



CW-NJ-001-005

RAYMOND ARTHUR ABBOTT, ET AL.,

Plaintiffs,

vs.

FRED G. BURKE, ET AL.,

Defendants.

SUPREME COURT OF NEW JERSEY
DOCKET NO. 42,170

CIVIL ACTION

ON REMAND TO

SUPERIOR COURT
CHANCERY DIVISION

**PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS
ON SUPPLEMENTAL PROGRAMS**

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A. Framework for Supplemental Programs

1. The Comprehensive Educational Improvement and Financing Act ("CEIFA") designates 28 poor urban school districts as "Abbott" districts.¹ Plaintiffs are students attending schools in Abbott districts. Plaintiffs are entitled to educational remedies ordered by the Supreme Court: (1) an improved regular education program; (2) supplemental programs that address their unique disadvantages; (3) educationally adequate school facilities; and (4) reform and improvement in teaching and student learning. See Abbott v. Burke, 149 N.J. 145, 223-26 (1997) ("Abbott IV").

2. Regular education in Abbott districts is the base curriculum and instructional program available to all students which through equivalent funding must become comparable to that offered to students in more affluent districts, designated by the Department of Education ("DOE") as "I & J" districts. See, e.g., Abbott IV, 149 N.J. at 176 (Court "continues to focus on [the I & J districts] recipe for success"); Goertz, Tr. 12/9/97, pp. 33-34²; Anderson, Tr. 11/17/97, pp. 255-6.

3. The DOE provided the Abbott districts with an additional \$246 million in state aid for the school year 1997-98 to assure that each district had the ability to spend an amount per pupil that is equivalent to the average per pupil expenditure in the I & J districts. Abbott IV, 149 N.J. at 224. With this additional state aid, each of the Abbott districts had a per-pupil expenditure of \$8664 for the regular education program. The DOE has approved plans developed by each Abbott district to expend the additional state aid for its regular education program. See, e.g., Goertz, 12/9/97, p. 33; Anderson, Tr. 11/18/97, p. 37; Azzara, Tr. 11/20/97, p. 168.³

4. Children living in poor urban communities have disadvantages and special needs that are greater than those of children in more affluent communities. These special and unique needs undercut the learning capacity of children in Abbott districts. See, e.g., infra at ¶ 36.

5. Supplemental programs are educational and educationally-related programs and services that address the unique needs of students in Abbott districts,

¹ Plainfield Public School District was excluded from the list of Abbott districts defined in CEIFA. See N.J.A.C. 6:19-1.2. A petition for reinclusion is pending before the Commissioner of Education. Leverett, Tr. 12/8/97, pp. 131-4.

² In these proposed findings, plaintiffs refer to transcript page numbers as found in the upper right corner of each transcript page.

³ The Superior Court, Chancery Division, ruled that the Court lacked jurisdiction on remand over the Abbott district expenditure plans for the use of additional regular education funding. See Letter of August 6, 1997 from the Honorable Michael Patrick King, PJAD, to Counsel.

are not required in I & J districts, and represent an educational cost not included in the amounts expended for regular education. See, e.g., Abbott IV, 149 N.J. at 180; Goertz, Tr. 12/9/97, pp. 37-8.

6. CEIFA authorizes two categories of state aid to provide supplemental programs in Abbott districts. Early childhood program aid ("ECPA") is state aid to offer preschool programs. Demonstrably effective program aid ("DEPA") is state aid to provide educational and educationally-related programs and services to students in Abbott districts. See, e.g., Abbott IV, 149 N.J. at 180; N.J.A.C. 6:19-3.1 to 6:19-4.3.

7. Early childhood education and services are required to address the unique disadvantages of children in Abbott districts. CEIFA, however, delays implementation of early childhood programs. CEIFA contains no assurance that the per-pupil amounts of ECPA would enable Abbott districts to provide the required early childhood programs and that there would be sufficient funding for facilities for the programs. See, e.g., Abbott IV, 149 N.J. at 183-4; N.J.A.C. 6:19-3.1.

8. Abbott districts received approximately \$200 million in ECPA for 1997-98. See, e.g., Goertz, Tr. 12/9/97, p. 54.

9. CEIFA lists various programs eligible under DEPA. CEIFA, however, does not require that any of those programs be implemented and provides no assurance that the per-pupil amounts of DEPA would enable Abbott districts to provide any of the listed programs. Further, DEPA is not based on any study of the actual special educational needs of students in Abbott districts. See, e.g., Abbott IV, 149 N.J. at 181; N.J.A.C. 6:19-4.1 to 6:19-4.3.

10. Abbott districts received approximately \$100 million in DEPA for 1997-98. See, e.g., Goertz, Tr. 12/9/97, p. 54.

11. CEIFA does not address adequately the special educational needs of students in Abbott districts in part because the Commissioner of Education Leo Klagholz ("Commissioner" or "Klagholz") performed no study to determine the nature and extent of those special needs, to determine the programs required to meet those needs, and to determine the costs of such programs. See, e.g., Abbott IV, 149 N.J. at 185.

12. The Supreme Court remanded this case to the Superior Court, Chancery Division, to correct the deficiencies in the supplemental programs authorized under CEIFA. Under the remand order, the Commissioner was directed to:

- (1) Conduct a comprehensive study of the special educational needs of students attending school in the twenty-eight Abbott districts; and specify the programs required to

address those needs, which shall include, as necessary, programs in addition to those provided for in [CEIFA];

- (2) Determine the costs of those needed programs, on a per-program and per-pupil basis, which shall include, as necessary, costs in addition to those provided for by [CEIFA]; [and]
- (3) Devise a plan for State or State-assisted implementation of the identified programs in each of the Abbott districts. . . [Abbott IV, 149 N.J. at 224-5.]

13. The Commissioner was directed to submit a final report to the Superior Court on the above-listed study components, along with the Commissioner's findings, conclusions and recommendations. Plaintiffs were authorized to respond to the Commissioner's proposed findings, conclusions and recommendations, and to file exceptions with the Superior Court. Abbott IV, 149 N.J. at 224-5.

14. The Superior Court was directed to conduct proceedings to obtain additional evidence on the special educational needs of children attending schools in the Abbott districts and on supplemental programs needed to meet those needs. Plaintiffs were authorized to participate in these proceedings. Abbott IV, 149 N.J. at 224-5.

15. The Superior Court was ordered to render a decision, including findings, conclusions, recommendations, and a determination as to whether the proposals contained in the Commissioner's study satisfy the requirements of the Supreme Court's order. Abbott IV, 149 N.J. at 226.

B. Preparation of the Commissioner's Study

16. On July 7, 1997, the Commissioner submitted to the Superior Court a work plan and timetable for the preparation and completion of his study on special needs and supplemental programs. Letter of Attorney General Peter Verniero to David G. Sciarra, July 7, 1997.

17. The Commissioner delegated primary responsibility for preparation of the report to Barbara Anderson ("Anderson"), Assistant Commissioner for the Division of Student Services, and Michael Azzara ("Azzara"), Assistant Commissioner for Finance. Klagholz, Tr. 11/18/97, p. 208.

18. The Commissioner filed his final study, Ex. D-2, "A Study of Supplemental Programs and Recommendations for the Abbott Districts" ("Study"), with the Superior Court on November 10, 1997, and served plaintiffs with a copy of the Study at the close of business on that day.

19. To prepare the Study,
 - (a) Anderson reviewed the national research literature on educational programs in urban schools; Anderson, Tr. 11/18/97, pp. 74-76;
 - (b) The DOE conducted a survey ("Survey") of existing supplemental programs in Abbott districts, based on the programs identified by plaintiffs in their Wiping Out Disadvantages report; Anderson, Tr. 11/18/97, p. 192; Ex. P-4.
 - (c) The DOE held public meetings in the 21 counties containing Abbott districts; Anderson, Tr. 11/18/97, p. 195;
 - (d) Anderson contacted Dr. Robert Slavin of Johns Hopkins University ("Slavin") to discuss the Success for All program at some point in mid-October 1997; Slavin, Tr. 11/17/97, p.154; Anderson, Tr. 11/18/97, p. 74;
 - (e) Anderson visited two Abbott district schools using the Success for All program. The Commissioner joined her for one visit; Anderson, Tr. 11/18/97, pp. 79-80;
 - (f) On or about November 3, 1997, Anderson gave Azzara some background material on Success For All (Ex. D-4), a summary matrix of research (Ex. P-23), and a draft of the Study;
 - (g) Azzara then determined supplemental program components and costs, and developed illustrative school-based budgets and revenues based on the "CEIFA methodology"; Azzara, Tr. 11/20/97, pp. 98-101 and 106; and
 - (g) In early November, the Commissioner, Anderson, Azzara and Gwendolyn Grant ("Grant"), Director of Program Review and Improvement, held a meeting with Slavin and Dr. Margaret Wang of Temple University to discuss a draft of the Study; Azzara, Tr. 11/20/97, pp. 117.
20. Plaintiffs' participation in the preparation of the Study was limited to:
 - (a) a meeting in August 1997, during which plaintiffs briefed Anderson on the supplemental programs identified in their Wiping Out Disadvantages report; and

- (b) a briefing on October 30, 1997 by Anderson restricted to a presentation of a tentative list of supplemental program areas that had been identified by the DOE and which the Commissioner was considering for the Study.

21. Plaintiffs filed preliminary exceptions to the Study on November 13, 1997, which included a request to strike portions of the Study that presented supplemental program costs in the context of "illustrative" budgets and revenues for Abbott district schools, on the basis that these "illustrative" schools are virtually identical to the CEIFA hypothetical model schools that were ruled unconstitutional as applied to Abbott districts in Abbott IV. See Abbott IV, 149 N. J. at 172.

C. Proceedings Before the Superior Court

22. The Superior Court, Judge Michael Patrick King presiding, conducted a hearing on the special educational needs of students in Abbott districts and the supplemental programs to meet those needs, from November 17 to 21, 1997, and from December 1 to 9, 1997.

23. At the outset of the hearing, plaintiffs moved to strike from the Study the Commissioner's proposal to determine the cost and funding for supplemental programs within the context of "illustrative" elementary, middle and high school-based budgets and revenues, including funding for regular and special education programs. The Superior Court reserved ruling on plaintiffs' motion. Tr. 11/17/97, pp. 4-19; Tr. 12/9/97, p. 196.

24. The Commissioner testified in support of the findings and recommendations in the Study. Klagholz, Tr. 11/18/97, pp. 206-244; Tr. 11/19/97, pp. 4-262. In addition, the Commissioner presented the testimony of:

- (a) Slavin; Tr. 11/17/97, pp. 31-184;
- (b) Anderson, Tr. 11/17/97, pp. 187-260; Tr. 11/18/97, pp. 2-205; and
- (c) Azzara, Tr. 11/20/97, pp. 28-287; Tr. 11/21/97, pp. 4-114.

