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Supreme Court of New Jersey
R.J. Hughes Justice Complex
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Robert Hanna
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Re: Abbott v. Burke
Docket No. 42,170

Dear Honorable Justices:

This letter is in response to the amicus curiae brief filed by the Newark School District. Therein Newark supports the relief sought by the Education Law Center (ELC) in the pending motion to enforce litigants' rights in the above captioned matter. For the reasons set forth herein as well as the reasons in the State's previous submissions in this matter, the requested relief should be denied.

Newark filed its motion to participate as amicus curiae on September 24, 2010. As the Court had not yet acted on Newark's application at the time the State filed its unified, comprehensive brief in response to all amici, the State responded generally to Newark's assertions as they were substantially similar to those of other Abbott district amici. See State's Amicus Response, p3, fn2. Thereafter, on October 14, 2010, the Court granted Newark's motion to participate and provided the State with the opportunity to respond. On October 22, 2010, the Court filed a corrected order providing the parties with 21 days from the date the order was filed for responding briefs. This letter serves as the State's more specific response to the factual circumstances of Newark in the current school year.



While Newark takes issue with the method of distributing State school aid for the FY 2011 fiscal year, the State maintains that the distribution, necessitated by a significant decline in available revenues to support education, was equitable and consistent with constitutional requirements. In past years, the Appropriations Acts provided that "[i]n the event that sufficient funds are not appropriated to fully fund any State Aid item, the Commissioner of Education shall apportion such appropriation among the districts in proportion to the State Aid each district would have been apportioned had the full amount of State Aid been appropriated." Appropriation Handbook 2009-2010 at B-57. See also e.g. Appropriation Handbook 2008-2009 at B-54; Appropriation Handbook 2007-2008 at B-61; Appropriation Handbook 2006-2007 at B-60. If this method of addressing the line-item appropriations for education aid was used in FY2011, Newark would have received a State aid reduction of \$97.2 million. Certification of Yut'se Thomas, Exhibits B and F.

Instead, for FY 2011, the Governor and Legislature determined to address the decline in available revenues to support education by treating all districts in a similar manner, whether the district was primarily supported by State aid, as Newark is, or by its local levy. Accordingly, every district's State aid was reduced in an amount equal to the lesser of (a) 4.99% of the district's 2009-10 budget or (b) the sum of its SFRA formula aid. Certification of Andrew Sidamon-Eristoff, ¶21. Newark's State aid, therefore, was reduced only \$42.4 million rather than the \$97.2 million aid reduction it would have otherwise experienced. Moreover, under the method utilized by the State, Newark's aid was not reduced in any of the SFRA formula categories, i.e., equalization, transportation, special education and security. Id. at Exhibit G. Rather, the only category that was reduced was the aid category designed to transition districts to the new funding formula, i.e. adjustment aid. Id. at Exhibits F and G (Newark's \$48.7 million in Adjustment Aid was reduced by \$42.4 million).

In fact, Newark had one of the smallest percentages of State aid loss in FY 2011, i.e., 5.9%. Id. at Exhibit E. Only eight of the 581 districts saw a smaller reduction in State aid than Newark. Ibid. 59 districts saw reductions of 100% of their State aid. Ibid. Although a State aid reduction of \$42.4 million could be devastating in some districts, for Newark, with an overall budget of close to \$1 billion, the State's method of distribution had a relatively minimal fiscal impact in Newark for FY2011. Further, Newark continues to have very high available revenues per pupil for

FY 2011, i.e., \$17,255. Id. at Exhibit H. Of all of the K-12 school districts in the State, Newark is in the top 25 in revenues per pupil. Ibid. Its revenues per pupil exceed the non-Abbott State average by \$3,127 per pupil and the I&J average by \$2,763 per pupil. Id. at Exhibit I.

Newark asserts that the \$42.4 million reduction in State aid resulted in the need to reduce child study team positions, health and services coordinators, substance awareness coordinators and staff that provided direct educational services. Newark Brief at 3. However, Newark does not acknowledge that it has significant amounts of ARRA Title I and SIA as well as ARRA IDEA Basic and Preschool allocations yet to be drawn-down from the \$26.6 million and \$13.7 million, respectively, allocated to Newark in 2009.¹ Gantwerk Certification, Exhibit A. Moreover the district does not acknowledge its allocation of Education Job Fund aid of \$23.7 million.² Certainly these additional federal funds earmarked to support programs for disadvantaged and special education students as well as to save or create education jobs could be utilized to offset entirely or substantially mitigate the need for reductions and elimination of critical staff in FY 2011 if necessary for the provision of a thorough and efficient education.

This Court should find that the manner in which the State distributed school aid in FY 2011 was reasonable and equitable and that the Abbott districts, including Newark, continue to receive State aid that is constitutionally adequate. Moreover, these districts have available significant amounts of federal aid designed to assist local school districts in these extraordinarily difficult fiscal times. Based on those findings, the relief sought

¹These funds are in addition to the district's FY2011 "traditional" Title I and IDEA Basic and Preschool allocations of \$27 million and \$10.6 million. Certification of Barbara Gantwerk, Exhibit A; IDEA Preschool and Basic Grant Awards by District, <<<http://www.state.nj.us/education/specialed/idea> (last visited November 5, 2010)>>. It is assumed for purposes of this response that the district appropriately anticipated these reoccurring federal monies and budgeted them to ensure compliance with these federal programs.

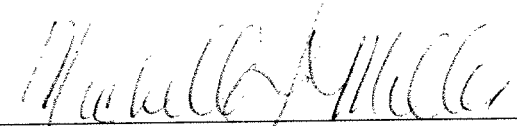
²In addition, Newark does not mention the \$100 million challenge grant made available to support education in Newark. About Newark's Education Opportunity, <<www.ci.newark.nj.us/government/mayor_booker/newark_education.php (last visited November 5 2010)>>.

by the ELC should be denied.

Respectfully submitted,

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