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Comparing The Adequacy Of New Jersey And Kentucky Court Mandates, Statutes And Regulations To Remedy Unconstitutional Public Education

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**COMPARING THE ADEQUACY OF NEW JERSEY AND KENTUCKY
COURT MANDATES, STATUTES AND REGULATIONS
TO REMEDY UNCONSTITUTIONAL PUBLIC EDUCATION**

BY

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requirements for the degree of Doctor of Education
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ACKNOWLEDGMENTS

Twenty nine years ago, Rutgers Law Professor Paul Tractenberg had the foresight to establish the Education Law Center (ELC). The existence of long term legal capacity to continue the struggle in New Jersey for three decades was essential to the eventual success of school finance reform. Without it, I would not have spent the better part of the past two decades working at ELC, making contributions that found their way into this study.

Professor Tractenberg also had the good sense in 1979 to hire a “grandmotherly former nun,” Marilyn Morheuser, to lead ELC during the critical early years of the Abbott story. In turn Marilyn had the good sense to convince me that looking at numbers could be as powerful a role as critiquing state education policy. Her fabled leadership was essential to the brilliant trial strategy and the seminal *Abbott II* decision.

Following Marilyn’s passing in 1995, the ELC board, still influenced heavily by Professor Tractenberg, continued the pattern of good sense by hiring David Sciarra to succeed Marilyn. David broke the mold of second generation leadership as he took *Abbott* to new heights and is today the key player in strengthening the growing capacity of ELC to fulfill its mission to children with disabilities and disadvantages. I owe a huge debt to all three for their essential and profound contributions to assuring that New Jersey leads the nation in Court-mandated remedies for the education of children with disadvantages.

I want to thank two others. Dan Gutmore and Elaine Walker, formerly of the Newark school district, are now firmly in place on the faculty at Seton Hall University. Their persistent badgering *and* support were absolutely essential to my mid-life return to higher education and to the completion of this study.

DEDICATION

To Jeannie, whose encouragement, love, and independence literally made it possible for me to devote the time necessary to get through the maddening course work and the even more arduous process of completing this study.

TABLE OF CONTENTS

PREFACE	
Personal Reflections	ix
I INTRODUCTION	1
The Research Problem and Question	4
Importance of the Study	6
Limitations of the Study	8
Assumptions	9
II REVIEW OF RELEVANT LITERATURE	11
The Role of the State in Leading School and District Reform	11
Constitutional Law, Statutory Law, and Administrative Regulations	27
Criticism of Laws and Regulations Implementing <i>Rose & Abbott</i>	33
III OVERVIEW AND HISTORY OF COURT-ORDERED SCHOOL FINANCE REFORM IN KENTUCKY AND NEW JERSEY	54
Background: Three Decades of Constitutional Litigation	
Throughout the Nation	54
Kentucky's <i>Rose v The Council for Better Education, Inc</i>	61
New Jersey's <i>Abbott v. Burke</i>	72
IV THE STATUS OF IMPLEMENTATION IN KENTUCKY AND NEW JERSEY	91
V METHODOLOGY	121
VI KENTUCKY'S LEGAL FRAMEWORK FOR EDUCATION REFORM... ..	126
The Language of <i>Rose</i>	126
Analysis of the Language of the <i>Rose</i> Mandates	131
Analysis of The Language of KERA	139
Kentucky Administrative Regulations (KAR):	
analyzing the language of implementation	151
Summary	164
VII NEW JERSEY'S LEGAL FRAMEWORK FOR EDUCATION REFORM	166
The Language of <i>Abbott</i>	167
Analysis of the Language of the <i>Abbott v. Burke</i> Court Mandates	207
Analysis of the Statutory Language Implementing <i>Abbott v. Burke</i>	209

New Jersey Administrative Code: analyzing the language of implementation	211
Summary	229
VIII COMPARING THE LEGAL FRAMEWORK IN THE TWO STATES ...	230
IX CONCLUSIONS AND RECOMMENDATIONS FOR FURTHER STUDY	236
REFERENCES	239
APPENDIX A Kera Content Analysis by Section	253
APPENDIX B Content Analysis of Administrative Regulations Adopted to Implement Kera	262
APPENDIX C Content Analysis of the <i>Abbott</i> Court Mandates	270
APPENDIX D Content Analysis of the Abbott Regulations	292

LIST OF TABLES

Table 1. Assessing the Adequacy of the Rose Court Mandates	138
Table 2. Assessing the Adequacy of Parts I, II, and III of KERA	139
Table 3. Average Ratings for KAR Administrative Regulations	151
Table 4. Ratings of Kentucky's Legal Framework	164
Table 5. Adequacy of New Jersey Supreme Court Mandates in <i>Abbott</i>	208
Table 6. Adequacy of the Abbott Regulations	212
Table 7. Ranking the Adequacy of New Jersey's Legal Framework	229
Table 8. Comparing Court Directives in New Jersey and Kentucky	230
Table 9. Comparing Statutes in New Jersey and Kentucky	230
Table 10. Comparing Regulations in New Jersey and Kentucky	230
Table 11. Comparing Summary of All Mandates in New Jersey and Kentucky	230
Table 12. Growth in Kentucky Education Spending 1990-91 through 2000-01	234
Table 13. Growth in New Jersey Education Spending 1991-92 through 2001-02	234

Do not allow public issues as they are officially formulated, or troubles as they are privately felt, to determine the problems that you take up for study. Above all, do not give up your moral and political autonomy by accepting in somebody else's terms the illiberal practicality of the bureaucratic ethos or the liberal practicality of the moral scatter. Know that many personal troubles cannot be solved merely as troubles, but must be understood in terms of public issues – and in terms of the problems of history-making. Know that the human meaning of public issues must be revealed by relating them to personal troubles—and to the problems of the individual life. Know that the problems of social science, when adequately formulated, must include both troubles and issues, both biography and history, and the range of their intricate relations. Within that range the life of the individual and the making of societies occur; and within that range the sociological imagination has its chance to make a difference in the quality of human life in our time.

C. Wright Mills, *The Sociological Imagination*

PREFACE

Personal Reflections

It was early 1980. Marilyn (Morheuser) had just spent six months persuading me that examining statistical data would be as stimulating and rewarding as analyzing and criticizing bad state policy. A year earlier she had been hired to lead the still young Education Law Center (ELC) into challenging New Jersey's continuing failure to provide equal and adequate educational opportunities for disadvantaged urban youngsters.¹ I had spent the previous two years working with Herb Green at Schoolwatch², reviewing state education policies, advocating needed changes, and evaluating the first five years of a 1975 education reform statute.

Marilyn and I came to ELC with roots deep in the 1960's. She, seventeen years my senior, had been a nun, a Sister of Loretto, working the civil rights movement in Milwaukee when she decided to leave the convent and enter Rutgers Law School in 1968. I too had been consumed by the purpose and passion of civil rights throughout the early 60's, organized a strong chapter of Students for a Democratic Society at my Alma Mater, Williams College, and arrived in Newark after my 1965 graduation to do community

¹ ELC was founded in 1973 by Rutgers Law School professor Paul Tractenberg as a non-profit law firm to conduct school finance litigation and to more generally use legal strategies to reform and improve education for poor, minority and disabled students. Twenty nine years later, Tractenberg remains a member of the ELC board, advisor to the legal staff, and participant in arguments before the New Jersey Supreme Court.

² Schoolwatch, now defunct, was a non-profit citizens group that sought to oversee implementation of the Public School Education Act of 1975, commonly known as the "T&E" law, referring to New Jersey's constitutional education clause that guarantees every student a "thorough and efficient" education. ELC had a seat on the Schoolwatch board of directors, a relationship that led to contact between the staff of both organizations, and, in particular, to Marilyn and I getting to know each other.

organizing. Our values and commitments were nearly identical.

My switch from policy analyst to school finance buff began in earnest. I learned that New Jersey had already gone through its first phase of school finance litigation following the 1970 filing of *Robinson v. Cahill*, the first successful challenge in New Jersey to systemic school finance inequities. In 1973 the New Jersey Supreme Court overturned the State's school finance scheme when it affirmed the 1972 trial court decision in *Robinson*. Two years later a reform statute was enacted and, despite objections from ELC attorneys and others, in 1976 the Court found it constitutional on its face.

Implementation began in the 1976-77 school year. ELC analyses in the late 1970's demonstrated - as had been predicted to the Court - that inequities were growing, rather than narrowing, since the Court-approved statutory remedy went into effect.

Marilyn's strategy, gleaned from years as a Catholic school educator in her earlier life as a nun, was to develop evidence that went beyond demonstrating continuing and growing funding inequities. She believed that the narrow statistical and financial evidence presented in the truncated, three-day trial of *Robinson*, was insufficient. She sought to expand the scope of our inquiry to demonstrate that funding inequity led inextricably to both educational inadequacy and to unmet student needs.

We decided to compare rich and poor school districts. We assembled powerful comparisons, based initially on my crude, but apparently solid, statistical analyses.³ We located parents in the districts of Camden, East Orange, Irvington, and Jersey City whose twenty children would become our plaintiffs. As fate would have it, when grouped

³During this early period, my work was overseen in part by Dr. Margaret Goertz, then of Educational Testing Service and a national expert on school finance, who would later become a principal ELC witness during much of the litigation. Goertz is now Co-director of the Consortium for Policy Research in Education at the University of Pennsylvania and the co-author of an on-going study of Whole School Reform Implementation in New Jersey.

alphabetically, first among the twenty was Raymond Arthur Abbott, a white, Camden High School student whose mother worked for the Camden School District. The new litigation strategy dictated naming as defendants the relevant cabinet officials, rather than the Governor, beginning with Fred Burke, the Commissioner of Education. Thus, when the new complaint was filed in February of 1981, *Abbott v. Burke* was officially born.

Now more than twenty years later, there is considerable evidence that the increasingly detailed *Abbott* decisions by the New Jersey Supreme Court have established the most comprehensive set of constitutionally prescribed educational entitlements and remedies for children with disadvantages anywhere in America. Indeed, *NJ Lawyer Magazine* found in late 1999 that lawyers and judges in the state voted *Abbott* the most important litigation in New Jersey during the 20th century. Two years later, the same publication would claim that *Abbott* “represents one of the most remarkable and successful efforts by any court in the nation to cut an educational break for kids from poor families and generally minority-dominated urban neighborhoods.”(10/29/01) The NY Times editorialized that *Abbott* “may be the most significant education case since the [US] Supreme Court’s desegregation ruling nearly 50 years ago.”(2/9/02) For my part, I would spend most of these past two decades at Education Law Center, contributing to all but one of the now nine *Abbott* decisions.⁴

As of this writing, the new McGreevey Administration in New Jersey has established a cooperative relationship with Education Law Center in an effort to resolve

⁴During these years I took two sabbaticals. From early 1983 to 1988, I worked first in Hoboken, my adopted home, helping to build a political reform movement and electing the only reform mayor in Hoboken history, and then for the NJDOE as an urban specialist. This period coincided with the 1986-87 nine month trial of *Abbott*, which I unfortunately missed. The second sabbatical occurred from late 1994 through 1995 when I worked for the Newark School District, attempting to deepen its reform initiatives and to help resist the impending takeover by the DOE. I was unsuccessful on both accounts and returned to ELC in December of 1995, just two months after Marilyn Morheuser succumbed to breast cancer.

the outstanding legal and implementation issues. I am privileged to be ELC's representative in many of the ongoing discussions and cross-role committees that were established to design needed changes in state implementation of preschool, whole school reform, standards-based reform, school governance and management, supplemental programs, school facilities, state operation of local districts, and charter school funding.

When the time came to pick a dissertation topic during the 2000-01 academic year, investigating something about Abbott felt right. Friends and academic advisors alike urged that I use the enormously privileged access I have to the Abbott story – in effect as a long term “participant observer” – to identify and document some aspect of this struggle that needs further investigation. It took nearly one year and three attempts though to conclude that my first topic, preschool implementation, was already the subject of several, fully researched lawsuits and that my second topic, professional development, was too removed from the center of the litigation and related work I had already been doing. Thanks to a novel perspective offered by Seton Hall Professor Joe Stetar in his Qualitative Research seminar, I began to think about a case study of the formal, written legal responses of the New Jersey Legislature and the Department of Education (DOE) in the form of new statutes and implementing regulations. It wasn't enough. So I decided to compare New Jersey to Kentucky, a state which had also been engaged in court-ordered reform throughout the 1990's, and which unlike New Jersey, had, by reputation, acted boldly and decisively in response to its 1989 Supreme Court mandate in *Rose v. Council for Better Education, Inc.* My impression going in was that Kentucky had it right and New Jersey had it wrong.

CHAPTER I

INTRODUCTION

These state constitutional claims, the underlying contentions and facts, although presenting great variety of detail, are remarkably similar . . . an educational funding system that depends on a combination of state and local taxes producing disparity of expenditures in the face of inverse disparity of need. . . . Almost invariably the remedy extended no farther than the observation that the Legislature will presumably revise the system to conform with the Court's decision, the Court frequently reserving jurisdiction in order to impose a judicial remedy if the Legislature failed to act.

Abbott v Burke, 1990, pp 314-15

Kentucky and New Jersey both went through litigation on the issues of education equity and adequacy in the late 1980's, had far-reaching Supreme Court decisions at the end of the decade, were required to establish new legal frameworks for implementing the Court mandates, and have now had more than ten years to wrestle with the practical impact of Court directives.

There are several obvious differences.

First, *Abbott* was initiated on behalf of otherwise powerless children outside the education mainstream; *Rose* by the center of the mainstream, relatively powerful school districts. Second, *Abbott* focuses on communities of color; *Rose*, on the entire state of Kentucky, where minority enrollment is less than 10%. Third, the *Abbott* trial took nine months; *Rose* was over in six days. Fourth, *Abbott* followed the earlier New Jersey case, *Robinson v. Cahill*, and was designed to cure the failure of the remedy in the case. *Rose* was the original case in Kentucky. And fifth, while *Abbott* may have ordered the most far

reaching set of legal mandates and funding for children with disadvantages, New Jersey has been bogged down in continuing litigation – nine separate Supreme Court cases thus far – over inept implementation. Kentucky, by contrast, had only one Supreme Court decision and order to rebuild the state's entire education system.

Choosing Kentucky as the comparison state, then, was easy. Similar time frame, the lack of ongoing litigation, and the enormous amount of research and generally positive acclaim in the press and in more serious publications made Kentucky a natural contrast. Moreover, Kentucky is, by reputation, the poster state for seriously dealing with educational adequacy. And, on the face of it, the evidence suggests that in Kentucky the other branches acted far more responsibly and efficiently than they did in New Jersey.

Court action, however, represents only one phase, important as it is to set direction, in the enforcement of rights, in this case, the fundamental education rights of children. Courts do not have the responsibility nor the authority to translate high-sounding legal rhetoric – findings, conclusions, and remedies – into concrete government action. That responsibility remains within the province of the co-ordinate branches. And, the behavior of those other branches typically flows from statute and/or regulation.

Although research on the quality of statutes and regulations to guide implementation at the state and local levels is virtually non-existent, it is self-evident that the performance of state and local education officials – what they do and how they do it – is tied, at least in part, to the detailed language embedded in state law and regulation adopted to implement state or federal policy or, in this case, mandates from the state's highest court. This is particularly true when state action is designed to inform and instruct local practice and implementation of Court-ordered change, as both New Jersey and

Kentucky faced following historic rulings by each state's Supreme Court requiring massive change in the provision of public education.

As the politically advanced wise-woman once said, "the devil is in the details." Yet, an examination and comparison of the "enacted laws" and "case law" to implement comprehensive education reform has not been done before. Nor has there been generic research on the relationship of State Court mandates, statutory language, and the wording of implementing administrative rules.⁵

While research directly on point does not appear in the literature, there is a body of work on several related topics that is relevant to this study. First, the stories of *Abbott* and *Rose* must be reviewed and summarized, with the discussion of *Abbott* benefitting from first-person participation and observation. Implementation of *Rose*, by contrast, though lacking the personal connection, has been the object of considerable national and Kentucky-based research. Second, these discussions will require a review of the national context as a preamble.⁶ Third, the role of state government in promoting and assuring effective finance and substantive education reform will help set a framework for the analyses of the Court mandates, statutes and regulations in both states. Fourth, these analyses will also benefit by a review of the work on 'how to write' or 'what constitutes' effective, high-quality, and practical state statutes and implementing administrative

⁵The legal framework operating in both the states and the federal government originates with English common law. There are enacted laws, including constitutions adopted by the people at large, statutes, adopted by legislatures, and administrative rules, typically called regulations, that have the force of law and are adopted by administrative bodies "to aid in the enforcement and application of legislative mandates" (Putman 2003, p. 23). Case law is established by the Courts "when there is no law governing a topic," and "where the meaning or application of the enacted law [Constitutions, statutes, regulations] is unclear" (Putman 2003, p. 23).

⁶The cases in both states arose out of an ongoing national discussion of and series of federal and state lawsuits on the role of school finance inequity in the denial of equal educational opportunity that began in the late 1960's.

regulations. Lastly, since ongoing litigation in New Jersey involves allegations of faulty statutes and non-compliant regulations, the literature review will also include Court Decisions that critique various versions of Abbott statutory and regulatory compliance as well as formal complaints about the Abbott regulations filed by Education Law Center that have yet to be fully litigated.

The Research Problem and Question

Clearly, judicial decisions that require changes in the field, in this case in schools and districts, cannot be implemented directly.⁷ They require statutory and/or regulatory elaboration and explanation to help officials, practitioners, and the public at large understand what and how to implement the meaning and intent of Court language. This study proposes to examine and compare the original court mandates and such elaborations and explanations as are contained in implementing statutes and regulations in Kentucky and New Jersey. The objective of the study is to compare the quality, thoroughness, and ultimately the adequacy of each state's approach to establishing a legal framework to guide implementation of a constitutionally required education at the state and local levels. Thus, the research question can be stated simply: How do New Jersey Court mandates, statutes and regulations adopted to remedy unconstitutional education found in *Abbott v. Burke* compare to Kentucky Court mandates, statutes and regulations adopted to remedy unconstitutional education found in *Rose v. Council for Better Education*?

Sub-problems/questions. In order to systematically analyze the legal documents in both states, it is necessary to examine the relevant documents of each from a variety of

⁷As New Jersey Chief Justice Deborah Poritz observed in the 2002, *Abbott VIII B* preschool decision, "We do not run school systems. Under our form of government, that task is left to those with the training and the authority to do what needs to be done" (*Abbott VIII B*, p. 38).

perspectives. First, the Court decisions themselves must be compared, particularly with reference to the mandates and guidance provided to the other branches. Each decision, or set of decisions in the case of New Jersey, will be analyzed to discover the substantive areas of schooling that are included; any standards or other commentary the Court provided to guide state or local implementation; the universe of districts and schools covered by the Court mandate; the level of specificity and clarity of the decision(s); and any findings of fact and/or conclusions of law that might serve as further guides to statutory or regulatory provisions will be reviewed and compared.

Second, it is necessary to identify any generic differences or similarities in the purposes and applications of legislative statutes and administrative regulations from both states. Typically, administrative regulations are adopted to implement a statute. Here, administrative regulations were adopted to implement a Court order, though in the case of Kentucky, that order led first to an omnibus education statute, the Kentucky Education Reform Act or KERA.

Third, each Court-written remedial directive must be examined in detail and compared with legislative enactments and administrative adoptions to determine if the meaning and intent of that directive is explained and amplified in implementing statutory and/or regulatory language, and if so, if such amplification is reasonably sufficient.

Fourth, each statutory and/or regulatory provision must be carefully examined to determine if (1) it adequately informs what must be done to implement the remedial directive; (2) the language is clear, unambiguous, and accessible to the implementing agent; (3) it adequately distinguishes the implementing responsibilities of various State, district, and school agents; (4) such implementing statutes or regulations are consistent;

and (5) they are practical.

Finally, this analysis will seek to identify any differences in the New Jersey and Kentucky legal frameworks that may account for the dramatic differences in implementation.

Importance of the Study

A review of the literature fails to identify any study similar to what is proposed here. The generic quality and comprehensiveness of statutory and/or regulatory language in response to Court orders does not appear to be the subject of any existing study, certainly with regard to otherwise successful school finance litigation. It appears, therefore, that the proposed study will break entirely new ground.

In New Jersey, until recently, the litigation has seemed endless -- nine separate decisions and counting -- fueled in large part by the failure of the State to follow Court directives. In Kentucky, the one and only Supreme Court decision led to a decade of reform that is the envy of advocates across the nation. Such fundamentally different developments may be traced ultimately to a number of possible causes:

1. each state is different;
2. the legal strategy was different;
3. the Court orders are different;
4. the political conditions were different;
5. the plaintiffs were different;
6. the beneficiaries of the remedies were different;
7. state leadership was different; and/or

8. the implementing strategies are different.

No doubt evidence can be accumulated to substantiate the role of each of these factors (even, perhaps, the strength of that role) in contributing to different results in the two states. What has not been examined, however, is the quality and practicality of the court mandates themselves and the statutes and regulations adopted to inform and guide State and local implementation and safeguarding of constitutionally prescribed rights. This study can provide useful insights for litigants, policymakers, and advocates in New Jersey and Kentucky as well as other states still wrestling with the issues of educational equity and adequacy.

A comparison of the legal framework's in New Jersey and Kentucky to meet Court-ordered education reform does not exist in the literature. So, on the one hand, this study may offer new insights. More important, however, is whether obvious differences in the execution of Court directives are traceable to differences in the legal frameworks established in each state by the other branches.

If the comparative analysis reveals, for example, that the legal framework in Kentucky clearly is more faithful to and/or more fully explains and elaborates the language of the Court, then claims about the importance and urgency of such legal framework may well be taken more seriously. If it can be shown that such wording 'as written' as opposed to 'as applied' after implementation has begun is more indispensable to producing desired outcomes in the field than previously thought, it would strengthen the cause of those who would challenge defective statutes and regulations before they are implemented.

Finally, it is hoped that the value of this study will be to reinforce the importance

of factors other than the capacity of local leadership to adopt new policies and to implement new practices. It will begin to identify ways in which the details of law and regulation reflect compliance with or defiance of court ordered change, and by extension, will stimulate other research into the exact relationship between on-the-ground implementation policies and practices and State-issued statutory and regulatory language.

Limitations of the Study

There are two limitations to this study. The first reflects the content of the proceeding section. This is not a study designed to compare school and district implementation of Court-ordered remedies in the states of New Jersey and Kentucky. Nor is it designed to determine with reasonable certainty what caused any perceived difference in such implementation. What will be examined and compared is the written, facial, legal framework, first issued by the State Supreme Court and then enacted and adopted by the legislative and executive branches of the respective state governments in response to these Court directives to implement comprehensive education reform. No more, no less. The study is limited to a review of legal documents – largely court decisions, legislative enactments, and administrative rules or regulations adopted by the executive pursuant to procedures prescribed by the Legislature.

The second limitation results from the potential for bias always present when a “participant observer” seeks to review and evaluate that which has been his life’s work. Although I have taken steps to minimize this potential, as presented in Chapter V, the absence of research tied directly to the subject of this study adds to the potential for subjectivity.

Assumptions

There are several assumptions, or operating principles, that drive my work at the Education Law Center. These assumptions also underscore this study. The first has to do with the idea of "capacity." The quality of teaching in a classroom, leadership in a school or district, or, for that matter, in a state department of education, depends almost entirely on the combination of individual and organizational capacity of the person(s) involved, that is, the knowledge, skills, experience, talent, attitudes and feelings brought individually and collectively to the assigned work by the teacher(s), principal(s), superintendent and central staff, or commissioner and state staff.

The second assumption more specifically focuses on classroom, school, and district reform, transformation, renewal and/or improvement. The quality, depth, and extent of such change for the better depends upon the capacity for change available individually and organizationally in the immediate circumstance. If a teacher and her colleagues have little knowledge, skill or experience in best practice, there is little chance she (and they) will improve their performance. Similarly, if a school management team or central office staff is empowered to improve the school or transform the district, and if there is little capacity on the team or within the staff for such improvement or transformation, it simply will not happen.

The third assumption is the obvious corollary of the first two: if existing capacity remains unchanged, the amount or degree of improvement will depend entirely on the capacity already available.

Fourth, the obligation of those responsible for assuring effective improvement of instruction, schools, and districts is to assess available capacity and, where necessary, to

make adjustments to establish opportunities and to provide expertise that improves and distributes capacity to more individuals and to the organization as a whole.

Fifth, the overwhelming number of teachers, principals, and central office staff who do not perform at optimum levels are not bad people demonstrating bad faith, but rather are typically victims themselves of a system that failed to provide the pre-service, in-service, leadership and other supports necessary to build their own capacity to know what to do and how to do it.

And, sixth, for State-directed reform to succeed, it must provide clear, comprehensive, and detailed explanations, including standards, definitions, and procedures so that practitioners everywhere will derive similar meaning from such explanations and will, therefore, fully understand their role in implementing the details of such state-directed reform.

CHAPTER II

REVIEW OF RELEVANT LITERATURE

The Role of the State in Leading School and District Reform

... ours is a system of *de jure* state control and *de facto* local control of schooling. The traditional model of state governance and administration that has grown up under these conditions. . . stresses regulatory oversight geared to minimum standards, with minimum state capacity to guide schools and school systems in the difficult problems of improving their organizational performance. With the advent of systemic education reform, this traditional state role is shifting away from regulatory oversight and compliance and toward constructive support and assistance to schools and school systems, introducing new forms of organization and new instructional practices to meet the growing demands for improved student performance.

(Elmore in Lusi, 1997, p. ix)

As early as the mid-1980's, the Education Commission of the States studied the role of state government in leading and supporting school improvement. That study, summarized by Furhman, Huddle, and Armstrong (1986), identified several factors that are within the jurisdiction of state government and that have been found to contribute to successful implementation at the local level. These factors include:

- strong political support from the executive and legislative branches;
- pressure for improvement from state accountability measures and other initiatives;
- a good fit between the state program and local needs as identified by school district officials;
- belief in and commitment to improvement for all students in every school;
- high quality including an acceptable theory of change, a strong base in research, classroom validation, and instructional language that has meaning for

practitioners;

a quality statewide implementation strategy that conveys instructions accurately and meaningfully, state staff that are expert at the content and process of change, and sufficient state staff to provide advice and support to local practitioners; and

adequate time and funds (Furhman, et al, 1986).

Odden and Anderson (1986) supported these findings and found several others.

They identified four distinct stages of state-led education improvement, each of which has overlapping and independent factors contributing to success. The stages include (1) initiation, (2) start-up implementation, (3) full implementation, and (4) institutionalization.

To be successful, the initiation phase must focus on schools that are ready for change, that seek improved student outcomes, and that have pressure to improve from state or local sources or both. (Odden & Anderson, 1986) Additionally, school and district administrators need "awareness training" to develop necessary beliefs and strategies to include all students in plans for improving academic achievement; collaborative decision-making including data collection, analysis, and problem solving; and recognizing the need for expert external support (Odden & Anderson, 1986) . Moreover, state implementation must fit the needs of schools and the readiness, willingness and buy-in of central office leadership and personnel and boards of education. Finally, enthusiastic and effective local leadership of the statewide reform initiatives is essential in this initial stage (Odden & Anderson, 1986) .

Once implementation begins, Anderson and Odden found six factors that correlate with success. First, effective central office implementation must be devised and coordinated to include, for example, initial training and coaching of school staff; data collection, analysis and feedback to the schools; processing paperwork; securing and allocating needed funding; and assuring sustained support from the board of education. Second, adequately trained, cross-role, school-based teams of administrators, teachers, and central office personnel should preside over implementation of programs and reforms that encourage broad practitioner buy-in, support teacher-principal collaboration, help principals become expert at the reforms, and promotes a sense of common purpose.

Third, effective implementation produces some results quickly to keep momentum up at the school, to give teachers immediate opportunities to practice new techniques, and to give school leaders the skills and opportunities to assess need and develop plans. Fourth, sufficient resources, including money and technical expertise, are associated with effective start-up implementation. Fifth, school and district coordination leads to delegating many decisions to the school including specialized training for team members and general training for all teachers; appropriate phasing-in of full staff participation; monitoring progress and solving problems as they were detected; controlling the allocation of discretionary dollars; and training central office personnel to provide technical assistance to the schools (Odden & Anderson, 1986) ⁸.

⁸It is interesting that in this period of his career, Odden identified the importance of central office involvement in effective reform, particularly when a decade later, as the Court appointed "special master" in the *Abbott V* remand proceeding, he would recommend to the Commissioner a New Jersey implementation plan that would exclude central offices from virtually any role in the State's whole school reform initiative.

Full implementation of a state initiated improvement program results when teachers and principals master the technical skills of teaching, leading, planning and implementation embedded in the reforms mandated or pushed by the State. Skill mastery itself resulted from practical application of the new techniques with on-site coaching to work through difficulties; faithful implementation of all aspects of the program; leadership by skillful principals fully committed to the program; and the rewards of positive program effects through the start-up period (Odden & Anderson, 1986). Essential to skill mastery is the ongoing availability of expert technical assistance responsive to the inevitable pitfalls of teachers and principals, to demonstrate where practice is falling short, and to enable practitioners, through reflective and assisted practice, to refocus on the new skills in order to eventually achieve mastery. Such mastery in turn leads to stronger commitment which in turn leads to increased practitioner support and acceptance of the skills and knowledge required by the reform initiative (Odden & Anderson, 1986).

Finally, full implementation evolves to permanent changes or institutionalization when both the individual players have changed – principals lead better, teachers teach better, and students learn more – and when the school as an organization is better – better climate, culture, professional development, curriculum etc. For such permanence to take hold, district support is essential and the smaller the change required or urged by the state, the more likely it is that the change will become permanent (Odden & Anderson, 1986).

The elements necessary for . . . success appear to be the use of a high quality, research-based, proven program; good up-front training; ongoing assistance in the form of observation, feedback, and coaching to help teachers and administrators master the skills in the program; and sustained

support in the form of resources and encouragement from district and state leaders. . .In successful programs, teachers and administrators expand their skills, students learn more, and schools become better places in which to work and learn. (Odden & Anderson, 1986, p. 585)

At the beginning of the last decade, Odden (1991) re-analyzed the research on effective local implementation and state initiative. He identified six "conclusions and implications" from the growing body of literature on state-induced local reform efforts. First, he cites the redistributive state and federal categorical programs initiated in the 1960's and 70's, the education reforms that followed publication of *A Nation at Risk*, and the restructuring reforms of the late 1980's to find that statewide initiative can have profound local impact. He concludes rather optimistically that "accommodation, cooperation, and strategic interaction to improve the American education system is more descriptive of conditions today" (Odden, 1991, p. 323).

Second, the failure of these earlier reforms, however, to produce substantial gains in student outcomes has led to a more intensive focus on policies and programs that will impact achievement and to research showing that "state education policy can [in fact] impact the important technical core of curriculum and teaching" (Odden, 1991, p. 324). Third, many, though not all, prior findings have been confirmed, including the importance of district and school leadership support, teacher involvement in program design and implementation, ongoing expert technical assistance and professional development, teacher buy-in and hard work, and, contrary to earlier findings, comprehensive and big, rather than limited and small initiatives. (Odden, 1991) Fourth, the role of teachers in leading reform is essential for complex curriculum and school restructuring initiatives,

requiring early attention to building capacity and professional expertise of these teacher-leaders. As such teachers develop their content knowledge, pedagogical skills, and leadership abilities, they tend to find informal and formal networks of colleagues to continue developing their knowledge and practice on their own. Once teachers acquire the status of leaders, conferred by colleagues and legitimated by school and district administration, they typically "provide the important ongoing technical assistance and support functions which are critically necessary to produce significant change in teacher classroom practice" (Odden, 1991, p. 325).

Fifth, state policy can impact the substance of education reform as well as the implementation processes that seek to install such reforms locally. State initiatives such as curriculum frameworks, professional development projects, new textbook selection, school improvement mandates, mentoring programs, state assessment, and school quality reviews provide resources, pressure, and opportunity for practitioners to get the help they need to change or to lead change (Odden, 1991). Sixth, growing expertise and professionalism of teachers and teaching could well limit the negative influences of politically-intended state legislative oversight. Finally, Odden cites the national education goals established in 1990 as reason to expect that research in the rest of the decade will focus on how to achieve these goals and assure that all students, including students who have traditionally been left behind, "benefit from these bold attempts to improve the overall American educational system" (Odden, 1991, p. 327).

In discussing implementation issues, Madson (1994) finds that state departments of education have grown in status and authority, offer "[t]he greatest impetus to local implementation of state initiatives" (Madson 1994, p. 171), and yet, there is little research

on the role, capacity, needs, and effectiveness of state education agencies. Lusi answers the call with her landmark 1997 study. Following case studies of the SDEs in Vermont and Kentucky, she offers seven strategic recommendations to improve the role of departments of education in leading and supporting sweeping reform initiatives at the local level.

First, State Education Department policy and practice must reflect the “desired values, norms, and goals of the reform effort” (Lusi 1997, p. 167). State education policy and implementation strategies must be integrated and congruent throughout the Department. Instructions, reporting requirements and direct assistance must emulate the collaborative, developmental values and practices stressed in the reform literature.

Second, SDE leadership and staff must know – and have a feel for -- actual conditions in schools in order to facilitate appropriate and flexible needs-based approaches. Such contact, while difficult given the numbers of schools and districts and the typical size of SDE staff, is nonetheless essential for the customization necessary for change to occur locally by making “differential treatment a self-conscious and data-based strategy” (Lusi, 1997, p. 168).

Third, SDEs must see themselves as intermediaries between legislative and executive branch officials and local schools, providing necessary support and protecting the interests of both state and local officials. The SDE must act aggressively to assure that legislative oversight does not strangle local initiative and that modifications can be made to strategies, instructions, and assistance based on local conditions and needs (Lusi, 1997).

Fourth, SDEs must transform themselves and give up their “emphasis on uniformity of treatment, little individual contact with schools, and a set of habits and

attitudes geared toward monitoring, as opposed to promoting change in practice (Lusi, 1997, p. 70). Instead, SDEs must stress (1) capacity-building, i.e., transferring authority among and between stakeholders and schools, districts, and the SDE; (2) persuasion, i.e., convincing practitioners to alter normative thinking and behavior to more closely approximate what the new reforms require; and (3) collaborative-learning, i.e., both state and local personnel are engaged in learning and problem solving together. While stressing the importance of this dramatic shift in SDE policy, behavior, and attitudes, Lusi acknowledges that “enforcement” measures may still be necessary for some even in the context of working to persuade local practitioners to embrace the reforms under consideration (Lusi, 1997).

Fifth, all state policies should be judged by the goal of local-capacity building to assure that, for example, accountability measures do not undermine the State’s efforts to build capacity at the district and school levels. Monitoring should be improved to “give schools useful feedback on their performance, generating dialogue around aims and the success of meeting those aims” as well as building “the capacity and habit of self-reflection and critique in schools” (Lusi, 1997, p. 172).

Sixth, SDEs need a guiding policy, set of principles, or “touchstone” to assure that policy, initiatives, and implementation activities are integrated, consistent and coherent and that the SDE sends the same direct and indirect symbols and messages to its own staff and to schools and districts alike (Lusi, 1997).

Finally, SDEs must establish partnerships and collaborations with other players to assure the capacity and commitment necessary for sustained work on sweeping local reform. SDE staff typically are not sufficient in numbers and do not have the skills and

knowledge necessary to provide all the help or to develop the instruments and products local practitioners need. SDE staff must also be prepared to learn from others since the work in which they are engaged is on the “cutting edge” and cannot be routinized. Moreover, genuine and deep partnerships help build the consensus needed to sustain attention over the long period of time it takes to institutionalize significant reforms at the local level (Lusi, 1997).

Massell, Consortium for Policy Research in Education (CPRE), 1998, raises a series of thoughtful questions that provide a “checklist” for examining the sufficiency of state strategies to build capacity for standards-based reform.

Does the state’s regional infrastructure for technical assistance and professional development have adequate resources, knowledge, and people-power to carry out its responsibilities? Do they use high-quality models of professional development and technical assistance?

How can the state increase capacity to assist schools in the middle of the performance distribution?

Does the state have a strategy for helping schools and teachers translate into practice the data generated by the accountability and testing program?

Do the state’s capacity-building initiatives meet the following research-supported criteria: Are the initiatives well-suited to individual school settings? Are the initiatives extended over time providing opportunities for feedback and reflection? Are the initiatives reform-linked and curriculum-specific?

Can the state play a role in encouraging and brokering research on curriculum and instructional practices that improves the performance of all students?

Do the state's initiatives provide adequate incentives for students, teachers, schools, districts, institutions of higher education, and other external organizations to build capacity – particularly capacity that is aligned with standards-based reform? Are there incentives to bring all students up to state performance standards?

Does the state policy system send coherent and consistent signals to schools and teachers about building needed knowledge and skills?

(Massell, CPRE, 1998, p. 42)

For implementation of national models of comprehensive school reform, CPRE (May 1998) addressed the role of both states and districts to assure and facilitate “appropriate matches between designs and schools” and to support “design-based improvement over time.” (p. 1) First, a series of at least 15 questions should be asked about CSR models that are being considered by state, district, and/or school officials. These questions include:

1. What theory of instructional improvement underlies the design? To what extent does the national model focus directly on improved curriculum and instruction and if not, how will the focus on other aspects of schooling -- structure, governance, process -- contribute to improved teaching and learning.
2. How good is the evidence? Does the evidence presented by the developer cover all schools that have used the model? Are the results of studies reliable and based on experimental designs? Do results teach us about the changes required by the model, the

best way to make such changes, and how to implement the model in different contexts?

And does the research focus directly on curriculum, teaching, assessment, professional development, etc.?

3. Are effects sustained? Is any documented growth in achievement for students at one particular grade sustained over time and do those same students achieve at higher rates than others as they grow older and are enrolled in upper grade levels?⁹

4. Have the effects been disaggregated? Does the evidence show growth for students similar to those in the school or district considering the model?

5. How long does it take to produce positive results? The national designs differ considerably in the preconditions they require and the time required to adopt and implement the model. There should be a match between local political imperatives and the amount of time required for full and effective implementation.

6. Under what conditions has the program failed to produce positive results? What do we know about when and why the program has failed when implemented elsewhere and to what extent are conditions in the current school or district similar?

7. Are there important prerequisite conditions for obtaining good results? Does the model require such things as physical space and professional capacity that are not currently available, and if so, can such space be provided and capacity developed in sufficient time to make adoption and implementation of the mode practical?

⁹It should be noted that a battle has raged in Phi Delta Kappan on this very subject between Robert Slavin (developer of the popular Success for All model), Co-director of the Center for Research on the Education of Students Placed at Risk, Johns Hopkins University and Stanley Pogrow, associate professor of Education at University of Arizona and developer of two programs that compete with SFA. See February 2002 edition for the latest point/counterpoint on this subject.

8. What are the initial and recurring costs? Are all the start-up and operational costs identified by the developer and can such costs be provided through reallocation of existing funding or additional funding within local political constraints?
9. How well specified is the program? Is the model highly developed with the required knowledge and skills identified and professional development activities targeted and available or is the program more general requiring more local development. And which approach more accurately fits local needs and capacity?
10. What support is provided and how good is it likely to be? As models spread throughout the country, the quality of technical assistance and professional development increasingly must rely on the capacity of the developer to exercise quality control of new staff and old staff with new responsibilities. It is essential that schools and districts assess the quality of help provided directly to schools throughout the life of the model to determine if current practices and performance are consistent with identified school and district needs.
11. Will local capacity to support the designs be developed? What is the program to build local parent and community knowledge and support and does the model include developing local district and university personnel to turnkey assistance and training over time?
12. Does the program fit well with previous local investments in instructional improvement? Is the model consistent with and does it build upon effective curricular and instructional improvements that may already be underway in the school?

13. Is the program complete? If the model is not a full K-12 model (as most are not), can the district live with, for example, elementary schools adopting a model for which there is no middle or high school equivalent?

14. What are the opportunity costs? Can the school or district afford the model in the face of other competing needs for scarce dollars, and, therefore, will support for continuing the model be sustained over time?

15. What is the provider willing to be accountable for? Will model developers provide technical assistance and professional development based on local needs rather than a pre-determined package of time and content? If results do not replicate prior experience, will the developer re-tool its relationship with the school to provide whatever is needed to improve results?

In addition to these questions concerning model programs and their sponsors, CPRE also addresses more specifically the role of the state and districts in supporting comprehensive school reform. First, states must assure consistency between the content and approach of each model and the state's approach to standards, curriculum, instruction, and assessment. Second, states must assess district capacity to support school based implementation of comprehensive school reform models, including assuring state capacity to conduct such assessment. And third, high quality evaluation/research is essential to determine levels of success, factors contributing to success, and best practices that are identified to be more broadly advocated, disseminated, and replicated (CPRE, May 1998).

Six specific responsibilities are identified for districts. First, districts must assist schools in making the correct decisions about matching school needs and conditions with competing models. This assistance is critical because school faculties have been found to

have much less information than they need about both the objective conditions and needs in their own school as well as the detailed strengths, weaknesses, and results of competing model(CPRE, May 1998).

Second, the selected model must become the centerpiece of school operations. It cannot be an "add-on" but rather must supplant and transform existing school policy, program, and practice. District policies, programs, oversight, assistance, and budgets must be adjusted to include and assume the central role of the model in the life of schools adopting such models (CPRE, May 1998).