25. In support of their exceptions and response to the Study, plaintiffs presented the testimony of:

- (a) Dr. Steven Barnett ("Barnett"), Professor of Economics and Policy, Rutgers University Graduate School of Education; Tr. 12/1/97, pp. 89-236; Tr. 12/2/97, pp. 16-181;
- (b) Dr. Jeremy Finn ("Finn"), Professor of Education, State University of New York-Buffalo and Visiting Scholar at

Temple University, Center for Research and Development in Education; Tr. 12/2/97, pp. 105-193; Tr. 12/9/97, pp. 5-24 (under subpoena);

- (c) Dr. Gary Natriello ("Natriello"), Professor of Sociology and Education, Columbia University Teachers College; Tr. 12/2/97, pp. 195-242; Tr. 12/4/97, pp. 4-172; Tr. 12/8/97, pp. 7-123;
- (d) Lawrence Gottlieb ("Gottlieb"), Program Officer, NBI Health Care Foundation; Tr. 12/3/97, pp. 4-129;
- (e) Leslie Morris ("Morris"), Project Director, Snyder High School Adolescent Health Care Center, Jersey City; Tr. 12/3/97, pp. 131-195;
- (f) Edward Tetelman ("Tetelman"), Assistant Commissioner, Department of Human Services ("DHS") and Director of the DHS School-Based Youth Services Program; Tr. 12/5/97, pp. 14-121 (under subpoena);
- (g) Janice Anderson ("Anderson"), Vice Principal for Curriculum and Student Activities, Thurgood Marshall School, Asbury Park; Tr. 12/5/97, pp. 196-256;
- (h) Dr. Larry Leverett ("Leverett"), Superintendent of Schools, Plainfield School District; Tr. 12/8/97, pp. 128-234;
- (i) Diana Autin ("Autin"), Executive Director, Statewide Parent Advocacy Network, Newark; Tr. 12/5/97, pp. 122-195;
- (j) Dr. Margaret Goertz ("Goertz"), Professor, Graduate School of Education, University of Pennsylvania and Co-Director of Consortium for Policy Research in Education; Tr. 12/9/97, pp. 25-192.

26. Plaintiffs also subpoenaed the following DOE officials to testify on the Study:

- (a) Dr. Gerald DeMauro ("DeMauro"), Director of Office of Assessment; Tr. 11/21/97, pp. 124-165;
- (b) Dr. Jeffrey Osowski ("Osowski"), Assistant Commissioner for the Division of Information and Management Services; Tr. 11/21/97, pp. 171-196; and

(c) Grant; Tr. 12/1/97, pp. 11-70.

27. The hearing on special educational needs and supplemental programs in Abbott districts concluded on December 9, 1997.

D. Special Educational Needs of Students in Abbott Districts

28. The Commissioner did not conduct a study of the special educational needs of students attending schools in the Abbott districts. See, e.g., Slavin, Tr. 11/17/97, p. 161-162 (report does not contain comprehensive study of the special educational needs of students in the Abbott districts); Natriello, Tr. 12/2/97, pp. 231-2 (same); Barnett, Tr. 12/1/97, p. 109 (report contains no assessment of the actual needs of the children); Slavin, Tr. 11/17/97, p. 91 (not aware of, and has not conducted, any assessment or analysis of the conditions of students in any of the Abbott districts).

29. The Commissioner did no study of student academic performance, school performance, community conditions and other factors in the Abbott districts, nor did the Commissioner make any comparisons of student achievement or school performance to I & J districts. See, e.g., Anderson, Tr. 11/17/97, p. 252 (no study of test results from 8th grade EWT or 11th grade HSPT); Anderson, Tr. 11/18/97, p. 43 (no study of programs in I & J districts); Anderson, Tr. 11/18/97, p. 109 (no study of gap in achievement levels between students in Abbott districts and students in I & J districts); Anderson, Tr. 11/18/97, p. 87 (no study of the educational attainment of parents in Abbott districts); Anderson, Tr. 11/18/97, p. 105-6 (no study of number of and implications of single parents in Abbott districts); Anderson, Tr. 11/18/97, p. 106 (no study of percentage of students in Abbott districts whose parents work full day); Anderson, Tr. 11/18/97, p. 106-7 (no study of percentage of students in Abbott districts whose parents receive welfare); Anderson, Tr. 11/18/97, p. 107-8 (no consultation with DHS regarding welfare reform implications); Anderson, Tr. 11/18/97, p. 72 (no study of districts' capacity to implement programs such as Success for All).

30. The only information the Commissioner collected on student needs in the Abbott districts was obtained through the surveys of the districts' existing supplemental programs, the results of which were analyzed by the Laboratory for Student Success at Temple University in Supplemental Programs Study: Needs Assessment Summary Report ("Temple Report"), Ex. P-5.

31. The Temple Report expresses concern about the quality of data provided by the districts and concluded that the Survey data was "inconsistent and incompatible" so that "it was not possible to accurately aggregate data across the districts" and, therefore, "summary statistics should be interpreted cautiously. Data provided in a more complete, comprehensive, and congruous manner would have been desirable." Temple Report, Ex. P-5, p. v.

32. The Survey "did not present achievement data relative to any of the categories" and provided "little mention of needs assessments being conducted on the part of the districts with regard to any of the categories" and "no formal results were presented." Temple Report, Ex. P-5, p. v.

33. The Temple Report was never shared with Slavin. Slavin, Tr. 11/17/97, p. 140.

34. The Commissioner relied solely on a review of selected national research on various educational programs and strategies to support the supplemental programs recommended for the Abbott districts in the Study. See, e.g., Anderson, Tr. 11/18/97, p. 75; Anderson, Tr. 11/18/97, p. 82 (Commissioner "look[ed] at the body of research that talked about characteristics of disadvantaged children in supplemental programs as they would fit a profile"); Anderson, Tr. 11/18/97, p. 14 (reviewed only "the body of research that's available on supplemental programs, and . . . look[ed] at whole-school reform approaches . . ."); Anderson, Tr. 11/18/97, p. 41 ("identification of which supplemental programs to select was based on again, Success for All and what it required, based on what research says, in reference to whole-school reform and supplemental programs . . .").

35. Significant educational decisions at the heart of the Study were made by the Assistant Commissioner for Finance, who has never been a teacher, principal, educator or superintendent, and has no training or certification in these areas. Azzara, Tr. 11/20/97, pp. 83-4; Azzara, Tr. 11/20/97, p. 198 ("I'm not an educator. . ."); See, e.g., Azzara, Tr. 11/21/97, pp. 42-3 (Azzara made decision to remove world languages supplement provided for in CEIFA budget from the Commissioner's proposal); Azzara, Tr. 11/20/97, p. 125 (Azzara made decision that administration, support, and professional development resources were not necessary for early childhood education programs); Azzara, Tr. 11/20/97, p. 200 (Azzara made decision to remove art and music teacher provided for in CEIFA budget from the Commissioner's proposal); Anderson, Tr. 11/18/97, pp. 36-7 (Azzara set class sizes of 21 in grades 1-3 based on CEIFA model).

36. A comprehensive needs assessment is essential to determine the specific programs and services needed by students; the intensity and duration of the needed programs and services; and the design, costs and implementation of the programs and services. See, e.g., Natriello, Tr. 12/2/97, p. 231; Natriello, Tr. 12/2/97, pp. 216-8; pp. 230-1; Tr. 12/8/97, pp. 100-103 (must understand particular risk factors which cause the disadvantage of students); Barnett, Tr. 12/1/97, pp. 107-8 (programs differ in design and emphasis depending on the community needs); Natriello, 12/4/97, pp. 99-101 (assessment of student needs is required to determine available resources, target programs, determine the size of the academic component, and determine security and safety needs in the neighborhood); Natriello, Tr. 12/8/97, pp. 58-9, 70 (important to know what schools, at all levels, are doing, what programs they have implemented and the success of programs in terms of student outcomes to determine what supplemental

programs are needed); Natriello, Tr. 12/2/97, pp. 215-6, 218-227 (identifying components of comprehensive needs study); Barnett, Tr. 12/1/97, pp. 104-6, 192-3; Tr. 12/2/97, pp. 80-3 (same).

37. A needs assessment is also necessary to evaluate program effects. See, e.g., Natriello, Tr. 12/2/97, pp. 219.

38. In the absence of a needs assessment in the Study, plaintiffs presented general evidence of the needs of children in the Abbott districts, using studies and experiences with disadvantaged children and programs in New Jersey, and among disadvantaged children elsewhere. See, e.g., Ex. P-36, Firestone, Goertz and Natriello, From Cashbox to Classroom, (Teachers College Press 1997); Barnett, Tr. 12/1/97, p. 141-4, 205-6; Barnett, Tr. 12/2/97, pp. 55-6, 77; Natriello, Tr. 12/4/97, pp. 63-78, 90-5, 104-117, 136-41; Tetelman, Tr. 12/5/97, pp. 29-30; Morris, Tr. 12/3/97, pp. 148-51; Gottlieb, Tr. 12/3/97, p. 91; Leverett, Tr. 12/8/97, p. 167.

E. Specific Supplemental Programs and Costs

1. Early Childhood Programs

39. The Commissioner presented no evidence of the actual needs of children in the Abbott districts for early childhood programs. See, e.g., Anderson, Tr. 11/18/97, p. 105 (no study of gap in readiness to learn between preschoolers in the Abbott districts and I & J districts); Barnett, Tr. 12/1/97, p. 140 (no regarding view of readiness level of children); Kaplen, Tr. 12/1/97, pp. 115-7 (no study of number of existing programs or the number of children currently served in half and full day programs); Anderson, Tr. 11/17/97, p. 204 (no study to determine universe of four-year-olds needing preschool); Anderson, Tr. 11/17/97, p. 258-260 (not able to predict how many children are expected in preschool and kindergarten programs until January 1998); Anderson, Tr. 11/18/97, p. 87-88 (did not identify the number of preschoolers in Abbott districts currently in programs operated by community-based organizations); Anderson, Tr. 11/18/97, p. 92 (no study of how many of current preschool programs are full-day versus half-day); Anderson, Tr. 11/18/97, p. 101-2 (no assessment of impact on quality of requiring a preschool teacher to teach 30 children a day)

40. The Commissioner recognized the established link between the success of low-income students in school and their participation in preschool programs. Study, Ex. D-2, p. 9; Anderson, Tr. 11/17/97, pp. 200-01 (low-income children need preschool because they often have no access to books and enrichment materials to stimulate learning nor to medical, dental and social services that would support a healthy start and strong educational focus); Anderson, Tr. 11/17/97, p. 202 ("preschool experience is an important experience for young people to have").

41. The Commissioner presented no evidence to support the conclusion that the benefits of early childhood programs are limited to programs that begin with low-income children starting at age 4. Study, Ex. D-2, p. 8-9.

42. The Commissioner presented research on early childhood programs and concludes from this research that the beneficial effects of a full day preschool program versus a half-day preschool program are "unknown." Study, Ex. D-2, p. 9.

