

In 1981, the Education Law Center filed a complaint in Superior Court on behalf of 20 children attending public schools in the cities of Camden, East Orange, Irvington, and Jersey City. The lawsuit challenged New Jersey's system of financing public education under the Public School Education Act of 1975 (Chapter 212).

This was the first salvo in the historic case, *Abbott v. Burke*, which is widely recognized as the most important education litigation for poor and minority schoolchildren since *Brown v. Board of Education*.

Beginning in 1981, ELC argued that the State's method of funding education was unconstitutional because it caused significant expenditure disparities between poor urban and wealthy suburban school districts, and that poorer urban districts were unable to adequately meet the educational needs of their students.

The case eventually made its way to the NJ Supreme Court, which, in 1985, issued the first Abbott decision (**Abbott I**) transferring the case to an administrative law judge for an initial hearing.

THE REMEDIAL DIRECTIVES

In 1990, in *Abbott II*, the NJ Supreme Court upheld the administrative law judge's ruling, finding the State's school funding law unconstitutional as applied to children in **28 "poorer urban" school districts**. That number was later expanded to 31. [View the Abbott Districts](#)

The Court's ruling directed the Legislature to amend or enact a new law to "assure" funding for the urban districts: 1) at the foundation level "substantially equivalent" to that in the successful suburban districts; and 2) "adequate" to provide for the supplemental programs necessary to address the extreme disadvantages of urban schoolchildren. The Court ordered this new funding mechanism be in place for the following school year, 1991-92.

In response to the **Abbott II** decision, the Legislature approved the Quality Education Act (QEA), which modestly increased foundation aid levels for the Abbott districts, but failed to provide parity funding.

In 1992, the Abbott plaintiffs went back to the NJ Supreme Court, asking for a decision on whether the new funding law met the specific terms of its 1990 decree. The Court remanded the motion to a trial judge with instructions to develop a full factual record. Following an extensive trial, the remand judge found that the QEA failed to meet the Court's 1990 ruling and recommended the law be declared unconstitutional as applied to the urban districts.

In 1994, the Supreme Court affirmed the findings and recommendation of the remand judge. The Court then entered its second remedial order, **Abbott III**, directing the Legislature to adopt another funding law by September 1996 that would assure "substantial equivalence" in per pupil foundation funding with suburban districts and provide the necessary supplemental programs.

In December 1996, the Legislature enacted its second funding law – the Comprehensive Education Improvement and Financing Act or "CEIFA" – in response to the Court's 1994 decision. In January 1997, the Abbott plaintiffs asked the Court to declare CEIFA unconstitutional for failing to achieve compliance with the Court's prior orders. The Court acted quickly on the motion and in **Abbott IV** found CEIFA unconstitutional as applied to the urban districts.

The Court also took more decisive action. First, the justices ordered parity in foundation funding for the 1997-98 school year, resulting in an immediate state aid increase of \$246 million. Second, they ordered that parity be continued in future years until the Legislature, through new or amendatory legislation, could "convincingly demonstrate" that resources adequate for urban schoolchildren to meet established academic standards could be provided at a level lower than the amounts expended in the successful suburban districts.

Finally, the Court ordered that a second remand trial be conducted by a designated judge, this time for the purpose of developing a full evidentiary record of the need both for supplemental programs (including early education) for urban schoolchildren and for capital facilities improvements in the urban districts. The State Education Commissioner was directed to prepare and present a study of these needs, including recommendations for funding levels and a plan for program implementation.

On review of the trial court's decision, the Supreme Court in **Abbott V** accepted many of the supplemental programs and reforms, and a plan to fund capital facilities improvements, recommended by the remand judge. The Court also modified several recommendations and established a unique process whereby urban districts were afforded the right to seek additional funding for supplemental programs and capital improvements if they could demonstrate the need. Districts were also afforded the right to seek administrative and judicial review of decisions by the State Education Commissioner denying requests for supplemental funds.

Taken together, the 1997 *Abbott IV* and 1998 *Abbott V* rulings directed implementation of a comprehensive set of remedial

measures, including high quality early education, supplemental programs and reforms, and school facilities improvements, to ensure an adequate and equal education for low-income schoolchildren.

The Abbott remedies were strikingly detailed and comprehensive. The mandates also broke new ground in school finance and education policy in the United States. No other state had equalized – or assured “parity” – in the education resources provided to children in its lowest-wealth communities at the level spent in more affluent ones. New Jersey was the first state to mandate early education, starting at age 3, for children “at risk” of entering kindergarten or primary school cognitively and socially behind their more advantaged peers. The Court’s “needs-based” approach to providing supplementary programs and reforms was an unprecedented effort to target funds to initiatives designed to improve educational outcomes of low-income schoolchildren. Finally, New Jersey undertook the most extensive construction program in the United States designed to ameliorate the severely deficient condition and quality of school buildings in low-wealth neighborhoods.

ENFORCING AND SUSTAINING IMPLEMENTATION OF THE REMEDY

The Court’s hopes for a sustained, good faith effort to implement the remedial measures ordered in Abbott IV and V were quickly dashed. Over the next ten years, both parties sought judicial intervention to resolve numerous implementation delays, disputes and controversies.

PRESCHOOL CLARIFICATION RULINGS

Twice – in 2000 and 2002 – the Abbott plaintiffs filed motions to enforce the Abbott V mandate for early education in the urban districts, alleging that state education officials failed to ensure funding for qualified teachers, appropriate class sizes and curriculum, and other essential components of a “high quality” preschool program. In 2000, the Court accepted and directly adjudicated the motion (**Abbott VI**) without remanding for fact finding. In the 2002 motion (**Abbott VIII**), the Court reviewed the facts presented by the parties on the motion and a decision by an administrative court adjudicating requests by the urban school districts under the Abbott V process for additional preschool funding.