Third, district operations must be re-ordered, or, in the words of the Cross-city Campaign,¹⁰ "re-invented," to accommodate the new era of school-based decision-making. Comprehensive school reform includes huge delegation to schools for budgeting, personnel selection, use of data to drive decisions, accountability, instructional reform, needs assessments and professional development. District policy, program, staffing, and practice must reflect this new authority delegated to schools. Central offices must be prepared to provide direct services to schools as well as to assist in the development of school-based capacity to make and implement decisions about curriculum, instruction, scheduling, governance, staffing, hiring, etc.(CPRE, May 1998; Cross City Campaign, 1995).

Fourth, districts must develop their own approach to school-based initiatives, including the amount of discretion schools are to have, the degree of centralized direction, and whether adoption of national models, development of homegrown, customized

¹⁰For a thoughtful, though incomplete, early discussion of the need to reinvent central office program, staffing, and operations, see *Reinventing Central Office*, 1995, by the Cross City Campaign for Urban School Reform.

initiatives, or both are to be encouraged or mandated. Such district-policy also carries with it powerful implications for central office work, since the less reliance on national developers, the more central offices will be obliged to provider or broker the services not accepted as the responsibility of national developers (CPRE, May 1998).

Fifth, districts should be monitoring and providing quality control of the performance of design teams and developer implementation, including the business and contractual aspects of the relationship between developers and schools. And sixth, districts should assure that parents and the community at large are fully aware, engaged in, and supportive of the school and/or district decisions to adopt and implement national models or home-grown initiatives. Such a public engagement process must assure public awareness of the achievement deficits that led schools and the district to make new instructional decisions. It should provide ongoing information about the models and their relationship to district and state standards, assessments, and expectations. It should assure that parents in particular are fully involved at the school site and are provided the training necessary to monitor school-based implementation and achievement levels district-wide (CPRE, May 1998).

And still another 2001 study was conducted by the Center for Education Policy at the University of Massachusetts under the auspices of the Massachusetts Education Reform Commission. Specifically designed to assess the capacity of the state education agency to implement a reform act passed in 1993, the study produced eleven recommendations that have broad applicability for state departments of education engaged in comprehensive school reform. These recommendations include:

- (1) Increase DOE funding to support expansion of data collection and management, research and evaluation, assessment, and technical assistance;
- (2) Include sufficient funding for DOE oversight and evaluation of all mandated programs;
- (3) Increase salaries for DOE staff;
- (4) Change relationship of state and local practitioners from adversarial to collaborative;
- (5) Establish networks of independent and higher ed providers of technical assistance and professional development to service the schools but assure sufficient DOE resources to facilitate such networks and assure high quality service;
- (6) Establish clear lines of authority and responsibility for accountability, monitoring and oversight;
- (7) While establishing collaboration with practitioners and providing or brokering assistance, continue the essential role of regulating compliance with law and regulation;
- (8) Increase the use of sample data collection and analysis where appropriate to increase efficiency in evaluation activities;
- (9) Increase communication and coordination across divisional lines within the DOE;
- (10) Decentralize DOE functions to regional offices to facilitate improved contact with practitioners; and
- (11) Increase ongoing research to guide policy formation and resource deployment (Mass. DOE Report, 2001).

Constitutional Law, Statutory Law, and Administrative Regulations

Put simply, statutes and rules depend on one another. Statutes provide the legal authority for rules and the various processes by which they are made. Rules provide the technical detail so often missing in statutes, and rulemaking brings a capacity for adaptation to changing circumstances that the letter of the law alone would lack (Kerwin, 1999, p. 7).

Professor Kerwin has it almost right. What he omits, however, in this otherwise clear distinction between statutes and regulations is that statutes are not the only source of legal authority that cause the adoption of administrative regulations. As we will see in greater detail in Chapter VII, the New Jersey Supreme Court authorized the promulgation of implementing regulations directly, after nearly a decade of finding one statute after another unable to pass constitutional muster. In effect, one can almost see in the evolving Court decisions in *Abbott* a growing awareness that as the Court issued more and more prescriptive rulings, it virtually abandoned any expectation that a legislative remedy would fully meet New Jersey's constitutional requirements.

As described earlier, Kentucky took the more conventional route. A short, but powerful decision by the state Supreme Court led to a sweeping new education statute that on its face, as demonstrated by the absence of any challenge, met and furthered the constitutional goals set out in *Rose*. The enactment of KERA then set in motion a series of administrative processes that led to even more detailed regulations identifying the various new obligations of the Kentucky Department of Education, as well as local schools and districts.

By contrast, in New Jersey after the Supreme Court found the Public School Education Act of 1975 unconstitutional in 1990, the Quality Education Act unconstitutional in 1994, and the Comprehensive Education Improvement and Financing Act unconstitutional in 1997, its rulings in *Abbott IV* (1997) and *Abbott V* (1998) ordered the Commissioner to implement many of the Court-imposed remedies directly.¹¹ Parity funding was ordered by the Court in May of 1997 for the following September. School facilities were to be assessed by the Commissioner and a plan to fix and replace school buildings was to be developed. The Commissioner was directed to assess the special needs of actual students in Abbott schools, propose programs and services responsive to such needs, develop an implementation plan to assure the provision of these programs and services, and identify needed funding. (*Abbott IV*) These assessments and plans then were not to go directly to the Legislature for statutory enactment, but rather would be considered and approved by the Supreme Court after a full adversarial examination conducted by Appellate Division Judge Michael Patrick King of the Superior Court (*Abbott IV*, 1997).

Moreover, once the Court received Judge King's recommendations, an oral argument was held before the Supreme Court to consider what specific remedies the Court would order. Once the Court determined the remedies, rather than order legislative action, the Commissioner was directed "to promulgate regulations and guidelines that will codify the education reforms incorporated in the Court's remedial measures." In addition, the

¹¹The remedy ordering parity funding required the Legislature to adopt language in the annual appropriations bill that establishes the formula and authorizes funding amounts. In addition, the facilities remedy required legislative adoption. The bulk of the operational remedies dealing with preschool, standards-based and whole school reform, school-based management, supplemental programs, and needs assessment to assure program adequacy all were left to the Commissioner to implement through regulations.

Court directed that such “regulations shall include the procedures and standards that will govern applications by individual schools and districts for needed programs and necessary funding” (*Abbott V*, 1998).

The *Abbott* Court directive for “procedures and standards” is buttressed by other sources for the construction of good statutory and regulatory language. The purposes of regulations are threefold: to directly cause the implementation of a statute (or judicial decree), typically when such prior authority has fully and completely detailed the terms and conditions of such implementation; to interpret a statute or decree that once enacted, may not of its precise language anticipate changes in the very circumstances that caused enactment or issuance in the first instance; and to elaborate where statute or decree is devoid of sufficient detail to adequately explain what and how certain required actions are to be undertaken (Kerwin, 1999).

State statutes typically spell out the procedures and standards governing the adoption of administrative regulations. In New Jersey, where *Abbott* regulations are central to implementing Court mandates, the Legislature has adopted the Administrative Procedures Act. In section 52:14B-4.1a.b., the Act requires that all regulations adhere to a “standard of clarity.” The elements of this standard include easy readability; good grammar; short and practical sentences organized sensibly; definitions for terms of art and words that may be misinterpreted; comprehensiveness; the absence of double negatives, cross references that are not obvious and clear, and overly complex language; and sufficiently informative language to facilitate public understanding of the “legal authority, purposes and expected consequences” of implementation of the regulation.

Further, case-law has been established in New Jersey that makes clear the State's obligation to assure that regulations are consistent with the details of authorizing statutes, that such regulations reflect all policies embedded in the originating law or decree; that such regulations cannot narrow or restrict the policies established by the law or decree; that all terms and requirements must be reflected and detailed in regulations; and that language is sufficiently clear, unambiguous, and comprehensive to enable both practitioners and consumers to understand the meaning and intent of the regulation.¹²

Kentucky also has adopted similar requirements on the use of language. Section 446.015 of the Kentucky Revised Statutes requires that bills introduced in the General Assembly are to be drafted in "nontechnical language," in a "clear and coherent manner using words with common and everyday meanings." Section 13A.222 of the Kentucky Administrative Code requires that regulations be written with "plain and unambiguous words that are easily understood by laymen." Words or phrases that are "ambiguous, indefinite, or superfluous" are to be excluded. There does not appear, however, statutory language in Kentucky that covers the purpose of rulemaking.

Martineau (1991) has provided a thoughtful discussion on the art of drafting legislation and rules.¹³

The purpose of legislation or a rule is to impose a burden or confer a benefit, not to be merely descriptive. When the drafter attempts to determine what that result should be and to accomplish that result through the use of language, the

¹²Although these standards for regulatory adoption relate to implementation of the federal IDEA, the language is clearly consistent with the state's APA and rationally would apply to other areas besides federal special education legislation. See 30r NJ Super at 402, 403, 404-06; 204 NJ Super at 162,164.

¹³ For the purpose of this study, "rules" and "regulations" are used interchangeably, both identifying the written adoptions of Administrative agencies designed to implement statutory or case law.

first principle that should guide the drafter is concentrate on the “who” – the person on whom the legal burden is imposed or benefit is conferred, and the “what” – the burden imposed or benefit conferred. The actor is the who; the action and the object or the complement are the what. . . . The primary responsibility of the drafter is to identify both. If the drafter fails in this responsibility, a reader of legislation or a rule will be uncertain about its intended effect (p. 65).

More than identifying who is responsible to take what action, the drafting of legislation or a rule must include details that will produce the intended consequences. Thus, the legislation or rule elaborates, implements or extends original intent, are reflected initially either in the mind of an official, or in the words of the antecedent authority, and, therefore, “almost every word chosen by the drafter reflects a policy choice” (p. 65) .

To assure clarity in the actual writing, Martineau advises elements of the Plain Language movement, including: avoid unnecessary words; use words that are common, used by laymen everyday; avoid legal jargon; repeat the same words rather than writing “elegant variation” or even synonyms; avoid long, complex sentences; pay attention to the proper placement of words to elucidate meaning; and pay attention to proper punctuation (Martineau,1991).

The promulgation of detailed administrative regulations in the early 90's in Kentucky and the late 90's in New Jersey occurred during a time when the very idea of state education regulations was under growing scrutiny (CPRE, 1992). Despite concern about the seminal question of the value of state regulation, however, the research community has been virtually silent on the adequacy and quality of such regulations or the degree to which they conform to judicial or statutory language.

State education regulations typically address one or more of the three basic elements of schooling: inputs, including such areas as school finance levels, teacher qualifications, and class size; process, including the organization and delivery of instruction or the assessment of student need; and outputs or outcomes, including expected student achievement levels, staff and student attendance, and graduation rates (CPRE, 1992). The CPRE study identified "ten lessons" about education regulations. These include:

1. considerable confusion among practitioners about the differences between regulations, statutes, policies, and guidelines;
2. lack of certainty about the ways in which regulations can lead to improved practice;
3. the absence of clear linkage between regulations and practice contributes to increasing interest in establishing outcome standards through the regulatory process;
4. possible erosion of quality and lowering of achievement when de-regulation is triggered by higher achievement.;
5. for low achieving schools and/or districts, regulatory oversight may be intensified up to an including state takeover, without sufficient evidence or planning that state operation actually cures the problems such schools face;
6. no evidence that de-regulation leads to school improvement;
7. the quid pro quo aspect to deregulation may itself stimulate school improvement since the prospect of deregulation acts as an incentive;
8. any potential benefit that may derive from loosening regulations can only occur if an entire set of regulations that impact on a local school situation can be waived --

granting of single issue waivers has virtually no impact on improved schooling;

9. similarly, potential benefits may only occur when blanket deregulation has been adopted; and

10. attention to direct school improvement mandates and assistance are essential if deregulation will contribute to school improvement.

Such findings by researchers at CPRE actually skirt the primary issue, at least as revealed in *Abbott* and *Rose*. That is, if regulations include standards, definitions, and procedures for implementing court-ordered (and/or statute-required) new programs and reforms, isn't it likely that to be effective, such programs and reforms must be defined and elaborated in the very implementing regulations that appear to be the object of deregulation efforts? This is precisely the situation in Kentucky and New Jersey.

Criticism of Laws and Regulations Implementing *Rose & Abbott*

I should apologize, perhaps, for the style of this bill. I dislike the verbose and intricate style of the modern English statutes. . . . You however can easily correct this bill to the taste of my brother lawyers, by making every other word a "said" or "aforesaid" and saying everything over two or three times so as that nobody but we of the craft can untwist the diction, and find out what it means (Thomas Jefferson, 1817¹⁴).

¹⁴In a letter to Joseph C. Cabell, September 9, 1817, as quoted in Martineau (1991) from D. Mellinkoff, *The Language of the Law* 253 (1963), originally from *The Writings of Thomas Jefferson* 417-18 (Lipscomb ed. 1905)

Martineau finds that typically “there are relatively few comments on the drafting found in legislation and rules” (1991, p. 2)¹⁵. It is no surprise then that there is virtually no evidence of scholarly review and criticism of the language of KERA or of its implementing regulations. As implementation proceeded, however, criticism of specific KERA *policies* began to surface. Cunningham (1998), for example, finds a large discrepancy between the standards implicit in the assessment instruments Kentucky employed during the KIRIS period of KERA implementation and the language of the published standards. He points to five different published sets of standards, including (1) Learner Outcomes, (2) Transformations, (3) Academic Expectations, (4) *Content Guidelines*, and (5) Core Content for Assessment, and finds, “[t]hese standards differ among themselves in terms of content and philosophy, but provide minimum guidance for teachers.”¹⁶ He further finds that “the high standards implicit in the assessment have remained fixed in the test itself, and never manifested in the published standards” (p. 5). Cunningham concludes that the basic problem in Kentucky is the expectation “that all students can reach the same high level of performance and that this can be accomplished with the proper delineation of standards.” (P. 6)

Whitford and Jones (2000) are more supportive of KERA, but take issue with the growing tendency to lessen the importance of performance assessment in favor of more

¹⁵Martineau cites several authorities over time, in addition to Jefferson, who have commented on the quality of written statutes or regulations. Those cited include Jimmy Carter who issued an executive order requiring all federal rulemaking to be in “plain language;” Rudolph Flesch who authored several books on the “incomprehensibility of federal administrative rules;” Renaissance era English critics who sought statutes that were “more plain and short, to the intent that men might better understand them;” and a mid-70’s government commission that found statutory language to be “legalistic, often obscure and circumlocutious,,” with overly long sentences, obscure grammar, and “legally meaningless words and phrases” (Martineau, 1991, p. 2).

¹⁶See Corcoran and Matson (1998), finding, “*Transformations* was dense, lacked specificity about content, and was only loosely aligned with the KIRIS assessments” (p. 6).

traditional tests based on multiple choice questions. They see “high stakes accountability” as the force propelling state mandates and lessening the opportunity for authentic assessment and meaningful reform.

Kentucky’s system of accountability, with its significant rewards and sanctions for teachers and administrators, has led to a state system of more traditional assessment, in large part because it can be scored more reliably for high stakes than can performance assessment formats. Thus, the perceived need for state standardization, measurement, and enforcement has superceded the call for greater diversity, authenticity, and local empowerment (Whitford and Jones, 2000 p. 233).

A WestEd (2001) study affirmed that “promising, innovative statewide assessment formats were rolled back and, ultimately, eliminated” (p. 4). The change from KIRIS to CATs signaled a retreat from several key components of innovative assessment. First, open-response items were cut back in favor of multiple choice questions to assure that all student response counted, to improve scoring reliability, and to increase and identify different achievement deficits among low-achieving students. Second, the math portfolio requirement was abandoned because it was costly, teachers were not ready to teach to it, and it was seen by practitioners to be an unnecessary burden on both teachers and students. Third, performance events were dropped because they could not be universally and reliably scored, interpreting proficiency was difficult, logistics were very difficult to master, and the costs too great to justify. Fourth, integrated assessments were removed because of the difficulty in providing authentic, integrated assessment across subject areas and the difficulty of reliable scoring of both subjects contained in the integrated assessment. Fifth, the inclusion of national, norm-referenced, commercial tests in

reading, language arts, and mathematics enables inter-state comparisons and avoids public concern over the reliability and results of state-developed assessment (WestEd, 2001).

Foster (1999) identifies several problems with KERA's implementing language. First, he finds that the absence of statutory or regulatory deadlines for curriculum improvement led to uneven curriculum across the spectrum. Such difficulty was compounded by requiring practitioners to develop curriculum without the training and experience necessary to develop and acquire sufficient skills and knowledge. Second, the problem many teachers had with switching from a focus on "recognition and recall of specific information" to standards-based instruction was compounded by inadequate training and materials as well as the state's failure to link performance standards for assessment with standards for curriculum. Third, the culture of schools and teaching cause teachers to devalue "assessment as a clinical tool for evaluating their own effectiveness or that of the instructional practices they employ," thus generally attributing failure "to the student rather than the instruction" (p. 66). Fourth, problems identified in implementing the primary program included the insufficiency of time for implementation and for ongoing meetings, inadequate professional development, insufficient support from parents, and serious problems of teaching multiple age students. Fifth, the language of KERA was inadequate to provide guidance on the mission, program, location and funding of Youth Service Centers (Foster, 1999).

It appears that criticism of KERA focuses largely on aspects of implementation that were not fully developed or that did not fully suit the views of certain researchers and advocates. Foster (1999) concludes with his belief that "Kentucky is on the right track," (p. 255) while Whitford and Jones (2000) believe that the linkage of performance assessment with high stakes accountability "has forced compliance with several state

mandates but has not developed commitment to the vision of learner-centered, performance-oriented teaching and learning described in KERA.” (p. 2)

By contrast, criticism of New Jersey’s efforts to implement *Abbott* through statute and regulation throughout the 1990’s was constant, sweeping, fundamental, and went to the core of everything written and done by the New Jersey DOE. Beginning in 1990, the Supreme Court announced its ruling for parity funding to end program disparities between rich and poor and supplemental programs “to wipe out disadvantages as much as a school district can.” *Abbott II* was the second *Abbott* decision and first to consider the merits of the case originally brought in February of 1981. After reviewing the nine-month 1986-87 trial before Judge Lefelt, the late Chief Justice Robert Wilentz wrote for a unanimous Court:

We again face the question of the constitutionality of our school system. We are asked in this case to rule that the Public School Education Act of 1975, *L. 1975, c. 212, N.J.S.A. 18A:7A-1 to -52* (the Act) violates our Constitution’s thorough and efficient clause. We find that under the present system the evidence compels but one conclusion: the poorer the district and the greater its need, the less the money available, and the worse the education. That system is neither thorough nor efficient. We hold the Act unconstitutional as applied to poorer urban school districts. Education has failed there, for both the students and the State. We hold that the Act must be amended to assure funding of education in poorer urban districts at the level of property rich districts; that such funding cannot be allowed to depend on the ability of local school districts to tax; that such funding must be guaranteed and mandated by the State; and that the level of funding must also be

adequate to provide for the special educational needs of these poorer urban districts in order to redress their extreme disadvantages (*Abbott II*, 1990 p. 295).

And so began what is in 2002 a twelve-year quest for statutory and regulatory compliance with the Court's directives for additional state aid to achieve spending at parity with wealthy districts and to adequately support the extra programs students with disadvantages require to be competitive with their suburban peers. The Court presumed, as courts typically do, that the other branches would comply. It was anticipated that a statute would be enacted or the existing statute amended to assure parity funding and that the State would identify the needs of actual students in the poorer urban districts and develop and fund a package of programs and services responsive to such needs (*Abbott II*, 1990).

As discussed earlier, the Quality Education Act, introduced and quickly passed in 1990, failed to achieve the Court mandate. Following a three month trial in 1992,¹⁷ and on a State appeal from the trial court ruling in favor of plaintiff children and ELC, the Court ruled in 1994 that the State again missed the mark. (*Abbott III*, 1994) The Court "affirmed the judgement of the Chancery Division declaring unconstitutional the Quality Education Act" (p. 446), "based on the Act's failure to assure parity of regular education expenditures between the special needs districts, and the more affluent districts." (p. 447) The Court provided a technical description of why the language of the QEA failed to provide the assurances ordered in *Abbott II*. (*Abbott III*) The Court concludes that

[b]ecause the QEA's design for achieving parity depends fundamentally on the discretionary action of the executive and legislative branches to increase the

¹⁷Judge Paul Levy of the Chancery Division decided in his 1993 unpublished decision that plaintiffs had once again proven that a remedial statute did not cure the constitutional defect.

special needs weight, which in turn would increase the maximum foundation budget and the amount of foundation aid in the special needs districts to the levels required for parity, the statute fails to *guarantee* adequate funding for those districts. Accordingly, the conclusion is unavoidable that the QEA does not comply with Abbott's mandate. . . (*Abbott III*, p. 451).

Further, the Court found that "students in the special needs districts have distinct and specific requirements for supplemental educational and educationally-related programs and services that are unique to those students, not required in wealthier districts, and that represent an educational cost not included within the amounts expended for regular education." (p. 453-4) Yet, the expectation that the other branches would conduct the necessary studies to determine the specific needs, programs, and costs to assure program and funding adequacy was not met.

. . . the Legislature made no study of the added costs associated with providing services for at risk students. Moreover, although legislation was enacted specifically to require the Commissioner, in accordance with our holding in *Abbott*, to undertake a study of the programs and services to be implemented for disadvantaged students, including their costs . . . that study apparently has not been completed (*Abbott III*, p. 453).

And finally, the Court noted the critical importance of assuring that the new funding required by *Abbott* will be spent efficiently and for maximum educational benefit. Such assurance must be provided by the State. "The responsibility for substantive education is squarely and completely committed to the State; delegation of any part of the educational function to school districts does not dilute that State responsibility at all" (*Abbott III*, p. 455), And more specifically, the Court emphasizes "the State's obligation to

verify that the additional funding for the special needs districts mandated by *Abbott* significantly enhances the likelihood that the school children in those districts attain the constitutionally-prescribed quality of education to which they are entitled" (*Abbott III*, p. 452). The Court held onto the case and gave the State three more years or until September 1997 to enact and implement a statute that fully complies with the *Abbott II* order, as reaffirmed in *Abbott III*.

As noted earlier, the new Whitman Administration took this language and turned it on its head. On December 20, 1996, Governor Whitman signed into law the Comprehensive Education Improvement and Financing Act of 1996. (*Abbott IV*) Five months later, the Court was quick to respond.

We hold that the Comprehensive Educational Improvement and Financing Act of 1996 is unconstitutional as applied to the special needs districts. The remedial relief that we order is directed to those constitutional deficiencies. We do not disturb the substantive and performance educational standards. In the absence of adequate funding, realistically geared to such educational standards, however, we require that funding for regular education in the special needs districts be increased and that measures be taken to assure the proper and efficient use of expenditures to maximize educational resources and benefits in those districts. We further order the State to study, identify, fund, and implement the supplemental programs required to redress the disadvantages of public school children in the special needs districts (*Abbott IV*, p. 153).

The Court went on to further detail its order. The added funding was to be sufficient to "assure that each of those districts has the ability to spend an amount per

pupil in the school year 1997-98 that is equivalent to the average per pupil expenditure in the District Factor Group I&J (wealthiest) districts for that year, based on actual, budgeted expenditures, by the commencement of the 1997-98 school year" (*Abbott IV*, p. 224).

Additionally, the Commissioner of Education was directed to "manage, control, and supervise the implementation of said additional funding to assure that it will be expended and applied effectively and efficiently to further the students' ability to achieve at the level prescribed by the Core Curriculum Content Standards" (*Abbott IV*, p. 224).

The Court accepted the content standards, noting however a 1997 report from the American Federation of Teachers indicating that the "standards were not clear and specific enough to lead to a common core curriculum or to serve as a basis for funding determinations" (*Abbott IV*, fn. p. 168)¹⁸. In addition, the Court accepted the performance indicators and "an improved statewide assessment program, based on the standards" that "are scheduled to be phased in over the next six years." (*Abbott IV*, p. 162).

As a precursor to the very detailed findings, conclusions, and directives in *Abbott V*, the Court noted that these standards "do not ensure any substantive level of achievement" (*Abbott IV*, p. 168). The educational improvement *Abbott* requires and presumes will be determined by "the sufficiency of educational resources," the quality of "teaching, effective supervision, efficient administration, and a variety of other academic, environmental, and societal factors needed to assure a sound education" (*Abbott IV*, p.

¹⁸Three years later Achieve, Inc. would also conclude that "the clarity and specificity of New Jersey's standards fall well below that of exemplary standards from other states and nations, providing insufficient guidance and assistance for teachers" (*Measuring Up - NJ, 2000*, p. 4). The report goes on to find that some of the standards lack adequate "progression" and some others are either "too demanding" or "not rigorous enough." (p. 4). Most important, the report finds that "the language arts literacy standards omit important content, particularly in early literacy." (p.). The methodology and rubrics used by Achieve staff in examining the New Jersey standards are reviewed in the next chapter to inform the methodology for document review in Chapter V.

168). The Court found that “content standards” alone cannot identify the level of resources sufficient to implement such standards and “to provide a thorough and efficient education to children in the special needs districts” (*Abbott IV*, p. 168). Thus, the Court concludes that since “CEIFA does not in any concrete way attempt to link the content standards to the actual funding needed to deliver that content, we conclude that this strategy, as implemented by CEIFA, is clearly inadequate and thus unconstitutional as applied to the special needs districts.” (*Abbott IV*, p. 169).

The Court goes on to criticize the basis for the funding amounts contained within CEIFA. They are generated by a set of “efficiency standards” that in turn derive from a “model district” the State asserts would meet the content standards – with no evidence – and that is unlike either the successful districts or the special needs districts. In language suggesting displeasure with the State’s resistance to earlier directives, in *Abbott IV*, the Court further finds that:

Neither CEIFA itself, the record in this case, empirical evidence, common experience, nor intuition supports the State’s position that inefficiencies explain why successful districts’ spending levels exceed what the State asserts is the amount needed to provide a thorough and efficient education. (p. 169)

and

The fallacy in the use of a hypothetical model school district is that it can furnish only an aspirational standard. It rests on the unrealistic assumption that, in effectuating the imperative of a thorough and efficient education, all school districts can be treated alike, and in isolation from the realities of their surrounding environment. (p. 172)

In addition to such fundamental criticism of the State's failure to provide sufficient funding for standards-based education reform, the Court also found once again wholly unacceptable the inadequate attempt in CEIFA to provide for the special needs of Abbott children. The Court rejected the CEIFA funding formulas for both Early Childhood Program Aid (ECPA) and Demonstrably Effective Program Aid (DEPA), declaring both formulas "unconstitutional," and finding that:

The State contends that experts were involved in formulating the amounts of DEPA and ECPA and that the Court should defer to their determinations. Children in the special needs districts have been waiting more than two decades for a constitutionally sufficient educational opportunity. We are unwilling, therefore, to accede to putative expert opinion that does not disclose the reasons for its conclusions. We have ordered the State to study the special educational needs of students in the SNDs. That has not been done. We have also ordered the State to determine the costs associated with implementing the needed programs. Those studies have not occurred. Without studies of actual needs, it is unclear how a sound program providing for those needs has been accomplished (*Abbott IV*, p. 185).

Further, the Court reiterated its historic position that the Constitution imposes on State government, not local school districts, the responsibility to assure that all children receive a thorough and efficient education, that is one that satisfies the constitutional command. Delegation to local districts can only go so far and cannot include such assurances. The Court concludes that "[t]he State. . . cannot shirk its constitutional obligation under the guise of local autonomy" (*Abbott IV*, p. 182).

Finally, the Court found that “CEIFA completely fails to address one of the most significant problems facing the SNDs – dilapidated, unsafe, and overcrowded facilities” (*Abbott IV*, p. 186). In ordering parity funding and state funded and improved facilities “that will be sufficient to enable . . . students to achieve the substantive standards that now define a thorough and efficient education,” the Court recognized that its judicial remedy is “necessarily incomplete,” and that the full solution to the “enormous problem” requires comprehensive “efforts” by the Legislature and the Executive (*Abbott IV*, p. 189)

Thus, we have always insisted that increased funding to the SNDs be allocated for specific purposes realistically designed to improve education. The Commissioner has an essential and affirmative role to assure that all education funding is spent effectively and efficiently, especially in the special needs districts, in order to achieve a constitutional education (*Abbott IV*, p. 193).

The Court ended what most observers have identified as a quite angry decision with a comprehensive order spelling out the further work of the Commissioner and establishing an adversarial, judicial process for deciding State policy and implementation on the remedies not adequately addressed in CEIFA. The Court directed first “a comprehensive study” of the needs of students “attending school” in the Abbott districts; second, specified programs “required to address those needs,” third, a determination of the “costs of those needed programs;” fourth, an implementation plan for the “identified programs” in each of the Abbott districts; fifth, a “review of the facilities needs” of the Abbott districts; sixth, “recommendations as to how the State should address those needs;” and seventh, “consideration of appropriate and alternative funding, as necessary” (*Abbott IV*, p. 225) All such matters were to be submitted in the form of recommendations to the

Superior Court, with opportunities for the Attorney General, representing the State, and ELC, representing the plaintiff children, “to respond and to take exception to proposed specific findings, recommendations, or conclusions of the Commissioner concerning said programs and facilities needs” (*Abbott IV*, p. 225)

The hearing by Judge King was conducted in November and December of 1997. His recommendations to the Supreme Court issued on January 22, 1998, the Supreme Court heard oral argument on March 2, 1998, and issued *Abbott V* on May 21, 1998. Since that decision provides a programmatic, budgetary, and facilities framework for *Abbott* implementation, the details will be further examined in Chapter IV.

The Court’s next opportunity to criticize implementation occurred in the *Abbott VI* proceeding.¹⁹ ELC had returned to the Supreme Court in 1999, having discovered non-conforming State implementation of the *Abbott V* preschool mandate. The Court concluded “that the manner in which the . . . DOE has carried out the preschool mandate of *Abbott V* is not consistent with the Commissioner’s representations to the remand court in that case” (*Abbott VI*, p. 101). Further, “the DOE’s use of community care providers staffed by uncertified teachers and government by . . . DHS daycare standards violate the *Abbott V* requirement to establish quality preschool programs for three- and four-year old children” (*Abbott VI*, p. 101).

The Court took note of the lack of substantive standards in the DOE preschool regulations and found that “[w]ithout adequate standards the DOE will be unable to

¹⁹It is important to note that by the time *Abbott V* issued, Governor Whitman’s former Attorney General, Deborah Poritz, had been seated as the new Chief Justice of the Supreme Court. Although Justice Poritz has not altered in any fundamental way continuing judicial oversight, the tone of the *Abbott* decisions from *V* on was less critical of the State and the Court’s eagerness to adopt ELC’s remedial recommendations had lessened considerably.

evaluate preschool programs or to prevent the development of a two-tiered system in which one group of children is offered daycare and another group is offered high-quality preschool” (*Abbott VI*, p. 107) The Court then directed the DOE to provide “substantive educational guidance” for Abbott preschool programs no later than April 17, 2000.

Further, the Court took issue with regulations that in effect permitted protracted delays in the provision of certified teachers in child care centers, while recognizing that school-based programs would immediately employ certified teachers. “Under this system, district-run schools will have qualified teachers, DHS licensed providers would not. Indeed a broad interpretation of the waiver provision would permit DHS licensed providers to hire minimally qualified teachers” (*Abbott VI*, p.111). The Court directed that “[t]he regulations must be clarified and the time frames shortened in order to eliminate as quickly as possible any disparity between district-run and DHS-licensed preschool programs” (*Abbott VI*, p. 111). The Court further directed that the State require uncertified teachers to demonstrate progress in achieving certification, while requiring such teachers to obtain certification within 4 years, or by 2004.²⁰

The Court further took issue with the State regulation that provided optional class size and staffing pattern. The regulations permitted either a class size of 15 with one teacher and an assistant, or a class size of 20 with one teacher and two assistants. Such an

²⁰ELC agreed with virtually all advocates that this time frame was entirely too fast, given that many experienced child care teachers had little or no college, and that holding a full-time job, along with family responsibilities made the completion of sufficient course-work within a four year period virtually impossible. At the time, however, it was agreed that Court relaxation of the deadline would not be sought until the State provided accessible higher education programs, some released time from work, and all the supports existing childcare staff needed to successfully obtain a college degree and DOE certification. As this is written, however, the McGreevey Administration has begun to work with advocates to craft a more comprehensive higher education and programmatic response to the needs of existing teachers, and an application to the Court for more time is likely to be filed by end of 2002

option violated the *Abbott V* mandate as well as two “academic” studies that found adding “an instructional aid produces little if any achievement effect” (*Abbott VI*, p. 113) Thus the Court directed the DOE to alter its regulation and limit class size to 15 with a certified teacher and an assistant.

Contracts between districts and providers were also subjected to Court review, and the Court noted the absence of regulatory guidance to districts on the promulgation of such contracts. In discussing the need for mutual accountability between districts and providers, the Court found that contracts must define the various responsibilities in detail. Specifically, the Court found:

Ultimately, it is the district that must have the power to assess and evaluate providers and to impose improvements if necessary. Termination of the contract by the district must be an option when the provider cannot or will not adhere to quality standards. On the other side, the support to be provided by the district is also critical, whether in the form of supervision, professional development, access to specialized staff, or assistance in complying with federal and state requirements for special education, bilingual education, and other needed services. Ultimately, it is the responsibility of the districts and the DOE to monitor operating preschools on a regular basis and to ensure that they are delivering quality programs.

Contracts between the districts and providers must spell out these and other requirements deemed appropriate by the Commissioner (*Abbott VI*, p. 116).

The Court also took issue with the DOE’s exclusion of Head Start providers, justified by the State on the spurious assumption that Head Start programs already meet the Abbott standards. On the contrary, however, the Court cited “loose content

standards,” inadequately qualified teachers, and class size of 20 to reject the State’s assertion that federal Head Start standards are comparable to *Abbott*. The Court directed the State to collaborate with all Head Start programs unless it can be shown that a particular program already meets or exceeds the Abbott preschool standards (*Abbott VI*, p. 116)

In reviewing the low enrollments identified by ELC, the Court found that “[t]he DOE has failed to require that significant efforts be made to recruit as many children as possible into the Abbott preschool program.” The Court directed the State to assure that all parents in the communities are aware of the program, that all children whose parents demonstrate the interest shall be enrolled, and that if necessary, the State should provide additional funding for outreach and recruitment (*Abbott VI*, p. 119)

Finally, the Court anticipated developments that would take an additional two years to materialize when it concluded, “It is our hope that the adversarial relationship between the parties will give way to a cooperative effort focused on the provision of high quality preschool programs for children in the Abbott districts” (*Abbott VI*, p. 120-21)

The next formal critique of State implementation was unveiled in *Abbott VIII*, issued on February 21, 2002.²¹ Once again preschool was the subject. Despite the clear and unequivocal language of *Abbott VI*, the DOE continued to implement preschool without regard for the Court’s increasingly detailed mandates. Court language, soft in tone but strong in content, reminded the State that “[w]hen three- and four-year-old children

²¹ As discussed earlier, *Abbott VII* was the Court’s response to a motion brought by the former speaker of the New Jersey General Assembly who sought “clarification” on whether the Court would actually continue its order of full state funding of Abbott facilities improvement. Consequently, there was no effort to parse the words or meaning of implementing statutes or regulations.

are denied the opportunity to attend a quality preschool, the advantages of early exposure to that educational experience are irretrievably lost”²² (*Abbott VIII*, Slip. Op. at 8).

To assure, finally, the provision of “substantive educational standards” to guide adoption or development of preschool curriculum, the Court directed the DOE to complete a final draft of the preschool curriculum framework by April 30, 2002. On the matter of low enrollments, the Court found that “thousands of children have not been enrolled in preschool in Abbott districts” (*Abbott VIII*, p.21-22), and directed the State to oversee development and implementation of plans to increase enrollments.

As part of the obligation to increase enrollments, the Court once again took the State to task for not assuring local district collaboration with existing Head Start agencies and the evidence that such providers are “facing decreasing enrollment, escalating loss of staff, and financial difficulties”(*Abbott VIII*, p. 24). The Court, for the third time in five years, directed the State to “utilize” Head Start agencies by carefully analyzing federal requirements and funding and then developing plans for agencies to build upon current programs and services in order “to meet state standards” (*Abbott VIII*, p. 26) by providing sufficient additional funding to implement such plans.

The Court acknowledged the State’s failure to account for the flight of certified teachers from community providers to schools in search of “higher compensation packages” (*Abbott VIII*, p. 24). Since the assurance of comparable quality, regardless of

²²Only five justices heard and decided this case. Two justices recused themselves for reasons of potential conflict. Of those who decided, a majority of three wrote the main opinion, while one Justice concurred in part and dissented in part, believing the implications of additional funding were unnecessary. The fifth Justice, Gary Stein, the Court’s most passionate advocate for *Abbott*, dissented entirely because he believed the evidence clearly indicated State default on *Abbott VI*, as well as *Abbott V*, and that ELC’s petition for a special master to oversee further State implementation should be accepted.

venue, had been ordered previously in *Abbott VI*, *Abbott VIII* directs assessment of provider financial needs to compete with districts for qualified staff and the provision of sufficient funding to assure "salary parity" (*Abbott VIII*, p. 26) and a compensation package necessary for community providers to retain such staff.

The Court found once again that retaining qualified staff and upgrading community providers generally to meet all Abbott preschool requirements in turn necessitates the provision of adequate funding. With considerable evidence that budgetary regulations and instructions have contributed to pre-determined funding amounts, on a per student and per district basis, the Court directed again, as it did in *Abbott VI*, "funding decisions based not on an arbitrary, predetermined per-student amount, but, rather, on a record containing funding allocations developed after a thorough assessment of actual needs" (*Abbott VIII*, p. 33).

And finally, the Court addressed part of the continuing facilities problem. Noting that "districts conducting outreach initiatives will experience increased enrollments in the year following those efforts, and that some of those districts will not have sufficient classrooms for the children who enroll," (*Abbott VIII*, p. 36) the Court directed local contingency planning. Such planning must be conducted prior to the identification of a shortage and approved by the DOE so that "specific facilities can be renovated quickly" or that DOE approval for modular classrooms "can be obtained on short notice and appropriately situated on previously designated sites" (*Abbott VIII*, p. 37).

As noted earlier, ELC's first attempt at judicial review of the entire package of Abbott regulations failed to persuade the Appellate Division of the Superior Court.²³ The briefs prepared for that case are in the public record, contain considerable details on the deficiencies in the regulations, and will be reviewed by the Supreme Court if the parties are unable to reach agreement on a new set of Abbott implementing regulations.²⁴ The briefs represent the most comprehensive and detailed review of the Abbott regulations to date.²⁵ ELC summarized its critique of the regulations at the outset of its preliminary brief:

These regulations directly contradict the *Abbott* rulings; do not define the most basic terms; offer minimal standards and procedures in some areas, and no standards in many others; provide virtually no guidance on the roles and responsibilities of the State, districts and schools; and, finally, fail to assure that the interests of the Abbott children "remain prominent, paramount, and fully protected." (Plaintiffs' Brief, 2000, p. 1-2, and quoting from *Abbott V*)

²³The legal standard for review, sought by ELC and rejected by the Appellate Division, involves which party bears the burden of demonstrating the inadequacy or sufficiency of regulations. ELC argues that since these regulations were adopted pursuant to Supreme Court order to "codify" the remedial measures directed by the Court, the State bears the burden of proving that its regulations provide such codification. By rejecting that argument, the Appellate Division then imposed a near impossible burden on ELC – to prove that regulations adopted by the State are arbitrary and capricious. Thus, the legal issue of which standard of review applies is the threshold matter that the Supreme Court would decide if the parties are unable to come to agreements on new regulations. (Appellate Division, 2002)

²⁴There have been three sets of overlapping and similar regulations. Pursuant to statutory authority, the DOE promulgated one-year emergency regulations for 1998-99 and then again for 1999-2000. A 'permanent' set of five year regulations were adopted in June of 2000 and remain in place. (Appellate Division, 2002) ELC and the McGreevey Administration successfully sought from the Supreme Court a suspension of many of these regulations in order to facilitate a "time-out" to change the regulations and to accommodate the State's fiscal crisis.

²⁵There are three briefs in this case. The first was submitted to the Appellate Division on February 4, 2000. A "Supplemental Brief" was submitted on July 14, 2000, following adoption of five year regulations by the State Board of Education a month earlier. And third, a "Reply Brief" was submitted on September 15, 2000, in response to the brief submitted by the state defendants.

In particular,²⁶ ELC criticizes the State's failure to assure that WSR models and school and district curriculum are consistent with the New Jersey Core Curriculum Content Standards; and to provide standards, procedures and guidelines for districts and schools to implement standards-based education reforms; professional development programs consistent with the State's content and performance standards; appropriate needs assessment in support of applications to supplement standards-based education; preschool education integrated with WSR the SFA early literacy structure in all elementary schools; and all Court-directed supplemental programs for elementary, middle, and high schools (Plaintiffs' Brief, 2000).

In addition, ELC documented the State's failure to assure an instructional facilitator in every school adopting a national WSR model, elementary school social and health services and referrals through an enhanced family support team, enhanced technology in every school, violence prevention and school security based on local needs, and class size reductions (Plaintiffs' Brief, 2000).

Further, ELC documented the State's failure to provide standards, procedures, and guidelines to facilitate school planning, budgeting, and State funding for extended or additional supplemental programs, including additional bilingual or special education programs. Nor had the State codified the Abbott mandate for a longitudinal, state-authorized evaluation of Abbott implementation²⁷ (Plaintiffs' Brief, 2000).

²⁶Detailed arguments supporting these claims are contained in the three briefs. The Chapter VII analysis contains a more detailed critique that will reference the initial analysis.

²⁷Despite a Court directive in *Abbott V* to begin such an evaluation as soon as possible, the absence of rules defining and providing for such an evaluation contributed to the State's failure thus far to gather any official data on the results of Abbott implementation.