43. Based on these conclusions, the Commissioner recommended a half-day preschool program for 4 year old children in Abbott districts "at this time." Study, Ex. D-2, p. 9.

44. The Commissioner recommended a full-day kindergarten program for children in Abbott districts, citing research evidence that, compared to a half-day program, a full-day program produces gains in IQ, greater behavioral benefits, significant differences in academic engagement, improved performance later in school, more independent learning, and increased classroom involvement. Study, Ex. D-2, p. 10.

45. The Commissioner's cost for his recommended half-day preschool program for 4 year olds is \$2,983 per-pupil, and the cost of full-day kindergarten is \$4,108 per pupil. Study, Ex. D-2, pp. 9-10, Appendix A. These per-pupil costs do not include any costs for supervision, administration and other support for these programs. The Commissioner's budget assumes that these costs can be subsumed within a regular school budget and funding for regular education already provided to the Abbott districts. Azzara, Tr. 11/20/97, p. 90-2.

46. The Commissioner's cost estimate for his recommended early childhood program is unrealistic and will not result in a program of high quality. Barnett, Tr. 12/1/97, pp. 128-9, 207-8, 214; Barnett, Tr. 12/2/97, p. 100-101; Barnett, 12/1/97, pp. 217-8; Tr. 12/2/97, pp. 57-61 (Commissioner's proposal is at the minimal end of the spectrum of early childhood education programs and is not sufficiently intensive to adequately address the disadvantages of young children in the Abbott districts).

47. Half-day kindergarten is included in the regular education program and funding currently provided to the Abbott districts. In 1997-98, Abbott districts received \$3,950 per-pupil for this program, which amount represents one-half of the per-pupil amount for an elementary student, calculated at the I & J average. See, e.g., Goertz, Tr. 12/9/97, p. 71.

48. The Commissioner's cost for his recommended full-day kindergarten program is approximately the same amount as that currently provided to the Abbott districts for a half-day kindergarten program as part of the regular education program and funding. Goertz, Tr. 12/9/97, p. 71.

49. The cost to provide the Commissioner's proposed full-day kindergarten program to children in Abbott districts is \$93.4 million. The cost of the Commissioner's proposed half-day program for four-year-olds in the Abbott districts is \$65.6 million. The total cost of the Commissioner's recommended early childhood programs is \$159.1 million. Ex. P-66; Goertz, Tr. 12/9/97. pp. 68-9.

50. The Abbott districts for 1997-98 have available \$89.8 million for half day of kindergarten and approximately \$200 million in ECPA. Ex. P-66; Goertz, Tr. 12/9/97, p. 70.

51. The total cost of the Commissioner's recommended early childhood program is \$130.8 million less than the sum of regular education funding for kindergarten and ECPA currently available in the Abbott districts. Ex. P-66; Goertz, Tr. 12/9/97, p. 70.

52. In the absence of a study by the Commissioner of actual needs in the Abbott districts, plaintiffs identified some of the special needs of disadvantaged children which early childhood programs generally must address. See, e.g., Barnett, Tr. 12/1/97, p. 141 (poor children often two grade levels behind by time of school entry); Barnett, Tr. 12/1/97, p. 142 (poor child at home typically exposed to about one-fourth the language to which a child in a professional family is exposed); Barnett, Tr. 12/1/97, p. 142; Tr. 12/2/97, p. 77 (by age three the typical child in a professional family already has a larger vocabulary than the typical adult welfare recipient); Barnett, 12/1/97, pp. 205-6; Tr. 12/2/97, p. 55-6 (children in the Abbott districts likely to spend time out of school in environments that may be detrimental to development); Natriello, Tr. 12/4/97, pp. 47-8 (Abbott children not likely to receive educationally relevant and enriched experiences at home); Anderson, Tr. 11/17/97, p. 200-01 ("Research indicates that children from low-income families often don't have access to things such as books or enrichment materials that would in fact stimulate learning."); Slavin, Tr. 11/17/97, p. 52 (middle-class child is much more likely than a poor child to have an enriched experience in early childhood outside of school).

53. A preschool program that begins at age three rather than age four, and includes a program that is full-day rather than half-day, will increase the likelihood of success in school for students in the Abbott districts. See, e.g., Barnett, Tr. 12/1/97, pp. 148-53, 198-203; Tr. 12/2/97, p. 100-101 (research cited by the Commissioner does not support conclusion that a full-day preschool is no better than half-day preschool); Barnett, Tr. 12/1/97, pp. 198-9 (typical half-day program does not close gap in achievement between disadvantaged and non-disadvantaged); Slavin, Tr. 11/17/97, p. 51 (programs "that have shown the greatest success are ones that provide more intensive services, that start with three-year-olds rather than four-year-olds and are more likely to be full-day for four-year-olds than half"); Slavin, Tr. 11/17/97, p. 51 (programs which "have had the biggest effects and the longest lasting effects . . . tend to be more intensive and longer in the day and starting earlier than is typical of the . . . public school prekindergarten programs"); Slavin, Tr. 11/17/97, p. 122 ("I could

absolutely see a rationale for a full-day three-year-old program and a full-day four-year-old program.”); Slavin, Tr. 11/17/97, p. 122 (“the cases where preschool programs have had . . . particularly powerful . . . long-term impacts on children, they often have been full-day or quite intensive, involving a great deal of parent outreach and health care and so on”); Barnett, Tr. 12/2/97, p. 41 (more intensive (longer days and years) and higher quality (better trained teachers and smaller classes) early childhood programs produce stronger results); Natriello, Tr. 12/4/97, p. 46 (programs with more duration and intensity achieve better outcomes); Barnett, Tr. 12/1/97, p. 149, 198-201 (same); Barnett, Tr. 12/1/97, p. 157-8, 162 (to get the results found in model programs, you need to implement programs which provide components and services like the model programs not like typical public programs); Barnett, Tr. 12/1/97, p. 151, Tr. 12/2/97, pp. 53-4; 96 (full-day preschool for three- and four-year-olds is likely to produce better results than half-day preschool); Barnett, Tr. 12/2/97, pp. 48-50 (entry into preschool at age three versus age four may produce a difference of up to 50% in effects); Barnett, Tr. 12/1/97, pp. 144-5 (intensive preschool programs starting at an early age make substantial progress toward closing the gaps experienced by poor children); Barnett, Tr. 12/1/97, p. 145 (intensive preschool programs result in reductions in mental retardation and increases in graduation rates); Barnett, Tr. 12/1/97, pp. 153-6 (same).

54. It is essential that programs be of high quality to achieve positive results. See, e.g., Barnett, 12/1/97, p. 211 (no reason to believe that placing children in existing programs of mediocre quality will produce the desired gains in terms of making up disadvantages); Barnett, Tr. 12/1/97, p. 162-3; Tr. 12/2/97, pp. 56-7 (if a program is poor enough and poorly implemented, it achieves no positive results).

55. To address the needs of children in Abbott districts, plaintiffs’ recommend an intensive preschool and kindergarten program, with a maximum class size of 15, for children age three to five. Ex. P-26, pp. 2-3; Ex. P-29.

56. Plaintiffs recommend that these programs be full-day and year round, and link early childhood education with day-care, health and other social services. These “wrap-around” programs serve the needs of the children and their families, particularly the increasing need of single parents under the work requirements imposed by welfare reforms. These programs would be provided and funded through a collaboration among Abbott districts and existing community-based providers of preschool, day care and other services, including the Head Start program. Ex. P-26, pp. 2-3; Ex. P-29.

57. An assessment of existing community-based Head Start programs, existing child care and other resources, and the quality of these programs is needed to determine the level of additional funding needed for plaintiffs’ recommendation and to identify barriers to program implementation. Ex. P-29; Barnett, Tr. 12/1/97, pp. 133-4; 211, 215; Goertz, 12/9/97, pp. 79-86; Barnett, Tr. 12/1/97, pp. 132; 135-6 (estimated costs include elements which may not be borne by the public education system).

58. Plaintiffs' estimate a per-pupil cost for full day kindergarten of \$7,900, or the current per-pupil amount for regular education for elementary level students in Abbott districts. Plaintiffs' estimated cost to provide full day kindergarten to children in Abbott districts is \$179.7 million, with an additional \$20.4 million needed to reduce class size in kindergarten to an average of 15 students. Barnett, 12/1/97, p. 209; Ex. P-67; Goertz, Tr. 12/9/97, p. 76.

59. The cost of plaintiffs' full-day, wraparound, full-year preschool is estimated to fall within the range of \$9,000 to \$14,000 per pupil. Barnett, Tr. 12/1/97, p. 130, 226-7. The estimated cost to provide this preschool program to three- and four-year-old children in Abbott districts is \$528 million, using an estimate of \$12,000 per pupil. Ex. P-67; Goertz, Tr. 12/9/97, pp. 76-7.

60. The total estimated cost of plaintiffs' recommended early child programs for three-, four- and five-year-old children in Abbott districts is \$728 million. Abbott districts currently have available for this program \$89.8 million for kindergarten and approximately \$200 million in ECPA. Adjusting for current funding, the net new cost of plaintiffs recommended program is \$438.3 million. The total in additional ECPA needed for this program cannot be determined pending a full assessment of Head Start and other community-based programs and resources. Ex. P-67; Goertz, Tr. 12/9/97, pp. 77-94.

61. Intensive early childhood programs have been shown to achieve net savings. The benefits generated by these programs can far exceed program costs, by as much as \$100,000 per child in current dollars. Barnett, Tr. 12/1/97, pp. 156, 158-161, 229-30.

62. Savings from intensive early childhood programs are found in decreased educational costs through reductions in grade repetition and special education, and in increased earnings, decreased crime and delinquency, and decreased welfare among adults who participated in these programs in their early years. Barnett, Tr. 12/1/97, p. 160.

63. Plaintiffs presented a carefully staged implementation plan for their recommended early childhood program, with funding provided only after collaborations are established between Abbott district schools and community-based organizations to provide coordinated programs and after the provision of adequate facilities. Ex. P-29; Goertz, Tr. 12/9/97, pp. 94-98; Ex. P-26, pp. 2-3.

2. Class Size Reduction in Grades 1-3

64. The Commissioner presented no evidence of the actual needs of children in the Abbott districts for reduced class size in lower grades.

65. The Commissioner found that "[r]esearch supports large reductions in class size in the early grades, particularly for children from low-income backgrounds," Study, Ex. D-2, p. 11. Based on his review of the research, the Commissioner concluded that "small class sizes are probably most beneficial in reading so that students reach third grade reading on grade level." Study, Ex. D-2, p. 11.

66. The Commissioner recommended reducing class size from 21 to 15 students in grades one through three for 90 minutes of instruction in reading. Study, Ex. D-2, pp. 11-12.

