Special education service provider positions eliminated as a result of the reduced aid included: (i) twelve (12) child study team social workers at a cost of \$778,360; (ii) four (4) child study team psychologists at a cost of \$233,700; (iii) nine (9) child study team learning disabilities-teacher consultants at a cost of \$650,411; and (iv) one (1) child study team coordinator at a cost of \$112,534.

10. The District was compelled to conduct a Civil Service reduction in force, resulting in the loss of one hundred ninety-nine (199) clerical and administrative central office

positions at a cost of \$8,277,962 and two (2) school clerks at a cost of \$81,636.

11. The District was also forced to abolish the following educational services: (i) thirty-two (32) substance abuse coordinators for a reduction of \$2,761,312, and (ii) six (6) health and social services coordinators at a cost of \$531,540. At the June 15, 2010 Advisory Board regular public meeting, members of the public spoke for almost two hours on the reductions of these positions, many of whom gave powerful testaments to the manner that the substance awareness coordinators had saved them from incarceration, institutionalization, or rebounding into gang involvement, alcohol or drug abuse. The elimination of these positions results in the transfer of this important and sensitive workload and responsibility to social workers and nurses, who also have other duties.

12. The District abolished twelve (12) School-To-Career Coordinators for a reduction of \$1,005,060. These individuals developed work-based learning experiences for students that provided the knowledge, skills, abilities and opportunities necessary for transition into the workforce or post-secondary

education programs. The District was also forced to abolish two (2) Job Developers at a cost of \$168,538. These job developers created employment opportunities for students. These services are valuable in our community, which has an unemployment rate that exceeds the state average.

13. The District eliminated eleven (11) Head Guidance Counselors at a cost of \$1,202,165. These positions provided supervision and monitoring of guidance counselors, developed and enforced guidance policies.

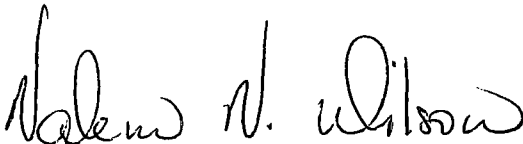
14. The District abolished sixteen (16) Central Office Instructional Program Supervisors at a cost of \$1,717,164. These positions provided supervision and monitoring of the District's curriculum.

15. Further, the District was required to eliminate the Aeronautical Program for a reduction of \$175,000, which provided an opportunity for students to receive training in technical and scientific aspects of aeronautical technology. A number of students were able to successfully acquire pilot licenses through this program.

16. The District was also required to eliminate the Banneker Science Program for \$1,219,280. This program provided an alternate learning experience within the science curriculum.

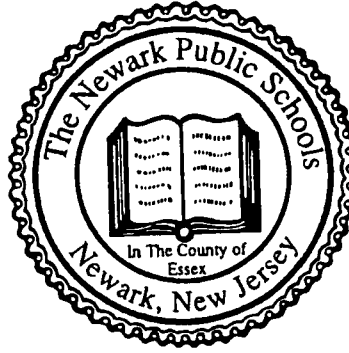
17. Finally, the District was required to eliminate the Adult Education Program for a reduction of \$1,681,912. This program provided a "second chance" for community persons to acquire high school diplomas and improve English language proficiency, skills which are required for employment eligibility.

I hereby certify that the statements made by me are true. I am aware that if any of the foregoing is willfully false, I am subject to punishment.


VALERIE V. WILSON

Dated: September 20, 2010
Newark, New Jersey

EXHIBIT A



RESOLUTION URGING FULL FUNDING OF SFRA FORMULA IN FY11

WHEREAS, the Newark Board of Education makes every effort to ensure all students have access to a high quality, "Thorough and Efficient" (T&E) educational program as required by the New Jersey Constitution; and

WHEREAS, the Newark Public School District works diligently to develop and implement a budget that provide the educational programs necessary for all students to meet State academic standards, and prepare students for college and work readiness; and