The ELC critique demonstrates how the regulations improperly identify Court-ordered supplemental programs and the expected needs-based process for extending or adding to such programs. Incomplete or improper language regarding SMTs is shown, including SMT responsibilities, training, and the role of the State and the central office in assuring and relating to school-based management (Plaintiffs' Brief, 2000).

Finally, the failure of the State to codify an assurance of Court-ordered adequate funding is identified. Documentation includes the failure to provide clear and workable "funding protocols," the illegal use of "illustrative budgets" to guide school-based budgeting, and the improper authority for districts to seek property tax increases to support Court-ordered programs (Plaintiffs' Brief, 2000).

In the Supplemental Brief submitted following the State's adoption of five-year regulations in June of 2000, ELC documented the failure of the new regulations to correct the deficiencies of the prior rules. In addition, with the language of *Abbott VI* available, the new brief demonstrated the failure of the permanent regulations to codify the well-planned, high quality preschool education required by the Court in *Abbott V*, *VI*, and now in *VIII* as well. Such documentation includes the failure to codify: well-planned, high quality full-day kindergarten; preschool educational standards; full-day, full-year programs by 2001-02; teacher certification requirements; class size of 15; needs assessment; full enrollment through outreach and recruitment; state provision of temporary and permanent facilities; uniform high quality regardless of venue; and timely resolution of district-specific disputes with state decisions on plans and/or budgets (Supplemental Brief, 2000).

CHAPTER III
OVERVIEW AND HISTORY OF COURT-ORDERED
SCHOOL FINANCE REFORM IN KENTUCKY AND NEW JERSEY

Background: Three Decades of Constitutional Litigation Throughout the Nation

The US system of educational finance is characterized by large disparities in funding and opportunities for K-12 education among schools, local school districts, and states. These disparities have historical, constitutional, and social origins: states play a major role in financing education, local school districts bear significant responsibility for raising revenue for schools, the property tax is the primary source of local revenue for school districts, and property wealth varies significantly between districts within a state. As a result, districts with small property tax bases typically find it harder than those with large property tax bases to generate local revenue for schools. Compounding the problem, districts with more-costly-to-educate youngsters are often not the ones with the large property tax bases. Although the effects of low wealth or concentrations of costly-to-educate students have been partially offset by small amounts of aid from the federal government and larger amounts from state governments, significant disparities remain both within and between states (National Research Council, 1999).

Education, particularly public education, is big business. According to the Association of School Business Officials, the nation spent \$350 billion on its public schools in 2000-01. Augenblick (2001) estimates 3.7% of the nation's Gross Domestic Product is devoted to funding 91,000 schools serving 46 million K-12 students and employing 5.4 million adults. Nearly half the funds supporting public education are provided by states, most of the remainder by local communities, with less than 10% by the federal government (Augenblick 2001). In most states, spending on the public schools is the single largest budget item. Same thing for local communities. Small wonder decisions about public education, particularly on fiscal matters, are continually embroiled in local and state politics.

Historically, the interests of communities of color and/or poor communities have been under-represented in Legislatures and State Houses. Thus since the 1960's the politics of school finance, dominated by the interests of typically white, wealthier communities, led advocates for reform to seek the third branch of government -- the judiciary -- as the primary forum for addressing school finance inequity. Moreover, given the climate of the post WWII period, and the role of the federal judiciary in striking down both *de jure* and *de facto* segregation, it is not surprising that a national discussion began in the late 1960's among legal theorists and advocates for reform concerning the best way to litigate school finance inequities.

The core problem addressed by these advocates can be illustrated as follows. If a home is worth \$100,000 in one community and the school tax rate is set at one dollar (per \$100 of assessed value), the school district can raise \$1,000 annually from that property. The same property in a wealthier community may be valued at \$400,000, and with the

same tax rate of one dollar per \$100 of assessed value will produce \$4,000 in annual tax revenues for the public schools. Thus, disparate property values produce unequal funding, a condition that many educators, advocates, and legal scholars concluded was likely to be disallowed under one of several legal theories developed during this period.

The presumption at the start of this conversation was that the federal judiciary would be hospitable to challenges of state-specific school finance inequities. The scholar credited with the earliest influence on this debate is Arthur Wise. Wise (1968) articulated for the first time the seminal idea that the quality of public education a child receives should not depend on where she lives or the wealth of her community. He coined the phrase "wealth neutrality," meaning that there should be no relationship between the quality of education a student receives and the wealth of her community. Wise's solution: equal spending for each student in a state, a condition termed "horizontal equity" in the literature (Minorini & Sugarman, 1999).

While Wise focused on literal dollar-for-dollar equality, UCLA law professor Harold Horowitz developed the idea of "geographic uniformity," where variation in school spending should not be based solely on geography. (Minorini and Sugarman, 1999) While appearing similar to Wise's notion of horizontal equity, Horowitz' analysis went further in explaining that there were instances where state legislatures may well allocate disparate funding for children with differing needs, including those at risk and those with disabilities (Minorini & Sugarman, 1999). The idea Horowitz introduced, that student need should drive spending levels, was a concept that would complicate litigation and

policy-making across the nation in the ensuing years.²⁸

The first advocates to embrace and utilize a needs-based critique and remedy were Legal Aid lawyers who filed federal cases in Illinois in 1968 and in Virginia in 1969. At that time, however, the federal courts were simply dumbfounded how to identify enforceable standards for both defining need and for determining the level of funding such need requires. Consequently, both suits were dismissed, appealed to the US Supreme Court, and the dismissals were affirmed “without comment” by the high court (Minorini & Sugarman, 1999).

Further inquiry into these matters by Professor John Coons of Northwestern Law School and two of his students, Stephen Sugarman and William Clune, led to the theory of “fiscal neutrality.” These researchers first proposed the idea that the quality of funding for local public schools cannot depend on local wealth, but rather should depend on the wealth of the state as a whole. Their legal theory pointed to a different remedy than their predecessors, one that could avoid the “rich vs. poor” conflict that attended the earlier theories. Their fiscal neutrality strategy proposed to distribute state aid up to a certain level so as to make each district “effectively equally wealthy.” Then, if districts so desired, they could tax themselves beyond this amount to provide greater revenues to support local educational objectives (Minorini & Sugarman, 1999).

The fiscal neutrality theory was advanced in the first wave of school finance cases brought on federal equal protection grounds. In 1968 a group of Mexican-American

²⁸Indeed, the New Jersey Supreme Court would later define educational adequacy precisely in terms of needs. The court found that comprehensive assessment of both what students need and what schools need to meet student need was the only measure of educational adequacy available to officials. See Chapter III below.

parents in Texas filed *Rodriquez v. San Antonio Independent School District* claiming that Texas school financing violated the equal protection language of the 14th amendment to the US Constitution. Meanwhile, *Serrano* was filed in a California state court a year later, based also on federal constitutional grounds. Advocates around the country were buoyed by the prospect of an eventual US Supreme Court ruling finding unequal funding unconstitutional on federal equal protection grounds. The hopes for federal intervention were further strengthened when in the *Rodriquez* case a three-judge federal district court panel ruled in late 1971 that the Texas system of school finance did indeed violate the US Constitution (Ladd & Hansen, ed, 1999; Long, 1999; Minorini & Sugarman, 1999).

The optimism was short lived. Fifteen months later in early 1973, Nixon-appointedes on the US Supreme Court led a 5-4 split decision upholding the Texas system and finding that disparate funding does not violate the US Constitution. Advocates were reduced to a long, lengthy, and costly state-by-state approach to correcting educational inequality. By 1999, state supreme courts had overturned inequitable school finance systems in seventeen states. In ten other states, the courts upheld the status quo. And in twelve more, final judicial determinations have yet to be issued. (Long, 1999) School finance litigation has become part of the landscape of state education policy formation throughout the nation, particularly since the predominant legal and political remedy for unequal financing has been to increase reliance on state funding.

Various approaches and formulae to greater equalization have been tried.²⁹ For a short, but thorough review of these strategies, see *Paris*, 1998. Each of these formulae

²⁹ Although not the subject of this study, many of these strategies and formulae have resulted in only partial success, even though disparities were found to violate state constitutions. For a discussion of the consequences of court-imposed remedies, see Goertz and Natriello, 1999.

requires state government to increase state sales and/or income tax revenues in order to increase state aid to those communities with lower local property values. In most cases, if the Court rules favorably for those challenging existing school finance schemes, the issue is either resolved or continues, depending upon the particular remedy ordered by the courts. In New Jersey, for example, throughout the earlier *Robinson* case, the Court did not set a specific standard. The state was then allowed to implement its own interpretation of the court's findings, and the result was a funding formula and state tax increases that did not further the goal of equalization. In the subsequent New Jersey case, the *Abbott* Court was mindful of its earlier mistake (a problem not unconnected to the legal strategy and detailed evidence submitted by respective plaintiff attorneys) and this time ordered funding equity based on average spending in the state's 120 wealthiest communities.³⁰

School finance litigation took a dramatic turn when the Kentucky Supreme Court issued its 1989 decision in *Rose*. Until then, the focus had been on statewide funding disparities and various approaches to reducing or eliminating such inequities. But with *Rose*, the battleground shifted to the question of educational adequacy. Both litigants and jurists now faced questions of educational policy, programs, and sufficient funding to assure adequate implementation. The question of reforming school finance systems yielded to the far more complicated question of how to reform educational programs, schools, and districts.

In sum, school finance literature identifies three distinct periods. The first includes

³⁰The precise formula requires annual following-year estimation of average per pupil spending projected for regular education in these wealthy districts. Regular education then has been defined by the Court as the basic set of programs and services, available to all children, not including state and federal categorical programs. Typically, funding for these programs comes from the combination of local property taxes and any state foundational aid the district is entitled to receive. *Abbott II*, 1990.

the early federal cases through *Rodriguez* and *Serrano*. The second continues the emphasis on equity -- in state courts on state constitutional grounds -- and began with *Robinson* in New Jersey and includes successful cases in Arizona, 1973; Arkansas, 1985; Connecticut, 1977 and 1985; Montana, 1974; Washington State, 1974 and 1978; West Virginia, 1979 and 1984; and Wyoming, 1980 (Long, 1999). This period also includes losing cases in Georgia, 1981; Michigan, 1972 and 1973; Oklahoma, 1987 (Long, 1999). The third phase emphasizes adequacy along with equity, begins with *Rose* and includes *Abbott* in New Jersey and successful cases in Alabama, 1993; Arizona, 1994; Arkansas, 1996; Connecticut, 1998; Massachusetts, 1993; Montana, 1989 and 1990; New Hampshire, 1993, 1997 and 1998; Ohio, 1997; Tennessee, 1993 and 1995; Texas, 1989, 1991 and 1995; Vermont, 1997; West Virginia, 1997; and Wyoming, 1995 (Long, 1999). Losing cases during this third period were found in Illinois, 1996; Louisiana, 1998; Maine, 1995; Nebraska, 1993; North Dakota, 1993; Rhode Island, 1995; and Virginia, 1994 (Long, 1999).

The adequacy movement has framed legal arguments less in terms of equal opportunity and more in terms of sufficient resources to provide adequate programs and services and adequate outcomes. The adequacy movement coincided with the work done by the National Governors Association and the federal government on content standards and standardized testing. The predominant question became what programs and services are needed by particular groups of students to achieve at levels consistent with statewide content standards (Minorini & Sugarman, 1999).

Kentucky's Rose v The Council for Better Education, Inc:

Kentucky was first. While Education Law Center was sparring with the Kean Administration in New Jersey over various procedural matters in the early 1980's, political developments in Kentucky were rapidly creating the conditions for a successful challenge to that state's school funding system. Unlike New Jersey, Kentucky did not have a neat and tidy history of successful school finance litigation in the 1970's and a failed legislative remedy. Rather, the state simply had a failing school system statewide (Pankratz, 2000; Paris, 2001).

So thorough were Kentucky's educational failures, that the prime mover to initiate a legal challenge to the state's school finance scheme was Arnold Guess, the former chief budget officer for the Kentucky Department of Education. (KDE) After Guess lost his job for supporting the losing candidate in the 1983 governor's race, he began to mobilize support among mainstream educators for a legal challenge to the state's school funding law (Pankratz, 2000; Paris 2001). Guess had long believed that the Courts were the only venue available to remedy the stark funding inequities he observed coming across his desk every year. Once removed from his obligations to the bureaucracy and the political constraints of high position in the executive branch of government, Guess was free to pursue his strategy (Pankratz, 2000; Paris 2001).

He enlisted the aid of two friends, Kern Alexander, an academic specializing in school finance policy, and Ted Lavit, an attorney in private practice. The three were responsible for two signal developments that would become pivotal to the eventual success of the litigation. First, they organized a group of superintendents from poor rural districts who agreed to seek financial and local political support from their boards of

education. The group became formalized as the Council for Better Education, Inc. in May of 1985 (Pankratz, 2000; Paris 2001).

The second critical development was the successful pursuit of former Governor Bert Combs to become lead attorney for the proposed litigation. Combs was a partner in one of Kentucky's most prestigious and successful law firms, had held various high government positions over the years, and was well known and widely respected (Pankratz 2000; Paris 2001). When Combs filed the complaint, the Council had grown to include 66 districts. Seven of those districts and 22 students attending school in the seven districts joined the suit as parties. The case, *Council for Better Education, Inc. v. Collins* – naming Governor Martha Collins – was filed in November, 1985, nearly five years after the filing of *Abbott* in New Jersey (Pankratz, 2000; Paris 2001).

Less than two years later, the short trial was heard by Judge Roy Corns of the Franklin County Circuit Court. Bert Combs summarized the issues before Judge Corns, “. . . in these 66 school districts. . . the school system is not efficient, is not adequate, is not sufficient, and does deprive the children in those districts of the opportunity to get an adequate education. . . The thrust of this lawsuit is inadequacy.” While Judge Corns pondered evidence and arguments through the fall and early winter of 1987, Kentucky elected a new governor and superintendent of public instruction. The case before Judge Corns received an unexpected boost when newly elected Superintendent John Brock, who had attended public school years earlier in one of the state's poorer districts, joined the case on behalf of the plaintiffs (Pankratz, 2000, Paris 2001).

On May 31, 1988 Judge Corns issued the first of three trial court decisions some ten weeks before New Jersey's Administrative Law Judge Steven Lefelt issued *his* 600

page opinion in *Abbott*. Judge Corns would release subsequent decisions in June and later in October. Taken together, his decisions declared the Kentucky school finance system “unconstitutional and discriminatory” because it failed to provide all children with “substantially equal education opportunities.” He adopted a select committee report that outlined nine principles for an “efficient and equitable school system” (Pankratz, 2000; Paris 2001).

Although Kentucky support for serious reform was mounting, spurred on by the Corns’ decisions, legislative leaders vowed a challenge. The President Pro-Tem of the State Senate, Eck Rose, led the way as the case was transformed by the appeal process from *Council for Better Education, Inc. v. Collins* to *Rose v. Council*. Within two months, the Kentucky Supreme Court heard oral argument in December of 1988 and six months later issued its unprecedented ruling. For the first and, so far, only time in the now more than three decades history of school finance litigation across the country, a state supreme court ruled the entire system of education unconstitutional, and ordered the Legislature to not only devise a new finance system, but to create an entirely new system of public education in Kentucky by the close of the 1990 legislative session (Pankratz, 2000; Paris, 2001; *Rose v. Council*, 1989).

Unlike the New Jersey Supreme Court which defined an adequate education in programmatic terms, the Rose Court in Kentucky defined adequacy in terms of “minimum goals” or student learning outcomes. These include:

- i. Sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;

- ii. sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
- iii. sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- iv. sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- v. sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
- vi. sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
- vii. sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market. (*Rose*, 1989)

Further, the Court outlined the “essential, and minimal, characteristics of an efficient system of common schools” as follows:

1. The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly.
2. Common schools shall be free to all.
3. Common schools shall be available to all Kentucky children.
4. Common schools shall be substantially uniform throughout the state.
5. Common schools shall provide equal educational opportunities to all Kentucky children, regardless of place of residency or economic circumstances.

6. Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence.
7. The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an adequate education.
8. The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education.
9. An adequate education is one which has as its goal the development of the seven capacities recited previously. (Rose, 1989)

While in New Jersey, following the 1990 *Abbott* decision, both the Democrats under Governor Florio and the Republicans under Governor Whitman devised legislative responses to *Abbott* in secret, the Kentucky process was quite different. The day after *Rose* was released by the Kentucky Supreme Court, the Governor met with the leadership of the House and Senate, Speaker Blandford and President Pro-Tem Rose. The three leaders agreed to a comprehensive, public process combining representatives of elected officials and acknowledged experts in the field to design a full legislative response to the Court order (Pankratz, 2000; Paris 2001).

On July 12, 1989, thirty-four days after the Supreme Court decision, the Kentucky Commonwealth Task Force on Education Reform met for the first time. The 21-member group included eight members from each house and five members appointed by the Governor, co-chaired by Rose and Blandford. The task force was further organized to include three committees for curriculum, governance, and finance. Each committee retained an expert consultant with a national reputation. The committees worked "long

hours” to the eve of the 1990 legislative session. On March 7, 1990, nearly ten weeks before Governor Florio would unilaterally introduce his secretly developed Quality Education Act in New Jersey, the Kentucky Task Force approved nearly 1000 pages of draft legislation that had been thoroughly vetted through a process that included public representation, public hearings, and expert consultation. The Kentucky Education Reform Act of 1990 (KERA) had been conceived. Five weeks later, on April 11, 1990, KERA was born (Pankratz, 2000; Paris 2001).

The language of KERA begins with six goals for student learning. Schools were required to develop student capacity in each area. First, students would develop skills in mathematics and communication, the “tools of learning in school,” to use “throughout their lives.” These skills included “reading, writing, speaking, listening, visualizing, basic mathematics, information gathering, and use of information technology” (Foster, 2000).

Second, students would learn to apply the basic concepts and premises of the major disciplines including the arts, humanities, science, math, social studies and “practical living studies.” The framers of KERA expected such knowledge would enable students to “organize and interpret information” rather than trying to memorize the growing body of information associated with each discipline (Foster, 2000).

The third and fourth goals involved “life skills and moral sensitivity.” Students would be taught through formal curriculum to become “self-reliant” and “responsible members of family, work group, or community.” By formalizing the growth of students to become good citizens, KERA responded to survey data that indicated most Kentuckians wanted the public schools to fully prepare the next generation of citizens (Foster, 2000).

The fifth and sixth goals involved developing students' "higher order thinking skills" including problem-solving, reasoning, and making sound judgments through acquiring and processing information. These goals also responded to the public interest as defined by leaders of business and industry who understood the economic imperative for a workforce of young people who were thoughtful and able to solve problems (Foster, 2000).

To assure an educational system that made it possible for students to achieve at the levels contemplated by the new goals, KERA established a host of new initiatives and responsibilities for the State and local schools and districts. These included: equitable resources; extra funding for schools with large numbers of children with disadvantages; an end to political interference as found in "patronage, nepotism, and favoritism;" high standards for students, teachers, schools, and districts; a statewide network of technology and communication to support teachers and students; local school decision-making to establish appropriate local learning environments; school-based accountability for achieving the new standards; rewarding successful schools; and providing help to unsuccessful schools (KDE, 2000).

More specifically, KERA mandated the following eleven key initiatives:

1. Curriculum Development. Kentucky determined that the six learning goals would best be met by a "dynamic curriculum" developed or adopted by local educators that would be consistent with state promulgated "performance goals," designed to measure outcomes of twelve years of schooling in the various disciplines. Additionally, the State would develop curriculum frameworks to guide local curriculum decisions.

These decisions as well as the most appropriate teaching strategies to deliver the

curriculum would be made by school-based practitioners on a school by school basis (Foster, 2000).

2. **Assessment.** A new assessment system was authorized that would require students at the 4th, 8th and 12th grades to demonstrate actual proficiency in understanding basic concepts and processes by the practical use of such concepts or processes. The State was required to have new performance-based assessment instruments developed. In the meantime, students would be required to take existing criterion referenced tests similar to the National Assessment of Educational Progress, thus allowing for comparisons with other states. Additionally, schools were required to administer their own assessments throughout the grades to determine the level of student outcomes as measured against the statewide performance standards (Foster, 2000).

3. **Accountability.** Establishing sanctions against schools that do not perform while providing rewards for schools that do formed the core of Kentucky's new system of professional accountability. The specifics of such sanctions and rewards were left to the staff and leadership of individual schools. Determinations about school performance would be based on comparing student achievement in the individual school from one year to the next. To be eligible for rewards, the percentage of students demonstrating proficiency would be "steadily improving over time." Such schools would then be officially declared an "improving school" (Foster, 2000).

4. **Measuring School Improvement.** KERA required the KDE to establish a "school performance index" that would include school performance of student academic learning goals as well as the "non-cognitive" goals of reducing absenteeism, dropouts rates, and in-grade retention; improving school-to-work, -college, and -military transition;

and reducing physical and mental barriers to learning. This index was eventually called the Kentucky Instructional Results Information System or KIRIS. Every two years schools would be given an improvement goal, as measured against past performance, and schools that met or exceeded their goal would be given additional funding, while schools that failed to meet their goal would be subject to a range of state assistance, intervention, and, in the case of extraordinarily bad schools, state takeover (Foster, 2000).

5. Consequences. Schools that exceeded their improvement goals by one index point or more would be given cash awards to be distributed by the School Council. Schools that did not show progress, depending on the severity of the school's performance, would be assigned a "distinguished educator," a teacher or administrator who had demonstrated success in "managing change." The KDE would recruit, train, and deploy such practitioners. Their first responsibility would be to evaluate the school and make recommendations for change that might include recommending the dismissal or transfer of staff, regardless of tenure. In many circumstances, the distinguished educator would be responsible for recommending technical changes in curriculum and/or instruction. The goal was not solely to monitor staff, but rather to identify the cause or causes of school failure and then recommend improvement measures and oversee implementation (Foster, 2000).

6. School-Based Decision-Making. Every school would develop a school-based council consisting of three teachers, two parents, and the principal. Modifications of this structure would be permitted, so long as the ratio of three teachers to two parents remained. The primary purpose of the council was to involve practitioners and parents in decisions that directly contributed to the quality and quantity of instruction. In addition to

the curriculum decisions mentioned earlier, the councils were expressly authorized to decide “the characteristics of the staff, the use of teacher and student time, classroom management techniques, assignment of students, curriculum and learning materials, and the use of equipment and space” (Foster, 2000).

7. **Early Childhood Education.** Every school serving children with disadvantages and/or disabilities was mandated to establish a preschool program to enable such children to succeed in kindergarten and beyond. In addition, grades K through 3 were to be organized as a non-graded primary program to enable students to move through their early years of schooling based on their growth and needs, rather than age (Foster, 2000).

8. **Equal and Adequate Funding.** KERA established a funding process that would identify a base funding amount and assure first, that all districts would receive the same amount per pupil and second, that unequal property values and tax rates would be compensated by the State with adjustments in tax rates and state aid. In addition, State and federal funds would supplement the base amount for schools and districts with large numbers of children with disadvantages and/or disabilities. A specific amount of yet additional funding was to be allocated to districts for further allocation to schools depending on the number of children enrolled at the school who qualified for the federal free and reduced lunch program (Foster, 2000).

9. **Developing the Existing Workforce.** As discussed above, KERA imposed serious and complicated new responsibilities on local educators. Consequently, two strategies were embedded in the law. First, the KDE was authorized to reorganize existing capacity, including the establishment of regional technical assistance centers, to address the host of new responsibilities placed on local educators. These included:

preschool, non-graded primary education, standards-based curriculum, performance-based teaching, and school-based decision-making. To address the long-term need for continuous development of professional skills, KERA established a market-driven process of funding schools to seek and contract with independent providers for ongoing professional development based on the staff needs of individual schools (Foster, 2000).

10. Future Workforce Quality. Beyond its focus on the short and long-term development of individual practitioners, KERA recognized the many structural barriers to workforce quality. An independent Education Professional Standards Board was established to oversee teacher preparation programs, professional certification, teacher discipline issues, and the development of performance standards for teaching. Another independent, non-judicial, structure was established to expedite review of teacher dismissal notices and to lessen the involvement of the judiciary which had proved to be cumbersome and time-consuming (Foster, 2000).

11. Leadership Reform. KERA changed the role of everyone from school board member to classroom teacher. The KDE was literally abolished and reconstituted for the first time under an appointed, rather than elected, Commissioner of Education. The role of the KDE changed from a dictating, regulatory agency to a supportive, helping organization. School boards were no longer involved in personnel decisions beyond the superintendency. Local school councils were authorized to make instructional decisions. Central office personnel, like the KDE itself, were encouraged to be more supportive of school practitioners newly engaged in instructional management issues. Principals were directed to shift from conventional administration to collaboration and instructional leadership (Foster, 2000).

In conclusion, the struggle for school finance reform in Kentucky was relatively quick and covered all aspects of the state's public school system. It took six years. It included one short trial, a brief decision by the Kentucky Supreme Court, and a ten month consensus-building process that produced an historic and comprehensive statute. New Jersey would be an entirely different story.

New Jersey's *Abbott v. Burke*:

Following the 1969 filing of *Serrano* in California, New Jersey became the second state to have its school funding system challenged on state constitutional grounds. In 1970, *Robinson v. Cahill* was filed in Superior Court against Governor William Cahill on behalf of twelve-year-old, public school sixth grader, Kenneth Robinson of Jersey City. The case was strictly about money. Suburban school districts had it, as much as two times or more the per pupil amount available to urban districts (Botter Decision, 1972). Plaintiff's attorney argued that New Jersey's constitutional education clause, requiring a "thorough and efficient system of free public schools" for all students could not be thorough or efficient if gross funding disparities based solely on geography resulted from the operation of the state's school finance statute.³¹ The 1972 trial lasted all of three days and, according to presiding Judge Theodore Botter, the funding disparities between city and suburb were sufficient to declare the State's school financing scheme "unconstitutional." Four years, seven state Supreme Court decisions, and one new state

³¹The legal theory employed in the brief trial of *Robinson* went beyond the state's educational clause and included both federal and state equal protection claims. For a more thorough discussion of the theoretical foundations of *Robinson* – indeed of *Abbott* and *Rose* – see Paris, 1998, *Legal Mobilization and Social Reform: A Comparative Study of School Finance Litigation in New Jersey and Kentucky*.

income tax later, New Jersey implemented the Public School Education Act of 1975 (Paris, 1998).

The Act was intended to cure funding inequities. Such was the finding of the Supreme Court when it issued the 1975 *Robinson V* decision, upholding the Act on a split vote of 5-2.³² Education Law Center and other advocates had argued before the Court that the proposed funding formula contained in the Act would *not* cure inequities and that the Legislature should be sent back to the drawing board. Funding disparities narrowed during school-year 1976-77, the first year of full implementation. As the decade continued, however, disparities not only reappeared, but increased (*Abbott II*, 1990). Consequently, in 1981, New Jersey became the only state to re-litigate school finance inequities because the remedy implemented after the first case failed to cure the constitutional defect (*Abbott II*, 1990).

Abbott v. Burke was filed originally on behalf of twenty students from Camden, East Orange, Irvington, and Jersey City, with 11th grader, Raymond Arthur Abbott of Camden at the head. Outgoing Education Commissioner Fred Burke was first among the group of Executive branch defendants. As the case progressed, it was officially certified by the Supreme Court as a class action, first covering all students in the four named districts. Later, the plaintiff class was expanded from the four districts to all students in all "similarly situated districts," those poorer urban districts that would eventually be covered by the Abbott remedies (*Abbott II*).

³²Court approval of the Act was put on hold when a year later *Robinson VI* held that because the State had failed to fund the new Act, the Court took the unprecedented action of directing the closing of all public schools in New Jersey beginning on July 1, 1976. Eight days later the first income tax in New Jersey history was adopted and the school reopened.

The year *Abbott* was filed coincided with an election year. Governor Tom Kean, who ironically would be touted by the press as the "education governor" took over the reigns of state government the following year and opposed *Abbott* vigorously, placing as many procedural roadblocks as the law would allow. Consequently, it took three more years just to get the issue of proper venue before the State Supreme Court. In 1985, the Court ordered the case to be heard by an administrative law judge to develop the factual record. In addition, and key to its later rulings, the Court determined that the standard to be applied was whether or not education in the poorer cities of New Jersey adequately prepared urban children to "compete" with their suburban peers for higher education, jobs, and the other perks of citizenship (*Abbott I*, 1985).

The case was not heard until the 1986-87 school year. Plaintiff's legal theory required a showing that undisputed funding disparities were caused by insufficient local fiscal capacity and translated into gross disparities in staffing, programs, facilities, unmet student need, dropout rates, and student achievement (*Abbott II*, 1990). Further, such disparities in both inputs and outcomes clearly violated the education clause of the New Jersey Constitution that required a "thorough and efficient system of free public schools" for all children in the State, ages 5-18 (*Abbott II*, 1990). ELC attorneys offered poor and wealthy district comparisons, introduced district-specific evidence and testimony, and provided national research and witnesses as well. More than 90 witnesses appeared and every witness who testified and every fact put into evidence by Education Law Center attorneys was vigorously contested by the State (*Lefelt Initial Decision*, 1988). As a result, the three days required to prosecute the *Robinson* case fourteen years earlier mushroomed to a nine month trial in *Abbott* (*Lefelt Initial Decision*, 1988).

In the summer of 1988, Judge Steven Lefelt's *Initial Decision*³³ found in favor of the plaintiffs on virtually every matter of law and fact. Nearly two years later, in late June of 1990, the New Jersey Supreme Court issued the second *Abbott* decision (*Abbott II*), unanimously upholding Judge Lefelt, and declaring its previously approved remedy (the Public School Education Act of 1975, the "T&E" law) "unconstitutional" (*Abbott II*). To remedy growing fiscal and programmatic disparities, the Court directed the State to assure parity funding for regular education in each of the designated poorer urban districts,³⁴ calculated at the level of average per pupil spending in New Jersey's 120 wealthiest and high achieving districts. In addition, the State was directed to provide adequate additional funding for programs and services designed to "wipe out [student] disadvantages as much as a school district can" (*Abbott II*).

Meanwhile, much against the advice of Education Law Center staff, the newly elected Florio administration anticipated a likely plaintiff victory by introducing the Quality Education Act (QEA) in late May of 1990, less than two weeks before the Court issued its *Abbott II* decision. Without the "political cover" that waiting for the Court decision may have provided, with a closed-door deliberative process that excluded the

³³Under New Jersey school and administrative law, when filing a complaint against local or state officials, plaintiffs must first file the action with the agency head, in this case the Commissioner of Education. When the case is fact sensitive, the Commissioner typically remands the case to the Office of Administrative Law for an adversarial hearing, conducted as a trial with evidence presented, witnesses testifying, cross examination, and the like. The decision of the Administrative Law Judge, called the Initial Decision, is in reality a recommendation back to the agency head, again the Commissioner of Education in this case. When then Commissioner of Education Saul Cooperman received the Initial Decision, he over-ruled Judge Lefelt and issued a decision favoring the State's position. Plaintiffs then were required to appeal the Cooperman decision to the State Board of Education, which, not surprisingly, upheld the Commissioner's decision. It was only then that Education Law Center was able to finally submit papers to the Supreme Court and get the first independent, appellate review of Judge Lefelt's *Initial Decision*.

³⁴The Court initially found that 28 districts met the criteria it had established for "poorer urban districts." Subsequently the Legislature added two additional districts, Plainfield and Neptune Township, for a total of 30.

public as well as the interest groups, and containing provisions that many in the State found objectionable, New Jersey exploded in controversy.³⁵ Consequently, when the *Abbott II* decision issued less than a month later, the State was already ablaze in controversy and, because public attention had now shifted to this expanding political battleground, relatively little attention was paid in the press to the details of the Court order.

Education Law Center had serious reservations about the QEA from the outset. The two most important criticisms were its failure to guarantee the parity funding ordered by the Court and the absence of sufficient funding and/or any process to determine the programs needed to "wipe out disadvantages" and their costs. Despite these reservations, however, the Governor's chief of staff assured Marilyn Morheuser that once adopted, amendments would be introduced and adopted to cure the identified weaknesses.

Indeed, the original QEA was quickly amended, but in an effort to appease opponents, rather than to comply with the Supreme Court (see fn.#35). The controversial

³⁵Although the press and most observers focused on Florio's income tax increase to pay for both the deficit he inherited from the Kean administration and the additional funding he proposed to distribute to urban districts, the more powerful incentive for educational insiders to oppose Governor Florio's plan came from both the wording of the QEA itself and the backroom politics that produced it. Assuming – incorrectly – that the Court would order all state education funding equalized, i.e. based on a district's ability to pay, the original QEA would have ended six decades of full *state* payment of the employer's share of teacher pension and social security costs, placing the full burden for such costs squarely on local districts and their property tax-payers. In practical terms, many of the wealthiest school districts in the state would have been forced to raise millions of additional dollars to provide for these newly imposed costs. Suburbia objected strenuously, as did the state's largest teachers' union, the New Jersey Education Association (NJEA) and the New Jersey School Boards Association. Parents, educators, and politicians in the suburbs joined with the NJEA and the newly formed anti-tax group, Hands Across New Jersey, to oppose Florio and his Democratic majority in the state Legislature. The Democrats subsequently lost their majorities in both houses of the Legislature in the 1992 legislative election and Governor Florio narrowly lost the statehouse to Governor Whitman a year later. Whitman, therefore, came into office with her legislative allies dead set against *Abbott*. The resulting Republican control of both legislative houses and the State House during the critical implementation years of the 1990s set the stage for continuing litigation and an unprecedented level of Court scrutiny and supervision. For a more detailed discussion of these developments, though one not entirely consistent with the observations expressed here, see *Paris*, 1998.

proposal to end state payment of teacher pension and social security costs was removed and several hundred million dollars of proposed state aid was diverted to more direct property tax relief. (Firestone, Goertz & Natriello, 1997) When the Act was finally implemented in September of 1991, it did not and could not comply with the 1990 *Abbott II* order. Consequently, Education Law Center took the QEA and the Florio administration to Court and in 1994, *Abbott III* was decided, declaring the QEA unconstitutional as applied to urban districts and ordering the State to achieve full compliance with *Abbott II* by September 1997 (*Abbott III*, 1994).

Before *Abbott III* was filed, Education Law Center faced the dilemma of how to respond to the unequalizing effect of State payment of local teacher pension and social security costs as well as the political problem posed by Florio's solution. Throughout the debate and passage of the original QEA, the Florio administration had been adamant that recovering the funds earmarked for such wealthy district payments was an essential precondition to sufficient redistribution to the poorer districts (*Paris*, 1998). In fact, the Court had stopped just short of including the pension issue in its equalization order by hinting that the matter could one day itself be the subject of further litigation (*Abbott II*, 1990). Meanwhile, the education establishment was virtually unanimous in its opposition to this aspect of Florio's solution and worried that although the Governor was backing off,

ELC was preparing a return to Court that would seek a directive to equalize local pension and social security costs.³⁶

The eventual decision to abandon litigation challenging state payment of teacher pension and social security costs was met with enthusiasm throughout the educational establishment. Marilyn Morheuser and Betty Kramer, president of the New Jersey Education Association, at odds with each other on this and other issues actually signed a formal document committing NJEA to support only proposed Abbott legislation that fully complied with *Abbott II*, and ELC to abandoning any effort in the future to seek an end to full state payment of local pension and social security costs. The Garden State Coalition was also enthusiastic. The result was the beginning of an important alliance among the key players in the State who were now prepared to support legislative action that would fully comply with *Abbott II*.³⁷ ELC was maturing politically, a critical factor in the drive to build consensus on the remedies that lay ahead.

Prior to the Court issuing *Abbott III*, and despite the new "pro-Abbott" sentiment among the education mainstream, a new governor took office in January of 1994,

³⁶The matter came to a head when Harry Galinsky and Mark Smith, superintendents of Paramus and Westfield, respectively, and founders of the Garden State Coalition of Schools, an advocacy group representing the wealthy, high achieving districts in New Jersey, visited ELC's office and met with me in the fall of 1991. They were persuasive that if communities like theirs would be required to raise four to five million dollars each just to replace current state funding of pension and social security, the result would be a lowering of educational quality as property taxpayers would insist on spending cuts to partially offset new taxes. Moreover, after working some of the numbers, it became obvious to me that since these costs were rising faster than the increase in state funding allowed by the QEA, more and more of general state funding would be devoted to these costs over time, reducing the use of these funds for school improvement expenditures. For these reasons I urged Marilyn Morheuser to drop any plans we were developing for a challenge to continued State payment of these local costs. I also suggested that ELC use this opportunity to develop new alliances with the educational mainstream to help build political support for full statutory compliance with *Abbott II*.

³⁷Ten years later, this alliance continues. NJEA's executive director, Robert Bonazzi, sits on ELC's board of trustees and NJEA financial support to ELC has grown. The Garden State Coalition has been steadfast in its advocacy throughout the decade for full compliance with *Abbott*, as each particular decision has defined in more detail the obligation of the State to implement Court-ordered remedies.

apparently determined to resist the financial burden of the Abbott remedies.³⁸ A year into her first term in office, Governor Christine Todd Whitman revived a little known Florio administration initiative to establish state curriculum standards in seven core subject areas.³⁹ Once adopted, Governor Whitman then signed the Comprehensive Education and Improvement Financing Act (CEIFA) into law in late December of 1996. CEIFA would have frozen and made permanent existing urban-suburban funding inequities. The Act asserted that since these standards would apply equally to all students and were now an appropriate definition of a through and efficient education, they could, therefore, replace 'equal funding' as the state's primary strategy for improving urban education (*Abbott IV*, 1997).

Working feverishly over the holiday period, within two weeks, on January 6th, 1997, Education Law Center returned to Court. It argued the absurdity of advancing the idea that such standards, arguably higher than curriculum requirements at the time, at least in the urban districts, could be equally met in urban and suburban districts if urban

³⁸Note that despite losing control of the Legislature and a continuing public drumbeat against his tax policies, Governor Florio lost his bid for re-election by less than 25,000 votes. Key to Florio's loss was the continuing hostility of the education lobby, particularly the very powerful NJEA, that resulted not from increased state taxes, but far more from both the closed process he used to develop the QEA and particularly its treatment of the pension issue. Arguably, had Florio waited for the Court to issue *Abbott II*, established an inclusive public process for considering his response to *Abbott*, and ignored the pension issue, opposition to the QEA and to his leadership would have been far less. It is not hard under such a presumed scenario to imagine a re-elected Governor Florio, despite large state tax increases

³⁹The 1991 statute authorizing development of core standards in seven substantive areas led to proposed math standards during the 1992-93 school year. These and the other standards were developed by groups of practitioners and experts convened by State officials. Given this history, it was interesting to read in the affidavit of Assistant Commissioner Ellen Shecter, submitted as part of the defense of CEIFA in *Abbott IV*, that the idea for standards in New Jersey first came to Governor Whitman when she appeared on a television show in 1995. The State Board of Education eventually adopted the set of proposed standards in each of the content areas and in five "cross-content" areas in the spring of 1996.

districts, with needier students, are denied the resources available to their suburban counterparts.

Four months later, in *Abbott IV*, the Supreme Court issued a stinging denunciation of the Whitman strategy. Although the Court accepted the standards as an appropriate definition of "T&E,"⁴⁰ it declared the Act otherwise "unconstitutional" as applied to the Abbott districts, ordered the immediate distribution of parity funding by the following September (1997) and called for the State to assure educational improvement "at the classroom level" by emulating suburban districts' "recipe for success" (*Abbott IV*, 1997). Further, the remaining Abbott remedies were remanded to a lower court for fact finding and recommendations on the special needs of disadvantaged students in Abbott districts, the programs and services required to meet these needs, the facility needs of these districts, and a state program of full and adequate facilities improvement financing and construction management (*Abbott IV*, 1997).

During the six week hearing in late fall of 1997 before Superior Court Judge Michael Patrick King, the Department of Education (DOE) presented a study that included reference to national research on students with disadvantages, a list of minimum programs and services to respond to student need as identified in this research, the novel idea of *requiring* all Abbott schools to adopt a national model of whole school reform (WSR), and a minimum state construction program (NJDOE, 1997). Education Law Center

⁴⁰The standards, written in the form of expectations for student achievement, were developed for each grade in the subjects of visual and performing arts, comprehensive health and physical education, language-arts literacy, mathematics, science, social studies, and world languages. Infused throughout the seven core academic areas are five "cross-content workplace readiness standards," which are designed to incorporate career-planning skills, technology skills, critical-thinking skills, decision-making and problem-solving skills, self-management, and safety principles. (*Abbott IV*, 1997)

responded by challenging the State's refusal once again to conduct an assessment of the needs of actual Abbott students,⁴¹ the proposed minimum set of programs,⁴² the use of national models for WSR instead of more generic work on improving curriculum and instruction, and the State's minimum construction program.

In May of 1998, five months after Judge King presented his findings and recommendations, the Court issued *Abbott V*. It represented a compromise between the positions of the DOE and ELC. The Court remedies now included in addition to parity funding and standards-based reforms:

- a) at least one-half day of universal, well-planned, high quality preschool for all three- and four-years-olds, class size of 15, DOE certified teachers and an aide, and developmentally appropriate curriculum consistent with the NJ Standards;
- b) full-day kindergarten;
- c) class size reduction to 15 in pre-K, 21 in K-3, 23 in grades 4 and 5, and 24 in grades 6 and above;

⁴¹ Since *Abbott II* in 1990, the Court has insisted that the social, health, academic, and other needs of students attending Abbott schools and districts be assessed in order to determine the programs and services required as well as adequate funding levels. The State's failure to do so in *Abbott III*, *Abbott IV*, *Abbott V*, and *Abbott VI*, has strengthened the Court's directive, first articulated in *Abbott V*, that schools and districts, rather than the State, should conduct such assessment regularly and that these assessments should drive planning, budgeting, state funding, and local implementation. *Abbott V, VI*.