67. The Commissioner admitted that the proposed class size of 21 for kindergarten to grade 3 was based on the hypothetical elementary school originally developed by the Commissioner to support regular education funding under CEIFA. The Commissioner did not study current class sizes in Abbott district elementary schools, although the Abbott districts reported on the Survey of supplemental programs that current classes ranged from 18 to 35 students. Temple Report, Ex. P-5, p. 1; Anderson, Tr. 11/18/97, pp. 36-7 (reduction to 21 is based on CEIFA model and the decision was made by the Assistant Commissioner for Finance); Anderson, Tr. 11/18/97, p. 38 (no study of how much reduction would be necessary to achieve a class size of 21).

68. Implementing the illustrative schools presented in the Study would actually raise the average pupil to teacher ratio in the Abbott districts from 14.0 to 17.5. Study, Ex. D-2, Appendix B; Azzara, Tr. 11/20/97, pp. 264-5.

69. The Commissioner determined that 1.5 additional certified teachers would be needed in Abbott district elementary schools to provide reading instruction for 90 minutes in groups of 15 students. Study, Ex. D-2, Appendix A.

70. The cost of providing the additional 1.5 teachers in an elementary school of 535 students utilizing the Commissioner's assumptions is \$90,270. Ex. P-68; Goertz, Tr. 12/9/97, pp. 99, 103.

71. Research shows definitively that smaller class sizes produce significant differences in achievement in all subjects. Ex. P-33; Finn, Tr. 12/2/97, p. 141, 148-9; see also, Finn, Tr. 12/9/97, p. 9 (research shows that reduced class size to an average of 15 results in an average difference as large as six months, and perhaps more, in each subject area in upper grades); Finn, Tr. 12/2/97, pp. 141-2 (small class size produces superior performance when compared to regular size classes with teacher aides); Finn, Tr. 12/2/97, p. 142 (both boys and girls benefit from smaller class sizes).

72. In every grade and in all subject areas, minority students at inner city schools gain more from small classes than children attending suburban or rural schools. Ex. P-33; Finn, Tr. 12/2/97, pp. 142-3, 158-9; see also, Finn, Tr. 12/9/97, p. 18 (effects of small class size are larger for minority students, in some cases roughly twice that for

white students); Finn, Tr. 12/2/97, p. 159 (on the most sensitive research measures, the benefit for minorities is greater); Finn, Tr. 12/9/97, p. 10-11 (students who are further behind tend to gain more from small classes than students who are not as far behind).

73. Research supports targeting class size reduction to city schools with high concentrations of minority students. Ex. P-33; Finn, Tr. 12/2/97, pp. 171-2.

74. Effect sizes due to small classes are as positive for all behavioral dimensions as they are for academic achievement. Ex. P-33; Finn, Tr. 12/9/97, pp. 20-21; Tr. 12/2/97, pp. 160; see also, Natriello, Tr. 12/4/97, pp. 62-3 (small classes allow for more direct and concentrated instruction to allow teachers to more adequately respond to the greater intensity of risk factors in Abbott classrooms); Finn, Tr. 12/2/97, pp. 160-61 (small class sizes increase students' active engagement in learning); Finn, Tr. 12/2/97, p. 168 (most important aspect is the small class setting, not the small teacher to student ratio).

75. The Commissioner's recommendation to limit class size reductions to 15 for 90 minutes of reading instruction is not supported by the research, especially the results of Tennessee's large-scale class size reduction program. See, e.g., Finn, Tr. 12/2/97, pp. 163 ("Small classes are more effective academically than larger classes, in the primary grades, in all subject areas"); Natriello, Tr. 12/4/97, p. 54-5, 61-2 (research indicates that advantages of small classes are not exclusive to reading); Finn, Tr. 12/2/97, p. 175 (Success for All provides benefits only in one subject); Finn, Tr. 12/9/97, pp. 19-20; Tr. 12/2/97, pp. 177-8 (research of regrouping children into small groups only for particular subjects has reported mixed and even negative results).

76. Plaintiffs propose reducing class size to 15 or below, for instruction in preschool and kindergarten, and in all subject areas for grades 1 to 3, to address the special educational needs of students in Abbott districts. Ex. P-26, pp. 4-5; Natriello, Tr. 12/4/97, pp. 56-67, 78-80.

77. Plaintiffs estimate that to reduce class sizes to 15 in grades 1 to 3 in the Abbott districts would require an additional 1,346 teachers, and an estimated total program cost of \$63.5 million. Ex. P-70; Goertz, Tr. 12/9/97. pp. 136-141.

78. Plaintiffs recommend a carefully staged implementation plan in which class sizes would be reduced to the recommended level only after adequate facilities become available and after certified teachers are hired and adequately trained by the Abbott districts. P-26, p. 4-5; Natriello, Tr. 12/4/97, pp. 85, 88; Goertz, Tr. 12/9/97, pp. 163-4; Finn, Tr. 12/2/97, pp. 165-8, 182-7 (citing absence of facilities and planning in California's class size reduction program).

3. After-School Programs For Grades 1-12

79. The Commissioner presented no evidence of the actual needs of children in the Abbott districts for after-school programs. Natriello, Tr. 12/4/97, p. 89.

80. Although he made no recommendation for after-school programs in the Study, the Commissioner's view "is that those kinds of programs and services can and should be offered as a part of a community school program of some kind. . . .". Anderson, Tr. 11/18/97, p. 117-8.

81. The Commissioner conducted no assessment of the availability and quality of existing community-based after-school programs in the Abbott districts. Anderson, Tr. 11/18/97, p. 127-8.

82. After-school programs address the need of students in Abbott districts for additional instructional time to improve academic performance, particularly for students in need of subject specific tutoring, homework help and exposure to using computers and technology. See, e.g., Slavin, Tr. 11/17/97, p. 127 ("study in Memphis . . . show[ed] an additional benefit for Success For All schools to have an extended day program."); Slavin, Tr. 11/17/97, p. 84 (after-school programs and extended day programs have shown effectiveness); Natriello, Tr. 12/4/97, pp. 90-1 (educational resources and experiences outside of schools are not generally available to students in Abbott districts); Natriello, Tr. 12/4/97, p. 92-5 (after-school programs allow access to technology, libraries, and other educational and recreational resources at the school which would not otherwise be utilized).

83. After-school programs address the need of students in Abbott districts for opportunities for structured programs and recreation during unsupervised after-school hours. See, e.g., Natriello, Tr. 12/4/97, p. 94 (after-school programs divert children from the kinds of undesired behaviors they might be engaged in during unsupervised time).

84. Plaintiffs recommend after-school programs for elementary, middle and high schools in Abbott districts based upon a program design that includes additional time for instruction, tutoring, homework help, computer training and recreational opportunities. Ex. P-26, pp. 6-7; Natriello, Tr. 12/4/97, pp. 89-96.

85. To determine the cost of after-school programs, it is necessary to work backward from an assessment of student need, to program design, and then to costing-out program components. Natriello, Tr. 12/4/97, p. 103.

86. Plaintiffs estimate that the cost of an instructional-based after-school program is \$455 per-pupil, and the total cost to provide these programs for students in the Abbott districts is \$64.2 million. Ex. P-70; Tr. 12/9/97, pp. 135-6); Ex. P-71; Goertz, Tr. 12/9/97, pp. 141-6.

4. Summer Programs for Grades 1 to 12

87. The Commissioner presented no evidence of the actual needs of children in the Abbott districts for summer programs and made no recommendation for summer programs. Natriello, Tr. 12/4/97, p. 104.

88. The Commissioner presented no evidence of the extent and nature of summer school programs currently in Abbott district schools. Natriello, Tr. 12/9/97, p. 104.

89. Summer school programs address the need of students in Abbott districts for additional instructional time to improve academic performance, particularly for students in need of extra help, to sustain academic gains over the summer, and to prevent summer learning loss. See, e.g., Natriello, 12/4/97, p. 105-6 (disadvantaged students experience summer learning loss which is cumulative, so the gap grows every year); Barnett, 12/1/97, p. 206 (typical disadvantaged child is not going to make a year's progress in a year); Barnett, Tr. 12/1/97, pp. 151-2 (economically disadvantaged students, especially boys, lose ground during the summer); Slavin, Tr. 11/17/97, p. 84 (summer school programs have been shown to be effective).

90. Summer school programs address the need of students in Abbott districts for structured programs and recreation during unsupervised summer vacations. See, e.g., Natriello, 12/4/97, p. 113-4 (with welfare reform need to insure that children do not experience a deteriorating set of educational experiences by spending more time unsupervised); Natriello, 12/4/97, p. 107 (students who are not in supervised activities have time to engage in undesirable activities); Barnett, Tr. 12/2/97, pp. 27-8 (there is no justification for nine-month school year and there is a high demand for full-year programming); Natriello, Tr. 12/4/97, pp. 124-5 (summer programs can lead to cost savings from reduced retention rates).

91. Plaintiffs recommend summer programs to serve students in elementary, middle and high schools based upon a program design that includes instruction and recreation for students in grades 1-10, and also includes paid employment opportunities for students in grades 11-12. Ex. P-26, pp. 8-9; see also Natriello, Tr. 12/4/97, p. 119 (for older students, summer employment opportunities serve as leverage to engage students in the program).

92. To determine the cost of summer programs, it is necessary to begin with an assessment of student needs, to design programs targeted to meet those needs, then to estimate costs of program components. Natriello, Tr. 12/4/97, pp. 122-4.

93. Plaintiffs estimate that the cost for an instruction- and recreation-based summer program serving students in grades 1 to 10 is \$736 per pupil, and the total cost to provide these programs in Abbott districts is \$91 million. Ex. P-70; Tr. 12/9/97, pp. 135-6); Ex. P-72; Goertz, Tr. 12/9/97, pp. 146-52.

94. Plaintiffs estimate that the cost for an instruction- and employment-based summer program serving students in grades 11 and 12 is \$810 per pupil, and the total cost to provide these programs in Abbott districts is \$11 million. Ex. P-70; Tr. 12/9/97, pp. 135-6); Ex. P-72; Goertz, Tr. 12/9/97, pp. 146-52.

5. Social and Health Services

95. The Commissioner presented no evidence of the actual needs of children in the Abbott districts for social and health services. Natriello, Tr. 12/4/97, p. 132.

96. The Commissioner admitted that he did no assessment of the availability and quality of existing community resources for social services and health services in the Abbott districts. Anderson, Tr. 11/18/97, p. 134-5; see also, Natriello, Tr. 12/4/97, p. 136 (same); Anderson, Tr. 11/18/97, p. 77-79 (no consultation with DHS about school-based youth services); Tetelman, Tr., 12/5/97, p. 95 (no involvement in the preparation of this study); Anderson, Tr. 11/18/97, p. 85 (no study of quality of prenatal care in Abbott districts).

97. The Commissioner recognized that low-income families "often live in communities that have weakened infrastructures which pose a number of problems for families requiring health and social services which may not be available or, when available, are not accessible." Study, Ex. D-2, p. 12.

