

SUPREME COURT OF NEW JERSEY

Abbott ex rel. Abbott v. Burke, 187 N.J. 191

901 A.2d 299 (2006) · Decided May 9, 2006

OPINION

PER CURIAM.

901 A.2d 299 (2006) 187 N.J. 191 Raymond Arthur ABBOTT, a minor, by his Guardian Ad Litem, Frances ABBOTT; Arlene Figueroa, Frances Figueroa, Hector Figueroa, Orlando Figueroa and Vivian Figueroa, minors, by their Guardian Ad Litem, Blanca Figueroa; Michael Hadley, a minor, by his Guardian Ad Litem, Lola Moore; Henry Stevens, Jr., a minor, by his Guardian Ad Litem, Henry Stevens, Sr.; Caroline James and Jermaine James, minors, by their Guardian Ad Litem, Mattie James; Dorian Waiters and Khudayja Waiters, minors, by their Guardian Ad Litem, Lynn Waiters; Christina Knowles, Daniel Knowles, and Guy Knowles, Jr., minors, by their Guardian Ad Litem, Guy Knowles, Sr.; Liana Diaz, a minor, by her Guardian Ad Litem, Lucila Diaz; Aisha Hargrove and Zakia Hargrove, minors, by their Guardian Ad Litem, Patricia Watson; and Lamar Stephens and Leslie Stephens, minors, by their Guardian Ad Litem, Eddie Stephens, Plaintiffs-Respondents and Cross-Movants, v. Fred G. BURKE, Commissioner of Education; Edward G. Hofgesang, New Jersey Director of Budget and Accounting; Clifford A. Goldman, New Jersey State Treasurer; and New Jersey State Board of Education, Defendants-Movants and Cross-Respondents, and Board of Education of City of Asbury Park, Board of Education of City of Bridgeton, Board of Education of City of Burlington, Board of Education of City of East Orange, Board of Education of City of Elizabeth, Board of Education of Gloucester City, Board of Education of Town of Harrison, Board of Education of Keansburg Borough, Board of Education of City of Passaic, State-operated School District of Paterson, Board of Education of Pemberton Township, Board of Education of City of Perth Amboy, Board of Education of City of Plainfield, Board of Education of Salem City, Board of Education of Town of Phillipsburg, and Board of Education of City of Trenton, Intervenor-Cross-Movants, and Board of Education of Camden City, Board of Education of Irvington, Board of Education of Millville, Board of Education of State-Operated School District of the City of Newark, Board of Education of Pleasantville, and Board of Education of Vineland, Intervenor.

Supreme Court of New Jersey. May 9, 2006. *300 ORDER The within matter having been initiated by the Attorney General on behalf of the Department of Education (DOE) by motion seeking authorization to require the Abbott districts, recognized by this Court as Special Needs Districts in *Abbott v. Burke*, 149 N.J. 145, 693 A.2d 417 (1997) (*Abbott IV*), to submit budget requests consonant with the funding provided in the Governor's FY2007 Proposed Budget for School Aid to Abbott Districts and as set forth in the FY2007 Abbott regulations; And the DOE