⁴² Among the proposals advanced by ELC: to reduce class size to fifteen in grades K to 3; to make high quality preschool available not only to all four-year-olds but to *all* three-year olds as well, and for all day and all year, not just for a half-day during the school year; to provide instruction-based after school and summer programs; to establish school-based health clinics and social services; and to enhance special and bilingual education and federally funded nutrition programs. (*Family and Community Schools*, 1997)

- d) early literacy programs modeled on the Success For All (SFA) program;⁴³
- e) needs-driven programs for *all* schools including (1) school-based health and social services; (2) after school and summer instructional, service and recreational programs; (3) violence-prevention and school security; *and*, for middle and high schools, (4) alternative education; (5) drop-out prevention; and (6) school-to-work and-college transition programs;
- f) enhanced elementary curricular offerings, including intensive music, art, and science, as needed;
- g) enhanced special and bilingual education, as needed;
- h) enhanced nutrition programs, including breakfast, lunch, and after-school snacks, as needed;
- i) adequate technology staff, equipment, training, and curriculum integration;
- j) school-based management, budgeting, and elementary whole school reform (with SFA as the presumptive model) to implement these remedies;
- k) comprehensive, 100% state-funded and managed needs-driven facilities rehabilitation and new construction;
- l) adequate state funding for all remedies;
- m) codification (through regulation) of all remedies including definitions, standards, and procedures to guide local implementation; and

⁴³The Court accepted the Commissioner's proposal that SFA be required in all elementary schools, unless an alternative model for WSR is identified by a school with similar or greater research support than SFA enjoys. The Court further directed the structural elements of SFA to be installed in all elementary schools, regardless of whether the school adopts the entire SFA model. These elements include 90 minutes of instruction in reading and writing each day, class size for this block schedule not to exceed 15, and 20-minute daily one-to-one tutoring (with a certified teacher) for all 1st to 3rd graders who are not performing up to state or national reading and writing standards.

- n) a dispute resolution process authorizing local districts to challenge state decisions on local plans and budgets by filing an administrative appeal.

Implementation of these mandates began in the fall of 1998 pursuant to a set of emergency implementing regulations adopted by the DOE in the summer of 1998. ELC immediately filed a challenge to the entire set of Abbott regulations based on their failure to adequately codify the Court mandates.⁴⁴ That case was argued before the Appellate Division of Superior Court on October 9, 2001, and, on February 22, 2002, the Appellate Division issued a decision that affirmed the State's authority to adopt regulations that fail to comply with the Supreme Court's directives.⁴⁵

Because state implementation of preschool education failed to follow the Commissioner's own detailed recommendations in the remand proceeding, ELC filed a complaint with the Supreme Court in August of 1999. In March of 2000, the Court issued *Abbott VI*, criticizing the State for its non-compliance on preschool implementation and issuing even more specific mandates redirecting State implementation of well-planned,

⁴⁴By codification, the Court meant the establishment of definitions, standards, and procedures that would guide local implementation of Court-ordered remedies. The Abbott regulations have typically failed to provide much in the way of definitions, standards, or procedures, preferring in large part to either simply repeat the language of the Court, to ignore some of the remedies entirely, or, in some other cases, to overly prescribe detailed activities that have no justification in research or best practices. (Plaintiffs Brief, 2000) Detailed review of these deficiencies will form much of the discussion of *Abbott* in Chapter VII.

⁴⁵ The decision rejecting ELC's claims of regulatory non-compliance was not entirely unexpected. According to ELC lawyers and legal advisors, the Appellate Division typically defers to the other branches of government. By contrast the Supreme Court historically resists deference when questions of constitutional compliance are at issue. Expecting less than a favorable ruling by this lower court, ELC had planned all along to immediately appeal to the Supreme Court. That action, however, has been tabled, pending the collaborative process with the McGreevey Administration to correct the illegal and poorly designed implementation policies, regulations, and practices of the prior administration. On March 12, 2002, the Court granted a six months delay in considering ELC's appeal of the Appellate Court decision in this matter. In September, 2002, the Court extended the delay another six months to give more time for the collaboration to produce new regulations. The McGreevey Administration joined ELC in seeking these delays.

high-quality preschool.⁴⁶ In May of 2000, the Court issued *Abbott VII*, restating its *Abbott V* order that the school construction program in the Abbott districts be 100% fully funded by the State, in response to a motion for clarification brought by the Speaker of the General Assembly. The Speaker was attempting to get Court approval for a 90% state funding program, one that would have dramatically reduced the State's obligation since many of the Abbott districts could not afford the 10% share the Speaker was proposing to require if the State were to go forward with local construction.⁴⁷

Despite the clear and unmistakable details of the *Abbott VI* order on preschool, ELC was forced back into Court in 2001 to once again seek intervention on the State's continuing failure to provide the resources and programs required for high quality preschool.⁴⁸ Among the deficiencies in state implementation was the inordinate delay of state decisions on local plans and budgets to late June or even the summer months, rendering the Court-ordered dispute resolution process inoperable (*Abbott VIII*, 2002). Oral argument was heard on September 25th and four weeks later, the Court issued a

⁴⁶Here, the Court repeated and embellished its 1998 *Abbott V* preschool directives including: class size should not exceed 15 with a DOE certified teacher and an aide; curriculum should be developmentally appropriate but aligned with the NJ Core Curriculum Content Standards; collaborating community providers should be assessed and plans implemented to upgrade their programs from child care to preschool; Head Start must be included; adequate preschool facilities must be procured and must be prioritized by the State; and adequate funding must be provided. (*Abbott VI*, 2000)

⁴⁷ The 10% local share would have required the Abbott districts to bond in excess of \$700 million, based on a current State-approved total cost of \$7.3 billion in the 30 districts, without yet including the cost of additional preschool classrooms. Newark, for example, would have to bond for \$170 million, an amount the city may not have been able to afford and/or raise, since the issue of municipal overburden, decided in *Abbott II*, would be implicated.

⁴⁸ The preschool program was authorized by the Court as a collaboration with local child care providers, Head Start, and school-based programs. The State's failure to provide adequate funding and facilities or to mobilize higher education resources in support of the preschool mandate, despite the explicit *Abbott VI* directives, led to enrollment levels below 50%, the explicit exclusion of Head Start as a collaborating partner, the failure to assess child care agencies to assure their growth to fully qualified preschools, and insufficient numbers of certified teachers. *Masin Initial Decision*, 2001.

detailed order on October 22nd directing state implementation of 2002-03 preschool plans and budgets pursuant to a highly structured timetable that would facilitate district appeals of state decisions on local plans and budgets.

On February 21, 2002, the Court issued the second, and more substantive part of *Abbott VIII*. While denying ELC's continuing call for the Court to appoint a "special master" to supervise and oversee state implementation of the preschool mandate, the Court found once again serious foot-dragging by the government. The Court also noted and was "encouraged" by the new era of cooperation "now underway," referring to the efforts by the new McGreevey Administration and ELC to resolve all contested and implementation matters (*Abbott VIII*)⁴⁹.

In other litigation, in late July of 2001, ELC filed a motion challenging the State's failure to assure "full, effective, and timely" implementation of standards-based reform, whole school reform, and supplemental programs and services as required by *Abbott IV* and *V*. That case is working its way through the Office of Administrative Law as of this writing.⁵⁰

⁴⁹The Court directed the DOE to issue curriculum frameworks by April 30, 2002, to guide the development of preschool curriculum "for use in the 2002-03 school year" (*Abbott VIII*, 549); found that "thousands of children have not been enrolled in preschool" (*id.* 552); directed the DOE to work with districts to develop "corrective action plans" to assure full enrollment (*ibid.*); ordered the DOE to "supplement existing Head Start funding with state funding to allow Head Start to meet state standards and to retain certified teachers" (*id.* 555); required sufficient state funding so that districts could provide "salary parity between district-run and community-provider programs" (*id.* 556); prohibited the use of predetermined per-pupil funding amounts and ordered instead that needs assessment support district funding requests that must be "articulated with specificity" and that DOE responses to such requests must provide "appropriate explanation" (*id.* 559); and directed the DOE to review and approve district contingency plans for rapid and temporary creation of additional classroom space for any anticipated short-term enrollment increase. (*id.* 562)

⁵⁰ It is entirely likely, however, that if the collaboration between ELC and the new administration continues to produce consensus on new implementation initiatives, this case will be tabled, not argued before the Court, and dismissed without prejudice.

The year, 2002, provided yet another dramatic change in state leadership in New Jersey, this time offering greater promise for *Abbott* than ever before. Democrat Jim McGreevey took office on January 15th with a major accomplishment to advance Abbott implementation already behind him. On December 21, 2001, the New Jersey Supreme Court accepted an emergency petition filed by Education Law Center (and urged and supported by the McGreevey Transition Team leadership) to delay by one month the Court imposed January 5, 2002, date for state decisions on district preschool plans for 2002-03. This delay was requested in order to assure that the incoming McGreevey Administration would make these decisions, rather than the outgoing DeFransesco Administration. In addition, pursuant to an agreement reached between Education Law Center and the McGreevey Transition Team on December 18th, a team of preschool practitioners, advocates, and experts was quickly assembled to oversee independent review of the plans during the continuing transition period.⁵¹ Despite a huge state deficit, the team began deliberation with the understanding that to upgrade existing community-providers and to include more children in the statewide program, considerable additional state funding would be needed.

When the new February 5th date for state decisions on district 2002-03 preschool plans arrived, the New Jersey Department of Education had already gone through a transformation. On the eve of his January 15th inauguration, Governor-elect McGreevey announced that former Montclair Superintendent, William Librera, would be named

⁵¹The team included representation from ELC, districts, community-based providers, advocates, and the McGreevey Transition. Technical assistance and staff work was supplied by Dr. Ellen Frede of the College of New Jersey and the Center for Early Education Research at Rutgers. All members of the team not associated with the McGreevey Transition were proposed by ELC and accepted by the Governor-elect.

Commissioner of Education to lead the McGreevey DOE. Librera had been a long-time friend of ELC and strong supporter of *Abbott*. He began immediate conversations with ELC to identify the outstanding legal and implementation issues in *Abbott*, the proper role of the DOE in compliance and implementation, and possible candidates to head the *Abbott* sections of the DOE.

Commissioner Librera established for the first time an *Abbott* Implementation Division where all offices and staff involved in state-assisted local implementation would be housed. He appointed former State Senator Gordon MacInnes, executive director of Citizens for Better Schools, to head the division as assistant commissioner. MacInnes had spent the past several years as an outspoken critic of the former administration's handling of *Abbott* and has long asserted that if properly implemented, *Abbott* would make New Jersey "the best educated state in the nation."

In addition, Librera named College of New Jersey Early Childhood Education professor, Dr. Ellen Frede, to head the McGreevey administration's efforts to comply with the Supreme Court order for well-planned, high quality preschool for all three and four year olds. Frede and her husband, Dr. Steven Barnett, founded the Center for Early Education Research at Rutgers and are nationally recognized experts in the field. They have served as ELC's primary witnesses and advisors on preschool since 1997.

Meanwhile, Governor McGreevey accepted an ELC proposal to create the *Abbott* Implementation and Compliance Coordinating Council by Executive Order (#6) to oversee state compliance with the *Abbott* directives, to resolve all outstanding legal issues, and to assure full, effective, and timely implementation of all Court-mandated programs and reforms. The Council is comprised of the Commissioners of Education and

Human Services, the executive directors of the Economic Development Authority (responsible for the school construction program) and the Commission on Higher Education, the Attorney General, ELC's executive director, and Assistant Commissioner MacInnes. In addition, the Executive Order provided the authority to establish work groups comprised of state employees, local practitioners, experts and parents in each of the substantive Abbott remedies to analyze the problems with statewide implementation and recommend solutions through policy changes and revised regulations. Governor McGreevey signed the Executive Order on February 19th, 2002, and the Council met for the first time two days later. Thereafter, the Council would meet on the third Thursday of every month and operated as a deliberative discussion group. Lacking authority to take concerted action, the Council discussed matters that informed legal action and policy making among the agency heads sitting at the table.

Having completed the work on reviewing district preschool plans for 2002-03, the preschool workgroup focused on establishing comprehensive guidelines for local planning and budgeting, strengthening district central office capacity to serve school and community-based programs, improving program quality, and collecting and assessing data on children and their programs. The facilities workgroup sought ways to pry open the bureaucratic gridlock that undermines and stalls removal of health and safety violations, let alone the more complicated problem of constructing new schools and expanding preschool classrooms. The data and accountability workgroup, reacting to New Jersey's historic and sweeping failure to collect and analyze data on students and their schools, worked to develop the ideas for a comprehensive student data base and to seed both external and internal accountability with such information. And finally, the K-12 working

group sought to establish standards-based instructional improvement as the over-arching mandate for Abbott implementation, simplify local planning and budgeting, improve central office capacity to serve the schools, and link planning and budgeting with assessment and accountability.⁵²

Three additional work groups were established during the summer of 2002. A charter school group began examining the State's failure to provide the Abbott remedies to Abbott students attending public charter schools. A school management and governance group looked at the role of parents and teachers at the school and district levels, the relationship between mandated school management teams and central offices, barriers to more effective and widespread involvement of both parents and teachers, and remedies to increase the level and effectiveness of such participation. Finally, a workgroup on state operation was convened to help devise a comprehensive strategy to transition from direct state control back to local control.⁵³

The *Abbott* case took another turn when, on September 23, 2002, Administrative Law Judge Solomon A. Metzger, issued an Initial Decision in *Bacon et al v. NJDOE*.

⁵²I participated directly in all the meetings of both the pre-school and k-12 workgroups. As to the other groups, I regularly discussed developments with ELC staff who attended those meetings. In addition, Ass't Commissioner MacInnes asked me to help develop the new workgroups on charter schools, state operation, and local governance.

⁵³For many years, the State of New Jersey has directly controlled the operation of the three largest school districts, Jersey City since 1989, Paterson since 1991, and Newark since 1995. Governor McGreevey campaigned on returning these districts to local control and on June 5, 2002, Commissioner Librera outlined a plan to begin liberating these school districts from state control. The Librera Plan grew out of a study done at Rutgers Law School under the direction of Professor Tractenberg. That study found state operation to be largely a failure and recommended establishing standards for removing state control and measures to increase local capacity to effectively implement *Abbott* and other needed management and educational improvements. See *Developing a Plan for Reestablishing Local Control in the Stat-Operated School Districts*, Institute on Education Law and Policy, Rutgers University, May 23, 2002. The workgroup on state operation was convened to recommend policies to Commissioner Librera that would restore local control without returning to the status quo ante.

This case was brought by 17 rural districts seek inclusion as Abbott districts and access to the Abbott remedies. Judge Metzger ruled that five of the 17 districts are special needs districts and are entitled to Abbott funding and the other remedies.⁵⁴ As this is being written, the five districts are waiting for the decision by Education Commissioner Williams Librera to accept or over-rule Judge Metzger's decision. It is also unclear at this time whether any of the twelve districts rejected by Judge Metzger will appeal his decision.

⁵⁴The five districts include Buena Regional (Atlantic County), Commercial Township and Fairfield Township (Cumberland County), Salem City (Salem County), and Woodbine (Cape May County).

CHAPTER IV

THE STATUS OF IMPLEMENTATION IN KENTUCKY AND NEW JERSEY

Defined most simply as the state between decision and operations, implementation can range from the trivial case of one individual's deciding to do something and then doing it to a lengthy process among many actors across several layers of government. But whether we are talking about simple or complex cases, the fundamental implementation question remains whether or not what has been decided actually can be carried out in a manner consonant with that underlying decision. More and more, we are finding, at least in the case of complex social [and educational] programs, that the answer is no. So it is crucial that we attend to implementation. (Williams & Elmore, 1976)

Radically different processes that defined and developed implementation strategies in the two states appear to have foreshadowed deeper and more protracted differences in both the quality of actual implementation and the degree of compliance with Court directives. As described above, in Kentucky the process was open, public, representative, faithful to research and included serious input from experts. By contrast, until the

inauguration of Governor McGreevey, in New Jersey the process was closed, bureaucratic, unrepresentative, and ignored much of the literature on implementation.⁵⁵

In *Abbott V*, the New Jersey Supreme Court directed the Commissioner “to implement as soon as feasible a comprehensive formal evaluation program . . .” to determine the quality of implementation and whether it is “resulting in the anticipated levels of improvement in the Abbott elementary schools” (*Abbott V*, 1998). Four years later, as of this writing, the State has yet to begin such evaluation. What can be said without equivocation, however, is that both *Abbott VI* and *VIII* document serious problems with statewide preschool implementation and hint at problems in other areas of Abbott.⁵⁶ Moreover, in papers submitted in *Abbott IX*, seeking the Court’s permission to digress from one year on full funding and continued implementation of the Abbott remedies, the State, in the affidavit of Assistant Commissioner MacInnes, acknowledged the serious

⁵⁵Because KERA broke such new ground and was implemented fully without further judicial intervention or interruption, there have been a multitude of Kentucky studies conducted over the past decade. Since the purpose here is to document generally what is known and accepted currently in the field about implementation in both states, this literature review will include reference only to summaries and critiques that have gained attention, rather than to untold individual studies. We will see that in New Jersey there has been far less research conducted, far less written about implementation. It will be essential when reviewing what we know about New Jersey, therefore, to comment on specific research, since general summaries and critiques have not yet been written.

⁵⁶In an *Abbott VI* concurring opinion, Justice Stein took note of the emerging criticism of state implementation of whole school reform, as well as the problematic implementation of the preschool mandate. See below.

problems in implementation and the absence of sufficient State data to fully assess compliance and the quality of implementation.⁵⁷

Since many of these implementation problems are reflected in statutory and regulatory inadequacies, such deficiencies will not be addressed here, but will be carefully examined in Chapter VII. As of this writing, however, three independent studies have been conducted on early implementation of preschool, whole school reform (WSR), and school based management in New Jersey. The preschool study was conducted by the Center for Early Education Research (CEER) at Rutgers and issued in 2001. The WSR study is ongoing, with two annual reports issued in October 1999, January 2001, and a third report due in late 2002, and has been undertaken by Drs. Erlichson and Goertz of Rutgers and the University of Pennsylvania, respectively. The school-based management study was conducted by Dr. Elaine Walker of Seton Hall University.

In "Broken Promises, Shattered Dreams: A Report on Implementation of Preschool Education in New Jersey's Abbott Districts," CEER examined the needs of Abbott preschoolers, current enrollment, and program quality. The study "underscores" the extreme need children in New Jersey's Abbott districts have for well-planned, high quality preschool and, to a large extent, the failure of the State to provide these programs. Specifically, CEER found in *Broken Promises* that:

⁵⁷The MacInnes certification identified several fundamental deficiencies in implementation including, "insufficient preschool enrollment and program quality; inadequate focus on standards-based reform, including this Court's directives on early literacy; poor implementation of whole school reform, including school-based management; the failure to examine district central office capacity; the lack of appropriate protocols for needs-based planning, budgeting and funding; and substantial delays and structural impediments associated with implementation of the school construction program." ¶9 The assistant commissioner went on to certify that "the absence of sufficient codification of the Abbott remedial measures, a state funding system that permits categorical state aid to support widely disparate school and district expenditures, and fundamental gaps in state data collection contribute to the lack of basic information and analysis necessary to ensure the effective and efficient use of Abbott funds." ¶11.

kindergarten students are far behind the national average in language abilities when entering school, and even further behind children in New Jersey's suburbs;

after three years of program implementation, less than 10% of eligible three and four year olds are enrolled in a program that can be described as "good;"

the great majority of classrooms operating with Abbott funding still do not have the financial and human resources necessary to "make a meaningful difference in a child's school readiness;" and

low enrollment, below 50% of eligible children, can be attributed to the failure of the state to provide facilities and operating funds to serve more children, to provide transportation, and to assure uniform high quality programs in all venues.

Broken Promises concludes that the State "has been trying to create the appearance of compliance with the Court while minimizing state spending and continuing to treat early education as little more than babysitting" (Barnett et al, 2001, p.17). Such a policy not only hurts the very children the Court insisted be served, it also defies the public interest. Adequate investment to assure effective, high quality programs would provide a return to taxpayers through "decreased costs of school failure, delinquency, and crime and increased workforce productivity [that] would far exceed the cost." (Barnett et al, 2001, p.18)

In 2000, the NJDOE and DHS jointly contracted with Westat to conduct a five year study of statewide preschool implementation.⁵⁸ The first annual report – “The Evaluation of Early Childhood Education Programming in the 30 Abbott School Districts: First Year Report on Program Implementation and Descriptions of Children and Families” – was released in June of 2001. While couching its findings in language favorable to the contracting agency,⁵⁹ much of Westat’s research confirmed the earlier findings reported by CEER. Westat found “considerable” variety in such essential areas as the quality of programs, the roles of district personnel in supervising collaborating providers, needs-based programs to support children and their families, recruitment and assignment of family workers, and curriculum implementation. Additionally, Westat reported serious “obstacles” to reaching the goal of one certified teacher for each Abbott preschool classroom, regardless of venue.

While the findings of the CEER study on preschool in New Jersey were reinforced in the adversarial process before the Supreme Court in *Abbott VI* and *VIII*, implementation of whole school reform had not been fully litigated before the high court. Nevertheless, the findings of “Implementing Whole School Reform in New Jersey: Year One in the First Cohort Schools” as well as “Year Two” describe another area where implementation has been problematic. The authors, Erlichson and Goertz, found that in year one:

⁵⁸The Westat contract was cancelled by the Commissioner of Human Services at the request of Education Law Center with the support of Dr. Frede. The study was premature and would not have sufficiently examined the State role. As of this writing, Dr. Frede expects to use the funds saved for a higher education initiative that will support qualitative assessment of preschool classrooms in order to develop baseline data necessary for the upgrades called for by the Court in *Abbott VI*.

⁵⁹Westat concluded that “the Abbott Early Childhood Education Program has accomplished a great deal in a relatively short period of time.” (p. 2) This conclusion contrasted sharply with Administrative Law Judge Jeff Masin who in 2000 found serious shortcomings in many aspects of State implementation, including low enrollment, arbitrary funding, and insufficient efforts to secure additional facilities desperately needed to expand enrollment. See *Mason or Initial Decision, Abbott VIII*.

the decision to choose a particular model was hurt by inadequate involvement of classroom teachers, too little information, insufficient time, pressure from school and central office administration to choose a particular model, and uncertainty about each model's connection to New Jersey's core curriculum standards;

state department staff assigned to work with the schools did not provide sufficient technical assistance, were themselves inadequately trained, and most schools experienced a turnover at least once during the year;

school management teams were ill prepared for the work they were assigned, training was inadequate, resources were not available, school-based budgeting was confusing and frustrating, and teachers were pulled from their primary job of teaching to work on the team;

district central offices were given conflicting roles, inadequate guidance, and removed from direct supervision of school-based planning and budgeting; and

none of the models "were explicitly engaged in implementation of the Core Curriculum Content Standards," none had firmly established programs for students with disabilities, and more generally it was unclear how the models helped schools deal with the needs of students that could not be met through the model (Erlichson, Goertz & Trumbull, 1999).

In their second year study, Erlichson and Goertz found continuing issues as well as new ones. Their findings include:

an absence of comprehensive needs assessment to guide the selection of a model, far less than the required 80% teacher buy-in, model selection based largely on consistency with existing "practices or philosophies," insufficient knowledge and

expectations about model requirements, and relatively high levels of enthusiasm among teachers working with the Success for All model;

insufficient time for teacher collaboration on model implementation, lesson planning, developing manipulatives, and preparing budgets according to state guidelines;

unnecessarily burdensome paperwork and woefully inadequate state computer capacity;

high turnover among and insufficient training for state, developer and district staff that undermine critical relationships with school practitioners;

absence of collaboration among the DOE, developers, and district central offices as schools were now facing separate and inconsistent demands from each;

absence of collaboration among DOE budget and program personnel; and

lack of real empowerment at the school level and a concomitant lack of control at the district level (Erlichson & Goertz, 2001).

The findings of the Walker study on school-based management are consistent with Erlichson and Goertz. Dr. Walker concludes that, "inconsistent and poor guidelines emanating from the NJDOE, and the ineffectual role of the School Review and Improvement Teams have undermined the development of quality school management teams" (Walker 2000, p. 10). Her specific findings include:

School Management Teams (SMT) are confused about their responsibilities and the role of the principal because State regulations are vague and imprecise;

SMT members lack expertise and experience in substantive work, such as needs assessment, aligning curriculum, reviewing professional development programs, and

developing school-based reward systems and in school-based decision-making such as hiring, budgeting, and adopting required plans;

SMT training has been inadequate;

Excluding participation of community members who work for the school or district reduces the pool of potential candidates for service;

Disputes over whether compensation should be provided for participation has become an issue that saps time, energy and enthusiasm;

Holding meetings during the school day, to avoid the issue of supplemental staff compensation, limits the opportunity for parent and community participation;

The State School Review and Improvement team members typically lacked the experience and expertise to effectively assist SMTs with school reform and seemed to be learning from the districts and schools rather than providing them with support; and

SMTs are dissatisfied with the services of the WSR model developers and such dissatisfaction varies greatly depending on the model (Walker, 2000).

In 2001, the NJDOE asked the Region III Comprehensive technical assistance center at George Washington University to conduct "an evaluation" of the WSR implementation process. With a less detailed set of protocols and a simpler methodology than those of Ehrlichson and Goertz, the evaluation revealed that while members of SMTs reported "significant progress in all components of WSR implementation," on closer inspection there were several areas of deficiency that overlapped the findings of the independent study. The George Washington evaluation found that: faculty support to implement WSR was inadequate; state technical assistance was weak; academic programs for students with limited English were not adopted; data for school level decision-making

was lacking; professional development was inadequate to help practitioners learn about needs assessment, appropriate supplemental programs, alignment of teaching and curriculum to the state standards, zero-based budgeting, staffing and personnel selection; and that parent involvement was insufficient. Noting the absence of district involvement in the WSR process, the study recommends technical assistance to district central offices to help districts “build their own capacity to provide the technical assistance schools need to implement WSR successfully” (Region III Study, 2001 p. 5).

Although action by the Supreme Court on implementation issues has been limited to the preschool area, Justice Gary Stein, in a concurring opinion appended to *Abbott VI*, voiced serious and prophetic concern about the entire package of Abbott remedies. After reviewing the first report from the Erlichson and Goertz study, Justice Stein found that “the DOE’s implementation of whole school reform may also be off course” (Stein concurrence, *Abbott VI*, p. 5). In language reminiscent of earlier majority decisions, Stein wrote: “[b]ut the clock is ticking, and for each school year in which implementation is delayed or flawed, thousands of urban children will lose the full benefit promised by the Abbott initiatives. The time for bold, corrective and decisive action by the DOE is now” (Stein concurrence, *Abbott VI*, p.6).

As has been documented, such official resistance to *Abbott* by the other branches of New Jersey state government in fact caused years of delay. Indeed thousands of urban children have already lost “the full benefit promised by the Abbott initiatives.” The entire package of Abbott programs and reforms did not surface as Court directives until May of 1998 and implementation, problematic as it has been, did not begin until the following September, more than eight years after the original decision in *Abbott II*.

By contrast, Kentucky took all of ten months to produce 1000 pages of “what Stanford University Professor Mike Kirst called the most broad-based and systematic legislative initiative in the recent history of education reform”(Pankratz & Petrosko, 2000, p. 59). What is clear from the research is that Kentucky embraced the opportunity the Court presented and left no stone unturned to rebuild its public school system. Indeed, “[w]hat researchers find unusual about Kentucky is that this very bold and complex effort has been sustained for a decade” (Petrosko, Lindle & Pankratz, 2000),

Examining the literature on implementation of the Kentucky Education Reform Act (KERA) reveals a similar effort. It is also clear that unlike New Jersey, the Kentucky experience has been examined by scores of independent investigators and, though imperfect and still developing, the body of literature amassed during the past decade is impressive.

In an unprecedented decision, the Supreme Court of Kentucky on June 8, 1989, abolished the existing system of public schools. The court ordered the Kentucky General Assembly to create a new one by April 15, 1990. The legislature and governor met this challenge. On April 11, 1990, Governor Wallace G. Wilkinson signed into Law House bill 940, the Kentucky Education Reform Act, that created a new system of public schools in Kentucky. What happened to public education in Kentucky as a result of this historic opportunity is unparalleled in this century (Foster 1999, p.1).

“All Children Can Learn” (Pankratz & Petrosko, ed. 2000) is a compilation of eight years of independent, foundation-supported research by the Kentucky Institute for

Education Research. The book includes analyses of nine aspects of KERA implementation. These are: (1) assessment and accountability under the Kentucky Instructional Results Information System (KIRIS), the “driving force behind KERA;” (2) curriculum frameworks to help schools align instruction to the new content standards, and the difficulty encountered by teachers who were fearful of change; (3) the primary school program resulting in improved teaching and learning, though less than expected; (4) “promising results” in the effort to deepen professional development to “advance the standards of instruction;” (5) effective school improvement through the Distinguished Educator Program; (6) the role of the Kentucky Education Professional Standards Board in reshaping teacher preparation programs and improving instruction throughout the State; (7) the establishment of school-based decision-making councils to establish local partnerships between parents, teachers, and school administration; (8) reorganization of the KDE and reshaping and balancing the State’s mission between oversight and assistance; and (9) the involvement of parents and citizens in broadening the constituencies supporting these reforms. This study does not include reports on preschool, school-based health and social services, after school and summer school, and the use of technology.

The assessment and accountability provisions of KERA may have been the driving force behind much of the change the Act mandated, but taken by themselves they were far from perfect. As John Poggio⁶⁰ has observed:

⁶⁰Poggio is a former member of Kentucky’s National Technical Work Group and serves as vice-chair of the Commonwealth Accountability Testing System’s National Technical Advisory Panel on Assessment and Accountability. He works at the University of Kansas where he is co-director of the Center for Educational Testing and Evaluation and professor of educational psychology and research.

. . .the assessment design Kentucky created had never been tried on such a scale, and the difficulties the state encountered were never anticipated.

Testing, assessment evaluation theory, and accountability were not up to the job demands. KIRIS was, as so many have put it, “a work in progress.”

The discipline of psychometrics was learning what to do and how to do it better each day. Yet everyone expected the system to be perfect from the start. That is a standard that no test and no state can meet (Poggio 2000, p. 78).

Improved student achievement was the ultimate goal of Kentucky’s efforts to craft a thoughtful response to the *Rose* decision. It was no surprise, therefore, that so much emphasis was placed on designing an assessment and accountability system that tracked how well students were doing in response to the huge investment and change in Kentucky public education. “. . . from the available results, there is every reason to believe that from 1992 to 1998 KERA did result in progressively increasingly higher learning in Kentucky’s public schools” (Poggio, 2000, p. 91).

There appears to be little debate that KERA implementation led to improved student achievement on the KIRIS tests between 1992-93 and 1997-98 (Poggio, 2000; Petrosko, Lindle, & Pankratz 2000). There is considerable support in the research for findings of:

“substantial increases” in KIRIS scores in reading, math, and social studies across all grade levels; “substantial positive changes” in science scores in both elementary and high schools, with far more modest increases in middle schools; “small positive changes”

in elementary school writing, even smaller in high school, and no change in middle schools; greater increase in elementary and high school scores than middle school; and “most improvements” were demonstrated by students moving from the novice to the apprentice level, with less movement from apprentice to the higher levels of proficient and distinguished (Poggio 2000; Petrosko, Lindle, & Pankratz 2000).

Poggio also found increased student achievement by examining “progress by performance classification.” As Kentucky established levels of performance, “novice” for less proficient, “apprentice” for more proficient, “proficient,” and “distinguished” for most proficient, Poggio found that “[i]n all content areas, and at all grade levels, scores advanced from majority novice to majority apprentice. In reading, at all grade levels, he found that students scoring in the proficient category increased measurably and the number in the novice category decreased accordingly. In science and social studies, similar patterns are evident. Finally, Poggio examined the School Accountability Index -- a measure of cognitive and non-cognitive factors that formed the basis for state approved improvement goals -- and concludes that elementary and high schools on average achieved the goals set for them by the State, while once again Kentucky middle schools did not keep pace as on average they failed to reach the goals set for them by the State.

Researchers who have examined implementation in Kentucky differ on whether the results accurately reflect learning outcomes and if they do, whether such results have

been moderated by the very design of accountability in Kentucky.⁶¹ Poggio attempts to resolve the dispute by citing the gains in achievement described above and in a series of other studies that demonstrate growing practitioner interest, commitment, and knowledge about instructional issues (Petrosko, 2000). As time passed and the effects of state policy and professional development took root, practitioner concerns evolved from direct criticism of KERA policy to matters involving “workload” and “school staffs’ inability to do what was required in the time available” (Petrosko, 2000).

Implementation of KIRIS sparked public controversy and debate. The issues raised included: inconsistent grading of portfolios in different schools, unreliability of the KIRIS test, the absence of consequences for students, difficulty in understanding the scoring of the school accountability index, angry teachers in schools that were shown to be “in decline,” confused teachers in schools that were improving, and in general the absence of clear linkage between the accountability index and changes needed in curriculum and instruction (Foster, 1999).

Despite these criticisms, there appears to be general agreement that KIRIS has had an impact on curriculum and instruction. While the extent and precise nature of this impact has not yet been identified, high-stakes accountability caught the attention of growing numbers of teachers and “has stimulated important changes in instructional practices” (Foster, 1999). Teacher expectations for student achievement has grown.

⁶¹As to test accuracy, the issues involve “equating error, form-content equivalence, reasonableness of cut scores, early score increases attributed to adjustment and growing familiarity with the test format, and the failure to engage in immediate impact and validation studies.” Poggio, p. 91. For a thoughtful discussion of how KIRIS may undermine the goal of improved quality, see Whitford & Jones, *Accountability, Assessment, and Teacher Commitment*, 2000, “At worst, the story [of KIRIS] is a powerful lesson about how such a high-stakes accountability system can distort and undermine original assumptions and visions for effective curriculum, instruction, and assessment practices.”

Professional development opportunities increased and both additional time on task and changed teaching methods are evident due to the writing and math portfolios. Students write more and engage in more problem-solving activities (Foster, 1999; Petrosko, 2000; Poggio, 2000).

The evidence of positive change notwithstanding, serious and widespread criticism grew through the life of KIRIS. Educators complained they had too little time, that state guidance on curricula changes required by KIRIS was insufficient, that writing portfolios were too time-consuming, that curriculum was narrowing, and that KIRIS itself was not reliable (Clements, 2000). Not surprising, KIRIS was modified in 1998. A new name, the Commonwealth Accountability Testing System (CATS) was created, and the unmistakable goal was to resolve the problems and reduce public and practitioner dissatisfaction with statewide assessment and accountability. Under the new scheme, the basic structure of accountability remained intact -- high-stakes, annual student testing; the same four student designations depending upon test score; school-based indexing including cognitive and non-cognitive factors; goals for school improvement; and rewards and various levels of state intervention for schools not meeting their improvement targets. The new system established far greater public and professional oversight, reduced the role of performance-assessment, ended penalties, and distributed financial rewards to schools rather than to individuals (Foster 1999; Petrosko 2000; Poggio 2000).

High stakes testing and accountability led, almost inexorably, to curriculum reform and development. The KDE produced curriculum guidance documents, most notably "Transformations," a collection of materials to help practitioners develop curriculum; "The Core Content for Assessment," to help practitioners identify the kinds of outcomes

to be measured on state assessment; the "Program of Studies," including lists of K-12 subjects and programs necessary for graduation; and a list of "57 Academic Expectations" describing outcomes required of students in the various subjects (Petrosko, et al, 2000).

Researchers have reported that curriculum development in writing and literacy has had positive effects but their findings typically point to such problems as the insufficiency of time for teachers to develop and implement curricular reforms and limited teacher capacity to develop curriculum and improve instruction for children of color and for those with disabilities (Petrosko, et al, 2000). Lindle (*Curriculum Reform*, 2000) finds that because of the insufficiency of specific research on instruction and curriculum, "it is impossible to make any definitive statements about the impact of the fundamental changes in teaching and learning under KERA" (Lindle, *Curriculum Reform*, 2000, p.14). Yet Clements (2000) reports that researchers have found that schools with high performing students engaged in continuous "curriculum review and analysis, communicated effectively and openly about curriculum alignment, set high academic expectations, promoted the application of thinking skills to real world situations, shared responsibility for their students' success, and provided a continued academic focus toward higher standards" (Clements, 2000, p.107). Clements agrees, however, in that the more positive findings he reports are based not on large-scale, statewide study of curriculum implementation, but rather of "case studies and inferences from surveys, classroom observations, and school performance results" (Clements, 2000, p. 110). Nevertheless, he concludes that Kentucky schools to varying degrees have modified and aligned curriculum since KERA began (Clements, 2000).

During the 1999-2000 school year, more than 20,500 three and four-year-old children participated in Kentucky's program of mandated services for preschoolers with economic disadvantages and/or handicapping conditions.⁶² Researchers found that participating children:

show "significantly greater" cognitive and social development than similarly situated children who do not attend preschool;

demonstrate such gains in all areas of development;

overcome the typical school-readiness gap between affluent children and low income children;

show effects regardless of race or gender; and

reduce participation rates in special education services.

Moreover, the heavy emphasis on parent participation has improved school-family relationships (Hemmeter, 2000; Foster 1999).

Kentucky's vision of early childhood education saw preschoolers transition from developmentally appropriate classrooms at three and four to a Primary School Program that featured ungraded primary classrooms through age eight. This Program featured seven "critical attributes," including: a continuation of developmentally appropriate educational practices; multi-age and multi-ability classrooms; continuous progress; authentic assessment; qualitative reporting methods; professional teamwork; and positive parental involvement (Raths, 2000).

⁶²The KDE "1999-2000 Performance Report" also indicated that 70% of participating districts (122 of 176) operated collaborations with other providers or funding sources; that more than 95% of participating students received immunization and health screenings, including vision and hearing screenings; 37% of 1425 classrooms were half or 3-hour day, 29% were full or 6 hour day, 25% provided 3.5 hour days, and 9% provided a 4-6 hour day; transportation was available in 172 of the 176 participating districts; and 100% of the children received at least one meal each day and 63% received two meals..

Implementation of these attributes has been uneven: some were fully implemented, some partially, and some were never implemented (Raths, 2000). "All of these studies consistently indicate there is wide variation from teacher to teacher and school to school in the manner and degree to which components of the primary program are being implemented" (Foster, 1999, p.77) .

Nevertheless, researchers found that more than two-thirds of the teachers and schools examined demonstrated practices advocated by the KDE that were consistent with the critical attributes. These include: flexible use of space; student use of non-textbook printed materials; student initiated communications with other students; two-way student and teacher interaction; positive discipline; qualitative evaluation of student performance over a broad range of subjects; regularly scheduled parent/teacher conferences and frequent communication between parents and teachers; children remaining with the same teachers for two years or more; qualitative progress reports to parents; and, instructional planning with their colleagues (Foster, 1999, p. 78).

Researchers found that implementation of the primary school program not only produced these input variables, but altered outcomes as well. First, Kentucky's elementary schools demonstrated greater improvement in student learning than middle or high schools. Second, students are writing more and demonstrating greater competence. Third, the most advanced mathematics students are showing higher levels of achievement when compared with their peers in other states (Gnadinger, McIntyre, Chitwood-Smith, & Kyle, 2000).

More disappointing have been findings that (1) the great majority of teachers are not teaching classes where students are grouped from three or more age levels; (2)

underlying beliefs about continuous progress and age/ability grouping have not been adopted or have been misunderstood by teachers; (3) an emphasis on reading writing and mathematics has crowded out instruction in science, social studies, arts and the humanities; (4) primary school teachers continue to voice concerns that traditional basic skills such as spelling, punctuation, grammar and computation are being neglected; and (5) a disconnect exists between the beliefs and practices promoted in the Primary School Program and those of fourth and fifth grade teachers (Gnadinger, et al, 2000; Raths 2000).

While KERA mandated these primary school reforms, high school “restructuring” was encouraged but not required. Moore (2000) examined the role of the Kentucky Task Force on High School Restructuring, established in 1992, which recommended five performance-based core components for high school graduation. These include: a graduation plan and comprehensive record keeping for each student, a required “culminating project” that demonstrates the student’s conceptual, writing, and research skills, required extra-curricula activities, and an “exit review” during which a school official will verify that these components have been completed (Moore, 2000).

In addition, the Task Force recommended eleven fundamental elements of high school restructuring, defined as “the smaller pieces that assist in clarifying for schools some of the incremental steps that might be taken on the complex road to systemic change at the secondary level” (Moore, 2000). These included: core curriculum, curriculum redesign, student engagement, performance standards and accountability, professional development, structure and organization of schools, technology, alternative use of time, collaboration, successful transition, and community participation (Moore 2000). Pilot implementation sites included 27 schools that choose to implement all five core

components and 41 additional schools that agreed to work on one or more of the restructuring elements. Moore found serious problems in the 27 pilot implementation sites, due largely to insufficient time, money, counselors, and support from the KDE. The more modest effort to implement one or more elements of restructuring apparently were successful in changing the use of time, establishing the core curriculum, and empowering teachers to work on curriculum redesign (Moore 2000).