98. The Commissioner recognized the effectiveness of model programs that address the social and health needs of Abbott district students by locating social and health services directly in schools, such as the DHS' School-Based Youth Services program. Study, Ex. D-2, pp. 12-3; Anderson, Tr. 11/17/97, p. 218.

99. The Commissioner did not recommend a school-based approach to social and health services, but instead proposed to address these needs by offering students referrals to social service organizations and health care providers in the community. Study, Ex. D-2, pp. 13-4; Anderson, Tr. 11/17/97, p. 216; Anderson, Tr. 11/18/97, p. 137.

100. To provide referrals to students, the Commissioner recommended that a social worker be provided for elementary schools, regardless of enrollment, and a community services coordinator be provided for middle and high schools, again without regard to enrollment. Study, Ex. D-2, pp. 13-14; Anderson, Tr. 11/18/97, pp. 129-132.

101. The Commissioner determined that the cost of the social worker is \$60,180 per elementary school, and the cost of the community services coordinator at the middle and high school is \$64,546 and \$69,384 per school, respectively. Study, Ex. D-2, Appendix A; Ex. P-68; Goertz, Tr. 12/9/97, p. 64.

102. Providing referrals to health and social services does not, and cannot, assure that children actually receive such services, creates transportation and family availability issues, and establishes lost time between problem identification and resolution. Gottlieb, Tr. 12/3/97, pp. 91-2; 93 (fewer services available in poor communities); Morris, Tr. 12/3/97, pp. 150-53 (communities lack services, students loose time when referred by school nurse to outside agencies); pp. 160-172 (describing problems created for students needing services by removal of primary health services at Snyder Clinic due to loss of funding); Tetelman, Tr. 12/3/97 pp. 29-30 (describing fragmentation of community services and difficulty parents and students have getting to such services); Leverett, Tr. 12/8/97 p. 167 (referral approach contributes to fragmentation, an absence of case management, and inadequate service).

103. Plaintiffs recommend school-based social and health services to address the needs of students in the Abbott districts and insure that children are ready to learn. Ex. P-26 at 10-11; see also, Barnett, Tr. 12/1/97, p. 191-2 (in the whole child perspective, learning is predicated on the child being healthy and emotionally well); Slavin, Tr. 11/17/97, p. 44 (must "be sure that the children are in school ready to learn every day, and to find whatever resources are available in the community, as well as within the school, to be sure that . . . takes place"); Tetelman, Tr. 12/5/97, p. 19 ("so we felt if we put the services there [in school] they would use the services"); Leverett, Tr. 12/8/97, p. 171 (to support learning we have to satisfy other needs which then link academic, social, and health services to development of whole child)

104. Basing health and social services directly in schools frees educators for instruction, reduces absenteeism, reduces lag time between identification of a problem and access to services, tackles the problem of unavailability of services in community, and addresses the health needs of uninsured students. See, e.g., Natriello, Tr. 12/4/97, p. 138 (basing services at schools reduces lag time between identification of a problem and access to services); Natriello, Tr. 12/4/97, pp. 138-41, 147-8 (availability of social services in schools frees educators to focus on instruction); Anderson, Tr. 11/17/97, p. 201 ("Research also indicates that disadvantaged children often have lack of access to things such as medical, dental, or social service supports that would in fact support a healthy start in terms of a strong educational focus"); Natriello, Tr. 12/4/97, p. 135 (same); Natriello, Tr. 12/4/97, pp. 136-7 (research shows that people in urban communities are often very neighborhood bound and basing services at schools insures that the services will be available at a location for which transportation patterns are established); Gottlieb, Tr. 12/3/97, pp. 46-7 (families in poverty have less access to good preventive health care and schools represent a wonderful place to deliver very important health services to the "captive audience" of students); pp. 77-78 (school-based services should reduce student absenteeism); pp. 86-89 (same); Tetelman, Tr. 12/5/97 pp. 52-53 (on-site services free educators to educate and remove barriers to achievement created by unmet health and service needs).

105. Plaintiffs' recommendation is based on successful and effective programs currently operating around the country, and in Abbott district schools. Gottlieb, Tr.

12/3/97, p. 15 (900 school-based clinics around the country); p. 34; Morris, Tr. 12/3/97, pp. 143-155 (describing services at Snyder High Clinic before cutbacks in funding); Tetelman, Tr. 12/5/97 p. 36 (15 DHS School-Based Youth Services Programs in Abbott districts, including Plainfield High School's teen parent and day care program).

106. School-based programs result in savings by preventing more serious health and mental health problems and by reducing expensive emergency room admissions. Goertz, Tr. 12/9/97, p. 172; Gottlieb, Tr. 12/3/97, pp. 62, 68-69; Morris, Tr. 12/3/97, p. 158.

107. Plaintiffs estimate that the cost of establishing a school-based programs that offer health and social services in Abbott districts is \$300,000 per school, an estimate that is based upon the current cost of operating the DHS School-Based Youth Services Program. Goertz, Tr. 12/9/97, p. 153; Tetelman, Tr. 12/5/97, p. 99; Gottlieb, Tr. 12/3/97, p. p.57; Morris, Tr. 12/3/97, p. 178.

108. Plaintiffs estimate that the total cost of establishing a school-based program in each elementary, middle and high school is \$126 million. Ex. P-70; Goertz, Tr. 12/9/97, pp. 153.

109. The cost of providing school-based programs can be offset by funds already appropriated to DHS for the School-Based Youth Services Program. It is also estimated that approximately 20-30% of program costs can be offset through reimbursement for health services provided to students from Medicaid, Charity Care and Health Maintenance Organizations. Ex. P-70; Goertz, Tr. 12/9/97, pp. 162-3. Gottlieb Tr. 12/3/97, pp. 28-35; Morris, Tr. 12/3/97, p.179-80.

6. Student Nutrition

110. The Commissioner presented no evidence of the actual nutritional needs of children in Abbott districts and made no recommendation for student nutrition. Natriello, Tr. 12/4/97, p. 153.

111. The Commissioner did no assessment of the availability and quality of breakfast and lunch programs in Abbott districts. Natriello, Tr. 12/4/97, p. 153.

112. The Commissioner presented no evidence of the gap between current breakfast and lunch program and nutritional programs of high quality, with full participation, during regular school hours, and a nutritional component for after-school and summer programs. Natriello, Tr. 12/4/97, p. 153.

113. High-quality nutritional programs foster good health and increase student readiness to learn. See, e.g., Natriello, Tr. 12/4/97, pp. 155, 161 (feeding children provides the most proven positive outcomes available).

114. The gap in nutritional programs can be determined only after an assessment of the current nutritional programs in Abbott districts. Natriello, Tr. 12/4/97, p. 157.

115. The funding gap between the amount the federal government provides and the full cost of the program should be included in supplemental program aid. Natriello, Tr. 12/4/97, p. 154.

116. The need for supplemental program funding to support high quality nutritional programs can be determined following completion of the needs assessment. Goertz, Tr. 12/9/97, p. 130; Natriello, Tr. 12/4/97, p. 159.

7. Alternative Education Programs

117. The Commissioner presented no evidence of the actual needs of students in Abbott districts for alternative education programs. Natriello, Tr. 12/4/97, p. 164; Tr. 12/8/97, pp. 16, 38-9; Anderson, Tr. 11/18/97, p. 174-5 (no study conducted of number of students in Abbott districts who might need alternative education); Natriello, Tr. 12/8/97, p. 20 (report does not contain assessment which allows identification of the needed alternate education components).

118. The Commissioner presented no evidence of the extent and nature of alternative education programs currently in place in Abbott district schools. See, e.g., Anderson, Tr. 11/18/97, p. 169-70 (no study conducted of number of alternative programs or number of students currently served in alternative programs in Abbott districts); Anderson, Tr. 11/18/97, p. 175 (not sure if current programs are operating at capacity).

119. The Commissioner presented selected national research concerning the need to prevent students from leaving school before graduation, and presents various dropout prevention strategies in use around the country. Study, Ex. D-2, pp. 17-19.

120. The Commissioner recommended that one alternative middle school be established in each Abbott district, at a cost of \$339,500 per alternative school, and a total cost of \$9.5 million. The Commissioner recommends that one alternative high school be established in each Abbott district, at a cost of \$344,400 per school, and a total cost of \$9.6 million. Study, Ex. D-2, Appendix A; Ex. P-68; Goertz, Tr. 12/9/97, pp. 65, 116.

121. The Commissioner recommended a dropout prevention coordinator for each Abbott district middle and high school, at a cost of \$64,500 and \$69,400, respectively, and at a total cost of \$3.1 million for middle schools and \$3.6 million for high schools. Study, Ex. D-2, Appendix A; Ex. P-68; Goertz, Tr. 12/9/97, pp. 64, 113.

122. The Commissioner's alternative education program is not adequately described so as to determine what services would be offered by the proposed program. Natriello, Tr. 12/4/97, pp. 163-4.

123. Alternative education programs address the needs of students who have demonstrated learning deficiencies and whose learning would be improved by immersion in a smaller, more informal, and individualized program. See, e.g., Anderson, Tr. 11/17/97, p. 229 ("Alternative education is a way of working with children who may not be successful in a traditional learning environment or traditional setting."); Anderson, Tr. 11/17/97, p. 230 (alternative schools "provide high intensity instruction. . . . They provide necessary additional supports for children, whether it be job counseling, social workers, guidance counselors, et cetera, in a setting which as a small teacher to student ratio, in a setting that allows for that particular child's needs, we feel, best to be addressed"); Natriello, Tr. 12/8/97, p. 18 (alternative education programs address students with special learning problems or needs requiring an education which is more intense or individualized); Natriello, Tr. 12/8/97, p. 19 (alternative education programs address the needs of students with behavioral problems).

124. Alternative education programs can also prevent students from leaving school before graduation, if coordinated with drop-out prevention and counseling services. See, e.g., Natriello, Tr. 12/8/97, p. 18 (alternate education programs address the need to prevent students from leaving school); Natriello, Tr. 12/4/97, pp. 166-7 (alternate education programs increase interaction between students and teachers to make children feel connected).

125. The need for alternative education programs can be determined only after an assessment of the numbers and needs of potential students and the current alternative programs, drop-out prevention programs and other programs, where such programs exist. Natriello, Tr. 12/8/97, p. 20.

126. The cost of alternative education programs and supplemental funding needed for these programs can only be determined after a full needs assessment. Natriello, Tr. 12/8/97, p. 20.

8. School-to-Work and College Transition Programs

127. The Commissioner presented no evidence of the actual needs of students in Abbott districts for school-to-work and college transition programs. Natriello, Tr. 12/8/97, p. 26.

128. The Commissioner did no assessment of the availability, quality and expenditures of current school-to-work and college transition programs in Abbott districts. Natriello, Tr. 12/8/97, pp. 26, 38-9.

129. The Commissioner presented selected national research on the need of disadvantaged students for school-to-work and college transition programs. Study, Ex. D-2, pp. 19-20.