having requested that for FY2007 State aid to Abbott districts remain "flat" at FY2006 levels; the Abbott districts be precluded from requesting additional Educational Opportunity Aid for FY2007; the Abbott districts be precluded from appealing DOE budgetary decisions regarding supplemental funding; and that eight of the Abbott districts (Asbury Park, Garfield, Jersey City, Long Branch, Neptune, Newark, New Brunswick, and Perth Amboy), whose general tax levy is below 110% of the State equalized tax rate, increase their tax rate to 110%, limited to a \$125 increase on the average household's tax liability; And the DOE having represented that the requested relief is necessitated by the fiscal crisis facing the State of New Jersey; And the DOE having further represented that it will conduct fiscal and programmatic audits in the Abbott districts during this proposed year of fiscal austerity so that resources may be directed effectively in future budget cycles; And the DOE having further represented that notwithstanding the State's fiscal crisis, parity funding will be maintained, pre-school funding needs will be fully met, and supplemental funding will remain at FY2006 levels; And the Education Law Center (ELC) and the Boards of Education of twenty-two Abbott districts (Asbury Park, Bridgeton, Burlington, Camden, East Orange, Elizabeth, Gloucester City, Harrison, Irvington, Keansburg, Millville, State-Operated School District of Newark, Passaic, State-Operated School District of Paterson, Pemberton, Perth Amboy, Plainfield, Pleasantville, Salem City, Phillipsburg, Trenton, and Vineland) (Individual Districts) separately having opposed the DOE's motion on the grounds that the relief sought by the DOE, if granted, would result in reductions to or elimination of existing mandated programs, positions, and services in the Abbott districts and would prevent the opening of new or remodeled schools; And the ELC having requested that the FY2007 Abbott regulations be declared invalid; that emergency regulations for the preparation of FY2007 district budgets be adopted forthwith permitting the Abbott *301 districts to seek supplemental funding for demonstrably needed programs including the opening of new or remodeled schools; that the Abbott reforms be evaluated promptly; that a management plan for the implementation of Abbott reforms be completed; and that DOE budget guidance regulations be promulgated under the Administrative Procedure Act, N.J.S.A.

52:14B-1 to -24, for subsequent budget cycles, to remain in place for a period longer than one year; And the Individual Districts also having asserted that the DOE lacks legal authority to require eight Abbott districts to raise their local tax levy; And all of the parties having agreed that the DOE has failed to conduct programmatic and fiscal audits of the Abbott districts notwithstanding previous orders of the Court; And amici curiae Association for Children of New Jersey and the New Jersey State Conference of the National Association for the Advancement of Colored People, Paterson Branch of the National Association for the Advancement of Colored People, Paterson Education Fund, New Jersey Community Development Corporation, American Civil Liberties Union of New Jersey, New Jersey Black Issues Convention, and the Newark Teachers Union, having also opposed the DOE request for relief; And the Court having reviewed

the submissions of the parties, intervenors, and amici curiae and the requests for relief; And the Court having heard oral argument on May 2, 2006; And for good cause appearing; IT IS ORDERED that, no later than May 31, 2006, the Abbott districts shall comply with Acting Commissioner Lucille E. Davy's March 23, 2006 memorandum and the FY2007 Abbott regulations, N.J.A.C.

6A:10A-1.1 to -9.8, directing them to resubmit their 2006-2007 budgets consistent with the revenue sources set forth in the Governor's proposed budget and as reflected in their FY2007 State aid notices; and it is further ORDERED that the relief provided in the foregoing paragraph shall be limited to FY2007; and it is further ORDERED that the DOE shall work with the Abbott districts that seek DOE assistance in developing district budgets that provide for existing demonstrably needed Abbott programs within the aforementioned fiscal restraints; and it is further ORDERED that the districts shall have a right to appeal inadequate funding for such demonstrably needed Abbott programs.

On appeal, a district must prove that an identified demonstrably needed program, position, or service will be substantially impaired due to insufficient funding; and it is further ORDERED that the DOE shall complete comprehensive fiscal audits of the four pilot districts (Newark, Jersey City, Paterson, and Camden) by November 2006; and it is further ORDERED that the DOE shall complete all remaining fiscal audits as well as programmatic evaluations of the Abbott districts such that timely decisions can be made for the FY2008 budget year; and it is further ORDERED that the DOE shall promulgate regulations in accordance with the Administrative Procedure Act, N.J.S.A.

52:14B-1 to -24, to govern the submission *302 of Abbott district budgets subsequent to FY2007, and that such regulations shall remain in effect for a minimum of two years; and it is further ORDERED that any relief not granted herein is denied. Chief Justice PORITZ and Associate Justices LONG, LaVECCHIA, ZAZZALI, ALBIN, WALLACE, and RIVERA-SOTO join in the Court's Order.