Four years after establishing the Task Force, Kentucky created the Commission on High School Graduation Requirements to examine the link between existing graduation requirements and KERA's 6 learning goals and 57 academic expectations. The Commission concluded such existing requirements were "profoundly out of sync with the Kentucky's Learning Goals and Academic Expectations" (Foster, 1999). Recommendations from the Commission led the State to require new minimum course requirements in language arts and math, an individual graduation plan for each student, a minimum 22 credits of successfully completed courses, local district policy on high school graduation that describes the link between program offerings and the state goals and expectations, and comprehensive transcripts (Foster, 1999). Since most of these reforms were targeted for 2002, research has not yet been published that reviews the level, quality, and impact of implementation (Foster, 1999).

The positive changes in the primary program, though clearly not universal or comprehensive, result in some measure from Kentucky's emphasis on professional development (PD). Spending for teacher learning opportunities grew from less than \$1 per student to more than \$23 per student during the early to mid-1990's (McDiarmid & Corcoran, 2000). The elements of professional development included

- (1) school-based and staff-determined content and format with 65% of the professional development funds so utilized;
- (2) central office control over the remaining 35%;
- (3) eight Regional Service Centers to broker and/or provide the actual development opportunities;
- (4) summer institutes sponsored by the Commonwealth Institute for Teachers;
- (5) science and math programs through the Kentucky Science and Technology Council and higher education;
- (6) networks of teachers in writing, mathematics, and technology;
- (7) KDE summer institutes in various content areas;
- (8) the Kentucky Leadership Academy; and
- (9) as many as nine days during the year for PD at any given school (McDiarmid & Corcoran, 2000) .

These elements developed in response to evolving needs in the field. Initially, considerable technical assistance and development activities focused on implementation of the structural and programmatic mandates in KERA. Once considerable implementation had begun, the emphasis shifted to curriculum alignment and planning and instruction for the new state assessments. More recently, attention is shifting again, this time to a focus on pedagogy and teachers' knowledge of content and curriculum (McDiarmid & Corcoran, 2000).

Decentralized decision-making and customized school-based programs have made it difficult to conduct large scale and systemic studies of professional development (Petrosko, et al, 2000). Researchers have found, however, that; 81% of teachers are "very"

or “somewhat” satisfied with PD opportunities; teachers control the PD strategy and program at their school; such local control leads to a “traditional format” in most schools that avoids more cutting edge practices of mentoring, coaching, study groups, collaborative review of student work, and teacher networks; most assessment-driven PD emphasizes student test preparation rather than teacher content knowledge; effective professional development is correlated with high performing schools; and Kentucky teachers receive more PD opportunities than do teachers in other states (McDiarmid & Corcoran, 2000; Clements, 2000).

The continuing assessment of KERA implementation and the evolution of policy-making and resource provision have combined to produce needed changes in the structure and substance of professional development. First, the range of activities that counted for professional development has been broadened to include “school improvement work, teacher networks, study groups, summer institutes” (McDiarmid & Corcoran, 2000). Second, districts have now been required to establish central office leadership and coordination of school-based professional development. And third, the Regional Service Centers have been changed to focus more on subject matter, to offer subject-matter summer institutes, and to provide school year follow-ups (McDiarmid & Corcoran, 2000).

While professional development of existing staff has been evolving from the initial responsibility solely of a school to a more collaborative and cooperative effort between schools, districts, and the State, improving the preparation of future teachers has been centralized from the outset. Faced with inadequate authority from KERA, dissent from organized teachers, and insufficient financial resources from the legislature, however, the Educational Professional Standards Board was unable to accomplish the mission

established by the 1993 Governor's Task Force on Teacher Preparation⁶³ (Pankratz and Banker, 2000). Nevertheless, the Board was able to complete a series of less ambitious tasks. These included: simplifying suspension or revocation of teaching licenses related to criminal proceedings; partnering with the National Council for Accreditation of Teacher Education to base accreditation visits on performance; adopting a new interdisciplinary certification for early childhood education; approving a plan for higher education reporting continuous progress of candidates for teaching; adopting an alternative school-based certification program; adopting new standards for certifying school counselors; adopting standards from the Interstate School Leaders Licensing Consortium for Kentucky school administrators; and adopting a new classroom observation instrument consistent with Kentucky's new teaching standards and portfolio exhibits (Pankratz and Banker, 2000).

After a grueling 1999-2000 legislative struggle to re-energize and fund the Board, a series of political compromises led supporters of improved teacher quality to expect more serious change (Pankratz and Banker, 2000). Legislative authority and funding were provided to support many of the important changes consistently called for by independent studies. Additional support was earmarked in the 2000-01 budget for Board operations and improved data management. New local initiatives were more closely aligned to the strategies for high quality professional development emerging in the field. The linkage of individual teacher performance to student achievement was growing. Institutions of higher

⁶³The mandates included: requiring higher ed to comply with KERA; evaluating all teacher preparation programs; revoking state approval of programs that are not consistent with KERA; establishing regional certification centers with the capacity to measure the proficiency of beginning and experienced teachers; linking teacher compensation to performance; phasing out the Masters degree requirements for certification; and developing ways to ensure subject matter and pedagogical expertise when conferring certification. (Pankratz and Banker 2000)

education were developing "continuous assessment plans" that would qualitatively and quantitatively document the progress of preservice teacher development. And a collaborative Board Benchmark Committee was created in 1999 that is establishing benchmarks and standards that track potential teachers from exiting pre-service training to achieving national board certification, using "portfolio exhibits" to demonstrate teacher "competence" in "planning, implementing, and evaluating a four-week unit of instruction during the internship year" (Pankratz and Banker, 2000).

Low performing schools were an early focus of KERA implementation. Schools that were "in decline" or "in crisis," as determined by KIRIS test scores received state intervention through the School Transformation and Renewal (STAR) Program. Intervention included extra funding and the assignment of an experienced, recognized, and specially trained "distinguished educator," who spent as many as three days each week at the school. Distinguished educators (DEs) led school staff through a school improvement process that included needs assessment, goal setting, planning needed "transformation" and professional development, and allocating additional state funding to identified areas of need. DEs were also asked to evaluate certified personnel every six months and to recommend such actions as retention, dismissal, or transfer. (Foster, 1999; Kannapel & Coe 2000).

During the first two-year cycle of STAR, 46 DEs were assigned to 53 schools. For the second two-year cycle, the number of schools expanded dramatically to 185, yet the number of DEs remained the same. Thus the level and intensity of interaction between the DEs and the staff of the school was reduced (Kannapel & Coe, 2000). Nevertheless, reaction to the work of the DEs was generally positive. A 1997 survey found more than

80% of local practitioners supportive of the STAR program. In 1998 another survey showed strong support for the DEs' knowledge of the issues confronting practitioners, fairness in addressing personnel issues, leadership in the design and process of planning for school improvement, and emphasis on sustaining improvement over time (Foster, 1999; Kannapel & Coe, 2000).

Test score improvements reinforced the perceptions of practitioners. Of the 53 schools participating in the first two-year STAR cycle, 34 met or exceeded their KIRIS improvement goals. During the second cycle, 46 of the original 53 improved their test scores, while 89% of all schools participating in the second cycle improved their test scores (Foster, 1999; Kannapel & Coe, 2000). Moreover, the impact of the DEs has been found to have several long term effects. First, schools in which they worked emphasize student learning in all activities. Second, instruction improved and best practices were implemented. Third, teacher collaboration improved and more teachers assumed leadership roles in the school. Fourth, ongoing planning and broad teacher participation improved. Fifth, professional development focused more on the needs of the individual school and improved curriculum and instruction. And sixth, staff evaluation was seen as practical and helpful, as DEs actually explained the identified deficits and suggested remedies within the capacity of the individual teacher to implement (Foster, 1999; Kannapel & Coe, 2000).

The impact of the DE program under STAR appears to have been even broader. The Kentucky Leadership Academy was modeled on the work of the DEs. Moreover, nearly 75% of the individuals who served as distinguished educators went back to work in positions where the experience and training they had in their state assignment would

contribute to improvement in their schools and districts. In addition, the strategies, techniques, and tools used in the STAR program are being adopted by schools that seek improvement but may not have been as deficient as to require the assignment of a DE (Foster, 1999; Kannapel & Coe, 2000).

The success of the DEs working in the STAR program spurred district leadership to ask the KDE to provide school improvement training to principals and central office administrators (Kannapel & Coe, 2000). The Kentucky Leadership Academy was created to build capacity among school and district administrators through a training focus on "planning for continuous improvement, effective instructional practices and curriculum development, accountability and assessment, and facilitating change" (Kannapel & Coe, 2000). The KLA design called for 1 ½ days of professional development four times during the year plus a retreat week in the summer. Participants received eleven days of development work each year for three years (Kannapel & Coe, 2000). Although research has not yet linked student achievement to the work of participants in the KLA, surveys of such participants indicated a high degree of satisfaction with the training provided. Specifically, participants reported the training provided continuing access to helpful information and to knowledgeable people, and developed their own leadership skills in curriculum and instruction (Coe, 2000).

KERA transfers considerable authority from the central office to the school. Each school was to establish a council that includes three teachers, two parents, and one administrator or more participants based on the same 3-2-1 ratio. Teachers and parents are to be elected annually and the principal or administrator automatically serves as chair. In addition, teacher committees were expected to be formed to would make

recommendations to the Council. The Councils were given authority to hire principals, to consult on the hiring of other staff, and to establish school-wide policies on curriculum, instruction, school schedule and calendar, student and staff assignments, space utilization, school and classroom discipline and management, and extra curricular activities. In short, all school-level decisions that were seen to impact teaching and learning were now to be decided collaboratively (David, 2000).

Consistent with national research, the research on school based decision-making in Kentucky has not established a link between such decentralization of authority and improved student achievement (David, 2000; Lindle, *School-based Decision-making*, 2000). Moreover, the evidence suggests that Kentucky School Councils were less able to focus their attention on teaching and learning issues than on student discipline, budgets, and personnel matters., David, 2000; Foster, 1999; (Lindle, , *School-based Decision-making*, 2000).

From both the New Jersey and Kentucky experience, it would appear that collaborative school-based management, when given broad mandates to work on many issues, tends to avoid the more complicated and individual issues of improved curriculum and instruction, in favor of issues that are more typically seen as management prerogatives. David (2000) concludes that:

The task of setting school wide policies and making decisions that might lead to improved curriculum and instruction is a formidable one, even for the experts who devote their careers to these issues. The notion that this could be accomplished by three teachers, two parents, and a principal, with minimum training and little or no experience in collaborative decision-making, strains credulity.

KERA recognizes the need to provide disadvantaged children and their families with extra social and health services and support in order to help improve the opportunities for such children to succeed in school. Family Resource and Youth Services Centers have been established throughout Kentucky in schools serving these children. Between 1991-92 and 1999-00, the number of Centers grew from 133 to 638, the number of children served rose from 111,243 to 473,612, and public expenditures grew from \$9.5 million to \$42.2 million (Wilson & Taylor, 2000). Elementary school Family Resource Centers were required to provide: child care assistance for 2 and 3 year olds; after-school child care for children 4-12; health and education services for expectant parents; support and training for day care providers; health referrals or direct on-site services; parenting education; and education for preschool children and their parents (Wilson & Taylor, 2000). The high school equivalent, Youth Service Centers, was required to provide: health referrals or direct on-site services; referrals to social services; employment counseling; job training and placement; summer and part-time job development; substance abuse referrals or on-site services; and family crisis and mental health referrals or on-site services (Wilson & Taylor, 2000).

Research on these centers has not yet established a link between services provided and gains in pupil achievement (Foster, 2000). Elementary teachers, however, are convinced that children who use the Centers show better attendance and higher achievement (Wilson & Taylor, 2000). Some evidence has been documented that marginal high school students have received sufficient help from Youth Service Centers to graduate high school (Wilson & Taylor, 2000). There is broad support for these Centers among

school practitioners, families who use the services, and researchers who have evaluated them (Foster, 1999).

Finally, a word about the engine driving KERA, the Kentucky Department of Education. Seen universally as a political agency before *Rose*, with an elected superintendent of instruction, political appointees in high places, and policy shifts for every 4-year election cycle (Lusi & Goldberg, 2000), the KDE was dramatically changed by KERA. A State Board of Education was appointed by the Governor, a Commissioner of Education was appointed by the State Board, and the Commissioner was directed to develop a new department with the capacity to implement KERA and eight regional services centers to provide direct help to practitioners in the field (Lusi & Goldberg, 2000). The mission of the KDE became "to ensure for each child an internationally superior education and a love of learning through visionary leadership, vigorous stewardship, and exemplary services" (Lusi & Goldberg 2000, quoting Steffy, 1993, p. 204).

The reorganization of the KDE involved fundamental changes in program, structure and personnel. The program emphasized directing and assisting district and school implementation of the reforms mandated by KERA. The structure established new divisions responsible for one or more aspects of KERA implementation. Thus far, there have been three major structural reorganizations in 1991, 1994, and 1998 (Lusi & Goldberg, 2000). At the beginning, only 18.5% of top management was appointed from the old KDE while 35% came from outside Kentucky (Lusi & Goldberg, 2000).

The first phase of KERA implementation emphasized the structural reforms and new programs described earlier. As the 1990's progressed, the KDE began to re-direct its

focus to content, curriculum alignment, and instruction – the “guts” of improved teaching and learning (Lusi & Goldberg, 2000). Increasingly, the focus shifted from school-wide change to a more concentrated focus on individual teachers and the improvement of teacher quality, as leaders and practitioners realized that implementation of the assessment and accountability provisions of KERA were not sufficient to generate the amount of student achievement growth previously anticipated (Lusi & Goldberg, 2000).

The results of KERA implementation and the KDE leadership have been mixed. (Foster, 1999; Lusi & Goldberg, 2000; Petrosko, et al, 2000). Student achievement growth has not kept pace with expectations, and changes in the assessment system in 1999 caused extension of the date for all students achieving at the levels contemplated by Kentucky standards from 2010 to 2014 (Lusi & Goldberg, 2000). Although comprehensive evaluation of the KDE has not been done, there is evidence that practitioners in the field view the state agency as service-oriented and providing services well and that such programs as STAR and the distinguished educator intervention have had positive effects on instruction and school leadership. Additionally, establishment of the Kentucky Leadership Academy and intensified focus on teacher quality indicates the capacity of the KDE to grow and evolve in response to emerging new conditions (Lusi & Goldberg, 2000).

CHAPTER V

METHODOLOGY

There is no simply right way to do content analysis. Instead, investigators must judge what methods are most appropriate for their substantive problems (Weber, 1990).

As discussed in the previous chapter, the role of the State is more than simply establishing a statewide system of public schools. Rather, the state has become the source not only of assuring equity as defined by the Courts, but of improving the education provided directly by schools and districts. Such improvement clearly is tied to laws, including Court mandates, legislative statutes and administrative rules or regulations which describe the roles of state and local agencies in this complex process of funding, managing, providing and overseeing public education classrooms, programs, schools, and districts. Such written communication, clearly the source of instructions to inform state and local policy and programs, can and should be examined to determine their utility in the improvement process.

The objects to be examined are the legal documents from the two states including the Court decisions in *Abbott* and *Rose*; the 1990 Kentucky Education Reform Act; the 2000 New Jersey Education Facilities Act; appropriate provisions of the New Jersey Appropriations Act for FY 1998, 99, 00, 01, 02, and 03; KERA regulations and *Abbott* regulations up to and including those in effect at the close of the 2001-02 school year.

Together, the web of Court decisions, statutes, and regulations can be viewed as the full legal mandate for local implementation of new programs and/or reforms.

The study conducted here can be seen as related to content analysis. By combining the standards identified in section II of the previous chapter, the study will examine decisions, statutes, and regulations in detail to assess three observable variable elements: "language clarity," to determine the ease of reading and understanding; "meaning clarity," to determine the degree to which detailed meaning is conveyed to those responsible at the state and local levels for implementation; and "legal authority," the extent of both responsiveness to prior legal sources -- the Constitution as the source for the Decision, the Decision as the source for statutes, and statutes as the source for regulations -- and necessary legal guidance is provided to implementing agencies -- Legislature, Department, local schools and districts. Each variable or element will be judged for adequacy and the overall adequacy of each mandate, statutory provision, or regulation will then be determined based on a rational assessment of the relationship among the four variables.

For regulations, the legal authority closest to implementation in the field, the key is effective communication, and the "content" of each examined regulation will be analyzed to determine if it simply describes a program or reform, or if it provides standards, procedures, and/or definitions that build a detailed set of instructions for implementing practitioners..

To determine relative clarity, questions will be applied to each section consistent with Martineau's standards, including: Does the section avoid unnecessary words? Does it rely exclusively on words that are common, used by laymen everyday? Does it avoid legal (or technical) jargon? Does it avoid unnecessary variation or synonyms? Does it

avoid long, complex sentences? Are words properly placed to assure universal meaning?
Is the section punctuated properly?

To identify the meaning of each regulation, questions will be asked to determine: does the regulation explain the “purpose, legal authority, and anticipated consequences” of compliance; does the regulation provide necessary definitions, standards, and procedures to assure that local officials and practitioners charged with local implementing authority and responsibility will know what is to be done; does the regulation indicate clear lines of authority and responsibility for state, district, and school officials and practitioners; does the regulation assure sufficient capacity for effective implementation by providing reasonable “how to” language or otherwise establishing sources of technical help to assure that local implementors can learn how to implement?

To determine the linkage between mandate, statute, and regulation, it will be necessary to ask whether the mandate conforms to the constitutional interpretation, whether the statute complies with and elaborates the mandate, and whether the regulation implements the statute, or, in the case of much of *Abbott*, the more detailed Court mandate.

The adequacy of each element of each mandate, statutory provision, and regulation examined will be coded with a numerical value as follows: inadequate=0; barely adequate=1; adequate=2; and comprehensive=3.

For the purposes of this analysis, “adequate” is defined as: “sufficient for a specific requirement, lawfully and reasonably sufficient” (Merriam-Webster, 2002); “sufficient in quality or quantity to meet a need” (Encarta online, 2001; American Heritage, 2000); “equal to some requirement, proportionate” (Webster’s Revised Unabridged, 2000); and “meeting the requirements especially of a task, enough to meet a

purpose" (World-Net, 2002). Thus, the wording of an adequate Court mandate, statutory provision or regulation will be reasonably sufficient in quality and quantity to facilitate effective implementation at the next corresponding level of public activity, by the Legislature, the Department, or local schools and districts. By contrast, "inadequate" is defined as the opposite, meaning the words do not "meet the need," are not "equal to the requirement," do not "meet the purpose," and do not provide sufficient guidance to enable effective implementation at the next stage. "Barely adequate," obviously, lies somewhere in between, where the language provides some guidance to the tasks ahead by the next agency of government, but not enough to be judged adequate. Finally, "comprehensive" is applied to those mandates, statutory provisions or regulations that appear on their face to be exhaustive or as: "covering completely or broadly, inclusive" (Merriam-Webster, 2002); "covering many things or a wide area, including everything so as to be complete" (Encarta online, 2001); "so large in scope so as to include much" (American Heritage, 2000); and "having a wide scope or a full view" (Webster's Revised, 2000).

Numbers will then be totaled and averaged for each element as well as for each mandate, statute or regulation. Such a procedure will provide a relative rating for each element as well as a rating for the legal statement as a whole. A determination will be made of the relative adequacy of each written element and of the entire set of state-specific responses. The state by state comparison will then be facilitated by the numerical tabulation differences in court decisions, statutory language, and implementing regulations. Finally, any substantive differences between the legal responses of each state that show up in relative numerical differences will be analyzed to identify any patterns that may explain such differences.

In an effort to standardize the analysis that yields judgements about adequacy, all mandates, statutes, and rules are viewed as presumptively adequate, with negative judgements (barely adequate or inadequate) or positive judgements (comprehensive) requiring extraordinary language that can be identified, and, hopefully, replicated. Finally, an effort has been made to mitigate the potential for bias by careful review of existing research in Chapter IV.

CHAPTER VI

KENTUCKY'S LEGAL FRAMEWORK FOR EDUCATION REFORM

As discussed in Chapter III, research and reporting on Kentucky's reform initiatives following the *Rose* decision have generally been very favorable. In addition, the absence of any litigation after the adoption and implementation of KERA conveys yet another dimension of support and public approval of the legal framework established by the legislative and executive branches of Kentucky state government. Here we examine more precisely the written words, beginning with the Court decision itself.

The Language of *Rose*

The *Rose* decision was not unanimous. Four associate justices supported the opinion written by Chief Justice Stephens, forming the 5-2 majority. Two of the five, Justices Gant and Wintersheimer, filed concurring opinions.⁶⁴ Justices Leibson and Vance dissented.⁶⁵ In summary, the majority found:

⁶⁴Justice Gant agreed with the Chief Justice on the merits of the declaration of unconstitutionality. However, he took issue with the remedy. He wanted a Court mandate for the Governor to call an "Extraordinary Session of the General Assembly," for the General Assembly to enact legislation, and for the Executive to "recommend appropriate corrective measures." Justice Wintersheimer argues the opposite. He believes that the decision, though correct in its findings, is nonetheless not binding, but only advisory, on the General Assembly. Additionally, he finds the language of the majority "too sweeping." He wants the Legislature to be free to perform its proper duty to develop "an appropriate system of legislation" that requires them to "fine tune certain aspects of the system." 790 S.W.2d 186, West Publishing, 2001

⁶⁵Justice Vance's dissent resembles that of Justice Wintersheimer concurrence. He too finds the failure to name all members of the General Assembly as parties to the suit, the failure to declare even one specific statute, let alone the spate of educational statutes, unconstitutional, and the focus on equal opportunity when local districts will still be able to raise disparate funding as evidence that the Court is "powerless at this time and in this litigation to mandate any action on the part of the General Assembly." Justice Leibson goes further and argues that there are not justiciable issues before the Court, but rather political policy issues, and that by rendering this decision, the majority has made the Court "part of the problem when we intend to be part of the solution." 790 S.W.2d 186, West Publishing, 2001

a virtual concession that Kentucky's system of common schools is underfunded and inadequate; is fraught with inequalities and inequities throughout the 177 local school districts; is ranked nationally in the lower 20-25% in virtually every category that is used to evaluate educational performance; and is not uniform among the districts in educational opportunities (*Rose*, p. 16, 1989).

In comparing rich and poor school districts, the Court found "wide variations in financial resources . . . unequal educational opportunities. . . large variances in taxable property. . ." and "substantial difference in curricula . . . particularly in the areas of foreign language, science, mathematics, music and art." In addition to inequities in funding, programs, and taxes, the Court also found lower achievement in poorer districts, higher "student-teacher ratios," and a clear "correlation between those scores and the wealth of the district" (*Rose*, p. 16, 1989).

The State as a whole, however, also fared poorly when compared to other states. The Court found that 35% of the adult population drop out of school, 80% of the local school districts are poor, the remaining 20% are below the national average in taxable property, and 30% of the districts are "functionally bankrupt." In addition, the evidence at trial proved that when compared with its neighboring seven states, Kentucky ranked: 6th in per pupil spending (40th nationally); 6th in average staff compensation (37th nationally); 7th in teacher salaries (37th nationally); 7th in the ratio of property tax revenue to overall school spending (43rd nationally); 7th in high school graduation rates; and 7th in pupil-teacher ratio. Thus, the Court accepted expert testimony that "not only do the so-called poorer districts provide inadequate education to fulfill the needs of the students but the

more affluent districts efforts are inadequate as well, as judged by accepted national standards" (*Rose*, p. 17, 1989).

Finally, the Court examined Kentucky's tax and spending inequities. Annual per pupil expenditures varied by the thousands. Such disparity occurs "because the assessable and taxable real and personal property in the 177 districts is so varied, and, because of a lack of uniformity in tax rates," the tax effort in many districts not only lacks "uniformity" but also lacks "adequate effort" (*Rose* at 18, 1989). Such disparity in raising school revenues is particularly important in the Court's view because uncontroverted trial testimony demonstrated a "definite correlation between the money spent per child on education and the quality of the education received" (*Rose*, p. 18, 1989).

Having found and described various educational inequities and inadequacies, the *Rose* Court then shifts to discussing whether the Kentucky Constitution actually provides the basis for Court involvement in matters that are normally viewed as political and, therefore, typically the responsibility of the other branches. The Court finds (at p. 23) that the education clause makes clear the General Assembly's responsibility to provide a system of common schools, everywhere in the State, and to assure that such a system is "efficient" (*Rose*, p. 23, 1989). Based on its review of the trial court opinion, the recorded deliberations of the 1890 Constitutional Convention that wrote and adopted the education clause, and the opinion of experts, the Court concludes that the seven capacities enumerated by the trial court are an essential part of the adequate education every child in Kentucky is constitutionally entitled to receive and that an efficient system of common schools includes eight other characteristics in addition to this goal of providing for the development of the seven capacities (*Rose*, p. 30, 1989).

The Court-ordered, constitutionally acceptable education program in Kentucky must provide all students the opportunity to learn "sufficient:"

(i) oral and written communication skills to enable students to function in a complex and rapidly changing civilization;

(ii) knowledge of economic, social, and political systems to enable the student to make informed choices;

(iii) understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;

(iv) self-knowledge and knowledge of his or her mental and physical wellness;

(v) grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;

(vi) training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and

(vii) levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market (*Rose*, p. 30, 1989).

The Court then summarizes the "essential, and minimal" qualities or "characteristics" of an "efficient system of common schools."

1) The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly;

2) Common schools shall be free to all;

3) Common schools shall be available to all Kentucky children;

4) Common schools shall be substantially uniform throughout the state;

5) Common schools shall provide equal educational opportunities to all Kentucky children regardless of place of residence or economic circumstances;

6) Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence;

7) The premise for the existence of common schools is that all children in Kentucky have a constitutional right to an adequate education;

8) The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education; and

9) An adequate education is one which has as its goal the development of the seven capacities recited previously (*Rose*, p. 30, 1989).

The findings of severe educational disparities and deficiencies in Kentucky, when examined against the backdrop of these characteristics of an "efficient system," led the Court to conclude that "Kentucky's *entire system* of common schools is unconstitutional" (*Rose*, p. 32, 1989). To assure that its conclusion was fully understandable, it specified that the decision applies to everything about public education in Kentucky "all its parts and parcels. . ." including "statutes creating, implementing and financing the *system* and to all regulations. . ." (*Rose*, p. 32, 1989). The declaration of unconstitutionality covers "the creation of local school districts, school boards, and the Kentucky Department of Education to the Minimum Foundation Program and Power Equalization Program."⁶⁶

⁶⁶ These were funding formulas in effect at the time of the *Rose* decision.

Finally, the ruling covers “school construction and maintenance, teacher certification -- the whole gamut of the common school system in Kentucky” (*Rose*, p. 32, 1989).

The Court neglected to direct the adoption of specific remedies. It found that by its ruling in *Rose*, the Constitution requires the General Assembly to “recreate, re-establish a new system of common schools in the Commonwealth” (*Rose* pp. 32-33, 1989) The minimum standards the Court provided require the General Assembly to (1) establish a mechanism to retain control of the system, even as it may delegate any of its responsibility; (2) assure that delegated institutions, like local school boards and districts, must “exercise the delegated duties in an efficient manner;” (3) provide “adequate” funds for the system to operate efficiently; (4) “establish a uniform tax rate” on real and/or personal property; and (5) assure that “all such property is assessed at 100% of its fair market value” (*Rose*, p. 33, 1989)

To put serious weight behind this decision and to enable the schools to continue functioning until an new system was put in place, the Court delayed the finality and the effect of *Rose* until 90 days after the conclusion of the 1990 regular session of the General Assembly. Thus, had the Legislature not acted or acted inappropriately, the Court might well have come back – as we have seen in New Jersey – with more exacting language. As discussed in Chapter III, in Kentucky, no such further Court action was taken.

Analysis of the Language of the Rose Mandates

As with all constitutional rulings, the Rose Court had to interpret the meaning and intent of the simple words of the education clause adopted nearly a century earlier: “The General Assembly shall, by appropriate legislation, provide for an efficient system of

common schools throughout the State” (Kentucky Constitution, §183). As noted above, the Court adopted nine elements to define and operationalize the meaning of “an efficient system,” as well as to guide the General Assembly’s enactment of remedial legislation that complied with the constitutional mandate. In reviewing these elements, it is also necessary to examine the findings and conclusions in *Rose* that may modify or further explain the affirmative ruling. Applying the three pronged test to each element – written clarity, adequate meaning, and responsiveness to antecedent legal authority – produces, in the case of the judicial decree, inconsistent and disappointing results.

1. “The establishment, maintenance and funding of common schools in Kentucky is the sole responsibility of the General Assembly.”

The language is clear, the meaning is self-evident, and the mandate tracks actual language in the constitution, clearly adequate.

2. “Common schools shall be free to all.”

Clear language, literal meaning, and, although the education clause does not refer directly to payment, both debate at the constitutional convention and subsequent rulings by the Court established the principle of public, rather than private or individual, financial support for the common schools (*Rose*, pp. 23-26, 1989).

- 3) “Common schools shall be available to all Kentucky children.”

Clear language, literal meaning, and with the constitutional language “throughout the State” as the guide, this element is adequate.

- 4) “Common schools shall be substantially uniform throughout the state.”

On its face, this element appears to be adequate as well, although the absence of any standard to define “substantially” is problematic. When read in conjunction with

other findings, however, this element loses its presumption of "adequacy." The Court also finds that local school boards may raise funds in addition to that which is guaranteed by the General Assembly in order to provide educational opportunities that would "supplement the uniform, equal educational effort that the General Assembly must provide" (*Rose*, p. 29, 1989). Thus, the uniformity required is only up to a certain level, that which is provided and guaranteed solely by the State, a clarification that undermines the meaning of this element. Moreover, the Court failed to provide any definition or standard to circumscribe the level of uniformity required of the State, or to incorporate any local supplemental funding and programs into the constitutional meaning of "uniform." Finally, the Court provides no guidance to determine when (and if) local supplemental funding and programs reach such levels of advantage and disparity with other districts as to encroach upon the very deficiencies that led to *Rose* in the first instance.

5. "Common schools shall provide equal educational opportunities to all Kentucky children regardless of place of residence or economic circumstances."

On its face, this element also appears to be adequate. Clear language, apparently obvious meaning, and responsive to the express constitutional language that the system be "throughout the state." In light of the Court's allowance of locally determined inequity, however, common schools may not provide equal opportunity if some school districts are able to raise funding greater than that which is guaranteed by the State. Such funding could be used to reduce class size or to increase the number of programs and services, for example, and, therefore, solely on the basis of the economic circumstances of the

community, establish schools that are superior to others on the very standards used in *Rose*.

6. "Common schools shall be monitored by the General Assembly to assure that they are operated with no waste, no duplication, no mismanagement, and with no political influence."

On its face, this element is barely adequate. Without further Court guidance to define the meaning of "waste," "duplication," "mismanagement," and "political influence," there is no assurance that such undersireables will be fully identified and prevented. Depending upon underlying values, what is wasteful to one group is essential to another. What is duplication to one perspective may very well represent diversity to another. Certain forms of administrative behavior may be mismanagement, bordering on corruption, or may reflect insufficient capacity and professional development. And government-imposed restrictions on educational resources may reflect public discipline and accountability or simply the political objective to reduce investment in public, as opposed to private, enterprise.

7. "The premise for the existence of commons schools is that all children in Kentucky have a constitutional right to an adequate education."

Since an "adequate" education is defined by the seven capacities adopted by the Court and with clear language and the obvious point that a system could not be "efficient" if it were inadequate, this element could be adequate. However, when considering the analysis in #9 below, this element becomes barely adequate.

8. "The General Assembly shall provide funding which is sufficient to provide each child in Kentucky an adequate education."

Although this element seems self-evident and fully consistent with the other elements, the failure to define “sufficient” or to provide any constitutionally sound process or standard for others to determine sufficiency undermines its value and makes it barely adequate.

9. “An adequate education is one which has as its goal the development of the seven capacities recited previously.”

On its face, this element is also inadequate. The Court has only required a “goal,” and not, for example, the provision of sufficient teachers, effective pedagogy, reduced class size, intensive professional development, management capacity, special programs, and adequate physical facilities. These are the essential building blocks to assure that schools have the capacity to provide the necessary opportunities for all children to reach the seven capacities. See for example, *Abbott IV*, finding, “The standards themselves do not ensure any substantive level of achievement. Real improvement still depends on the sufficiency of educational resources, successful teaching, effective supervision, efficient administration, and a variety of other academic, environmental, and societal factors needed to assure a sound education.”

Moreover, the failure to define “sufficient” when it modifies each of the seven capacities also leaves important definitions to political debate and, ultimately, allows for manipulation based on political values and the amount of resources politicians will approve. See 2002 Appellate Court ruling in New York, holding that the constitutional guarantee of a “sound basic education” only assures urban students in the State a minimal 8th grade education, and nothing more.

As mentioned above, the Court also established five specific mandates.

First, “the sole responsibility for providing the system of common schools lies with the General Assembly. . .to recreate a new statutory system of common schools . . .”

Although the first part of this mandate repeats the first element in the Court’s operational definition of efficiency, and, therefore is clear, conveys its meaning, and responsive to constitutional language, the second part makes it also clear that the General Assembly must draft and adopt an entire new set of statutes to govern the schools in Kentucky.

Second, “[i]f they choose to delegate any of this duty to institutions such as the local boards of education, the General Assembly must provide a mechanism to assure that the ultimate control remains with the General Assembly, and assure that those local school districts also exercise the delegated duties in an efficient manner.”

The Court repeats here the requirement that the General Assembly is the agent delegated by the Constitution to effectuate the obligation to provide the system of common schools for all children in the State. Even when parts of this obligation are delegated, the Court makes clear that the General Assembly must retain ultimate control and that the standard of efficiency, as delineated by the Court, must be adhered to by any other branch or agency of government accepting such delegated authority.

Third, “the General Assembly must provide adequate funding for the system.”

In this mandate, the Court actually expands the language contained in efficiency element #8, requiring “sufficient funding” to provide an “adequate education,” as defined by the “seven capacities.” The word “system” conveys the entire state and local infrastructure needed to provide the “adequate education” as defined by the capacities.

The problem, however, is that the Court nowhere provides any standard, definition, or procedure to convey the meaning of “adequacy” or a process for determining it.

Fourth, “the General Assembly has the obligation to see that all such [real and personal] property is assessed at 100% of the fair market value.”

This mandate is precise and clear and flows from evidence assembled at trial .

Fifth, “the General Assembly must establish a uniform tax rate for such property.”

This mandate is precise and clear and flows from evidence assembled at trial .

Table 1, on the following page, rates the language clarity, meaning clarity, fidelity to legal authority and the overall adequacy of each of the 14 Rose Court mandates. An average rating for each standard is shown at the bottom of the table on the following page.

Table 1.
Assessing the Adequacy of the Rose Court Mandates

#	Mandate	language clarity	meaning clarity	legal authority	adequacy
1	sole GA responsibility	2	2	2	2
2	schools are free	2	2	2	2
3	available to all children	2	2	2	2
4	substantially uniform	2	0	1	0
5	equal ed opportunities	2	1	2	1
6	GA monitoring	1	1	2	1
7	adequate education	1	0	2	0
8	sufficient funding for the capacities	2	1	2	1
9	adequacy defined by 7 capacities	1	1	1	1
10	new statutory system	2	2	2	2
11	delegation requires efficiency	2	2	2	2
12	adequate funding for the entire system	1	1	2	1
13	property assessment	2	2	2	2
14	uniform tax rate	2	2	2	2
Totals		1.71	1.36	1.86	1.36

By this analysis, only 7 of the 14 individual mandates or directives issued by the Court to define and assure an "efficient system of common schools" were "adequate" as written and adopted by the Kentucky Supreme Court, five are "barely adequate," and two are "inadequate." The scoring revealed an average of 1.36 or just above "barely

adequate." We turn now to an examination of the language adopted by the General Assembly in response to this language.

Analysis of The Language of KERA

The omnibus law introduced as House Bill No. 940 on April 11, 1990, and adopted as KERA, included 8 parts and 655 sections. Of these, 39 sections were "new," 284 sections were "amended," 331 sections were "repealed and reenacted," and one section simply repealed 79 sections of nine chapters of the education statutes.⁶⁷ The following analysis is based upon a review of the first three parts of KERA, identified as Curriculum, Governance, and Finance respectively. These named Parts comprise 116 sections or 18% of the 655 sections.

In Appendix A, beginning on page , the language clarity, meaning clarity, legal authority, and overall adequacy is rated for each of the 116 sections of KERA that were analyzed. Table 2 shows the average results of this rating.

Table 2.
Assessing the Adequacy of Parts I, II, and III of KERA (See Appendix A)

#	topic	language clarity	meaning clarity	legal authority	overall adequacy
32 I	CURRICULUM	2.34	2.34	2.03	2.16
60 II	GOVERNANCE	1.90	2.10	2.15	2.10
24 III	FINANCE	1.79	1.75	1.67	1.63
116	Total	2.00	2.10	2.02	2.01

⁶⁷ Taken from a content analysis of House Bill No. 940.

Part I, Curriculum, includes 32 sections that deal with the substance of education, including standards, improvement, and oversight. The sections range in length from one line, section 1, the title of the entire Act, to 116 lines, section 14, describing school-based decision-making. In between there are sections dealing with student capacities, goals for pupil achievement and goals for schools, strategies for state intervention in failing schools, school-based assessment and improvement planning, preschool, family and student supports and services, technology, required and permitted programs, and definitions. Of the 32 sections, half were new and the remaining 16 were amended from prior statutes; 14 expressly authorized the executive branch to adopt implementing regulations; and average length was 33 lines, while the medium length was 26 lines.

Of the 32 sections, none were inadequate, three were barely adequate, eight were comprehensive, and 21 were adequate. Typically, the sections were written in easily understood language, avoid jargon, and, do not involve unduly long sentences. The meaning of each section is sufficiently explained so implementing officials and practitioners are likely to understand what is to be done to conform, or, in the case where more explanation is necessary, authority is granted to the Executive to adopt implementing regulations to further clarify the meaning of the section and the responsibilities required. Finally, given the breadth of *Rose*, the mandate to reform the entire system and to ensure corrective action and improved education, the General Assembly had virtually carte blanche to adopt and/or change every statutory section that can reasonably be shown to address both one or more aspects of the common schools of Kentucky and accepted strategies for their improvement.

To explain the provisions judged as "barely adequate," section 2, for example simply restates the student capacities adopted by the Supreme Court as the definition of an

“efficient” education. While there is clear need to reference this Court mandate, the absence in this section of any more information than what was already put into motion by the Court undermines its adequacy. Lack of any added value clearly identifies this section then as “barely adequate.”

The failure to include any assurance that funding will be adequate leads two sections to the same classification. Section 13, is short, has 15 lines, and describes planning for professional development. It identifies a “planning grant” during the first year of KERA, 1990-91, “to be used in conjunction with other districts to plan for professional development activities through the 1994-95 school year.”⁶⁸ With the explicit exclusion of larger districts (enrollments of 20,000 or more), all other districts, by the end of that first KERA school year, “shall have joined a consortium involving two (2) or more districts and shall have submitted a preliminary professional development plan. . .” The plan developed by the consortium must describe utilization of “the professional development activities available from the Department of Education as described in Section 12 of this Act,” for the first year following the planning year – 1991-92 – and, further, “outline in general terms” both “the types of professional development,” and the “delivery mechanism” that will be used in the subsequent three years – 1992-93, 93-94, and 94-95. Further, once a district is part of a consortium, the consortium plan “may replace the plans for individual districts which are members of the consortium.”

Once a consortium is established, for the school years 91-92 thorough 94-95, the districts’ professional development funds will go to the consortium “to provide a high

⁶⁸ As will be the case throughout, the failure of the Rose Court to more specifically set out standards, definitions, and/or procedures for assuring adequate funding leads to funding streams, as here, that provide no assurance of adequacy, despite constitutional language in the decision requiring “adequate funding.”

quality, coordinated professional development program to the staff in the member districts. Following the 94-95 school year, "a school district shall be allowed to withdraw from the consortium and expend its professional development funds on any professional development activities it chooses."

In clear language and with clear meaning, this section lays out a four-stage professional development planning and implementation process. First, one year of planning; second, one year of direct utilization of State professional development resources presumably through a multi-district consortium; third, three years of consortium-sponsored professional development utilizing State or other resources; and, fourth, in the out years, districts may opt to continue to pool their resources and planning or withdraw from the consortium and expend their professional development resources by themselves, based on their own priorities and needs. Although the section does not provide standards and does not specifically authorize implementing regulations, the preceding section 12 does, and is referenced in section 13. Finally, although there is no explicit mandate in *Rose* on professional development, educational inadequacies demonstrated at trial and adopted by the Court plus the general mandate to "re-create a new statutory system of common schools" both provide ample constitutional justification for this and virtually all the statutory provisions of KERA. Thus, an otherwise adequate section becomes barely adequate once the legislature's failure to assure adequate funding is apparent.

A similar deficiency affects section 17, requiring preschool for three and four-year-olds with disabilities. With 17 lines, the section does not include much detail for state and local authorities. Moreover, while calling for the General Assembly to "provide funds to be used for preschool education programs and related services for handicapped

children," the section does not mention, let alone provide standards or a process to assure, adequate funding. Thus, the inadequate substantive detail coupled with the failure to address funding adequacy yields a classification of "barely adequate."

Other sections, with sufficient detail to otherwise be classified as "comprehensive" are identified as merely "adequate" because they too fail to include standards or a process to assure funding adequacy. This deficiency shows up in sections 7, 14, 18, and 21.⁶⁹ With 71 lines of detailed text, section 18, for example, authorizes the creation of Family Resource Centers for elementary schools and Youth Services Centers for secondary schools "to meet the needs of economically disadvantaged students and their families." A 16 member "interagency task force" is created to "formulate a five year implementation plan establishing the . . . centers" The section identifies the 16 sources of representation, a schedule for completing its work, protocols for beginning and a timetable for completing the assignment, and the standard of "20% or more . . . eligible for free school meals" for location of centers "in or near each school."