130. The Commissioner recommended that Abbott districts implement school-to-work and college transition programs using regular education funding. Study, Ex. D-2, p. 21.

131. The Commissioner made no recommendation for supplemental programs and funding to support these programs. Study, p. 21; see also Anderson, Tr. 11/17/97, p. 234 ("workplace readiness skills and school-to-work transition programs are very much a part of our core curriculum content standards. Therefore, the resources for those are already in the base budget").

132. School-to-work programs address the special need of students in Abbott districts for exposure to positive employment and college opportunities and experiences. See, e.g., Anderson, Tr. 11/17/97, pp. 232-3 ("Students at risk of school failure . . . don't have sufficient information to have access to or even know where to go to find meaningful employment, meaningful work experiences. . . . [I]t is absolutely critical that children have a clear awareness of school-to-work and college transitional programs. That preparation has to start in kindergarten."); Natriello, Tr. 12/8/97, pp. 27-8, 36-7 (students in Abbott districts often do not have resources or contacts outside of schools to help them access information about colleges and employment since few people in the communities may have attended college or even been employed); Natriello, Tr. 12/8/97, p. 34 (students in urban schools require additional resources beyond those needed in suburban schools); Natriello, Tr. 12/8/97, pp. 32-3 (children are more likely to stay in school if they see a connection between school and a future of work or college, a message suburban children hear constantly); Natriello, Tr. 12/8/97, p. 30 (staff in urban schools often are overburdened meeting immediate student needs and thus do not have time to assist students with transitions to work and college).

133. The supplemental program needs, program costs and funding for school-to-work and college transition programs cannot be determined without an assessment of (a) the school-to-work and college transition programs and spending for these programs in the I & J districts; (b) the actual needs of middle and high school students for college and career counseling; and (c) current guidance staff workloads to determine the capacity to provide guidance, arrange work and provide college exposure to students. Ex. P-26, pp. 16-7; Natriello, Tr. 12/8/97, pp. 31, 38.

9. Supplement for Security

134. The Commissioner presented no evidence of the actual needs of students in Abbott districts for increased security. Natriello, Tr. 12/8/97, pp. 44; Azzara, Tr. 11/21/97, p. 17 (not aware of, and not provided, any assessment of security).

135. The Commissioner presented no evidence of levels of security provided in I & J district and Abbott district schools. Natriello, Tr. 12/8/97, pp. 44.

136. The Commissioner identified the need to address disruptive behavior in Abbott districts through high levels of security. Study, Ex. D-2, p. 15.

137. The Commissioner recommended that Abbott districts provide increased security personnel using regular education funding and made no recommendation for supplemental programs and funding to support this increase in security personnel. Study, Ex. D-2, p. 15; Anderson, Tr. 11/17/97, p. 224 (proposed ratio of 1 students to security guards of 1:225 for Abbott district schools determined by Assistant Commissioner for Finance based solely on his review of the 1997-98 expenditure plans for additional regular education aid filed by Elizabeth and Perth Amboy); Azzara, Tr. 11/21/97, pp. 11-12.

138. Security is necessary to respond to the higher incidence of violence and crime in Abbott district schools, neighborhoods and communities. See, e.g., Natriello, Tr. 12/8/97, p. 41 (Abbott communities experience higher violence and crime rates).

139. Security is necessary to promote safe and secure schools, thereby fostering a strong environment for student learning. See, e.g., Natriello, Tr. 12/8/97, pp. 42-3 (assessment is needed of the implications of security on the academic program to insure that security issues do not compromise the academic program).

140. The need for supplemental programs and funding for increased security in Abbott districts cannot be determined without an assessment of (a) the security measures and spending in I & J districts; (b) the number and adequacy of Abbott district security personnel and other measures; and (c) appropriate security staffing levels and expenditures for security in the Abbott districts. Natriello, Tr. 12/8/97, pp. 41-2; Goertz, Tr. 12/9/97, p. 129.

10. Supplement for Technology

141. The Commissioner presented no evidence of the actual needs of students in Abbott districts for technology. Natriello, Tr. 12/8/97, p. 45.

142. The Commissioner presented no evidence of instructional technology and expenditures in I & J and Abbott districts. Natriello, Tr. 12/8/97, p. 45.

143. The Commissioner acknowledged that it "is apparent from a review of the literature that students who resided in low-income communities have little or no access to technology, books and other educational material that can provide them with background knowledge and skills that are essential to later success in reading, in school in general and to function in a global economy." Study, Ex. D-2, p. 15.

144. The Commissioner directed Abbott districts to integrate technology into their educational program using regular education funding, and made no recommendation for supplemental programs and funding to support this technology directive. Study, Ex. D-2, p. 16.

145. Access to technology in Abbott schools is necessary given the lack of exposure of students to computers in their homes and communities. See, e.g., Natriello, Tr. 12/8/97, p. 46 (because access to computers for students in Abbott districts is limited, there will be additional needs); Study, Ex. D-2, p. 15.

146. The need for supplemental programs and funding for technology in Abbott districts cannot be determined without an assessment of (a) the availability of computers and other technology and expenditures for technology programs in the I & J districts; (b) the current availability and adequacy of technology programs in Abbott districts; and (c) the appropriate expenditure level for technology in the Abbott districts. Natriello, Tr. 12/8/97, pp. 47-8; Goertz, Tr. 12/9/97, p. 130.

11. Parent Education and Involvement Programs

147. The Commissioner presented no evidence of the actual needs of students in Abbott districts for parent education and involvement programs. Natriello, Tr. 12/8/97, pp. 54-5.

148. The Commissioner did no reliable assessment of the availability, quality and expenditures of current parent education and parent involvement programs in Abbott districts. Natriello, Tr. 12/8/97, pp. 54-5; Temple Report, Ex. P-5 ("Given the condition of the data [collected by the Survey], any attempts to draw conclusions . . . would be inappropriate and very likely misleading.").

149. The Commissioner recognized that "well planned parent programs can have a measurable impact on student achievement if they link parents to schools, foster adult members' parenting skills and career development and involve parents in governance and decision-making." Study, Ex. D-2, p. 14.

150. The Commissioner recommended that the special needs of Abbott district students for parent education and participation programs be addressed by providing a parent liaison in each elementary school and the Commissioner recommended that any additional costs that may be required for these programs in elementary, middle and high schools be paid for from existing regular education funding. Study, Ex. D-2, p. 14.

151. The Commissioner determined that the cost of providing parent liaisons in elementary schools is \$24,190. Study, Ex. D-2, Appendix A; Ex. P-68.

152. Because intense parental involvement is essential to student and school success, Abbott district schools must actively facilitate such involvement through an aggressive program of parent training and education. Ex. P-26, at 20; Natriello, Tr.

12/8/97, p. 49.

153. Plaintiffs recommend that a parent coordinator for each preschool and for every 500 students in elementary, middle and high school is necessary to address the special needs of students in Abbott districts, and to coordinate, design and implement an intensive program to promote parent involvement tailored to the needs of each school. Ex. P-26, at 20; Natriello, Tr. 12/8/97, p. 53 (programs must be designed based on needs of parents in particular schools and may vary greatly from building to building); Natriello, Tr. 12/8/97, p. 52 (Commissioner's proposal assumes that a single person can serve as parent liaison for a school, regardless of the school's size)

154. Plaintiffs estimate that the total cost of providing parent coordinators in the Abbott districts is \$12.5 million. Ex. P-70; Goertz, Tr. 12/9/97, pp. 153-4; Natriello, Tr. 12/8/97, pp. 52-3 (to determine actual cost, it is necessary to understand nature of program, needs of parents in particular schools, and personnel needed to address needs).

12. Programs and Strategies to Improve Standards-Based Regular Education

155. The Commissioner acknowledged that poor-performing students need highly trained teachers who can employ various instructional strategies and that teachers will need even more training "in order to deliver effectively" the substantive education as defined in New Jersey's Core Curriculum Content Standards. Study, Ex. D-2, p. 16.

156. The Commissioner recognized that the "traditional" approaches to professional development and teacher training are ineffective and that a more intensive, "ongoing and sustained approach to professional growth of teachers and school administrators" is needed in Abbott districts. Study, Ex. D-2, p. 16.

157. The Commissioner recognized that high-quality professional development is strategic and multi-faceted, and "costs money and takes a significant amount of time." Study, Ex. D-2, p. 17.

158. The Commissioner presented no evidence or assessment of professional development and other programs and strategies to improve curriculum and instruction in regular education currently implemented in the Abbott districts. Anderson, Tr. 11/18/97, 167; Anderson, Tr. 11/18/97, p. 167 (did not assess the capacity and ability of current Abbott district teachers to deliver the core curriculum standards); Natriello, Tr. 12/8/97, 55 (need to know what programs for professional development are in place before suggesting what additions are needed).

159. The Commissioner presented no evidence or assessment of professional development and other programs and strategies to improve curriculum and instruction

in regular education currently implemented in I & J districts or other high performing districts in New Jersey. See, e.g., Slavin, Tr. 11/17/97, p. 136 (no comparison of achievement in New Jersey's Success For All schools with achievement in I & J district schools); Slavin, Tr. 11/17/97, p. 92 (no study of I & J district achievement levels).

160. The Commissioner presented no evidence or assessment of the specific academic needs of students in Abbott districts. See, e.g., Anderson, Tr. 11/17, p. 250 (Commissioner did not study results from HSPT and EWT in preparing Study); Slavin, Tr. 11/17/97, p. 115-6 (to determine number of teachers needed to implement Success for All must assess number of children that are poor and extent to which students are falling behind grade level); Slavin, Tr. 11/17/97, p. 118 (mobility rates must be considered to determine number of tutors needed); Anderson, Tr. 11/18/97, p. 114-5 (no study of mobility rates).

161. The Commissioner presented no evidence or evaluation of the various improvement strategies identified in the Study, including Success for All, Comer, Reading Recovery and other programs to improve reading, mathematics, science and other subjects currently implemented in Abbott district schools or any other school in New Jersey. See, e.g., Anderson, Tr. 11/18/97, p. 30-32 (no study of the existing Success For All schools in New Jersey in reaching conclusions); Slavin, Tr. 11/17/97, p. 92. (none of the data regarding Success For All pertains directly to any New Jersey school).

162. The Commissioner presented no evidence that the various strategies and programs to improve regular education identified in the Study, including Success for All, will prepare students to meet the expectations set forth in the Core Curriculum Content Standards. See, e.g., Anderson, Tr. 11/18/97, p. 143 (no study of delivery of core curriculum standards under Success For All); Slavin, Tr. 11/17/97, p. 85 (Success for All program is not "a full rich program in art and music . . . [and] I wouldn't say you don't need an art teacher or music teacher because you have WorldLab."); Slavin, Tr. 11/17/97, p. 93 (Slavin was not provided and did not review Core Curriculum Standards); Anderson, Tr. 11/18/97, p. 47 (determination that "all instruction for language arts, literacy, world languages, mathematics, science, social studies, will occur in the regular classroom with instruction in physical education occurring in the specialized setting" was not based on research and was made by Assistant Commissioner for Finance).

