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March 24, 1998

Stephen W. Townsend, Clerk
Supreme Court of New Jersey
Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625

Abbott v. Burke



CW-NJ-001-014

Re: Raymond Arthur Abbott, et al. v. Fred G. Burke, et al.
Docket No. M-622

Dear Mr. Townsend:

I am writing in response to Mr. Sciarra's letter of March 19, 1998 regarding the recent submissions by the State that had been requested by this Court.

The Court, at oral argument, requested a copy of the facilities standards that, pursuant to the testimony of Assistant Commissioner David Hesse, were to be issued in January 1998. I believe I noted at oral argument that the standards were embodied in draft legislation which had been recently delivered to the Legislature in a proposed Administration bill. As Mr. Hesse described in his testimony, the standards would include "standards of efficiency, which set forth a prototypical school, and within that prototypical school will be embodied" the minimum standards that were part of the Commissioner's Study of Facilities and Recommendations for the Abbott Districts. Tr. (12/10/97) 230:21-24. The draft legislation includes both of those elements in the establishment of a per pupil square foot standard for efficient construction in a statewide facilities funding formula.

The draft legislation is not intended to incorporate the Commissioner's recommendations on a construction management and financing plan for Abbott school district facilities. Thus, by design, the draft legislation does not address the issues identified by plaintiffs such as an amendment to permit the involvement of the Educational Facilities Authority or the 100% funding

March 24, 1998

Page 2

of debt service aid recommended for Abbott districts. The Department of Education does not intend to pursue legislation on these remand-related issues until after this Court has had an opportunity to respond to the Commissioner's facilities study recommendations. The same is true of the regulations that will be adopted to establish minimum standards for Abbott district facilities.

Plaintiffs also suggest that there are inconsistencies between the Commissioner's remand studies and the draft legislation. For example, plaintiffs note that the Commissioner used a 1.5% rate for handicapped students in the illustrative budget while the draft legislation uses higher figures. Sciarra letter at 7. However, the 1.5% used by the Commissioner and the higher figures in the draft legislation represent two distinct groups of handicapped students. The 1.5% used in the Commissioner's illustrative budget represents the percentage of severely disabled handicapped students that will be educated outside of the school building; the percentages in the draft legislation are the percentage of handicapped children who will remain in the school building but need specialized space. As indicated in the State's reply brief, the illustrative budget assumed the ideal under Success For All, *i.e.*, that all handicapped students could be taught in the regular classroom except for the severely disabled. However, the State recognized that this was a goal and not the current reality. SRb at 12. The draft legislation reflects the reality that schools, in Abbott and non-Abbott districts, may need to construct specialized spaces to provide services to handicapped students.

Also, the differences in the square foot per pupil averages in the Abbott districts (as set forth in the Vitetta Facilities Assessment) and the draft legislation (as calculated by the Education Law Center) are not inconsistent but merely reflect the fact that there was insufficient time to assess the underutilization of space and the possibility of reconfiguring space for more efficient use as part of the Vitetta study. Those reviews will be undertaken as part of the implementation plan pursuant to the Commissioner's facilities study. The draft legislation is premised on the efficient use of space in new construction.

Plaintiffs' specific concerns about the draft legislation are more appropriately addressed to the Legislature once a bill is introduced incorporating the Department of Education's proposal. Plaintiffs' arguments regarding the constitutionality of draft legislation addressing statewide facilities funding were not part of the remand proceeding and are not properly before this Court.

This Court also requested a copy of the Goodstarts evaluation and was advised that the Department has not yet completed that evaluation. Plaintiffs complain that the State did not provide the Court with any information on the status of the Goodstarts evaluation "such as the procedures, standards and time-frames for this evaluation" -- although the Court never requested that information. Sciarra letter at 8. It should be noted that the Department's evaluation of this now-defunct program was not required by or promised as part of the remand proceeding. Rather,

March 24, 1998

Page 3

the Department independently undertook this evaluation process, a process that is not yet complete. The Department also compiled a report of district assessments of the Goodstarts program. Upon further inquiry by this Court, a copy of that report was provided, even though the report is flawed for the reasons noted in my prior letter. Of course, the Department would respond to any additional request from this Court for further information on the status of the Department's evaluation of the Goodstarts program.

Respectfully yours,



Peter Verniero
Attorney General

PV:pat

c. David Sciarra, Esq.