The Family Resource Centers "shall promote identification and coordination of existing resources and shall include, but not be limited to, the following components at each site:

- (a) Full-time preschool child care for children two (2) and three (3) years of age;
- (b) After school child care for children ages four (4) through twelve (12), with the child care being full-time during the summer and on other days when school is in session;
- (c) Families in training, which shall consist

⁶⁹These sections respectively deal with standards and procedures for the school improvement fund (41 lines, section 7); school based decision-making and funding (116 lines, section 14); family resource and youth service centers (71 lines, section 18); and the technology council and technology planning for the whole state (45 lines, section 21).

of an integrated approach to home visits, group meetings and monitoring for new and expectant parents; (d) Parent and child education (PACE) as described in KRS 158.360; (e) Support and training for child care providers; and (f) Health services or referral to health services, or both” (KERA, §18).

The Youth Services Centers will be based on a “plan developed for the centers by the task force” to “promote identification and coordination of existing resources and include the five following components for each site: (a) Referrals to health and social services; (b) Employment counseling, training and placement; (c) Summer and part-time job development; (d) Drug and alcohol abuse counseling; and (e) Family crisis and mental health counseling”⁷⁰ (KERA, §18).

A phase-in implementation is required, with 25% of the required centers “to be established” by June 30, 1992, “with expansion by one-fourth by June 30 of each year thereafter until the centers have been established in or adjacent to all eligible schools.” To support these centers, the General Assembly created “[a] grant program . . . to provide financial assistance to eligible school districts.”

Throughout section 18, the language is clear on its face, the meaning is apparent, and the determination of the General Assembly to provide supplemental services to disadvantaged children and their families is directly tied to the findings in *Rose*.

However, the failure of the *Rose* Court to provide or otherwise require standards,

⁷⁰In addition to clarity in language and meaning of required services, so too is there abundant clarity and meaning with prohibited services. “In no case shall a school district operate a family resource center or youth services center which provides abortion counseling or makes referrals to a health care facility for purposes of seeking an abortion.” It is interesting that while implementing a fundamental state constitutional right of children, the General Assembly chose to undermine a fundamental federal constitutional right of women!

definitions, and/or procedures to assure "funding adequacy for the system," and the failure of the other branches to take seriously such language, results in grant programs like this one with no assurance that the funding provided by the State will be sufficient to provide all the required services -- and others -- in or near every eligible school. Thus, an otherwise comprehensive section on the substantive information provided, is nonetheless judged to be merely adequate because adequate funding is not addressed, let alone assured.

Part II, Governance, reflects many of the same findings and conclusions. There are 60 sections, 15 of which are new, while 45 are amended versions of older statutes. Also, 15 sections explicitly authorize the promulgation of additional implementing legal authority. They range from 2 lines (date for appointing the first commissioner of education) to 167 lines, a lengthy but coherent description of all government departments, program cabinets, and administrative bodies, apparently inserted into KERA to identify several new governmental structures called for in various sections of the statute. The average length is 32 lines while the medium length is 19. Of the 60 sections, none were "inadequate," three were "barely adequate," nine were "comprehensive," and 48 were "adequate."

The three sections judged to be "barely adequate" include section 47, a lengthy provision describing the duties of the state board, section 76, describing the local superintendent's screening committee, and section 77, describing free school supplies. Each of these is deficient for different reasons. Section 77, in discussing a fee waiver for students who are economically disadvantaged, legitimates parent assessment of fees for various needed school supplies and runs afoul of the Court mandate that the system of

common schools be free.⁷¹ Section 76, by contrast, requires the establishment of a screening committee “within 30 days of a determination by a board of education that a vacancy has occurred or will occur in the office of superintendent,” but then provides that “the board shall not be required to appoint a superintendent from the committee’s recommendation,” thus dis-empowering the mandated committee.

More complicated is section 47, a 64-line description of the duties of the State Board of Elementary and Secondary Education. The Board “shall have the management and control of the common schools and all programs operated in such schools, including interscholastic athletics, the Kentucky School for the Deaf and the Kentucky School for the Blind, and community education programs and services” (KERA, §47). The board is authorized to delegate to another agency the responsibility to manage interscholastic sports “provided that the rules, regulations, and by-laws” of such an agency “shall be approved by the board” and that the board retains ultimate authority through the promulgation of regulations allowing for an “appeal to the board of any decision made by the designated managing organization or agency” (KERA, §47). Further, the state board, based on the recommendation of the chief state school officer, “establishes policy or act[s] on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets and all other matters which are the administrative responsibility of the Department of Education” (KERA, §47). And finally, again upon “the recommendation and with the advice of the chief state school officer,” the

⁷¹Although not included in this analysis, section 171 of KERA, an amended statute, plainly states that “if sufficient funds are not available to furnish textbooks for all four (HS) grades, the chief state school officer . . . shall determine for what grades and subjects textbooks will be provided.” Moreover, the section authorizes local districts to permit students to “rent textbooks for a reasonable fee.” Thus, adequate funding for textbooks is clearly not provided. Further, the section authorizes local districts to establish a process, based on eligibility for free and reduced price lunch and other “exceptional circumstances” where students unable to purchase or rent books may get them free of charge from the district.

state board "may. . . prescribe, print, publish and distribute at public expense such administrative regulations, courses of study, curriculum, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction." The board is even authorized by law to inclose any regulations it adopts in a "booklet or binder on which the words "informational copy" shall be clearly stamped or printed" (KERA, §47).

As with most of KERA, the language of this section is plain and clear on its face and the meaning is transparent. The three primary provisions, however, are clearly at variance with the norm, both in KERA as a whole and in the principal portion of this section, in that the language is not plain, the sentences are over-long, and the wording is laced with legalese. These include sections dealing with leasing, renewing, and television production. Consider the following subsection dealing with the State board's responsibility for leasing "any lands, buildings, structures, installations and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction;"

Each option of the State Board for Elementary and Secondary Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission: provided, however, that the option shall be deemed automatically exercised, and the

lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of such succeeding biennium (KERA, §47).

Not surprising, the tendency for KERA to lapse into such legalese is somewhat more apparent in Part III, on Finance. Here, 24 sections range in length from 4 lines (requiring minority representation on all boards established under KERA) to 132 lines (providing for local tax procedures and budgets). Of the 24, four were new, three were repealed and reenacted, and the remaining 17 were amended from prior statutes. Six of the sections explicitly authorized further implementing rules. Average length of each section is 31 lines, while the median is 17. .

The absence in *Rose* of any definitions, standards or procedures to assure funding adequacy shows up in the language of KERA finance sections. Fully 9 of the 24 sections were found to be "barely adequate" because the specific language authorizing various aspects of state and local funding fail to include any assurance of adequacy. Section 101, for example, clearly states the intention of the General Assembly to tailor school spending to appropriations decisions, rather than to actual needs and costs.

If, when the apportionments are being determined under the provisions of KRS 157.310 to 157.440, funds appropriated by the General Assembly to the public school fund are insufficient to provide the amount of money required under KRS 157.390, the chief state school officer, unless

otherwise provided by the General Assembly in a budget bill, shall make a percentage reduction in the allotments to reduce the total of these allotments to funds available (KERA, §101).

Thus, in plain language, if elected officials choose not to raise sufficient funds to support budgetary needs, it is allocation and budgets that will be adjusted, not the revenues. Other sections follow suit. Section 95 establishes the fund to support educational excellence based on "appropriations." Section 103 establishes the "successful schools trust fund" to be supported by "[f]unds appropriated by the General Assembly." Section 112 authorizes local districts to levy taxes "to provide a special fund for the purchase of sites for school buildings and physical education and athletic facilities," with no assurance that the funds generated will be adequate.

Section 113 provides for local taxation to support "the purchase or lease of school sites and buildings and physical education and athletic facilities, for the erection and complete equipping of new school buildings and physical education and athletic facilities, for the major alteration, enlargement and complete equipping of existing buildings" and more. This provision, however, does not assure "adequate" funding through such taxation. Rather, the local tax is to be set at "not less than five cents (5) nor more than fifty cents . . . levied on each one hundred dollars (\$100) of property subject to local taxation."

Section 114 establishes "the emergency revolving school loan fund account," with no assurance that the funds set aside in the "special fund" will be sufficient to cover all emergencies that may arise during the course of a given year.

The failure of KERA to assure adequate funding also shows up in sections that, because of their substantive detail, are merely adequate, though otherwise would be

classified as comprehensive. These include, Section 97, that determines “the cost of the program to support education excellence in Kentucky” by “dividing the amount appropriated for this purpose by the prior year’s statewide average daily attendance” in order to then establish “the statewide guaranteed base funding level.”

In addition, Section 105 provides for State Board of Elementary and Secondary Education approval of local school board budgets. However, the standards established for disapproving such budgets include: (1) “it is financially unsound;” (2) doesn’t provide for “[p]ayment of maturing principal and interest on any outstanding. . . bond;” (3) doesn’t provide for “payment of rentals;” and (4) “[f]ails to comply with the law.” Missing from this list is any consideration of the constitutional guarantee as declared by the Rose Court. Such guarantee would include the adequacy of locally proposed budgets so that “each child in Kentucky” will receive “an adequate education,” consistent with the “goal” of “development of the seven capacities.” Moreover, there is no standard in KERA for budgetary review that would assure “substantially uniform” common schools or “equal educational opportunities to all Kentucky children, regardless of place of residence or economic circumstances.”

In summary, although the Court requires adequate funding, neither the Court nor the General Assembly have established definitions, standards, nor procedures necessary to assure the provision of the constitutionally prescribed adequacy. Similarly, although the Court mandates “equal opportunity” and “substantially uniform” schools, no definitions, standards or procedures are provided either by the Court or the General Assembly to assure that these mandates are met. Thus, despite consistent examples of well-written,

substantive detail, KERA falls short of its promise because of the clear digression from the language of *Rose*.

**Kentucky Administrative Regulations (KAR):
analyzing the language of implementation**

Seventy one regulations were identified as responsive to KERA as originally written and reviewed, each one for (1) language clarity, (2) clarity of meaning, and (3) legal authority.⁷² The length varies from 12 lines to 279; average length is 79 and the mean is 52. Appendix B, beginning on page , shows the rating for each element of the 71 regulations. The following Table 3 summarizes the ratings in Appendix B.

Table 3.
Average Ratings for KAR Administrative Regulations

#	topic	language clarity	meaning clarity	legal authority	overall adequacy
71	administrative regulations	2.17	2.24	2.03	2.03

Of the 71 regulations, eleven or 16% were judged to be barely adequate, largely on the basis of the recurring theme in Kentucky's legal framework -- the failure to provide definitions, standards, and/or procedures to assure funding adequacy. Correspondingly, thirteen or 18% were judged to be comprehensive, typically because the written regulation provided more detail and standards than was typically available in other administrative rules.

⁷² Regulations that reflect statutes adopted after KERA was originally enacted were not included. Nor were regulations dealing with special education or facilities.

Typical of the adequately written Kentucky education regulations is 704 KAR 3:035, 88 lines that provide guidance to districts on preparing an annual plan for professional development, pursuant to KERA. KERA Section 12 requires the State Board of Elementary and Secondary Education to “establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools,” subsection (1); Section 13 requires local planning for professional development from 1991-92 through the 1994-95 school years, subsection (1); and Section 27 authorizes districts to use “four (4) days of the minimum school term for professional development and planning activities for the professional staff without the presence of pupils” (subsection 3), and it also authorizes the State Board of Education to promulgate regulations “governing the use of school days . . . for professional development and planning activities for the professional staff” (subsection 4).

The regulation is divided into six sections. First, definitions include needs assessment, defined as “the gathering, sorting, and analysis of data that lead to conclusions regarding the need for professional development in identified areas;” professional development, defined as “those experiences which systematically, over a sustained period of time, enable educators to acquire and apply knowledge, understanding, skills, and abilities to achieve personal, professional, and organizational goals and to facilitate the learning of students;” [p]rofessional development plan, defined as “a product that clearly identifies how assessment, planning, implementation, and evaluation are to be accomplished relative to defined standards, goals, or objectives;” and professional development program, defined as “a process of professional development that is measurable by indicators. . .” and “. . . may be composed of several initiatives.”

Second, every school and every school district is required to “develop a process for professional development” that “leads to a plan” describing “training activities” for all “certified staff” based on both statutory authority and “local needs assessment.” Such plans must be submitted to the KDE prior to implementation.

Third, such plans must meet six standards. These include: (1) “a clear statement of the school or district mission;” (2) “evidence of representation of all persons affected by the professional development program;” (3) evidence that the plan reflects the “needs assessment” for professional development; (4) “objectives” that “are focused on the school or district mission” and “are derived from needs assessment;” (5) assurance that the “program and implementation strategies . . . support school or district goals and objectives;” and (6) “[a] process for evaluating professional development experiences and improving professional development initiatives.”

Fourth, 11 additional standards or conditions are required for the Plan. These include: (1) “instructional improvement or training needs” that are consistent with student goals for schools identified in section 3 of KERA; (2) “activities” that are related directly to “teaching assignments” and/or “administrators’ professional responsibilities;” (3) a prohibition against supplanting “any [part] of the six (6) hour instructional day” with “for-credit professional development activities;” (4) a district obligation to report to the KDE any activities held on “unpaid, noncontact snow days” that necessitated a change in the official district calendar; (5) permission to use professional development activities “to satisfy the requirements for certification or renewal options” if they “relate to an individual professional growth plan;” (6) permission to include in the Plan tuition reimbursement for practitioners enrolled in college or graduate school courses related to

teaching assignments; (7) prohibition against awarding “professional development credit” for “activities that provide remuneration beyond travel, food, lodging or tuition;” (8) permission to “award professional development credit for any given academic school year within the professional development plan;” (9) identification of experiences that “address instructional improvement for the school district, an individual school, or a group of teachers in accordance with goals identified in the needs assessment;” (10) prohibition against including as professional development such activities as organizational business activities, compiling class rosters, scheduling, textbook adoption committee meetings, writing lesson plans, housekeeping duties, faculty meetings, extracurricular activities, PTA/PTO meetings, sporting events, field trips, and parent-teacher conferences; and (11) permission to include development of “parent-teacher conferencing skills” as legitimate professional development.

Fifth, the qualifications and responsibilities for the district “Professional Development Coordinator” are enumerated. Qualifications include appropriate certification as provided by the Professional Standards Board, “[e]xperience in professional development planning,” and evidence of the ability to link professional development with “effective instructional practices and student achievement data.” The “duties” identified include: (a) conducting the needs assessment; (b) coordinating the “intradistrict alignment of goals, objectives, and activities for professional development;” (c) providing technical assistance to practitioners involved in planning professional development; (d) disseminating information to practitioners; (e) coordinating all “planning, implementation and evaluation of the district professional development program which is aligned, supportive, and developed in conjunction with local school plans;” (f) providing

“technical assistance on the evaluation and coordination of scheduled professional development activities;” (g) supervising all logistics of the “practical elements of professional development training, including fiscal management;” (h) liaison with the KDE for records and other “information;” (I) presenting the program to “school professionals, district staff, the board members, civic and parent groups, teacher training institutions and others as requested;” and (j) maintaining “professional” liaison with the KDE and “other agencies involved in providing professional development activities.”

The sixth and final subsection prohibits using “[m]ore than 15% of the district’s professional development grant” for “administrative purposes.”

The adequacy of the language of this regulation is apparent on its face. Although the regulation does not reference research on the structure, process, and content of effective professional development, nor does it identify tools for conducting required needs assessment, nevertheless, the wording is plain, uncomplicated, direct, and otherwise comprehensive. Definitions, standards, and procedures are provided. The meaning of the required planning process, of what is to be included in the plan, of who should do it, and of district staff capacity are all addressed, comprehensively. What denies this regulation the adequacy classification of comprehensive and the corresponding scoring of 3 are missing standards on the structure and content of effective professional development, tools for needs assessment, and assurance of adequate funding.

Regulation 704 KAR 3:285, governing “Programs for the gifted and talented,” also reveals a similar deficiency. Although the regulation contains comprehensive guidance on

the required program⁷³, once again, there is no assurance of adequate state funding. The regulation does require any local change in the use of “state funds for gifted education” to be approved by the KDE. But there is no statutory or regulatory language that identifies need or a process for determining need, no language or process for costing out appropriate program responses to need, and no language or process for assuring adequate state funding. Chapter 157.360 of the revised statutes merely states that “[s]pecific weights for each category of exceptional children [including those determined to be gifted and talented] shall be used in the calculation of the add-on factor for exceptional children. . .” (Section (2)(b)).

Regulation 704 KAR 3:390 implements the statutory requirement “to provide continuing education for students in needs of extended services. . .” Following sections covering definitions, the goals and elements of the extended instructional program, and pupil selection, the regulation includes 55 lines of information on funding. These provisions cite school district eligibility to “receive a grant award from available funds to provide extended school services.” (Section 4(1)) (emphasis added) An elaborate formula is then described that includes several factors to influence the amount of funds that a district may actually receive.

Such factors include: current rates of economic deprivation, average daily attendance, current dropout rates, current KIRIS cognitive indices. To assure that the effective application of the formula doesn’t disadvantage certain districts, the regulation includes assurance of a minimum grant. “To ensure the opportunity for all school districts

⁷³ The regulation includes 34 definitions, 12 standards and procedures to identify and diagnose “gifted characteristics,” required local program planning and a “comprehensive framework or course of study,” procedures for “determining eligibility for services,” standards for program evaluation, and comprehensive “service delivery options.”

to provide effective extended services of adequate size and scope, a school district shall not receive a grant of less than \$15,000.” (Section 4 (4)) Any relationship between this amount and assurances that the extended services will be “effective” and will be of “adequate size and scope” is arbitrary on its face. Moreover, that such funds will be provided from “available” or appropriated funds emphasizes that there are no statutory or regulatory standards and/or procedures to guarantee sufficient funding or to assure such effectiveness or adequacy. Finally, Chapter 158.146 of KRS makes it clear that extended school services, as part of the “comprehensive statewide strategy to provide assistance to local districts and schools to address the student dropout problem,” will be funded through “grants to local school districts for dropout prevention based upon available appropriations from the General Assembly . . .” (Emphasis added)

By contrast, the 11 regulations found to be barely adequate all share Kentucky’s failure to assure adequate funding, but do not have the breadth and depth of content found in the regulations described above. For example, Title 701, Chapter 5, regulation 110 authorizes the use of local funds to “reduce the unmet technology need.” On its face, permission to use local funds suggests that state funding may well be inadequate to fully support a state-approved local technology plan and that local funding will be needed to reduce the support deficit in those areas identified by the “Kentucky Education Technology System (KETS) Master Plan for Education Technology,” (Section I, subsection (3,4), section 3). Thus, program adequacy will be determined not by a “uniform” system of common schools that are adequately funded, but by the extent to which local funds are made available, the very issue that prompted the filing of *Rose* in the first instance.

Preschool, a key element in the strategies of both Kentucky and New Jersey to combat the effects of social and economic disadvantage, also is subject to a similar deficiency. Although the Court requires adequate funding, there is nothing in statute or regulation that codifies that mandate -- no definitions, no standards, and no procedures to identify program needs, costs, and funding. Title 702, Chapter 3, regulation 250, provides guidance on the "preschool grant allocation." Children who are four year olds and are "at risk of educational failure" or who have a disabling condition as defined in statute, Chapter 157.226 (KERA, §17) are eligible "to be counted for funding purposes." The definition of at risk is provided in regulation 410 which includes as criteria for eligibility any child who is (a) a resident of the district; (b) age 4 by October 1 of the applicable school year; and (c) "approved for free lunch based on federal free lunch criteria. . . ." (Section 2) State funding is provided "based on the number of eligible children. . . who are enrolled in the district's preschool programs on December 1 of the previous year." Adjustments are made if enrollment in the current year is "more than five percent above or below " the prior year's count (KERA, §3). Further, actual funding will be based on a per pupil "preschool allocation formula" that is developed by the KDE and adopted by the State Board. However, "[i]f the state funds appropriated are not sufficient, the funding formula shall be adjusted proportionately." (emphasis added) thus ensuring that appropriations, and not need, determine funding, negating any assurance that funding will be adequate. Further, the regulation permits districts to use any leftover funds to "transport eligible children who are enrolled in Head Start. . ." That such transportation services, therefore, will not be uniform for children who, by federal standards, are most "at risk," but rather will depend upon such variables as budgeting discipline, cost

variation, local public and private funding, etc. also appears to undermine Kentucky's constitutional scheme as mandated by the Rose Court.

Regulation 704 KAR 3:500 provides a funding process for "additional compensation to a classroom teacher or administrator serving as a classroom mentor, teaching partner, or professional development leader in core discipline areas." The regulation includes the "guidelines for programs and activities that qualify for funds, including the application and approval process for receipt of funds, the individual participant requirements, the amount of compensation, the time-lines, and the reporting requirements." Funding for this program is based upon legislative appropriations (KRS 157.390) and is available to districts as a "competitive grant to pay one (1) or more teachers or administrators additional compensation to develop and implement an action plan for improving the academic performance of students." Districts will "compete for a \$10,000 grant." Several obvious questions bear directly on the adequacy of this program, assuming its validity, given that public dollars are to be used..First, how many districts need for this program?. Second, how many teachers and/or administrators would be involved? Third, what is the cost per district and for the entire state? And fourth, how does the amount of funds appropriated meet the constitutional test of "adequacy?" Failure to answer, let alone ask, these questions highlights the arbitrariness of the funding scheme, based on legislative appropriations, competition among arguably equally needy districts, and the cap on the size of the grant.

Finally, analysis of 704 KAR Chapter 3, regulation 455 reveals both the strengths and the deficiencies of Kentucky's regulatory scheme. The regulation "establishes the standards and procedures which are necessary to carry out the statutory requirements

dealing with textbooks and instructional materials.” It is long, comprehensive on its face, divided into 23 sections, and includes 223 lines of text. Section 1 defines instructional materials as “any print, nonprint or electronic medium of instruction designed to assist students.” Section 2 lists the content areas “in each year of the textbook and instructional material adoption cycle.” Sections 3 to 11 govern the performance of vendors, including sending samples prior to the bidding process (3), participating in a public hearing of the State Textbook Commission (4), adherence to ethical standards (5), piloting books for evaluative purposes (6), prohibiting school officials or staff from accepting favors from vendors (7), adherence to national manufacturing standards (8), responding to defects in books and materials sent to schools (9), submission of substitute editions (10), and setting the retail price structure (11).

The remaining sections govern the performance of practitioners and officials in the process of selecting and purchasing books and materials. Section 12 establishes procedures for schools to substitute “instructional materials” for “basal programs on the state list;” 13 authorizes schools to use state textbook funds to purchase “adopted textbooks, instructional materials, or programs . . . based on identified pupil needs. . .;” 14 requires an “annual plan;” and 15 authorizes use of special materials for students with “impaired vision.”

Section 16 begins a string of sections that appear to run afoul of constitutional mandates. Funding for schools will be allocated “based upon the Kentucky General Assembly biennial appropriation,” and clearly not based on any determination of need. Despite the language of section 13, no standards, definitions or procedures are provided to assure that “identified pupil needs” are in fact identified, provided, and paid for. Thus the

adequacy of state funding for textbooks cannot be assured. Moreover, the section concludes with "funds shall be used for students in primary through grade eight (8), exclusively."

The meaning of this last provision becomes apparent in section 19 which, among others, calls for districts to "establish and maintain a textbook rental program for grades nine (9) through twelve (12)" and provide books free to high school students only with "local funds." For students who are unable to rent or purchase text books, Section 21 authorizes school districts to distribute free books to students who qualify for free lunch, and to tax parents of students who qualify for reduced lunch at "the same percentage that they contribute financially toward the cost of the children's lunches."

Thus, there is no assurance that annual state funding is adequate to purchase all the textbooks and instructional materials needed by students in the primary and middle school years. There is no assurance certainly regarding high school students. Moreover, that parents of high school students are charged a book fee would appear to violate the constitutional requirement that the schools be "free." Finally, that free books are to be distributed to disadvantaged students only from local funds suggests that the wealth of the community may well determine the amount of funding available for such subsidies, thus impacting the equal opportunity mandate of *Rose* as well.

Thirteen regulations were found to be comprehensive, typically including details and standards beyond the norm, and without deficiencies as described above. These include rules on alternative decision-making models, bus driver qualifications, regulating the management of high school athletics, calculating pupil attendance, identifying distinguished educators, determining school performance classification, including special

education students in state assessment, the educational assessment program, state assistance to schools in need, school report cards, staff evaluation, health services for staff and students, and accrediting teacher preparation programs.

For example, 702 KAR 7:065 designates the Kentucky High School Athletic Association (KHSAA) as the agent "to manage interscholastic athletics at the high school level in the common schools, including a private school desiring to associate with KHSAA and to compete with a common school," and establishes "financial planning and review processes" for the KHSAA to be held accountable to the Kentucky Board of Education (KBE). Section 1 formally identifies KHSAA as the agent and Section 2 lists fifteen requirements that KHSAA must meet in order to maintain its status as the agent for interscholastic athletics. These include: four members appointed by the KBE to the KHSAA governing body; democratic procedures for establishing bylaws and policies and for distributing proceeds from tournaments; professionalization of the role and evaluation of the Commissioner of KHSAA; limit board member terms to eight years; establish independent, formal processes for appeals; assure every participating school's compliance with federal Title IX requirements; and assure various due process procedures for schools or districts accused of violating rules or statutes.

Section 3 provides detailed annual financial reporting requirements including draft budgets for the current and next year; "end-of-the-year budget status report;" any revisions to the "KHSAA Strategic Plan" adopted by the governing body; summary reports of financial, legal, administrative and program operations, including any athletic appeals and their disposition, eligibility rules, responsibilities of school officials, contests, requirements for officials and coaches, and results of "biennial review of . . . bylaws; "[a]

review of all items which have been submitted to the membership for approval” and the votes on those matters; and “audited financial statements” including any management correspondence that addresses “exceptions or notes” contained in the statements.

As discussed in Chapter IV, key to the success of Kentucky’s program to help troubled schools was the distinguished educator program. Rule 703 KAR 4:030 establishes a process and “criteria” for the KDE to recruit and select candidates to be “distinguished educators.” First, the Commissioner is authorized to “appoint an advisory committee or committees” to help with the “review of candidates.” The Committee will include but not be limited to “representation from teachers, school administrators, business, parents, community, higher education, professional education associations, school boards, and the Department of Education.” The KDE is authorized to publicize the program so that educators throughout the commonwealth will be “aware of the opportunity to apply.” Applications go to the Commissioner who is directed to designate “DEs” by “May of each year.” Eligible candidates are identified “who meet the program criteria and are willing to fulfill the purposes and requirements of the program.

Selection criteria is divided into four categories. Experience and certification required include at least five years teaching or administrating; Kentucky certification; and participation as a teacher or administrator “within the last three years.” Further, “leadership and management knowledge and skills” must be demonstrated or the “capacity” to acquire such “knowledge and skills” as “(a) Personnel practices, policies, statutes, administrative regulations, and due process; (b) Written and oral communications; (c) Budget and management planning; (d) organization and planning; (e) Data analysis and problem solving; (f) Collaboration and team building; (g) Working

productively with colleagues and culturally diverse populations; and (h) Initiating, supporting, and sustaining innovations.” More specifically, the regulation requires that successful candidates have or can get “demonstrated curriculum and instructional knowledge and skills” in “(a) Current educational practices; (b) Curriculum development and alignment focused on the Kentucky curriculum; c) Multiple instructional methodologies; and (d) Instructional technology.”

Finally, successful candidates are required to possess the following “personal characteristics:” integrity, flexibility, commitment to the welfare of all children, strong sense of purpose, goal orientation, sense of humor and sound judgement. Clearly, any State regulation seeking high quality candidates to fill important roles that requires a “sense of humor” must, by definition, be comprehensive

Summary

The following table summarizes the analysis and ratings of Kentucky Court directives, statutory provisions, and administrative regulations.

Table 4.
Ratings of Kentucky's Legal Framework

#	legal mandate	language clarity	meaning clarity	legal authority	adequacy
14	Court directive	1.71	1.36	1.86	1.36
116	Statute	2.00	2.10	2.02	2.01
71	Regulation	2.17	2.24	2.03	2.03
201	Total	2.04	2.10	2.01	1.97

As the above Table shows, the 201 Kentucky mandates produce an average score that hovers around 2, or adequate. The least powerful set of mandates came from the Supreme Court and, as demonstrated, the most powerful brake on otherwise relatively high quality mandates occurs when the Court, Legislature, or Executive adopts a mandate on funding.

CHAPTER VII

NEW JERSEY'S LEGAL FRAMEWORK FOR EDUCATION REFORM

No one who has served in the executive or legislative branches during these past three decades could dispute the fact that legislatures dominated by suburban legislators often have impeded efforts by advocates of urban education to improve funding, programs, and facilities in urban schools.

Stein dissent, *Abbott IX*, February 2002

Unlike Kentucky, there is no statutory authority in New Jersey to translate *Abbott* Court mandates into political consensus and legislative directives. Justice Stein (now retired as of September 1, 2000) summarizes the history, and provides the explanation. Political resistance to *Abbott*, as vividly demonstrated by nine separate decisions resolved in favor of the plaintiffs, caused the Supreme Court to eventually bypass the Legislature when it could, and to order direct implementation by the Commissioner and the Department of Education. We begin with the language of *Abbott*, more exhaustive and detailed than *Rose*, since we must examine the substantive mandates and reasoning of nine separate decisions.⁷⁴

⁷⁴ *Abbott I* in 1985 established the standard of review for determining the constitutionality of education available for disadvantaged students in New Jersey and assigned the case to the Office of Administrative Law. It did not deal with the merits of the *Abbott* complaint. *Abbott VII* in 2000 was the Court's response to the Speaker of the State Assembly who asked the Court to reconsider its order that the State provide 100% financing for *Abbott* school construction. That short decision simply reiterated the facilities mandate of the 1998 *Abbott V* decision. Thus the focus here will be on the seven other *Abbott* decisions.

The Language of *Abbott*

Very few of the cases [in other states] have a factual record that even begins to approach that before us. None has the unique attribute of this case: an educational funding system specifically designed to conform to a prior court decision, having been declared constitutional by the Court, but now attacked as having failed to achieve the constitutional goal. In short, we are the only state involved in a second round of this issue.

(*Abbott II*, p. 315)

Abbott challenged the constitutionality of the *Public School Education Act of 1975*, the very remedy adopted by the State and approved “on its face” by the Supreme Court in the *Robinson* case. The basis of the challenge was the education clause, the same language that led to *Robinson*. “The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years” (NJ Constitution of 1947, art. VIII, §4, ¶1).

In *Abbott*, however, the Supreme Court altered its interpretation, a change that would have enormous consequences both as to the Court’s analysis of the issues presented and to the remedy it would eventually impose. Referring to its *Abbot I* decision, the Court acknowledged that “we added a new element of considerable relevance to this case” (*Abbott II*, p. 313).

We said, in effect, that the requirement of a thorough and efficient education to provide ‘that educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a

competitor in the labor market," . . . meant that poorer disadvantaged students must be given a chance to be able to compete with relatively advantaged students (*Abbott II*, p. 313, emphasis added).

The change in interpretation from "equip" to "compete" replaced an open-ended, purely subjective standard, equip, with a far more comparative and relative standard, compete. As we shall see, the constitutional requirement that poorer students need an education not simply to "equip" them, whatever that means, but to "compete" with their more affluent peers would have profound consequences.

Abbott II, issued on June 5, 1990, reversing the 1989 decision by the State Board of Education, upholding the Commissioner of Education who in turn had reversed the trial court's 1988 decision finding the *Public School Education Act of 1975* to be unconstitutional.⁷⁵ The Supreme Court decision was unanimous and sweeping. The Court found that

under the present system the evidence compels but one conclusion: the poorer the district and the greater its need, the less the money available, and the worse the education. That system is neither thorough nor efficient. We hold the Act unconstitutional as applied to poorer urban school districts. Education has failed there, for both the students and the State (*Abbott II*, p. 295).

⁷⁵In *Abbott I*, the Supreme Court directed the Office of Administrative Law to conduct a hearing to determine the facts of the case. Under New Jersey law, "[t]he Commissioner shall have jurisdiction to hear and determine . . . all controversies and disputes arising under the school laws . . ." (N.J.S.A. 18A:6-9) When such disputes are fact sensitive, the case is routinely transferred to an administrative law judge for a hearing on the facts. The decision of the administrative judge in these cases is delivered in the form of a recommended "initial decision" for the Commissioner to accept, modify, or reject. So, despite the fact that the Commissioner was the defendant in the case, the Commissioner enjoyed preliminary judicial authority. Not surprising, he reversed Judge Lefelt's Initial Decision.

The Court identified five critical factors contributing to educational failure: funding disparities, municipal overburden, educational program and achievement disparities, widespread unmet need, and poor state oversight. The Court found that “[p]laintiffs intended to prove the funding and spending disparities referred to in *Robinson I* are worse now than they were before adoption of the Act,” and “[t]hey have done so” (*Abbott II*, p.334). Further, the Court found that such funding disparities result from the school funding statute’s over-reliance on a “local property tax base already over-taxed to exhaustion” (*Abbott II*, p. 357). The Court found:

The poorer urban school districts, sharing the same tax base with the municipality, suffer from severe municipal overburden; they are extremely reluctant to increase taxes for school purposes. Not only is their local tax levy well about average, so is their school tax rate. The oppressiveness of the tax burden on their citizens by itself would be sufficient to give them pause before raising taxes. Additionally, the rates in some cases are so high that further taxation may actually decrease tax revenues by diminishing local property values, either directly because of the tax-value relationship, or indirectly, by causing business and industry to relocate to another municipality (*Abbott II*, p. 355).

The Court found that insufficient funding leads inevitably to a “level of education offered to students in . . .the poorer urban districts” that is “tragically inadequate” (*Abbott II*, p.359), The Court found consistent and pervasive program disparities in computer science courses, science education, foreign language programs, music and art programs, industrial arts, advanced placement programs and physical education. In addition, the

Court found disparate facilities, class size, student teacher ratios, teacher experience and the level of teacher education (*Abbott II*, pp. 357-368).

Alongside the evidence of inadequate educational quality was the evidence of much greater student need. The Court found;

... that the educational needs of students in poorer urban districts vastly exceed those of others, especially those from richer districts. The difference is monumental, no matter how it is measured. Those needs go beyond educational needs, they include food, clothing and shelter, and extend to lack of close family and community ties and support, and lack of helpful role models. They include the needs that arise from a life led in an environment of violence, poverty, and despair. Urban youth are often isolated from the mainstream of society. Education forms only a small part of their home life, sometimes no part of their school life, and the dropout is almost the norm (*Abbott II*, p. 369).

In addition, the Court found widely disparate achievement levels when comparing richer suburban and poorer urban school districts. While students in the affluent suburbs demonstrated ninth grade basic skills achievement levels in the high 90's for percent passing reading, math, and writing, students in the poorer urban districts routinely achieved at levels well below 50% in each of these measures of this "minimal test" that is "designed to show mastery of basic skills" and measures "the minimum level of learning needed to go on to more difficult subjects" (*Abbott II*, pp.369-70). Further the Court found the "unofficial dropout rate" in these districts, routinely approaching 50%, to be "further testimony both to their failure and to the students's needs" (*Abbott II*, p. 370).

Finally, the Court analyzed State oversight and concluded that such oversight did not examine fundamental constitutional matters. The Court found that

. . . although the [state] monitoring function may have been designed to measure and achieve a thorough and efficient education, in practice it has not accomplished that goal. In part because resource issues were avoided, it operated largely as a self-improvement system. Beyond a few state-mandated courses, the local board could approve any curriculum it choose, or, presumably, could afford. The Commissioner evaluated neither its adequacy to the children's needs, nor its relationship to a thorough and efficient education. Nor did he evaluate the quality of any offering (*Abbott II*, p. 353).

Faced with these findings and conclusions, the Court remedy covered eight mandates. First, the Court directed that "the Act must be amended, or new legislation passed so as to assure that poorer urban districts' educational funding is substantially equal to that of property rich districts" (*Abbott II*, p. 385). Second, the property rich districts were identified as all those residing in district factor groups I and J, the most affluent of New Jersey school districts when all are ranked by socio-economic factors (*Abbott II*, p. 386). Third, the Court further explained that such "funding per pupil" should be the same as the average amount spent in the wealthier districts on "regular education" or what was termed the "net current expense budget," a funding amount on a per pupil basis that provides all basic educational expenditures and excludes all federal funding and all state funding distributed as categorical aid for certain students with special needs (*Abbott II*, p. 386).

Fourth, the Court directed that “funding must be certain, every year” (*Abbott II*, p. 385). Fifth, “[t]he level of funding must be adequate to provide for the special educational needs of these poorer urban districts and address their extreme disadvantages,” (*Abbott II*, p. 385, emphasis added), in order to “wipe out their [student] disadvantages as much as a school district can” (*Abbott II*, p. 369). Sixth, this additional funding to assure equity in regular education and adequacy for needs-based programs “cannot depend on the budgeting and taxing decisions of local school boards,” (*Abbott II*, p. 369) or the “ability of local school districts to tax,” (*Abbott II*, p. 295), or even “how much a poorer urban school district is willing to tax,” (*Abbott II*, p. 386), and must be “guaranteed and mandated by the State” (*Abbott II*, p. 386). Seventh, the districts that “should qualify” are the “districts designated by the Commissioner as “urban districts” located in DFGs A and B. Eighth, concerned about efficient use of new money and the State’s financial liability, the Court ruled that while the “new funding mechanism must be in place legislatively . . . in . . . 1991-92, it need not be fully implemented immediately, but may be phased in” (*Abbott II*, p. 389).

Despite the Court’s conviction that “the Legislature will conform” to these mandates, as discussed in Chapter IV, the state’s response was incomplete and precipitated the filing of yet another challenge. *Abbott III* also was decided unanimously and issued on July 12, 1994. The Court found that the Quality Education Act of 1990 (QEA) “depends fundamentally on the discretionary action of the executive and legislative branches” to assure “parity” with suburban districts and therefore “the statute fails to *guarantee* adequate funding to those districts” (*Abbott III*, p. 451). Yet the Court also found that the QEA pumped “approximately \$700 million” into the Abbott districts,

reducing the disparity between the richer and poorer districts from 25% to 16%, and that such movement reflected “a constitutionally legitimate response of the other branches of government to our ruling” (*Abbott III*, p. 447).

Concerned about the use of additional funding, the Court found that “no mechanism presently is in place to control, regulate or monitor the uses of additional funding made available to the special needs districts pursuant to *Abbott*” (*Abbott III*, p. 447). Finally, the Court found “the State’s failure to date to adequately address the special educational needs of poor urban districts for which *Abbott* required funding in addition to that necessary to achieve parity with the richer districts,” (*Abbott III*, p. 452), adding

the Legislature made no study of the added costs associated with providing services for at-risk students. Moreover, although legislation was enacted specifically to require the Commissioner . . . to undertake a study of the programs and services to be implemented for disadvantaged students, including their costs . . . that study has apparently not been completed (*Abbott III*, p. 453).

The Court directed the Legislature to adopt by September 1996 (*Abbott III*, p. 448) a statute that provides by “school year 1997-98” (*Abbott III*, p. 447) a statute that complies with *Abbott II*, including immediate “substantial equivalence of the special needs districts and the wealthier districts in expenditures per pupil for regular education,” and “provision for the special educational needs of students” (*Abbott III*, p. 447). To assure clear understanding of the meaning and intent of its order, the Court explained that “substantial equivalence” means “approximating 100%” (*Abbott III*, p. 447) and that

[b]y “regular education” we mean what was known as the Net Current Expense Budget, now called under QEA the Local Levy Budget. By “provision for special educational needs” we mean sums in addition to those for regular education. By a “law assuring substantial equivalence,” we mean a law that will by its own terms, automatically achieve substantial equivalence in per pupil regular educational expenditures without depending on the discretionary actions of officials, and, to the extent local fair shares or their equivalent are required, will automatically and without procedural delay, result in the raising of funds for such shares (*Abbott III*, p. 448).

Further, the Court directed that the “legislative and administrative response to this decision” fully address “the State’s obligation to verify that the additional funding . . . mandated by *Abbott* significantly enhances the likelihood that the school children in those districts attain the constitutionally-prescribed quality of education to which they are entitled” (*Abbott III*, p. 452).

As discussed in Chapter IV, the clarity of *Abbott III* was apparently lost on New Jersey officials when, on December 20, 1996, the Governor signed into law the so-called Comprehensive Education Improvement and Financing Act or CEIFA. On May 21, 1997, just five months later, the Court, by a 5-1 majority, ruled this new act “unconstitutional as applied to the special needs districts”⁷⁶ (*Abbott IV*, p. 153).

⁷⁶On July 10, 1996, Governor Whitman appointed her former Attorney General, Deborah Poritz, to serve as chief justice. Since Justice Poritz was involved in the development of CEIFA, she recused herself from *Abbott IV*. The lone justice siding with the administration was Justice Marie Garibaldi who broke ranks with her colleagues for the first time.