163. The Commissioner proposed that every Abbott district implement a professional development program "that is continuous, focuses on student achievement of the content standards, and is based on ongoing professional renewal, strengthening the knowledge base on effective practices and subject matter knowledge of teachers and administrators," from funds currently available for the regular education program. Study, Ex. D-2, p. 17.

164. The Commissioner recommended that elementary schools be required to implement the Success for All program, unless the district and school can show convincingly that an alternative model will be equally effective and efficient, or that it is already in place and operating effectively. Study, Ex. D-2, p. 26; Klagholz, Tr. (implement Success For All over a three to five year period).

165. The Commissioner determined that the costs of implementing the Success for All program in elementary schools are (a) \$60,180 for a program facilitator; (b) \$17,500 for substitutes to provide teacher release for professional development; and (c) \$85,600 for training and materials; and (d) \$210,630 for 3.5 reading tutors. Study, Ex. D-2, App. A; Ex. P-68; Goertz, Tr. 12/9/97, pp. 103-5.

166. The Commissioner did not recommend any strategy or program comparable to Success for All to improve standards-based regular education in middle and high schools. Study, Ex. D-2, p. 36; Natriello, Tr. 12/8/97, p. 69 (important to provide interventions for at-risk children at all levels); Slavin, Tr. 11/17/97, p. 78 (for secondary schools "there are a number of promising programs that are around that are worth implementing and evaluating carefully, and . . . I would advocate the approach that I think is taken here of offering a ranges of potential models that secondary schools might choose"); Slavin, Tr. 11/17/97, p. 146-8 (middle school programs of promise include Talent Development Middle School, New American Schools Development Corporation programs, Atlas, Modern Red School House Program, Middle Grade State Systemic Policy Initiative, Connect, Accelerated Schools).

167. While the Success for All program, if properly and intensively implemented, has improved performance in reading, the program has no track record of achievement in other content areas, cannot be required by the State, is not appropriate for middle and high school, and, therefore represents only a partial response to improving teaching and learning in all subjects embodied in the Core Curriculum Content Standards. Leverett, Tr. 12/8/97, pp. 178-187 (discussing various limitations of Success for All) ; Ex. P63 (DOE research matrix prepared for Study indicating limitations of Success for All); J. Anderson, Tr. 12/5/97, pp. 242-244 (indicating that Success for All will not be effective if imposed by the State).

168. To determine the supplemental programs and funding needed to improve standards-based regular education requires assessment of (a) regular education, professional development and strategies to improve regular education currently employed in Abbott districts; and (b) regular education, professional development and strategies to improve regular education currently employed in I & J districts or other high performing districts; and the development of (c) a comprehensive program to improve curriculum and instruction in Abbott schools under the Core Curriculum Content Standards.. Ex. P-26, pp. 21-3; Goertz, Tr. 12/9, 63-64.

169. Plaintiffs recommend that the Commissioner undertake these assessments in order to identify the supplemental programs, costs and funding needed

for a comprehensive strategy to improve curriculum and instruction in Abbott districts under the Core Curriculum Content Standards. Ex. P-26, pp. 21-3.

170. Plaintiffs recommend that an instructional improvement facilitator be provided for each Abbott district and school to plan, assess, coordinate and implement programs and strategies to improve curriculum and instruction. Ex. P-26, pp. 21-3; Slavin, Tr. 11/17 p. 43-4; Goertz, Tr. 12/9, p.152-3.

171. Plaintiffs determine that the cost of providing instructional improvement facilitators to Abbott districts and schools is \$26.9 million. Ex. P-70; Goertz, Tr. 12/9/97, pp. 154-5.

172. Plaintiffs also recommend, on an interim basis, a school improvement fund to provide resources to Abbott schools currently involved with, or seeking to assess program needs, and/or to plan or install whole school reform or other programs and strategies, such as the Success for All program, that are designed to improve curriculum and instruction under the Core Curriculum Content Standards. Ex. P-26 at 21; Natriello, Tr. 12/8/97, p. 57 (a number of different programs currently are in place in the Abbott districts, including Success for All, the Comer Schools model, and the Accelerated Schools model); Slavin, Tr. 11/17/97, p. 34, ll. 7-11 (a number of programs have a great deal of promise or evidence of effectiveness for reforming education); Slavin, Tr. 11/17/97, p. 155-158 (if schools are implementing programs other than Success for All with good results they should be allowed to continue); Slavin, Tr. 11/17/97, p. 35 (various strategies "have shown effectiveness as well that are pieces that could be integrated into whole-school reform, but . . . you have good evidence of effectiveness, whether or not they're integrated with other elements"); Slavin, Tr. 11/17/97, p. 58 ("essential to have [Success for All] be completely voluntary and something that schools, if possible, are competing to do, that they are trying to get in it and not trying to get out of it").

173. Plaintiffs' interim fund would (a) provide resources, or "seed" funding, to schools that are assessing various approaches and attempting to determine which initiative is most appropriate; (b) provide resources to all schools including middle and high schools; and (c) avoid State imposition and foster buy-in by teachers and school administrators. Natriello, Tr. 12/9, p.64; Natriello, Tr. 12/9, p. 66, 67.

174. Plaintiffs estimate that \$31.3 million is an appropriate level of funding to enable a sufficient number of Abbott districts schools to undertake school improvement efforts. Goertz, Tr. Ex. P-70 (Table 4).

175. The additional assessments, as recommended by plaintiffs, are essential to develop and fund a comprehensive plan to establish comparability in regular education and to improve curriculum and instruction under the Core Curriculum Content Standards in each Abbott school. Ex. P26, pp. 21-23.

13. Commissioner's Supplemental Program Costs

176. The Commissioner gave a per-pupil and a per-school cost for some of the supplemental programs recommended in the Study. Study, Ex. D-2, Appendix A; Goertz, Tr. 12/9/97, pp. 59-66.

177. The Commissioner did not determine the total per-pupil and per-program cost of the supplemental program recommended in the Study, nor did the Commissioner determine the total cost of providing these programs to students in the Abbott districts and the DEPA funding needed in addition to that currently provided under CEIFA. Goertz, Tr. 12/9/97, pp. 66-7; Klagholz, Tr. 11/18/97, pp. 237-244; Klagholz, Tr., 11/19/97 pp. 3-9; pp. 59-60.

178. The Commissioner presented the costs for his recommended supplemental programs subsumed within "illustrative" school-based budgets developed by the Assistant Commissioner for Finance utilizing a model and methodology based on CEIFA that mixes all funding streams, including regular education and special education funding. Study, Ex. D-2, Appendix B; Azzara, Tr. 11/20/97, pp. 106-16, 113-16, 136-142; See Azzara, Tr. 11/20/97 and 11/21/97 passim.

179. No assessment or evaluation was conducted to determine if the Commissioner's proposed "illustrative" school budgets link the Core Curriculum Standards to the funding necessary to deliver them. Azzara, Tr. 11/21/97, pp. 62-3, Azzara, Tr. 11/20/97, pp. 201-2.

180. Plaintiffs estimate that the cost of the Commissioner's recommended supplemental programs, exclusive of early childhood program costs, for elementary school students is \$1138 per-pupil, and the total cost to provide these programs is \$163.1 million. Ex. P-68; Goertz, Tr. 12/9/97, pp. 107-8.

181. Plaintiffs estimate that the cost of the Commissioner's recommended supplemental programs for middle and high schools is \$23.3 million and \$27.7 million. Ex. P-68; Goertz, Tr. 12/9/97, pp. 113, 116.

182. Plaintiffs estimate that the total cost to provide the Commissioner's recommended supplemental programs, exclusive of early childhood programs, to students in Abbott districts is \$214.3 million. Ex. P-68; Goertz, Tr. 12/9/97, pp. 116-7.

183. Plaintiffs estimate that there is approximately \$196.6 million in DEPA and Title I funding currently available for supplemental programs in Abbott districts, and that the Commissioner's recommended supplemental programs will require \$17.6 million in DEPA in addition to that currently provided by CEIFA. Ex. P-68; Goertz, Tr. 12/9/97, pp. 117-20.

14. Plaintiffs' Supplemental Program Costs

184. In the absence of a comprehensive study of special needs in the Abbott districts, plaintiffs can estimate only the cost of their recommendations for reduced class size, after-school and summer programs, school based social and health services, parent coordinators, instructional coordinators, the interim school improvement fund, and supplemental programs coordinators. Ex. P-70; Goertz, Tr. 12/9/97, pp. 136-154, 162-3.

185. Plaintiffs are unable to determine the supplemental programs, costs and funding needed in the Abbott districts for alternative education programs, school to work and college transition programs, security, technology and comprehensive professional development. Ex. P-26; Goertz, Tr. 12/9/97, pp. 129,130; Natriello, Tr. 12/8/97, pp. 20, 31,38, 41-2, 47-8, 159.

186. Plaintiffs estimate that the cost of providing those recommended programs for which costs can be determined is \$453.6 million. Ex. P-70; Goertz, Tr. 12/9/97, p. 161.

187. Plaintiffs estimate that there is approximately \$235.5 million currently available in Abbott districts to provide supplemental programs, which includes current DEPA, Title I funds, health care reimbursement and DHS funding for School-Based Youth Services, which results in an estimated \$228 million in funding needed in addition to current DEPA under CEIFA. Ex. P70; Goertz, Tr., 12/9/97, p. 170.

F. State or State-Assisted Implementation

188. The Commissioner recommended that implementation of supplemental programs be accomplished primarily through school-based budgeting and decision-making, with no clear plan for state or state-assisted implementation. Ex. D-1, 4-8, 26-35 (listing only "general principals for implementation," a "vision" of effective elementary and secondary schools, and "illustrative" elementary, middle and high school budgets based on CEIFA); Slavin, Tr. 11/17/97 p. 131-33 (indicating no assessment of state capacity to assist districts and no plan to provide such assistance); Slavin, T. 11/17/97, p. 149 (there is no plan to assure local buy-in, an essential pre-condition to schools adopting Success for All); Klagholz, Tr., 11/18/97, p. 224 (stating that "the department's capacity and district's capacity to do these things are also variables that argue for a gradual approach."); p. 224 (indicating that districts will first be consulted to determine their views on the Commissioner's approach); p. 236, ("and what the implementation process we're talking about is not one of imposing that [the illustrative school budget] on everybody or using it as a way to fund every school. Instead, it's to go school by school, look at what is the current program, what are the current resources of that school, what are – and if there is anything lacking, what are the district resources. And if that's lacking, then what do we need from the state to support that"); Natriello, Tr., 12/8/97, p. 75 (indicating that there is no clear statement as to how the state would

assist districts to implement the Commissioner's plan); Leverett, 12/8/97, p. 196 ("there's nothing that I've been able to identify in this report that in any way approaches the kind of assistance that is needed to radically transform our urban schools. Just not there").