WHEREAS, the Newark Public School District, uses New Jersey's new school funding formula -- the School Funding Formula Act of 2008 (SFRA) -- as the basis for determining the level of funding needed to provide T&E to its students; and

WHEREAS, the Newark Public School District, received \$672,565,847 in state aid under the SFRA formula to support its 2009-10 (FY1) budget; and

WHEREAS, Governor Christie has proposed a State Budget for FY2011 that includes a \$1.06 billion, or 13.6%, cut in state SFRA formula aid statewide

WHEREAS, the Governor's budget proposal will result in a loss of \$42,424,847 in state aid in the 2010-2011 budget for Newark Public School District, which represents 5.9% of the District's total state aid amount; and

WHEREAS, the Governor previously cut \$476 million in state aid for 2009-10, and directed districts to use any surplus funds this year, leaving no rainy day funds available to offset the Governor's proposed state of school districts in order withhold state aid payments for 2009-10 to proposed cuts in state aid cut; and

WHEREAS, the Governor's proposed cuts in state aid in FY 2011 will have a severe impact the provision of necessary programs, staff, services and extracurricular activities, and significantly impair the ability of Newark Public School District to ensure T&E to students. Therefore, be it

RESOLVED that the Newark Public School Board of Education strongly urges Governor Christie to rescind the proposed cut in state formula aid and work collaboratively with the Legislature to enact a FY11 State Budget that provides aid at the levels required by the SFRA formula.

RESOLVED, that this resolution be sent to Governor Christopher Christie, Commissioner of Education Bret Schundler, Senate President Stephen Sweeney, Assembly Speaker Sheila Oliver, State Senators Ronald L. Rice, and M. Teresa Ruiz. Assembly Representatives Albert Coutinho, L. Grace Spencer and Cleopatra G. Tucker.

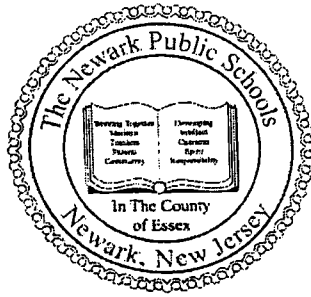
APPROVALS REQUIRED

Approved by: Valerie V. Wilson 3/29/10
 Valerie V. Wilson, School Business Administrator Date

Submitted for Approval by: Clifford B. Janey 3/30/10
 Dr. Clifford B. Janey, State District Superintendent Date

YEAS		NAYS
X	Samuel Gonzalez	
X	Shanique L. Davis-Speight	
	Tharien Arnold (Absent)	
X	Barbara King	
X	Marques-Aquil Lewis	
X	Eliana Pintor	
X	Juan Rivera	
X	Arelis Romero	
X	Nakia J. White	

Board Action: APPROVED Approve/Reject: March 29, 2010 Date



The Newark Public Schools
2 Cedar Street
Newark, New Jersey 07102

CERTIFICATION

I, ***ARSEN ZARTARIAN***, Deputy General Counsel, for the Newark Public Schools District of the City of Newark, in the County of Essex, and the State of New Jersey, hereby certify that the:

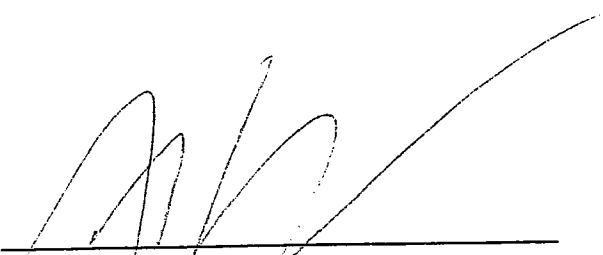
Approval of the Resolution Urging full Funding of SFRA Formula in FY 11

was approved by the Superintendent and the Advisory Board at the March 23, 2010

Board Meeting.

In witness whereof, I hereby set my hand and the Seal of said Board this 31st of March

2010.



ARSEN ZARTARIAN
DEPUTY GENERAL COUNSEL
NEWARK PUBLIC SCHOOLS

SEAL