The Court found that although the new content and performance standards are “facially adequate as a reasonable legislative definition of a constitutional thorough and efficient education . . . [t]he standards themselves do not ensure any substantive level of achievement” (*Abbott IV*, p. 168). Further, the Court found that “[r]eal improvement still depends on the sufficiency of educational resources, successful teaching, effective supervision, efficient administration, and a variety of other academic, environmental, and societal factors needed to assure a sound education” (*Abbott IV*, p. 168). Thus, the Court concludes that since “CEIFA does not in any concrete way attempt to link the content standards to the actual funding needed to deliver that content . . . this strategy . . . is clearly inadequate and thus unconstitutional as applied to the special needs districts” (*Abbott IV*, p. 169).

In finding that CEIFA permits wealthier districts to continue to spend in excess of the poorer urban districts and that the State contended such additional spending is constitutionally unnecessary, the Court observes that “[n]either CEIFA itself, the record in this case, empirical evidence, common experience, nor intuition supports the State’s position that inefficiencies explain why successful districts’ spending levels exceed what the State asserts is the amount needed to provide a thorough and efficient education.”⁷⁷ (*Abbott IV*, p. 169). Further, the Court continues its conclusion that the “I&J districts are achieving and undoubtedly will continue to achieve at high levels, and it is thus eminently reasonable that the Court continue to focus on their recipe for success until experience under the new standards dictates otherwise” (*Abbott IV*, p. 176).

⁷⁷ CEIFA contained a formula based on a “hypothetical school district” that the Court rejected as disconnected from “the realities of their surrounding environment.” (*Abbott IV*, p. 172).

The Court was also dissatisfied with the way CEIFA treated special needs. Although the statute lists various programs that qualify for DEPA⁷⁸ . . . none of the program listed are required to be implemented and there is no evidence that the aid provided will be sufficient to cover the costs of such programs. Neither CEIFA nor the May 1996 Plan explains or analyzes how the DEPA amounts were determined by the State. It is clear that in establishing the prescribed amounts, neither the Legislature nor the Commissioner made any study of the programs and services needed by children in the SNDs. Those are the very deficiencies that led the Court to invalidate the QEA's at-risk provisions in *Abbott III*. . . (*Abbott IV*, p. 181). The Court finds a similar deficiency when it reviewed the Early Childhood Program Aid (ECPA) provisions.

CEIFA provides no basis for the ECPA per-pupil amounts. We therefore are unable on this record to determine that ECPA is sufficient to enable the SNDs to provide the required early childhood programs. As with DEPA, it appears that no study was undertaken to determine the actual costs of implementing the necessary programs (*Abbott IV*, p. 184).

To emphasize its mandate that assessment of actual children and their needs is a requirement of *Abbott*, the Court repeats its criticism of the State's defense.

The State contends that experts were involved in formulating the amounts of DEPA and ECPA and that the Court should defer to their

⁷⁸Demonstrably Effective Program Aid, a source of K-12 funding for special programs, supposedly responsive to the special needs mandate of *Abbott II*.

determinations. Children in the special needs districts have been waiting more than two decades for a constitutionally sufficient educational opportunity. We are unwilling, therefore, to accede to putative expert opinion that does not disclose the reasons or bases for its conclusions. We have ordered the State to study the special educational needs of students in the SNDs. That has not been done. We also have ordered the State to determine the costs associated with implementing the needed programs. Those studies have not occurred. Without studies of actual needs, it is unclear how a sound program providing for those needs has been accomplished (*Abbott IV*, p. 185).

Finally, the Court finds that

CEIFA completely fails to address one of the most significant problems facing the SNDs -- dilapidated, unsafe, and overcrowded facilities. The statute neglects to consider the dire need for facilities improvement. Amicus points out that omission contributes to the inadequacy of the statute as a remedial measure and renders it unconstitutional. Contrary to the argument of the State, the condition of school facilities always has been of constitutional import. Deteriorating physical facilities relate to the State's educational obligation, and we continually have noted that adequate physical facilities are an essential component of that constitutional mandate (*Abbott IV*, p. 186).

CEIFA's complete and total disregard for the *Abbott* mandates led the Court for the first time to "order" a specific remedy and a process for completing the identification of the appropriate remedies.

First, the Court ordered the State to provide increased funding to the twenty-eight districts identified in the Comprehensive Educational Improvement and Financing Act as "Abbott districts" that will assure that each of those districts has the ability to spend an amount per pupil in the school year 1997-1998 that is equivalent to the average per-pupil expenditure in the DFG I & J districts for that year, based on actual, budgeted expenditures, by the commencement of the 1997-1998 school year (*Abbott IV*, p. 224).

Second, the State was ordered to implement education reform "at the classroom level," (*Abbott IV*, p. 198) and to assure that "implementation of said additional funding" will be "expended and applied effectively and efficiently to further the students' ability to achieve at the level prescribed by the Core Curriculum Content Standards" (*Abbott IV*, p. 198).

Third, the case was "remanded to the Superior Court, Chancery Division, to effectuate the remedial relief ordered by the Court" (*Abbott IV*, p. 198).

Fourth, the remand court "shall direct the Commissioner 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 the

Comprehensive Educational Improvement and Financing Act;

(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 the Comprehensive Educational Improvement and Financing Act;

(3) Devise a plan for State or State-assisted implementation of the identified programs in each of the twenty-eight Abbott districts;

(4) Review the facilities needs of the twenty-eight Abbott districts, and provide recommendations concerning how the State should address those needs. That review shall include consideration of appropriate and alternative funding, as necessary;

(5) Provide for the participation by the parties to this action in any proceedings required to fulfill the requirements set forth by the aforementioned paragraphs (1) - (4), including opportunities to respond and to take exception to proposed specific findings, recommendations, or conclusions of the Commissioner concerning said programs and facilities needs; and

(6) Prepare and submit to the court interim progress reports, as may be required by the court, and submit a final report that shall include the Commissioner's specific findings, conclusions, and recommendations, together with the responses and exceptions of the parties, as required by the aforementioned paragraphs (1) - (5) (*Abbott IV*, pp. 224-25) .

Fifth, the remand court was directed to "conduct proceedings to adduce additional evidence relating to said special programs and facilities needs in the Abbott districts, as required, and that the Commissioner and all parties to this action shall be permitted to participate in such proceedings" (*Abbott IV*, p. 225).

Sixth, upon the approval of the Supreme Court, the remand court was authorized "to appoint a Special Master to assist the court with such proceedings and with the court's review of the report of the Commissioner, and to submit to the court, as may be required, a report including findings, conclusions, and recommendations for special programs and facilities needs in the Abbott districts" (*Abbott IV*, p. 225).

Seventh, the remand court was directed to "render a decision, based on the court's review of the report submitted by the Commissioner, any report that may be submitted by the Special Master, and any additional evidence. The decision shall include the court's findings, conclusions, and recommendations, including its determination whether the proposals contained in the report submitted by the Commissioner satisfy the requirements of this Order, consistent with this Court's opinion in this case" (*Abbott IV*, p. 226).

Eighth, the Superior Court, Chancery Division (remand court) was directed to "render its decision by December 31, 1997" for final review by the Supreme Court (*Abbott IV*, p. 226).

Ninth, the Supreme Court retained jurisdiction (*Abbott IV*, p. 226).

After seven years of executive and legislative resistance, a reluctant Supreme Court was compelled to finally intervene directly in the implementation of the 1990 *Abbott II* decision. Thus, pursuant to the order in *Abbott IV*, on January 22, 1998, Superior Court Judge Michael Patrick King submitted his remand decision to the Court.

Four months later, 53 weeks to the day after the *Abbott IV* decision issued, the Court released the unanimous *Abbott V* decision which “explains the remedial measures that must be implemented in order to ensure that public school children from the poorest urban communities receive the educational entitlements that the Constitution guarantees them” (*Abbott V*, 491). The Court, unanimous once again, directed specific remedies in fourteen specific areas.

1. Whole School Reform. The Court was impressed with the strategy and found it a comprehensive approach to education that fundamentally alters the way in which decisions about education are made. A school implements whole-school reform by integrating reform throughout the school as a total institution rather than by simply adding reforms piecemeal. If carried out successfully, whole-school reform affects the culture of the entire school, including instruction, curriculum, and assessment. The reform covers education from the earliest levels, including pre-school, and can be particularly effective in enabling the disadvantaged children in poor urban communities to reach higher educational standards (*Abbott V*, p. 494).

The Court was persuaded that the evidence in support of whole school reform, particularly the Success For All model, “is impressive” (*Abbott V*, p. 501). It adopted the remand Court’s recommendation “that the State require the Abbott districts to adopt some version of a proven, effective whole school design with SFA-Roots and Wings as the presumptive elementary school model” (*Abbott V*, p. 501). Other models would be permitted if the school “could show convincingly that the alternative model it choose

would be equally effective and efficient as SFA or that the model was already in place and operating effectively" (*Abbott V*, p. 494). The Court further directed that

implementation proceed according to the schedule proposed by the Commissioner⁷⁹ and that SFA contain the essential elements identified by the Commissioner." (*ibid.*) Finally, the Commissioner was directed "to implement as soon as feasible a comprehensive formal evaluation program, modeled on SFA's formal evaluation precedents, to verify that SFA is being implemented successfully and is resulting in the anticipated levels of improvement in the Abbott elementary schools" (*Abbott V*, p. 494).

The "essential elements" to be implemented include:

"reading groups of fifteen," for "ninety minutes each day," in classes "that are organized according to reading level regardless of age or grade" (*Abbott V*, p. 495);

"additional daily twenty-minute one-on-one tutoring session[s]" for "first through third graders who are having trouble with reading," and "daily group tutoring session[s]" with "slightly larger groups" for "students in higher elementary grades" (*Abbott V*, p. 495);

assessment "every eight weeks to determine their [the students'] progress and their need for the extra tutoring session" (*Abbott V*, p. 495);

a "family support team that assists students with non-academic problems," including "health, counseling, nutritional, tutorial or other needed services," and includes

⁷⁹ The SFA model developer indicated that SFA could be implemented "in fifty Abbott schools in the 1998-99 school year, in 100 Abbott schools in the following year, and in the remaining Abbott elementary schools in the third year." (*id.* 497)

the school nurse plus “social workers, counselors, parent liaisons, administrators, teachers and parents” (*Abbott V*, p. 496);

a “program facilitator” to “ensure that all the elements of SFA are properly implemented and coordinated” (*Abbott V*, p. 496);

“school-based management or advisory team consisting of school administrators, teachers, and parents” (*Abbott V*, p. 496);

for “every Abbott school,” a “professional development program that is continuous, focuses on student achievement of the CCCS,” is “based on ongoing professional renewal,” and includes “at least three days of in-service” before the school year begins, one “week long training” for the “principal and program facilitator,” as well as “additional training for the “tutors and for the family support team,” and “weekly in-school training sessions” during “the school year” (*Abbott V*, p. 496);

“three two-day evaluations by SFA staff” for each year (*Abbott V*, p. 496);

a vote of “eighty percent of the teachers and other school staff” to “approve or buy into whole school reform” (*Abbott V*, p. 497);

class size limits of “twenty one students per class for kindergarten through third grade and twenty-three students per teacher for fourth and fifth grades” (*Abbott V*, p. 498);

“[c]lass sizes for reading would be fifteen for grades k-5” (*Abbott V*, p. 498);

“zero-based budgeting” requiring the school to “combine all of its sources of revenue or funding streams” for using “the aggregated amount as the basis for the entire school budget” (*Abbott V*, p. 498); and

because “the available research on whole school reform in middle and high schools was incomplete” (*Abbott V*, p. 508), no directive was issued except to require the

Commissioner to determine if by "September 1999" or later the research was sufficient to justify "the introduction of whole school reform in Abbott middle and secondary schools."

(*Abbott V*, p. 508, fn. 5).

2. Early childhood education. The Court reiterated previous findings "that early childhood education is essential for children in the SNDs" and found it to be "an integral component of whole school reform." (*id.* 502) The Court directed that

"full-day kindergarten be implemented immediately," meaning by September 1998 (*Abbott V*, p. 503);

for schools "unable promptly to locate or obtain adequate classroom space or instructional staff, full day kindergarten shall be provided by the commencement of the September 1999 school year" (*Abbott V*, p. 503);

the Commissioner "exercise his power . . . to require all Abbott districts to provide half-day preschool for three- and four-year-olds (*Abbott V*, p. 508), "as an initial reform" (*Abbott V*, p. 507), as "expeditiously as possible" (*Abbott V*, p. 507);

such programs must be "well-planned and high quality" (*Abbott V*, p. 503), and "adequately funded" (*Abbott V*, p. 508);

"[t]he Commissioner may authorize cooperation with or the use of existing early childhood and day-care programs in the community" (*Abbott V*, p. 508);

schools that are able "to obtain the space, supplies, teaching faculty, staff, and means of transportation . . . necessary to implement these programs for the 1998-99 school year . . . should be supplied with the necessary funding to enable them to do so" (*Abbott V*, p. 508); and for all other schools, "[t]he Commissioner shall ensure . . . the

resources and additional funds that are necessary to implement pre-school education by the commencement of the 1999-2000 school year" (*Abbott V*, p. 508).

The "high quality" program presented by the Commissioner and accepted by the Court includes a class size of 15, a state certified teacher and an aide (Elementary School Illustrative Budget), services that include "medical, dental, parent involvement and training" (Study, p. 8), and a curriculum that stresses "language development" (*Abbott V*, p. 504).

3. Needs-based assessment, planning, budgeting and funding. In *Abbott II, III, and IV*, the Court directed the State to conduct a study of the needs of actual students to determine the kind and extent of supplemental programs required to "wipe out their [student] disadvantages as much as a school district can" (*Abbott II*, p. 369). Each time the State failed to comply. The Court distinguishes between the "extreme disadvantages generally facing children in the Abbott districts" (*Abbott V*, p. 511), and the "particularized needs of these children" that must "drive the determination of what programs should be developed" (*Abbott V*, p. 511). The Court finds that "the Commissioner did not conduct a particularized needs study nor did he base his recommendations on actual needs; rather, he relied almost exclusively on national research unrelated to New Jersey generally and Abbott schools specifically" (*Abbott V*, p. 511). The Court then directs that "[t]he provision of supplemental programs involving necessary services should not be detached from the actual needs of individual Abbott schools and districts" (*Abbott V*, p. 511). Further, the Court directs that "[i]f a school demonstrates the need for programs beyond those recommended by the Commissioner, including programs in, or facilities for, art, music, and special education, then the

Commissioner shall approve such requests and, when necessary, shall seek appropriations to ensure the funding and resources necessary for their implementation” (*Abbott V*, p. 518).

Indeed, the Court has taken the directive away from the State and given new authority instead to local schools and districts to plan for and implement needed programs. As we shall see in the language that follows, “demonstration of need” determines the level, intensity, and extent of required programs, as well as whether extended or additional programs, beyond those required directly by the Court, should be implemented by schools and/or districts.

4. Health and Social Services. The Court found “clear support for a finding that the provision of social [and health] services is within the school’s mission” (*Abbott V*, p. 510), and concluded that “what matters for education of the Abbott students is that their health and social problems are remedied” (*Abbott V*, p. 511). The Court directed

the Commissioner to implement his proposal to provide a community services coordinator in every middle and secondary school for the purposes of identifying student need and arranging for community-based providers to furnish essential health and social services. However, because the general need for social services for children in Abbott schools is acute and indisputable, there must be an effective and realistic opportunity for these schools to provide on-site services that go beyond mere referral and coordination. Thus, we hold that individual schools and districts have the right, based on demonstrated need, to request and obtain the resources necessary to enable them to provide on-site social services that either are

not available within the surrounding community or that cannot effectively and efficiently be provided off-site. Conversely, we hold that the Commissioner has a corresponding duty to authorize requested school-based social service programs for which there is a demonstrated need and to provide or secure necessary funding (*Abbott V*, pp. 512-13).

5. Violence prevention and increased security. The Court found that “[s]ecurity is a critically important factor in the provision of a thorough and efficient education” and “[i]nadequate security frustrates the education process and is a great barrier to learning” (*Abbott V*, p. 514). The Court rejected the Commissioner’s proposals for one security guard per elementary school and for every 225 secondary students (*Abbott V*, p. 513), finding that “[e]ven within one particular district, different schools may have different security needs” (*Abbott V*, p. 513), and that “[w]e are certain there will be schools that need security beyond the Commissioner’s recommendation” (*Abbott V*, p. 513). The Court concludes that “[w]ithout a link to actual needs, the Commissioner’s proposal lacks an evidentiary basis” (*Abbott V*, p. 514) The Court directs that “individual Abbott schools or districts have a right to request supplemental programs for security and that the Commissioner must authorize the requested programs that are based on demonstrated need and secure or provide necessary funding” (*Abbott V*, p. 514).

6. Technology. The Court found that “technology . . . would help students master the basic and advanced skills necessary to reach the CCCS, and would improve student motivation and learning” (*Abbott V*, p. 514). The Commissioner is directed to “implement technology programs at the request of individual schools or districts or as he otherwise shall direct” (*Abbott V*, p. 517), including “one computer for every five students in grades

K-12" (*Abbott V*, p. 514), "peripherals and software" (*Abbott V*, p. 514), a "full-time media/technology specialist" (*Abbott V*, p. 514), and "a full-time technology coordinator" (*Abbott V*, p. 515).

7. Alternative education. The Court found that "[r]esearch shows that placing students in alternative education programs decreases disruption in the regular school and, for the students in the programs, increases academic performance, fosters positive lifestyles, and reduces aggressive behavior" (*Abbott V*, p. 515). The Court directed "that each Abbott district establish an alternative middle school program and an alternative high school program," that for each middle and high school "there be a dropout prevention specialist or counselor" (*Abbott V*, p. 515), and that the Commissioner "provide adequate funds" sufficient "to ensure that quality education extends to such alternative schools as well" (*Abbott V*, p. 515).

8. Accountability. The Court found that "accountability mechanisms, both fiscal and academic, are essential to high performance and effective restructuring" (*Abbott V*, p. 516). The Commissioner was directed to establish "accountability programs, as may be deemed necessary or appropriate, and to coordinate them with whole-school reform" (*Abbott V*, p. 517), including the "establishment of baseline data and the identification of progress benchmarks and standards that are linked to the Core Curriculum Content Standards," using "[t]he results obtained from this accountability system . . . to make informed decisions about program improvement," and establishing "a system of rewards and sanctions for students, teachers, and entire schools" (*Abbott V*, p. 515).

9. School-to-work and college transition programs. The Court found that "school-to-work and college-transition programs, including career majors, work-based learning,

connecting activities, and career development” are “important to education and beneficial to students from low-income families who are in danger of failing” (*Abbott V*, p. 516). Further, the Court found “research indicating that such programs lead to increased school attendance, reduced dropout rates, higher motivation to learn, and greater likelihood of pursuing further education” (*Abbott V*, p. 516). The Court directed the Commissioner “to implement school-to-work and college-transition programs in secondary schools in the Abbott districts at the request of individual schools or districts or as . . . [he] otherwise shall require” (*Abbott V*, p. 516).

10. Summer school, after school, and nutrition programs. The Court found that “all such programs are sound in principle” (*Abbott V*, p. 517), and because the “need for these programs will vary from school to school” (*Abbott V*, p. 517), the Court declined “to order their immediate district-wide implementation” (*Abbott V*, p. 517). Instead the Commissioner is directed “to provide or secure the funding necessary to implement those programs for which Abbott schools or districts make a request and are able to demonstrate a need,” with a special emphasis on “middle and secondary schools” since they “will not have the benefit of whole-school reform” (*Abbott V*, p. 517), and “such supplemental programs may be necessary to ensure the educational success of their students” (*Abbott V*, p. 517).

11. Adequate funding. While directing that parity funding be continued (*Abbott V*, p. 512), the Court cannot determine how much more than parity is needed to support the full complement of remedies because “it is not feasible at this time to ascertain or mandate a specific funding level” (*Abbott V*, p. 518), and concludes that “adequate funding remains critical to the achievement of a thorough and efficient education” (*Abbott V*, p. 518).) The

Court directs that “sufficient funds be provided for whole-school reform and for the additional or modified supplemental programs that are constituent parts of such reform” (*Abbott V*, p. 518). In addition it directs that “there must also be in place a clear and effective funding protocol” (*Abbott V*, p. 518), including, “consistent with zero-based budgeting,” and . . . “before seeking new appropriations” the Commissioner may “first determine whether funds within an existing school budget are sufficient to meet a school's request for a demonstrably needed supplemental program” (*Abbott V*, p. 518). The Court further directs that “any determination that existing appropriations are sufficient” must include the understanding that “funds may not be withdrawn from or reallocated within the whole-school budget if that will undermine or weaken either the school's foundational education program or already existing supplemental programs” (*Abbott V*, p. 518).

Finally, the Court finds that “[t]he provision of adequate funding . . . ultimately remains the responsibility of the Legislature,” that “[r]equests by the Commissioner that funds be appropriated to implement educational programs deemed essential on the basis of demonstrated need will be the measure of the State's constitutional obligation to provide a thorough and efficient education. . .” (*Abbott V*, pp. 518-19).

12. Adequate school facilities. The Court found that

the school buildings in Abbott districts are crumbling and obsolescent and that this grave state of disrepair not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety.

Windows, cracked and off their runners, do not open; broken lighting fixtures dangle precipitously from the ceilings; fire alarms and fire detection systems fail to meet even minimum safety code standards; rooms

are heated by boilers that have exceeded their critical life expectancies and are fueled by leaking pumps; electrical connections are frayed; floors are buckled and dotted with falling plaster; sinks are inoperable; toilet partitions are broken and teetering; and water leaks through patchwork roofs into rooms with deteriorating electrical insulation.

Besides facing these decrepit and dangerous conditions, children in Abbott districts must also contend with gross overcrowding. Some class sizes hover around forty. Due to insufficient space, up to three different classes may be conducted simultaneously within the confines of one room. Libraries and hallways have been pressed into service as general classrooms. Some "classrooms" are no more than windowless closets converted by necessity into instructional areas. For children in these huddled spaces, "art" consists of coloring and "music" consists of singing a song (*Abbott V*, p. 519).

Further, the Court finds that "[t]hese deplorable conditions have a direct and deleterious impact on the education available to the at-risk children" (*Abbott V*, p. 519).

In response to the *Abbott IV* order to study Abbott district facilities deficiencies, the Court concluded that the State's "study and proposals constitute the basis for appropriate and necessary remedial relief" (*Abbott V*, p. 520). The Court directs that "each district . . . complete an enrollment projection and Five-Year Facilities Management Plan," and that "the formulation of these Plans be undertaken immediately," to "be completed by January 1999," with "architectural blueprints. . . completed by the fall of that year," and "[c]onstruction" to "begin by the spring of 2000" (*Abbott V*, p. 520).

Further, the “Commissioner is directed to ensure that the Plans are completed and that the deadlines are met” (*Abbott V*, p. 520).

Reacting to a dispute between the plaintiffs and the State regarding the minimum standards adopted by the State to guide local district planning for new facilities, the Court “accepted[ed] the Commissioner’s conclusions relating to the minimum standards for instructional areas in Abbott schools” (*Abbott V*, p. 523). However, the Court also directed that “individual Abbott schools and districts should have the discretion to decide initially whether specialized rooms for art, music, and science instruction are required at the elementary level,” that if it is “determine[d] that such rooms are educationally necessary based on particularized need, its determination should be included in its Five-Year Facilities Management Plan,” that “the DOE should review that request and determination,” and that “[t]he determination of the local education authorities should be reviewed with deference and with the understanding that the local educators are in the best position to know the particularized needs of their own students” (*Abbott V*, p. 523).

The Court reiterated its directive that “the State . . . fund 100% of approved costs,” (*id.* 524) and defined such costs as “the complete cost” of “remediating infrastructure and lifecycle deficiencies that have been identified by Abbott districts,” constructing “any new classrooms needed to correct capacity deficiencies,” and providing “facilities adequate to ensure a thorough and efficient education” (*Abbott V*, p. 523), as defined by the Core Curriculum Content Standards. The Court approved and directed that “[t]he EFA . . . serve as construction manager for all projects” (*Abbott V*, p. 523), in order to “ensure efficient and satisfactory construction” (*Abbott V*, p. 524), including “prepar[ing] specifications for construction, solicit[ing] bids for all work and materials required, enter[ing] into project

contracts, invest[ing] any monies not required for immediate disbursement, and review[ing] all completed work before dispensing requisitioned funds" (*Abbott V*, p. 524). In accepting and directing implementation of the State's proposal, the Court concluded "that the State's proposal to provide and administer the funding for capital improvements would effectively address the need for adequate facilities and capital improvements" (*Abbott V*, p. 524).

In addition, the State was directed to "prioritize construction projects that will facilitate the full implementation of the early childhood programs" (*Abbott V*, p. 524), and to "make use of trailers, rental space, or cooperative enterprises with the private sector," when necessary as "temporary spaces," as long as each classroom is "free of code violations," is "at least 600 square feet," and contains "toilet rooms visible to the teacher" (*Abbott V*, p. 524). The Court directed that the use of such temporary space begin "in some Abbott schools by the 1998-99 school year and in all Abbott schools by the beginning of the 199-2000 school year (*Abbott V*, p. 524).

13. Implementation. The Court directed the Commissioner to "promulgate regulations and guidelines that will codify the education reforms incorporated in the Court's remedial measures," including "the procedures and standards that will govern applications by individual schools and districts for needed programs and necessary funding" (*Abbott V*, p. 526). To assure effective implementation of whole school reform, the Court accepted the Commissioner's assurances and directed the State to "facilitate the implementation process by providing resources to help review budgets, coordinating necessary support, and assisting in the transition from centralized to site-based management" (*Abbott V*, p. 497), and further directed the DOE to "exercise its essential and affirmative responsibility

to ensure the necessary changes," in the event that "a district or school is hesitant in its implementation of whole-school reform" " (*Abbott V*, p. 497). To facilitate implementation of full-day Kindergarten, the Commissioner will "ensure the availability of adequate temporary facilities" " (*Abbott V*, p. 503), and "to implement [preschool] programs as quickly as possible. . .the Commissioner must ensure that such programs are adequately funded and assist the schools in meeting the need for transportation and other services, support, and resources related to such programs" (*Abbott V*, p. 508).

14. Dispute Resolution. The Court found "that disputes will occur in the administration of public education in the era ushered in by these reforms," and that such "disputes will involve issues arising from the implementation, extension, or modification of existing programs, the need for additional supplemental programs, the allocation of budgeted funds, the need for additional funding, and the implementation of the standards and plans for the provision of capital improvements and related educational facilities" (*Abbott V*, p. 508).

The Court directed that "districts and individual schools . . . be accorded full administrative and judicial protection in seeking the demonstrably-needed programs, facilities, and funding necessary to provide the level of education required by CEIFA and the Constitution" (*Abbott V*, p. 527). The Court established a process to resolve such disputes by first directing that they "shall be considered "controversies" arising under the School Laws." Since the Court has authorized schools or districts "to apply to the DOE for authorization to improve or amend existing programs, to adopt additional supplemental programs, to build or to renovate facilities, and to seek the necessary funding," with "a showing of demonstrated need," when a dispute arises, the Court directs

that “[a]n aggrieved applicant may appeal to the Commissioner from an adverse decision on any such application made to the DOE,” and “[i]f the dispute is not resolved or if the applicant is not satisfied with the disposition, the case may be transferred under the Administrative Procedure Act to the Office of Administrative Law as a contested case” (*Abbott V*, p. 527). The Court further directs that “[a]fter conducting a hearing, the Administrative Law Judge will make a recommendation, which the Commissioner may, in his discretion, accept or reject,” with “[e]ither party . . . then appeal[ing] to the State Board of Education” whose “determination will constitute a final agency determination that may then be appealed to the Appellate Division and, ultimately, to this Court” (*Abbott V*, p. 527).

Within a year, however, plaintiffs had returned to Court, complaining that the preschool program implemented by the Commissioner did not conform to the *Abbott V* directives, particularly since they were largely the product of agreement between the parties on matters of quality in the remand proceeding.⁸⁰ Despite the *Abbott V* expectation that “twenty eight years of major judicial involvement in this extraordinary effort should end” (*Abbott VI*, p. 100), five of the six sitting justices found that State implementation of *Abbott* preschool programs “violates the *Abbott V* requirement to establish quality preschool programs for three- and four-year old children”⁸¹ (*Abbott VI*, p. 101). Reluctantly, the Court concluded that its “intervention is warranted now to assure that the

⁸⁰ *Abbott VI* was filed in July of 1999, oral argument conducted on October 13, 1999, and the decision issued on March 7, 2000. The decision was unanimous, though Justice Stein wrote a concurring separate opinion deriding the State’s undoing of the Success for All “presumption” since SFA was finding relatively few takers.

⁸¹ Justice Stein concurred but thought the opinion should include the evidence that the State was failing to implement whole school reform as originally proposed by the Commissioner and accepted and directed by the Court.

implementation of preschool in the Abbott districts is faithful to the programs proposed by the Commissioner and accepted by this Court less than two years ago" (*Abbott VI*, p. 101).

The Court found that "[t]he distinction between "daycare," which does not generally provide structured, educational programming geared toward school-readiness skill development, and "preschool" or "preschool education," which is intended to prepare children for success in elementary school, lies at the core of this case" (*Abbott VI*, p. 106). Further, "[i]n order for disadvantaged children to develop the language skills and discipline they need for later academic success, there must be educational content to their preschool experience" (*Abbott VI*, p. 106). In discussing the technical assistance the Commissioner claimed was provided to "work with the districts to oversee both the opening of preschool programs and to assist daycare providers, both fiscally and programmatically, two very different systems" (*Abbott VI*, p. 106), the Court concluded that "[s]uch staff assistance cannot substitute for substantive standards promulgated by the Commissioner" (*Abbott VI*, p. 106). Moreover, "[w]ithout core curriculum standards akin to those developed by the DOE for grade schools but specific to preschool levels, disadvantaged children in the Abbott districts will get little more than daycare" (*Abbott VI*, p. 105). The Court directed that "[s]ubstantive educational guidance for all Abbott district preschool programs. . .an essential component of the DOE's commitment to the Abbott districts . . .must be adopted by April 17, 2000, so that the districts will be able to prepare for the 2000-01 school year" (*Abbott VI*, p. 107).

In addition to the State's failure to establish standards to guide development and improvement of Abbott preschool programs, the Court was critical of staff qualifications, class size, contracts between districts and providers, facilities and supplemental programs,

and community outreach and recruitment. The Court found that “the DOE has created a two-tiered system,” where “district run schools will have qualified teachers; DHS-licensed providers will not” (*Abbott VI*, p. 111). Consequently, the Court directed that “[e]xisting teachers who have experience working with young children but who otherwise lack academic credentials should be given four years to obtain certification and should be evaluated each year to determine whether they will be retained” (*Abbott VI*, p. 111). Further, the Court directed that “[n]ew teachers . . . must be college graduates and should have until September 2001 to obtain the proposed preschool-3 certificate” (*Abbott VI*, pp. 111-12).

Class size, permitted to go to 20 under DHS regulations, when set at 15 or fewer was found to “reduce the chances that disadvantaged will be retained or assigned to special education in the early grades” (*Abbott VI*, p. 112).) Moreover, the Court relied on “the representations and testimony during the remand hearings and in the Commissioner’s report,” including testimony of Dr. Barbara Anderson, who indicated “that the Commissioner recommended a preschool class size of fifteen students with one teacher and one aide,” the testimony of “[t]he Assistant Commissioner for Finance at DOE . . . that he had prepared cost estimates by assuming preschool classes would have a 1:15 teacher-to-student ratio,” and the “calculations and recommendations” of the “Vitetta Group, an architectural and engineering consulting firm,” hired by the DOE to assess facilities needs in the twenty-eight SNDs,” whose work “assumed that each preschool class would consist of a maximum of fifteen students” (*Abbott VI*, p. 113). The Court reaffirmed the directive “of one certified teacher for every fifteen preschool children” (*Abbott VI*, p. 114).

The Court found that the a contractual relationship between districts and community providers for the provision of preschool programs “whenever practical,” “comports with *Abbott V*” (*Abbott VI*, p. 115). It directed that “contractual agreements with DHS licensed providers must include clear expectations, necessary supports and accountability measures, delineating the specific responsibilities of the district and the provider,” so that “there be evaluation and accountability based on the specific tasks assigned to each” (*Abbott VI*, p. 116), and that based on the new standards, such contracts will require “upgrading day care centers into well-run preschools” (*Abbott VI*, p. 115). Further, the Court authorized the “district” to “have the power to assess and evaluate providers and to impose improvements if necessary,” and to terminate “the contract . . . when the provider cannot or will not adhere to quality standards” (*Abbott VI*, p. 115). The Court directed districts to provide “support” to providers including “supervision, professional development, access to specialized staff, or assistance in complying with federal and state requirements for special education, bilingual education, and other needed services” (*Abbott VI*, p. 115). Finally, the Court directed “the districts and the DOE to monitor operating preschools on a regular basis and to ensure that they are delivering quality programs” (*Abbott VI*, p. 115), and gave districts the authority to determine “[w]hen an existing daycare center is unable or unwilling to comply with those requirements,” and to terminate “cooperation with that center” because it would “presumptively” be “not practical” (*Abbott VI*, p. 115).

The Court found that “[t]he DOE has excluded Head Start,” from “district enrollment projections” and from district contracts, and that “State [Abbott] preschool standards are more demanding than Head Start standards” (*Abbott VI*, p. 115). The Court

found such differences in teaching credentials, “requiring that merely fifty percent of teachers have advanced degrees,” in curriculum, “providing loose content standards,” and in class size, “allowing twenty students per class” (*Abbott VI*, p. 115). The Court directed districts to “exclude Head Start children from their preschool enrollment projections only when it can be demonstrated that the excluded children attend Head Start programs that meet DOE standards” (*Abbott VI*, p. 115, emphasis added).

The Court acknowledged disputes about the failure of the DOE to provide “funding for preschool facilities improvements,” and for “supplemental programs and transportation.” While it choose not to consider these disputes “without a record” (*Abbott VI*, p. 118), the Court directed the DOE to handle “reasonable requests to fund supplemental programs . . . fairly and quickly” (*Abbott VI*, p. 118).

Further, the Commissioner was directed “to work with the districts to resolve funding issues expeditiously,” and “when an amicable resolution is not possible,” to make decisions about such requests “early enough in the school year to allow programs to be implemented by the next school year” (*Abbott VI*, p. 118).

Finally, in reaction to inadequate preschool enrollment in the districts, the Court directed the Commissioner “to make funding available” for the purpose of “outreach efforts to improve enrollments” (*Abbott VI*, p. 119).

With the Court’s re-involvement in *Abbott*, despite its hope expressed in *Abbott V* that intrusion into these matters had come to an end, expectations were high that the Commissioner and the DOE would fully comply with this second round of preschool directives. It was not to be. Education Law Center pressed forward on a case originally brought before the Office of Administrative Law in July of 1999, known as the “In re

Abbott Global Issues” case, where systemic statewide preschool issues, those that are not “district specific,” were litigated. The Supreme Court reviewed the April 20, 2001, *Initial Decision* of Chief Administrative Law Judge Jeff Masin and the Commissioner’s June 1st response. In the first split decision of the *Abbott* era, only Justices Long and Coleman voted fully for the two-part opinion authored by Chief Justice Poritz, Justice LaVecchia filed a separate opinion, concurring in part and dissenting in part, Justice Stein filed a separate dissent, and Justices Verniero and Zazzali did not participate.

In an unprecedented intrusion into the prerogatives of a coordinate branch of government and to cure the State’s failure to make critical and timely decisions, the Court issued the first part of its opinion, released on October 22, 2001, that prescribed a rigorous timetable for State decision-making on district preschool plans for school year 2002-03. The Court found that “during school year 2000-2001 the DOE did not timely complete its review of certain pre-school program and budget proposals” (*Abbott VIII*A, p. 3), and further, “that time frames to be followed through the administrative decision-making and appeal process should be established to ensure that final dispositions are issued in time for the 2002-2003 school year” (*Abbott VIII*A, p. 3).

The Court “ordered” in “advance of the Court’s opinion in this matter” that “the submission, review, and approval of Abbott District pre-school program and budget proposals be carried out” pursuant to a timetable that would permit final resolution before the advent of the 2002-03 school year” (*Abbott VIII*A, pp. 3-4). The Court issued an eleven point directive, including

First, “[s]ubmission by November 15, 2001, of final pre-school program and budget proposals by the Abbott Districts, including, among other things, use and funding of community providers where applicable” (*Abbott VIII A*, p. 4);

Second, “[i]ssuance by January 5, 2002, of initial DOE determination on pre-school program and budget proposals” (*Abbott VIII A*, p. 4);

Third, “[n]otice filed by January 10, 2002, of administrative appeal in a contested case, such notice to be transferred immediately to the Office of Administrative Law for accelerated proceedings” (*Abbott VIII A*, p. 4);

Fourth, “[i]ssuance by February 15, 2002, of the Administrative Law Judge’s Opinion and Recommendations, including itemization of the record” (*Abbott VIII A*, p. 4);

Fifth, [i]ssuance by March 1, 2002, of Final Decision by the Commissioner of Education” (*Abbott VIII A*, p. 4);

Sixth, [n]otice of appeal filed by March 5, 2002, in the Superior Court, Appellate Division” (*Abbott VIII A*, p. 4);

Seventh, [r]esolution by March 30, 2002, of any Appellate Division appeal” (*Abbott VIII A*, p. 4);

Eighth, the DOE staff shall “work with the Abbott districts to ensure that plans submitted on or before November 15, 2001, are complete” (*Abbott VIII A*, pp. 4-5);

Ninth, “if a district plan is nonetheless incomplete when submitted, the DOE will accept supplemental documentation and continue to assist the District in an effort to cure any deficiencies” (*Abbott VIII A*, p. 5);

Tenth, “all appeals from the initial DOE decision must be referred to the Chief Judge of the Office of Administrative Law (OAL), who either will hear those matters

himself or, when necessary, will specially designate certain Administrative Judges for that purpose" (*Abbott VIII A*, p. 5); and

Eleventh, "Part A of the Superior Court, Appellate Division, is designated to hear all appeals from Final Decisions of the Commissioner that come within the scope of this Order" (*Abbott VIII A*, p. 5).⁸²

Four months later, on February 21, 2002, the Court issued part two of its opinion, finding that "[a]t best, the Department of Education . . . has been slow to respond to the districts' submissions [requests for needed funding] and "[a]t worst, the Department's responses have provided little guidance so late that resolution cannot be accomplished before the next group of children is scheduled to arrive in September." The Court further finds "the DOE's apparent reluctance to deal with funding and other difficult issues in a timely manner." The Court concludes that "on the question of timely disposition, the record is dismal."

The Court made findings and issued directives again on major systemic issues.

First, on the continuing matter of standards, the Court found and directed [t]o ensure availability of detailed curricula for use in the 2002-03 school year, and to meet the DOE's time frame for implementation workshops, the DOE must, as scheduled, complete a final draft of the [Early Childhood Curriculum] Framework by April 30, 2002 (*Abbott VIII B*, p. 16).

Second, on the matter of enrollment and recruitment, the Court found that parents "must be informed about the advantages of participation [in Abbott preschool] for their

⁸² Subsequently, with the support of Education Law Center the new McGreevey Administration asked for and was granted a one month extension of each of these deadlines to allow the new leadership to preside over the entire process and to facilitate use of the recommendations of the preschool work group, under the leadership of Dr. Frede who would become director of the office of early childhood education.

children” (*Abbott VIII B*, p. 17). Further, the Court found that “thousands of children have not been enrolled in preschool in the Abbott districts” (*Abbott VIII B*, pp. 21-22). The Court suggested that “partnering with community organizations might be of great assistance in achieving outreach goals” (*Abbott VIII B*, p. 21). It directed the DOE to “work with the districts to develop corrective action plans when the districts do not meet enrollment goals and must review, with the districts, the effectiveness of these plans during the implementation phase” (*Abbott VIII B*, p. 22).

Third, the Court took notice of “reports that Head Start programs are facing decreasing enrollment, escalating loss of staff, and financial difficulties” (*Abbott VIII B*, p. 24), and concluded, again, that Head Start is “[d]esigned to fit the needs of the community,” by offering “low-income children comprehensive medical, dental, mental health, nutrition, family involvement, and transportation programs, and has been instrumental in increasing the school readiness of young children from low-income families” (*Abbott VIII B*, p. 25). The Court, therefore, directed the DOE to “supplement existing Head Start funding with state funding sufficient to allow Head Start to meet state standards and to retain certified teachers” (*Abbott VIII B*, p. 25). Further, the Court directed districts to “develop budget proposals based on a careful analysis of a provider’s pre-existing obligations and funding sources” (*Abbott VIII B*, p. 26), and to “address salary parity between district-run and community provider-run programs” (*Abbott VIII B*, p. 26), in order to “retain qualified staff” (*Abbott VIII B*, p. 26). While the Court found that “[t]he DOE need not offer additional funding for services designed to meet federal regulations unless there is a need to improve those services to meet state standards,” it directed that “reasonable supplemental funds must be provided so that Head Start (and other

appropriate community providers) can meet the more demanding State preschool requirements” (*Abbott VIII B*, p. 26).

Fourth, the Court carefully reviewed the ALJ’s findings that the entire preschool “funding process and the DOE’s responses suggested an appearance of arbitrariness” (*Abbott VIII B*, p. 30), and that “it was not possible to determine whether the funding amounts requested by the districts and/or granted by the DOE were adequate for the provision of fully compliant Abbott preschool” (*Abbott VIII B*, p.30). The Court directed the DOE to develop a funding system that “*must* yield funding decisions based not on arbitrary, predetermined per-student amounts, but, rather, on a record containing funding allocations developed after a thorough assessment of actual needs” (*Abbott VIII B*, p.33).