189. The Commissioner admits that he has not even discussed timeframes or plans for implementing the proposed school-based budgets. Azzara, Tr. 11/21/97, pp. 83-4.

190. Implementation of the Commissioner's recommended school-based budget would place an impossible burden on elementary school teachers who, under this approach, must teach more subjects to a more diverse group of students, including students with disabilities. Study, Ex. D-2, p. 47 (school-based budget assumes that all instruction in language arts and literacy, world languages, mathematics, science, social studies, health, and the arts will occur in the regular classroom, with [only] physical education occurring in a specialized setting.); Study, Ex. D-2, p. 46 (pupils "other than those with severe learning disabilities [1.5% are assumed to be placed out of district] are served in the regular classroom"); Leverett, Tr. 12/8/97, pp. 188-190 (indicating that Abbott teachers have a difficult time teaching basic skills subjects, that standards for these subjects are now more rigorous, that more subjects, including world languages, possibly music and art, must now be taught, also to higher standards, and that special education students previously in self-contained classrooms will now be mainstreamed into the regular classroom); Autin, Tr. 12/5/97, pp. 173-177 (indicating methods of proper inclusion of disabled students in regular education and absence of sufficient student supports in Study).

191. The Commissioner recommended that actual implementation activities will be undertaken by the Abbott districts and schools, with assistance from the Center for Social Organization of Schools at Johns Hopkins for those elementary schools implementing the Success for All program. Anderson, Tr. 11/18/97, p. 73 (indicating that knowledge about district and school capacity to undertake Success for All was unnecessary because Dr. Slavin and his staff will work with educators in implementation.); p. 101, 135 (indicating that identification and implementation of social and health services must await school-based needs assessment at some future time); p. 150 (indicating that there is no plan for improved reading instruction in schools other than Success for All schools); p. 157 (indicating lack of knowledge about needed resources for implementation and that such knowledge will be learned school by school if State plan is accepted and implemented); p. 159 (indicating lack of knowledge about quality of teaching and that such knowledge will be learned through implementation of Success for All); Klagholz, Tr. 11/18/97, p. 225 (indicating that no plans exist for schools that don't demonstrate the commitment to change); p. 226 (indicating that what actually is to happen under whole school reform, including budgeting and staffing, must await implementation at the school site); Klagholz, Tr. 11/19/97, p. 10 (indicating that secondary school implementation will await discussions with superintendents but would

involve conventional process of districts submitting plans on their own with guidelines to include "elements" reflecting the DOE's plans).

192. The Commissioner provided no implementation plan to integrate community-based preschool programs with school-based half day for four year olds, despite the need to assure full day of programs for children of working parents and those seeking relief from welfare dependency. Study, Ex. D-2, pp. 4-8, 9, 26-35.

193. Commissioner provided no assessment of the needs of secondary students and their schools and provided no implementation plan for middle and high schools. Study, Ex. D-2, p. 36 (indicating that DOE has not had sufficient time to review research, that no specific model will be recommended, and that "a partial approach to implementing supplemental programs will have to suffice"); Klagholz, Tr., 11/18/97, p. ("one principle that I think was important is that we place our primary emphasis on the elementary level"); Tr. 11/19/97, p. 8, ("it would not be the same kind of aggressive, affirmative role for us as it would be in elementary . . ."); Leverett, Tr. 12/8/97, p. 185 ("there's absolutely nothing in this study of supplemental programs and recommendations for Abbott districts published by the Commissioner that speaks to middle or high schools. And it's a very glaring gap in that area").

194. The Commissioner's recommendation for school-based budgeting and decision-making does not require the provision of additional funds if implementation of supplemental programs identifies needed programs and funding in addition to those recommended in the Study. Klagholz, Tr., 11/19/97, pp. 184-188 (indicating that only if research changed about preschool would he support funding for full-day three and four year olds.); and see generally Klagholz, 11/19/97 pp.

195. Commissioner did not consult with DHS or other state agencies in preparing the Study and the Commissioner did not recommend state level collaborations to implement the recommended supplemental programs in Abbott districts. Tetelman, Tr., 12/5/97, p. 95; Leverett, Tr., 12/8/97, pp. 166-167 (indicating importance of social service coordination to stop practice of families or students in need having to deal with several different agencies that do not talk to each other).

196. The absence of a needs assessment undermines the DOE's capacity to provide statewide implementation. Natriello, Tr. 12/2/97, pp. 213-216 (explaining that assessment determines nature and extent or intensity of disadvantage, both of which are necessary to assure appropriate nature and extent or intensity of response.) Leverett, Tr. 12/8/97, p. 196 (indicating importance of discrete data at the school level to determine appropriate programmatic responses)

197. Plaintiffs recommend a state level interagency council to plan and implement supplemental programs in early childhood and social and health services and to increase coordination of existing service at the State, county, and local levels Ex. P-26, p. 24; Ex. P-29; Natriello, Tr. 12/8/97, p. 76.

198. Plaintiffs recommend a State initiated research and development program, in collaboration with higher education, to conduct research on promising new approaches, to evaluate statewide supplemental programs. Ex. P-26, p. 24; Ex. P-29; Natriello, Tr. 12/8/97, p. 76.

199. Plaintiffs recommend a staged, three year phase-in of supplemental programs, with the first year serving as a transition year during which the DOE and Abbott districts form state and local collaborations, and deploy trained program development and instructional improvement coordinators in each school to assess needs and design required programs. Ex. P-26, pp. 24-26.

200. Plaintiffs recommend that implementation of supplemental programs occur in the second and third years of the phase-in process, subject to the availability of appropriate facilities to accommodate the early childhood and other supplemental programs. Ex. P-26, p. 26.

201. Plaintiffs recommend that implementation phase-in be extended in Abbott schools and districts where facilities for early childhood programs, smaller classes and other supplemental programs are planned, but not yet available. Ex. P-26, pp. 24-26.

G. Conclusions

202. The Commissioner's Study does not satisfy the requirements of the Court's order.

203. The supplemental programs specified in the Study, taken individually and as a whole, do not address adequately the special educational needs of students in Abbott districts, and should be rejected.

204. The supplemental programs specified by plaintiffs address adequately the special educational needs of students attending schools in Abbott districts, and should be required until such time as the Commissioner can convincingly demonstrate that these programs are no longer needed.

205. Plaintiffs' recommendations for early childhood programs, full day kindergarten, reduced class size, school-based social and health services, after-school and summer programs, parent education and involvement are sufficiently defined so that the State can commence implementation of these required programs immediately.

206. Programs and strategies to improve standards-based regular education cannot be fully implemented without further assessment. In the interim, plaintiffs proposal for the establishment of a school improvement fund is sufficiently defined so that the State can commence implementation of this required initiative immediately.

207. Plaintiffs' recommendations for nutrition, alternate education, security, technology, school to work and college transition, and comprehensive professional development cannot be fully implemented without assessment of supplemental program needs, costs and funding.

H. Recommendations

Based on the findings and conclusions set forth above, it is recommended that:

1. The State, through ECPA under CEIFA, or through amendatory legislation, shall

- (a) require the provision of comprehensive, full-day and year-round preschool programs for all three and four year old children in the Abbott districts, including day care, social and health services, in cooperation with existing providers of community-based preschool programs and other services, in accordance with plaintiffs' recommendations;
- (b) require the provision of full day kindergarten for all children in Abbott districts; and
- (c) require the provision of such comprehensive preschool programs and full day kindergarten in classes of 15 students.

2. The State, through DEPA under CEIFA, or through amendatory legislation, shall

- (a) require that class sizes in grades 1 to 3 in Abbott district elementary schools be set at 15 students or below;
- (b) require the provision of after school and summer programs in Abbott district schools, which programs shall include instruction, recreation, nutrition and, for students in grades 11 and 12, work-study opportunities and stipends, and shall be implemented in cooperation with existing community-based programs, providers and resources;
- (c) require the provision of a comprehensive, school-based health and social services program in each Abbott district school, which programs shall be implemented in cooperation with the Department of Human Services School Based Youth Services Program and other existing community-

based health and social service providers, programs, and resources;

- (d) require parent education and involvement programs in Abbott district schools through the provision of a parent coordinator for every 500 students;
- (e) require the planning, assessment and implementation of professional development initiatives and programs and strategies to improve curriculum and instruction through the provision of an instructional improvement facilitator in each Abbott school and in each Abbott district;
- (f) require state-level support for Abbott districts to plan, assess and implement professional development initiatives and other programs and strategies to improve curriculum and instruction through the establishment a school improvement fund, which fund shall be administered under procedures and guidelines promulgated by the Commissioner;
- (g) require the timely implementation of supplemental programs through the provision of a supplemental program developer in each Abbott school and district to conduct needs assessments, design and coordinate school-level programs, and integrate such programs with curriculum and instruction.

3. The State, through the Commissioner, shall implement, and provide assistance to implement, supplemental programs in Abbott districts through

- (a) state and local collaborations between the Department of Education, Abbott districts and schools, and state and local departments, agencies, organizations, providers and others involved in the provision and delivery of programs and services to students in Abbott districts and their families;
- (b) a research and development program at the state-level to conduct ongoing research, evaluate programs and provide technical assistance to the Abbott districts; and
- (c) ongoing collaborations of Abbott district teachers, principals, administrators, parents and others.

4. The State, through the Commissioner, shall prepare a plan for implementation of the required supplemental programs in the Abbott districts, taking into consideration the need to plan for program implementation at the school and

district level and related facilities needs, which plan shall be submitted to the Superior Court, Chancery Division, for approval.

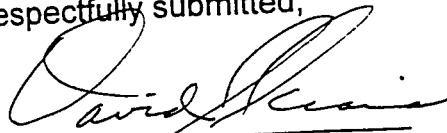
5. The case shall be remanded to the Superior Court, Chancery Division to supervise the State's implementation and phase-in of the supplemental programs set forth above, where appropriate, and, on remand, the Superior Court shall direct the Commissioner to:

- (a) conduct a comprehensive study of regular education staffing, programs, and expenditures in the I & J and Abbott districts in order to develop comparability standards;
- (b) assess current initiatives to improve curriculum and instruction in both sets of districts;
- (c) develop a comprehensive program to improve curriculum and instruction in Abbott schools, including any additional supplemental funding;
- (d) conduct a comprehensive study of the need for nutrition, security, technology, alternative education, and school to work and college transition programs in the Abbott districts;
- (e) determine the costs of these needed programs, on a per-program and per-pupil basis, which shall include costs in addition to those currently available under DEPA or appropriate amendatory legislation;
- (f) devise a plan for State and State-assisted implementation of the needed programs in the Abbott districts, consistent with the implementation plan for the supplemental programs required above;

6. The remand court shall establish appropriate procedures and timetables for the completion of the Commissioner's study, for proceedings to review the study, for the participation of the parties, and for the submission of findings, conclusions and recommendations.

7. The Supreme Court shall retain jurisdiction.

Respectfully submitted,



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