These rulings provided critical detail and direction to the State on key aspects of the preschool program, from teacher qualifications to class size, enrollments, facilities and procedures for determining needed program funding.

MEDIATION OF PROGRAM IMPLEMENTATION

In 2003, State education officials filed a motion seeking modification of the Court’s Abbott V mandate for implementation of school-level programs and reforms. Plaintiffs filed a cross-motion, seeking relief that included directing the State to evaluate the reforms. In **Abbott X**, the Court referred the motions to mediation for a 30-day period, appointing a senior judge to serve as “mediator for the sole purpose of resolving the issues.”

The mediation process resulted in extensive agreement between the parties on a variety of program implementation issues, including the provision of additional options for school level reform and clarification of the required supplemental programs. The agreement also established a “cooperative rulemaking” process to develop new rules for implementation of the Abbott remedies, along with a “work group” to design the formal evaluation of the mandated reforms.

The agreements reached in mediation were then approved and ordered by the Court.

ADJUDICATING REQUESTS TO LIMIT REMEDIAL FUNDING

In 2002 (**Abbott IX**), 2003 (**Abbott XI**) and 2006 (**Abbott XV**), the State filed motions with the court seeking one-year limits on the levels of school funding provided under the Abbott remedies, based on assertions of overall State budget difficulties. The New Jersey Supreme Court directly adjudicated these motions, and in each case granted the requested funding limits. Nonetheless, the Court ordered continuation of the process whereby the urban districts could seek supplemental funds above the established limit if necessary to maintain needed programs and reforms.

ADJUDICATING REQUESTS FOR SCHOOL CONSTRUCTION FUNDS

In 2005 (Abbott VIII), the Supreme Court ordered the State to fund all costs of facilities remediation and construction. By 2005, the State had exhausted the first round of \$6 billion in school construction funds approved by the Legislature to comply with the 1998 Abbott V decree. Costs had escalated, and hundreds of planned projects had been left without funding.

From 2005 through 2007, plaintiffs filed three motions seeking an order to compel the Legislature to approve additional capital construction financing. In 2005, in **Abbott XIV**, the Court directed State education officials to report to the Legislature on the amount of funds necessary to undertake outstanding projects. In 2007, in **Abbott XVII**, the Court dismissed plaintiffs’ motion as “premature,” stating that the Court would not assume that the State “will fail to comply with their constitutional obligations” within

the timeframes for adopting the annual State budget. Finally in 2008, in [Abbott XVIII](#), the Court denied plaintiffs' motion on the basis of Governor Corzine's commitment to the Court that additional funds would be approved in the context of the annual State budget.

Following the 2008 order, the Legislature approved an additional \$2.8 billion in school construction funds for school building improvement projects in the urban districts. Although the Court had not expressly ordered this funding, it had continuously reiterated the harm being caused to schoolchildren and the constitutional requirement that the State fund facilities improvements.

PROCEEDINGS RELATED TO THE SCHOOL FUNDING REFORM ACT

In early 2008, the Legislature enacted the third school funding law since 1990 designed to comply with the Abbott rulings. The new formula, the School Funding Reform Act (SFRA), was developed based on several years of study, including reviews by numerous school finance experts.

1) REVIEW OF THE SFRA

Following passage of SFRA, the State filed a motion with the court seeking to have the funding law declared constitutional and to have the specific funding and program remedies ordered in the 1997 Abbott IV and 1998 Abbott V rulings declared "no longer necessary" after ten years of implementation.

In November 2008, in [Abbott XIX](#), the Court found that the question of constitutionality of the SFRA "is not suited to summary disposition," and decided, once again, to utilize the remand process.

After a month-long trial, the judge appointed by the Court issued a report recommending that SFRA be found constitutional. In 2009 ([Abbott XX](#)), the Court reviewed the trial judge's recommendation and found the SFRA constitutional not just for students in the Abbott districts, but for all students statewide. The Court directed implementation of the new formula, but imposed two conditions on the State for "continuing constitutionality:" a) the formula must be fully funded for the first three years; and b) the formula must be thoroughly reviewed to determine if it is working properly, and any needed adjustments must be made based on that review. The Court also lifted the parity and supplemental funding remedies for the Abbott districts.

2) ENFORCEMENT OF ABBOTT XX

In June 2010, the NJ Legislature adopted Governor Christie's proposed FY2011 budget, cutting over \$1.1 billion, or almost 15%, in state aid from the SFRA formula. In July 2010, ELC, on behalf of the Abbott Plaintiffs, filed a motion with the NJ Supreme Court to enforce the conditions established in the [Abbott XX](#) ruling concerning the continuing constitutionality of the SFRA.

On January 13, 2010, the NJ Supreme Court issued an order for a remand hearing before the Honorable Peter E. Doyne, the same judge that acted as Special Master in the 2009 trial. Judge Doyne was asked to consider one issue: "... whether school funding through SFRA, at current levels, can provide for the constitutionally mandated thorough and efficient education for New Jersey school children."

After a two-week trial, Judge Doyne issued his report on March 22, 2011, finding that the SFRA formula was, in fact, underfunded by \$1.6 billion, or 19%, and that districts were unable to provide the programs necessary for students to meet State academic standards, particularly at-risk students.

On May 24, 2011, after considering Judge Doyne's report and hearing oral arguments, the New Jersey Supreme Court found that the State's failure to fund SFRA caused "instructionally consequential and significant" harm to at-risk students in districts across the state. The Court also found that the harm to NJ schoolchildren from the funding cut is not a "minor infringement" to their right to a thorough and efficient education, but "a real substantial and consequential blow" to that right. In [Abbott XXI](#), the Court ordered that the formula be fully funded in FY12 for students in the 31 high-need, urban districts.