Fifth, the Court found that “districts conducting outreach initiatives will experience increased enrollments in the year following those efforts, and that some of those districts will not have sufficient classrooms for the children who enroll” (*Abbott VIII B*, p.37). To remedy this continuing problem, the Court directed districts to “have in place a contingency facilities plan that has been reviewed and approved by the DOE,” including “specific facilities that can be renovated quickly, if needed, and should seek DOE authorization for TCUs that can be obtained on short notice and appropriately situated on previously designated sites” (*Abbott VIII B*, p. 37).

These two parts to *Abbott VIII* represent the latest proceeding in which the two parties to *Abbott*, the State and ELC, litigated in opposition to one another. In April of 2002, the new State leadership asked the Court for a temporary, one-year “time-out” from continuing implementation of the *Abbott* remedies in order to reformulate implementation of the *Abbott* remedies, to get a handle on where the funding has gone, and to ease New

Jersey's budget crisis. ELC supported this application, with the understanding that the "cessation of further growth in funding of certain of the Abbott remedial measures is necessary," but only for one year (*Abbott IX*, p. 2). On June 11, 2002, the Court issued *Abbott IX*, with five of the six sitting justices concurring, and found that

the State and ELC, "under the auspices of the Abbott Implementation and Compliance Coordinating Council and its workgroups, are committed to making significant revisions. . . to assure full, effective and timely implementation of the *Abbott IV* and *V* remedial measures" (*Abbott IX*, p. 3);

for 2002-03, "parity funding will be maintained," both "full-day kindergarten and half-day preschool . . . also will be maintained and enhanced;" and "the State's facilities improvement program for Abbott districts" will not be affected by this "cessation" (*Abbott IX*, p. 3);

the proposals for school-based and zero-based budgeting originated with the Commissioner of Education and not the Court" (*Abbott IX*, p. 4); and

the DOE's plan included "the ability to preserve the core elements of whole school reform as well as certain enhancements of the Success-for-All (SFA) model of whole school reform tied directly to improving curriculum and instruction under the Core Curriculum Content Standards (*Abbott IX*, p. 4).

The Court authorized the DOE to assure districts the "flexibility to reduce, eliminate or limit growth of other whole school reform enhancements such as technology coordinators and security coordinators . . . to authorize districts to eliminate positions and make staffing modifications in various programs such as technology programs, alternative schools, accountability programs, school-to-work and college transition, and to authorize

districts to make educational judgments about retaining certain specified positions such as media/ technology coordinator, technology coordinator and drop-out prevention specialist" (*Abbott IX*, p. 4).

The Court, however, was reluctant to remove districts appeal rights. While "acknowledging the State's fiscal crisis and the motivation underlying defendants' proposal to strictly limit 2002-2003 supplemental funding to 2001-2002 adjusted levels, and although accepting for 2002-2003 budgetary purposes the discretion of the Commissioner of Education preliminarily to set Abbott Districts supplemental funding at such levels," the Court was "unwilling to prejudge the merits of an Abbott district's need-based appeal seeking a higher level of supplemental funding" (*Abbott IX*, pp. 4-5).

With assurances of parity, preschool, and facilities remaining on track, the Court then ordered

the DOE [to] establish districts' supplemental funding for 2002-2003 at the level of expenditures contained in the 2001-2002 K-12 DOE approved district budget, as increased by actual and documented 2001-2002 expenditures for the second half of kindergarten, as modified by DOE to take into account 2001-2002 actual expenditures and available revenues based on the district annual audits (*Abbott IX*, p. 5); and [the] one year [cessation] to afford districts flexibility to eliminate, reduce, or limit growth of certain whole school reform enhancements as specified, to eliminate positions and make staffing modifications in various needs-based programs as specified, and to make educationally appropriate decisions about retention of certain positions as specified (*Abbott IX*, p. 5).

The Court also denied the State's request to limit any district appeal only to the funding necessary to reach in 2002-2003 the K-12 budget adopted and approved for 2001-2002 and instead ordered that "districts [be granted the] "right of appeal based on educational need related to impairment of the core elements of whole school reform and essential enhancements thereof" (*Abbott IX*, p. 5), but

FURTHER ORDERED that the DOE is authorized to impose educationally-appropriate limits on the categories for which needs-based funding requests may be submitted (*Abbott IX*, p. 6); [and] that the DOE may suspend for one year the regulatory requirement for middle schools and high schools to implement whole school reform models, may permit voluntary implementation of models in such schools, and may suspend for one year formal evaluation of whole school reform (*Abbott IX*, p. 6).

As this is written, negotiations and collaboration continue between the State and ELC, with representatives from schools, districts, parents, advocacy groups and higher education engaged in the substantive workgroups. The results of these critically important discussions will be included in this study if time permits.

Analysis of the Language of the *Abbott v. Burke* Court Mandates

Overall, sixty-four mandates have issued from the Supreme Court in the seventeen years since the Court began reviewing the law and facts involved in *Abbott*. Of these, 16 or 25% essentially repeat or clarify mandates previously issued, necessitated by the history of official resistance to the *Abbott* decisions. Many of the remaining 48, essentially from *Abbott V* on, represent more detailed requirements of earlier mandates.

Clearly, the Court has undertaken decision-making that typically resides in the Legislature. On language clarity, 17 of the mandates were comprehensive and the remaining 47 were adequate. On clarity of meaning, 26 were comprehensive, only 1 was barely adequate, and the remaining 37 were adequate. On legal authority, fully 34 were comprehensive, reflecting continuing and growing court intervention, one was barely adequate, and 29 were adequate. Accordingly, the clarity of language and meaning and fidelity to prior legal mandates are typically all well above average. Consequently, the adequacy of the mandates as a whole is also considerably above average.

Appendix C on page shows the analysis and rating of each of the 64 mandates in the nine *Abbott* decisions. Table 5 summarizes those findings.

Table 5.
Adequacy of New Jersey Supreme Court Mandates in *Abbott*

Decision	new ideas	language clarity	meaning clarity	legal authority	adequacy
<i>Abbott I</i>	5 yes, 0 no	2.00	2.20	2.20	2.20
<i>Abbott II</i>	4yes, 0 no	2.00	2.00	2.50	2.00
<i>Abbott III</i>	2 yes, 2 no	2.50	2.75	2.75	2.75
<i>Abbott IV</i>	5 yes, 4 no	2.11	2.44	2.89	2.44
<i>Abbott V</i>	17 yes, 1no	2.50	2.61	2.67	2.56
<i>Abbott VI</i>	5 yes, 3 no	2.12	2.12	2.50	2.25
<i>Abbott VII</i>	0 yes, 1 no	2.00	3.00	3.00	3.00
<i>Abbott VIIIA</i>	5 yes, 0 no	2.20	2.20	3.00	2.20
<i>Abbott VIIIB</i>	1 yes, 5 no	2.50	2.33	2.67	2.33
<i>Abbott IX</i>	4 yes, 0 no	2.00	2.00	2.00	2.00
TOTAL	48 yes, 16no	2.27	2.38	2.67	2.38

Analysis of the Statutory Language Implementing Abbott v. Burke

As discussed in Chapter IV, both statutes adopted to implement *Abbott*, the QEA under the Florio Administration and CEIFA under the Whitman Administration were declared unconstitutional as applied to the poorer urban districts in *Abbott III* and *IV*, respectively. In *Abbott IV* and *V*, the Court gave up attempting to secure statutory compliance and instead directed the Commissioner and the Department of Education to implement the *Abbott* remedies directly without legislative authorization.

Two exceptions to bypassing the Legislature are found in the required annual appropriations to fund the *Abbott* remedies and in the authorization to implement the comprehensive facilities remedy. The Educational Facilities Construction and Financing Act (EFCFA) was adopted on July 18, 2000, several months after the Court imposed deadline for beginning construction in the *Abbott* districts and is not included in this study. The statute is so particular, weighty, and problematic that a review of its adequacy to meet constitutional requirements would require an independent study in itself.

The language of annual appropriations statutes, beginning in FY 1998, simply authorizes and provides the formula to calculate and increase state aid to the *Abbott* districts “in the amount of the difference between each *Abbott* district’s per pupil regular education expenditure for . . . [whichever school year] . . . and the per pupil average regular education expenditure of districts in District Factor Groups “I” and “J” for . . . [whichever year]” (NJ Appropriations Act, 1998). Further, regular education is defined as “the sum of the general fund tax levy, Core Curriculum Standards Aid, Supplemental Core Curriculum Standards Aid, and all forms of stabilization aid” pursuant to the CEIFA

statute declared unconstitutional by the Court in *Abbott IV* (NJ Appropriations Act, 1998).

In each subsequent year the language shifted somewhat. In the FY '99 appropriations statute, the increased funding was defined as "*Abbott v. Burke* Parity Remedy Aid," and an estimated amount for budgeting purposes was calculated at a three percent increase. Beginning in FY '00, the estimated increase was calculated as the difference between actual per pupil I and J district spending in the prior two years. Beginning in FY 99, the state would adjust state aid based upon the actual "resident enrollment for the Abbott districts as of October 15," as well as "the actual per pupil average regular education expenditures of districts in District Factor Groups "I" and "J." for [the current year]."

This language represents the sum total of the statutory provisions enacted to implement the Abbott remedies, with the exception of facilities. Indeed, until the FY 03 appropriations bill, the other Abbott-specific state aids, Early Childhood Program Aid and Demonstrably Effective Program Aid, were continued at the same amounts each year, adjusted for inflation, despite the *Abbott IV* ruling that such amounts were unconstitutional because, failing to conduct a comprehensive assessment of the needs of actual students, the State could not assure their adequacy.

Although there has been no showing to date that parity funding for regular education produced by the calculations required in the appropriations statutes has been inadequate, the fragmentary and minuscule statutory language is not sufficient to analyze for adequacy and comparison purposes. This will not be the case for the "Abbott regulations."

New Jersey Administrative Code:
analyzing the language of implementation

As indicated in Chapter IV, Education Law Center challenged the Abbott regulations from the outset. Not surprising, therefore, the permanent regulations adopted by the State and effective on July 3, 2000, do not fair very well when held up to careful scrutiny. Of the 28 regulations, none were judged to be comprehensive, 10 (or 36%) were adequate, 14 (50%) were barely adequate, and 4 (14%) were inadequate. The detailed analysis and ratings for each of the regulations are contained in Appendix D. As the chart on the following page demonstrates, the overall ratings of the Abbott regulations are equally dismal, with an average adequacy rating of 1.21, just a hint above barely adequate..

Table 6.
Adequacy of the Abbott Regulations

6A:24-	topic	# lines	language clarity	meaning clarity	legal authority	overall adequacy
1.1-1.6	General Provisions	61.17	2.00	1.50	1.17	1.17
2.1-2.3	School Management Teams	58.67	2.00	1.33	2.00	1.33
3.1-3.4	Early Childhood Education	65.25	2.00	1.25	1.25	1.00
4.1-4.5	Whole School Reform	112.4	2.00	1.80	1.40	1.20
5.1-5.2	Supplemental Programs and Services	64.5	2.00	1.00	1.00	1.00
6.1	Implementation of required programs in secondary schools	77	2.00	1.00	1.00	1.00
7.1	Application for additional state aid	120	2.00	1.00	1.00	1.00
9.1-9.6	Appeals	13.5	2.00	1.67	1.67	1.67
	TOTALS	63.3	2.00	1.46	1.39	1.21

As discussed previously, the *Abbott* Court required the State to promulgate implementing regulations that would “codify” the remedial measures, meaning that the State must establish standards, definitions, and procedures to help local practitioners understand what their obligations are and, to the degree possible, how they must proceed. And as Professor Kerwin observed, “[r]ules provide the technical detail so often missing in statutes, and rulemaking brings a capacity for adaptation to changing circumstances that the letter of the law alone would lack.” Judged against these definitions of

rulemaking, Regulations 6A:24-1.4, 1.5, 3.4, and 4.1, were determined to be inadequate.⁸³

Accountability (1.5), for example, is short and straightforward.

Each district and school shall implement its approved district wide system of rewards to recognize schools, teachers, parents, and administrators who contribute to helping students attain the Core Curriculum Content Standards pursuant to a district plan approved by the Department. In districts and/or schools that do not maintain a pattern of improved student achievement, the Department shall pursue sanctions provided for in N.J.S.A. 18A:7F-6(b).

Clearly, this language contains no definitions, standards, or procedures. For example, by what standard will “each district and school” judge “who” contributes and whether that contribution deserves a reward. Moreover, by what standard is “a pattern of improved student achievement” to be judged. By contrast, in *Abbott V* the Court mandated the Commissioner to establish

“accountability programs, as may be deemed necessary or appropriate, and to coordinate them with whole-school reform,” (*id.* 517) including the “establishment of baseline data and the identification of progress benchmarks and standards that are linked to the Core Curriculum Content Standards,” using “[t]he results obtained from this accountability system . . . to make informed decisions about program improvement,” and

⁸³ Analysis of the all the Abbott regulations is contained in Appendix D, *Content Analysis of the Permanent Abbott Regulations*.

establishing “a system of rewards and sanctions for students, teachers, and entire schools” (*Abbott V*, p. 515).

The regulation contains, in professor Kerwin’s words, no “technical detail” to elaborate and implement the above Court mandate, and no process that would facilitate the “adaptation” he observes contrasts “rulemaking” from the more static “letter of the law” consequence of statutes or, in the case of *Abbott*, Court mandates. Thus, 1.5, with superficial language, conveying virtually no technical detail, meaning or added value, is patently inadequate.

Regulation 1.4, “Responsibilities of the local district” is a more complex and interesting example of regulatory inadequacy. The responsibilities covered include: a general call to “cooperate fully with the Department. . .in effectuating the directives of *Abbott V* and *VI* .;” ensuring that “each school is led by an effective principal;” the requirement that SMTs and SRIs are notified “prior to the effective date of any transfer or removal of any teacher. .;” providing funding to “the programs and services required pursuant to this chapter the highest priority,” including reallocation or seeking additional state aid “to ensure their full implementation within the prescribed time frames;” various staffing positions; a “district wide security plan;” alternative middle and high school programs; central office and school transition to school based management; directives regarding unexpended early childhood and demonstrably effective program funds; a budgeted deduction of “two percent of the district’s . . . Parity Remedy funding” to support “expenses required to manage, control, and supervise implementation of such aid;” assurance of “collaboration, articulation, and continuity “ between all programs and

grade levels; and assuring that WSR models and materials “are aligned with the Core Curriculum Content Standards.”

In general, the wording of the 15 subsections of this regulation suffers from the same deficiencies as suggested above for the shorter, accountability rule. Each is typically superficial, does not include standards, definitions, or procedures, nor technical detail.

For example, section (d) includes the following language:

The board shall accord the programs and services required pursuant to this chapter the highest priority in development of the school budget and shall make such reallocations and dedicate such resources as are necessary to ensure their full implementation within the prescribed time frames. To the extent resources are insufficient after all possible reallocation at the school and district levels, the board shall apply for additional funding pursuant to N.J.A.C. 6A:24-7.

Key words in this subsection are undefined and contain no standards or technical detail to guide local compliance, including “possible reallocation at the school and district levels,” and “full implementation.” The reference to “reallocation” is particularly interesting since the Court mandate on the subject was even more detailed than the rule: “funds may not be withdrawn from or reallocated within the whole-school budget if that will undermine or weaken either the school’s foundational education program or already existing supplemental programs” (*Abbott V*, p. 520).

Thus, adequate regulatory guidance would of necessity define the Court words “undermine or weaken” and further provide standards for determining at what point proposed reallocation might reach the Court prohibition. Moreover, even the reference to

“full implementation” requires far more detailed explanation. For example, does full implementation mean that a program, lets say preschool, has been fully implemented according to Court standards for some children, or that such a program can only be fully implemented when all eligible children are being served? Such a distinction is critical, when, as here, all children in the district are entitled to all the Abbott remedies.

Moreover, subsection (I) on district wide security flatly contradicts the Court mandate. The language of the rule is:

The board shall implement a Department approved district wide security plan that includes a Code of Student Conduct, and one security guard for each elementary school building and one for each 225 students at the secondary level as part of the board’s plan. As part of the board’s plan, it may apply for a waiver of the required number of security guards pursuant to (e) above.

By contrast, the Court, after noting that the Commissioner made this very proposal in the *Abbott V* remand proceeding, found that

[t]he security needs of the students across the Abbott districts will vary based on a range of factors peculiar to the individual schools. . . Even within one particular district, different schools may have different security needs . . . the 1:225 ratio does not address individual school needs. We are certain there will be schools that need security beyond the Commissioner’s recommendations. . . . In *Abbott IV* . . . we noted that approximately twenty security guards are required for Trenton High School. . . Under the

Commissioner's security plans, Trenton High School would receive only 13.3 security guards (Abbott V, pp. 513-14).

The Court concludes that "[w]ithout a link to actual needs, the Commissioner's proposal lacks an evidentiary basis." Thus, for the regulation to include the very "proposal" found by the Court to be inappropriate reflects at least a clear misreading, certainly bordering on outright defiance.

Further, the Court directed that "individual schools or districts have a right to request supplemental programs for security and the Commissioner must authorize the requested programs that are based on demonstrated need and secure or provide necessary funding." Clearly, the regulation on security not only fails to implement this needs-based mandate, it fails even to mention the right of schools and districts to customized security measures.

Subsection (h) directs the local district to provide "a full-time staff member responsible for the coordination of health and social services and the referral of students to such services for each secondary school within the district." Yet the Court directive is far more specific.

[T]he Commissioner [is directed] to implement his proposal to provide a community services coordinator in every middle and secondary school for the purposes of identifying student need and arranging for community-based providers to furnish essential health and social services. However, because the general need for social services for children in Abbott schools is acute and indisputable, there must be an effective and realistic opportunity for these schools to provide on-site services that go beyond

mere referral and coordination. Thus, we hold that individual schools and districts have the right, based on demonstrated need, to request and obtain the resources necessary to enable them to provide on-site social services that either are not available within the surrounding community or that cannot effectively and efficiently be provided off-site. Conversely, we hold that the Commissioner has a corresponding duty to authorize requested school-based social service programs for which there is a demonstrated need and to provide or secure necessary funding (*Abbott V*, pp. 512-13).

The regulation fails to provide technical details necessary to implement this “effective and realistic opportunity,” to identify the standards and procedures necessary to “demonstrate need,” nor to define and help local officials and practitioners understand how to determine whether off-site services are effective or efficient.

Finally, the regulation fails to codify other remedies authorized but not mandated by the Court. The Court found that “a program of instruction, recreation, and paid employment would prevent the summer learning loss that occurs when school is disrupted for an extended period;” that “after school programs address the students’ needs for additional instruction time to improve academic performance;” and that additional nutrition programs “would fill the gap left by current breakfast and lunch programs.” The Court concluded, however, that “even though such programs are sound in principle,” the “needs for these programs will vary from school to school,” and, therefore, “the Commissioner [shall] provide or secure the funding necessary to implement those programs for which Abbott schools or districts make a request and are able to demonstrate a need.” There is no mention in the subsection, indeed throughout the Abbott regulations,

of after school, summer school, or supplemental nutrition. The regulation provides no definitions, standards, or procedures to guide schools and districts in the process of demonstrating need, planning a response, and implementing the program. Nor does the regulation indicate whether, let alone under what circumstances, the State will "provide or secure the funding necessary to implement those programs." 517

Thus, when regulations fail to provide technical detail to implement statutory or judicial mandates, when certain mandates are not even addressed, and when explicit Court directives are in effect overturned by alternative regulatory language, such regulations are clearly inadequate on their face .

As mentioned above, fourteen or half of the twenty eight Abbott regulations were found to be barely adequate. These include: 1.1, Purpose and Applicability of the rules; 1.3, Assignment of DOE School Review and Improvement Teams; 2.2, Responsibilities of School Management Teams; 2.3, Training of School Management Team members; 3.2, Full-day kindergarten; 3.3, Early childhood education programs; 4.3, Submission of WSR implementation plan; 4.4 School-based budgets; 5.1, Demonstration of particularized need; 5.2, Application for supplemental programs or services; 6.1, Implementation of required programs in secondary schools; 7.1, Application for additional state aid; 9.4, Review of pleadings; and, 9.6, Commissioner review and decision. The most extensive regulation in this category is 3.3, "Early Childhood Education Programs." The regulation is filled with important and useful information⁴⁴ but suffers many of the same deficiencies identified above. First, Court mandates are in many stances simply repeated, and not

⁴⁴ The regulation actually goes beyond the Court mandate for a half-day, school-year program by requiring districts to "implement a plan to provide a full-day, full-year program by 2001-02.

developed. Such subsections as (a)3. "The board shall provide one teacher and one aid for every 15 children. Class size shall not exceed 15;" or (a)7. "The board shall ensure that family referral services are available for district operated early childhood education programs and that family workers are provided by all DHS-licensed child care programs with which the board contracts," provide no technical detail and merely repeat Court mandates. In the case of family workers, the State created the concept, with no assessment, and no detail about either the qualifications of such workers or the actual work they would do. Moreover, there are no definitions or standards for "family referral services" nor are schools or providers asked to assess the needs of children or their families for such services, despite the clear mandate throughout *Abbott V* and *VI* that virtually all programs and services should be driven by the needs of children. Indeed, as the Court has repeatedly asserted, the very mandate for program and funding adequacy cannot otherwise be assured without such assessments yielding information about what children actually need.

While the regulation provides some detail on the different responsibilities of district-run and community-based programs, many of the mandates of *Abbott VI* were ignored. There is no mention of Head Start, for example, the exclusion of which continued to dominate the litigation through *Abbott VIII*. There is no mention of funding procedures, deadlines for DOE decision-making, appeal procedures and deadlines, nor State responsibilities to "provide or secure" adequate funding. The *Abbott VI* mandate, completely ignored in the regulation states that

reasonable requests to fund supplemental programs must be handled fairly and quickly (*Abbott VI*, p.118). Only after a review of individual

applications from the districts can it be determined whether adequate funding . . . critical to the achievement of a thorough and efficient education has been provided. We urge the Commissioner to work with the districts to resolve funding issues expeditiously; when an amicable resolution is not possible, decision making must occur early enough in the school year to allow programs to be implemented by the next school year (*Abbott VI*, p.118).

Additionally, though section (c) of the regulation describes some requirements for community-based providers, including class size, teacher credentials, family workers, and district responsibility to contract with providers who are "able and willing to comply" with the requirements contained in the rule, the details of these requirements are not developed and there is no discussion of the assessment needed to determine what a specific provider needs in program upgrades, staffing changes, or additional funding to bring a licensed child care agency that operated for years under child care standards to the new Abbott preschool standards.

Finally, section (d) of the regulation contains a waiver provision that permits licensed child care centers to seek DOE approval to ignore the requirement imposed by *Abbott VI* that newly hired teachers have at least a bachelor's degree and obtain a P3 teacher certification "no later than September 2001." The waiver process includes "Explanation of circumstances that require employment of a person" without the required credentials (i.); "Demonstration of the process used" to find a person with the required credentials (ii.); "Documentation of notices and recruitment efforts" (iii.); "Identification of all appropriately certified individuals who applied" (iv.); and, "Provision of a

reason/justification," where appropriate, why a "certified applicant(s)" is not "suitable."

(v.)

Missing from the waiver discussion is any mention of the inability of licensed providers to afford public school salaries for persons with the same credentials. Because the DOE failed to consider the obvious ramifications of having schools and providers compete for the same pool of applicants, with school-based salaries, benefits, and even schedules far more employee-friendly, the primary reason inhibiting licensed providers from finding, and, keeping certified personnel was not addressed until *Abbott VIII* ordered salary comparability.⁸⁵

Section 7.1, "Application for additional state aid," is another important example of a regulation that is barely adequate. That it establishes a process for schools and districts to seek additional funding adds to its adequacy. However, it suffers deficiencies similar to those described above, and, therefore, fails the test of full adequacy.

Subsection (b) states that the application "shall include a demonstration that resources are insufficient to support all programs required by *Abbott V* or *Abbott VI*, and further reallocation would weaken the district's foundational education programs; and/or the board has determined that resources are insufficient to support Department-approved supplemental program(s) or service(s) and further reallocation would weaken the district's foundational educational program. . ." This language either repeats or paraphrases some

⁸⁵ ELC pleadings in *Abbott VIII* included information from Audrey West, former executive director of the Newark Preschool Council, New Jersey's largest Head Start agency, that she had lost four of her senior, and most able certified teachers to the public schools. Similarly, Joseph Della Fave, head of Newark's Ironbound Community Corporation and sponsor of a long term, highly regarded day care center, certified that he also lost his most able, certified teacher, fully bilingual in Portuguese and English, to the public schools. By contrast, Della Fave reports that following *Abbott VIII*, he received sufficient funding from the public schools to keep his most experienced, certified, fully bilingual teacher at a salary of \$69,000 per year, the amount the public schools would have paid.

language in *Abbott V*,⁸⁶ except that, as a threshold matter, it fails to even include the Court word “undermine,” and ignores the Court directive that reallocation not undermine or weaken “already existing supplemental programs.” Further, the regulation fails to identify all the areas indicated in *Abbott V* for which districts and schools must demonstrate a need and the DOE must “provide or secure” adequate funds.⁸⁷

There are no definitions, standards, nor procedures, i.e., no technical detail to help district and school personnel understand the meaning of “demonstration,” “insufficient,” and “weaken,” or even “foundational education programs,” particularly given the absence of any reference to “existing supplemental programs.”

Section (c) provides a novel requirement that once a district makes an application for additional state aid, it must include a list of expenditures for programs and services “in reverse priority order” that would total the same amount of additional state aid requested by the district. The section asserts that “[t]he reverse prioritization ensures elimination of potential duplicative and ineffective programs or services and demonstrates that additional state aid is needed for those programs or services to comply with *Abbott V* or *Abbott VI* or to maintain the district’s underlying foundational education program prior to the Commissioner seeking new appropriations.”

Assuming that such a procedure could indeed reveal duplication and ineffectiveness, it is not clear if the reverse priority is to include only those expenditure requests that are new, existing expenditures, or some combination of the two. Moreover, there are no definitions, standards, or procedures provided and no necessary technical

⁸⁶ See *Abbott V*, # 12 and 13, Appendix C.

⁸⁷ See *Abbott V*, # 4, 5, 6, 7, 9, 12, 13, 16, Appendix C.

detail that would instruct districts on how to develop a list of such priorities. Indeed, the entire thirty year history of school finance litigation in New Jersey, and the increasingly detailed directives of the Court, indicate that demonstrated need, not relative need, is the basis for determining funding adequacy. It is certainly possible, for example, to make the case that a classroom teacher to reach the Abbott class size limit represents a greater priority than security guards in a high school. Yet *Abbott* makes clear that both are needed, and that all such needed programs and services as directed in *Abbott V* shall be approved by the Commissioner who then shall "provide or secure" adequate funding.

Finally, the regulation fails to include several elements critical to codification of the Court directive for adequate funding. It fails to identify the many areas for which the Court has authorized schools and district to seek additional funds. It fails to provide any definition, standard, or procedure to establish what constitutes "demonstrated need" as consistently required by the Court. It fails to indicate the standards the Commissioner will use to approve applications for supplemental funding. And, it fails to include any schedule for State decision-making that would make real the promise of district or school initiated appeals to the judiciary when a dispute arises between local officials and the DOE.⁸⁸

Regulation 5.1 allegedly provides the technical detail for schools and districts to demonstrate "particularized need.." It identifies part of the process schools must undergo

⁸⁸ In addition, if a district is to identify why reallocation of existing funds is an insufficient source of financing needed and/or required programs, the State is obligated to provide guidance on how to think about possible efficiencies in the central office, including necessary operations, services, staffing patterns, and the like. Without careful examination of the central office, as well as the school, the State could well be reducing the very central office capacity needed by districts to help schools grow. On the other hand, without standards for central office staffing and programs, there could well be inefficiencies that will continue undetected.

to make their case for additional funding, and, therefore, marginally adds to the implementation process. However, the thread of deficiencies continues.

Section (a) authorizes a school management team to consider whether there exists a demonstrated particularized need for additional supplemental educational programs or services over and above existing WSR or required secondary programs which are essential to ensure educational success for a specified population of students, and without which program or service such students cannot achieve the Core Curriculum Content Standards.

This language presents serious definitional problems. The linkage of need to the model implemented in the particular school directly contradicts the Court requirement that such need must flow from an assessment of actual students, not actual WSR models.⁸⁹

Additionally, such need can reflect a host of issues, not all of which can be tied directly to achievement of the CCCS. Such supplemental programs and services may include, for example, violence prevention and school security, community-based or on-site health and social services, or technical assistance to improve capacity to collect and analyze data necessary to assess student need in the first instance. Each of these supplemental programs and services is directly or indirectly ordered in *Abbott V* and yet documentation of their role in achieving the Core Standards cannot be readily produced.

Section (b) spells out this procedure in slightly more detail, though continuing the problems identified above. The SMT will do “an assessment of student achievement in meeting CCCS and “identification” of those students “not meeting such standards.” The

⁸⁹ See Appendix C, *Abbott IV* #4, and *Abbott V* #5.

section again provides no definitions, standards or procedures to help SMTs separate out successful and unsuccessful students and those in between. The required process then must determine that “the failure of those students is caused by particularized needs which are not capable of being addressed by existing WSR or required secondary programs, simply repeating the incorrect standards listed in the first section of this regulation. Even if this approach were sound and consistent with *Abbott*, the failure to provide suggested definitions of particularized need to help practitioners and parents on SMTs grapple with ways of making the case for additional programs and funding is striking.

The final example of barely adequate guidance can be demonstrated by analysis of Regulation 2.2, “Responsibilities of School Management Teams.” We learn that the primary responsibility of school management teams is to “develop a WSR implementation plan based on needs assessment pursuant to N.J.A.C. 24:-4.3.” A careful examination of 4.3 indicates no amplification of the words “needs assessment.” So, there continues to be no definition, standard, or procedure to help SMT members learn what needs assessment is, what specific areas it covers, what procedures are needed, what expertise is implicated, and whether there are instruments available that not only help assess where students are, but the quality of curriculum, instruction, collaboration, and other school operations that contribute to improved teaching and learning. None of this is evident in this or any of the regulations, despite the Court’s consistent passion for the critical importance of needs assessment as the engine driving planning, budgeting and the assurance of program and funding adequacy.

Next, the SMT is required to assure that “curriculum, instruction, and the instructional delivery system are aligned with the Core Curriculum Content Standards.”

(2.2(b)1.) Given that on its face such work is complex, adequate regulations would provide far more detail, including standards, definitions, and procedures, including instruments, that would help guide teachers and parents on SMTs. Further the SMT is directed to "review school and district assessment results at school and grade levels" in order to "determine program and curriculum needs" and to "take appropriate action to improve and enhance student achievement." Once again, the absence of further elaboration leads to serious questions about how to translate assessment results into improvements in "program and curriculum." Is the problem inadequate materials, large class size, poor practice, lack of collegiality, insufficient professional development, teacher quality, bad labor-management relations, insufficient time on task, untreated disadvantages, or some other unidentified problem? Without guidance on translating test results into "program and curriculum needs," without guidance on linking such needs to effective improvement, and without prior expertise at such activities, there is little assurance that this or any of the required activities will amount to much more than 'make-work.'

The regulation continues with other requirements that reveal the same deficiencies. The SMT must assure that a "program of professional development to assist staff in the implementation of all aspects of WSR is being utilized at the school," (2.2(b)3.) with no definitions, standards, or procedures to assure that such work actually helps teachers improve practice. More assurances are required that the "school level educational technology plan" (2.2(b)4.) has been implemented;" that "education programs . . . are provided to address the Cross Content Workplace Readiness Standards;" (2.2(b)5.) that "a school-based system of rewards" (2.2(b)6.) has been implemented; and that additional

work groups are established “as needed” in order to “maximize participation by non-SMT members.” (2.2(b)7.) Again, no definition, standards, and procedures are provided to guide local implementation. .

In addition to the required responsibilities, 2.2(c) authorizes SMTs to undertake other responsibilities “after a majority vote of its members and upon approval of the SRI Team..” These responsibilities include approving a “school-based budget” (1.) and making “recommendations for the appointment of a building principal” and teaching staff members, including the obligation that the superintendent “shall not recommend to the board any such candidates for appointment unless the SMT recommended that candidate to the Chief School Administrator,” from a list of “not less than three (3) candidates to the Chief School Administrator, who may select one of the three candidates for recommendation to the board.” (2.)

By giving SMTs the authority to participate in budgetary and staffing decisions, the regulation helps to assure the role of the SMT in school governance. Yet, the continuing absence of sufficiently detailed standards, definitions, and procedures reduces the impact and, as was observed in the research discussed in Chapter 3, leads to confusion and unnecessary work at the school level, a condition which, given the paucity of time, undermines the capacity of school teams to provide effective leadership focused on improved teaching and learning.⁹⁰ Section (d) gives the building principal authority over budgeting and personnel decisions if the SMT chooses not to exercise the discretionary

⁹⁰In many schools, both anecdotal information and the separate studies by Ehrlichson and Walker reveal that SMTs spend considerable time working on the mechanics of budget-making, filling out forms, and trying to figure out how much various expenditures cost. Attention to such detail leads in turn to the “usual failure” of school-based management found by Fullan and Watson in their 2000 study of educational decentralization in developing and developed countries.

authority provided in section c). Here again, however, the authority is not developed and is merely stated with no definitions, standards, or procedures to guide local implementation.

Summary

Table 7 summarizes the analyses and rankings of the New Jersey legal framework governing implementation of *Abbott*.

Table 7.
Ranking the Adequacy of New Jersey's Legal Framework

#	legal mandate	language clarity	meaning clarity	legal authority	adequacy
64	Court directive	2.27	2.38	2.67	2.38
0	Statute	0	0	0	0
28	Regulation	2.00	1.67	1.67	1.67
92	Total	2.18	2.16	2.37	2.16

As demonstrated above, New Jersey's implementation of *Abbott* is pulled in two directions. Court mandates that on average are considerably stronger than average (2.38) are then undermined by the absence of any statutory authority and further by a series of regulations that on average (1.67) are below adequate to provide needed technical detail to implementing leaders and practitioners at the local level. The strength and number of the Court mandates overrides the negative influence of the regulations in producing a total adequacy rating of 2.17, or slightly better than adequate.

CHAPTER VIII

COMPARING THE LEGAL FRAMEWORK IN THE TWO STATES

Comparing the legal frameworks in Kentucky and New Jersey results in the following tables.

Table 8.
Comparing Court Directives in New Jersey and Kentucky

#	State	language clarity	meaning clarity	legal authority	adequacy
64	New Jersey	2.27	2.38	2.67	2.38
14	Kentucky	1.71	1.36	1.86	1.36

Table 9.
Comparing Statutes in New Jersey and Kentucky

#	State	language clarity	meaning clarity	legal authority	adequacy
116	Kentucky	2.00	2.10	2.02	2.01
0	New Jersey	0	0	0	0

Table 10.
Comparing Regulations in New Jersey and Kentucky

#	State	language clarity	meaning clarity	legal authority	adequacy
28	New Jersey	2.00	1.67	1.67	1.67
92	Kentucky	2.17	2.24	2.03	2.03

Table 11.
Comparing Summary of All Mandates in New Jersey and Kentucky

#	State	language clarity	meaning clarity	legal authority	adequacy
201	Kentucky	2.04	2.10	2.01	1.97
92	New Jersey	2.18	2.16	2.37	2.16

Although the two states look statistically similar when all ratings are combined, they arrive at their summary levels with very different ingredients. The comparison of the Court mandates is striking and surprising. New Jersey, with more than four times the number of mandates developed over twelve years and nine decisions, enjoys an average Court mandate rating that is 74% higher than Kentucky's. *Abbott* provides increasingly detailed mandates on the basic remedies ordered in *Abbott II*, while *Rose* orders the achievement of broad objectives, and leaves the details to the other branches. Direct substantive comparisons are difficult, therefore, though on the critical subject of "adequate funding," the differences are obvious and powerful. As discussed in Chapter VI, *Rose* mandates adequate funding with no embellishment. By contrast, as discussed in Chapter VII, *Abbott* mandates adequate funding, over and over again, and even prescribes a standard – parity funding – to begin reaching adequacy. It mandates a process – demonstration of need – that will enable schools, districts, and the State to determine what is needed and how much more it will cost. Moreover, by directing the Commissioner to provide or secure adequate funding for needed programs, as demonstrated by assessment of student and school need and the programs and services responsive to such needs, the *Abbott* Court anticipates the politics of legislative appropriations and directs that such decision-making must yield to the Constitutional command.

Comparison of statutory provisions is moot, since, as discussed in Chapter VII and earlier, in thirty years of school finance litigation New Jersey has never adopted a school funding statute that could pass constitutional muster. It is precisely this failure that necessitated increasingly complex judicial mandates that look and read far more like statutory construction than constitutional directives. The primary deficiency in KERA, however, is the failure to implement the Rose Court's directive for adequate funding. Instead, as documented in Chapter VI, KERA assumes throughout that funding decisions will be made through the normal appropriations process, with no statutory counter-balance to the primacy of legislative taxing and spending priorities.

The comparison of regulations in the two states puts the judicial mandate comparison on its head. Here, New Jersey ranks considerably below average, while Kentucky is somewhat higher than average, a difference of 23%. As discussed in Chapter VI, the predominant deficiency in the KERA regulation, as with KERA itself, is the consistent failure to codify the Court mandate for "adequate funding. Many other substantive regulations fully develop the statute and typically provide more technical detail. By contrast, what links virtually all the Abbott mandates is their failure to fully codify Court directives, a deficiency made even more onerous by the absence in New Jersey of implementing legislation.

More specific comparisons are striking. For example, as demonstrated in Chapter VII, the opportunity for schools to establish extended day or year instructional programs was authorized by the Court. Yet the regulations fail to mention, let alone codify this remedy. By contrast, Kentucky adopted a comprehensive regulation, 704 KAR 3:390 that codifies "Extended school services." Here, the comprehensive regulation includes

definitions, the major “emphases of extended school services,” six elements of the “instructional program,” scheduling guidelines, procedures and standards for selecting students, funding standards and procedures, and program evaluation.

Dropout prevention is another typical example. The Abbott regulations at 24:1.4(h) requires the board of education to “provide a full-time dropout prevention officer . . . for each secondary school within the district.” In addition, the regulation states that “in addition to such other duties as . . . may be assigned” the officer “shall . . . provide assistance to the SMT as needed.” There is no other regulatory reference to this Court-mandated program. By contrast, Kentucky provides 704 KAR 7:070, “Guidelines for dropout prevention programs,” that includes “criteria” for identifying students “at high risk of dropping out;” standards and procedures for procuring funding for such programs; a listing of potential services such a program will provide; required program evaluation; and procedures and sources for the Commissioner to locate funds to supplement appropriations.

Throughout the comparison of Kentucky and New Jersey regulations two generic differences continue to appear. First, New Jersey detail, such as it exists, occurs only in regulations that seek to implement Court-directives that are themselves more elaborately developed. Thus, the regulations on whole school reform and early childhood education, though deficient, are more detailed by virtue of the language repeated from *Abbott* itself. By contrast, Kentucky regulations show no such pattern. Indeed, as demonstrated above, they typically provide standards, definitions, and procedures, in short, the technical detail expected of regulations that are competently developed and designed to help assure effective implementation at the local level.

Finally, an explicit word about school finance, the critical issue that launched both *Abbott* and *Rose*. The following charts document the growth in state and local funding in the two states, in Kentucky between 1990-91 and 2000-01, and in New Jersey, between 1991-92 and 2001-02.

Table 12.

Growth in Kentucky Education Spending 1990-01 through 2000-01⁹¹

	Total State Spending	State Aid to schools and districts	Local Revenues for schools & districts	Total Education Spending
1990-01	\$4,287,165,300	\$1,544,363,800	\$585,287,000	\$2,129,650,800
2000-01	\$7,032,746,900	\$2,208,786,300	\$1,360,638,000	\$3,569,424,300
% change	64%	43%	133%	68%

Table 13.

Growth in New Jersey Education Spending 1991-02 through 2001-02

	Total State Spending	State Aid to Abbott schools and districts	Local Revenues for Abbotts	Total Abbott Education Spending
1991-92	\$14,651,000,000	\$1,356,000,000	553,000,000	\$1,909,000,000
2001-02	\$22,920,000,000	\$3,168,000,000	555,000,000	\$3,723,000,000
% change	56%	134%	0	95%

⁹¹ Kentucky Data for this chart was obtained on November 27, 2002, via email from the Kentucky Research Commission of the Kentucky Legislature. New Jersey data was provided by Dr. Ernest Reock, Director Emeritus, Bureau of Government Affairs, Rutgers University, based on his collection of annual state aid sheets for each district. Additional data was supplied by the NJ Office of Legislative Services, via email, on 11/22/2002.

The school finance data demonstrates clearly that Kentucky, with no judicial, statutory, or regulatory language to offset the normal political process in state appropriations decision-making, shows only a modest growth in state aid to the public schools. Indeed, such growth is even smaller than the growth in total state spending during the decade. Meanwhile property tax-based local revenues, potentially the most dis-equalizing source of public school funding, grew by 133%, with a net growth in education spending of 68%.

By contrast, New Jersey shows a substantial 134% increase in state aid to the Abbott districts, far more than the growth in state expenditures generally. Since property taxes were essentially frozen as a result of the Abbott municipal overburden mandate, the net growth in Abbott district spending was 95%.

CHAPTER IX

CONCLUSIONS AND RECOMMENDATIONS FOR FURTHER STUDY

The results of this study were largely predictable. New Jersey's continuing litigation, the growing precision of Court mandates, and the critical findings of the limited research on state implementation of *Abbott* raise facial questions about the adequacy of statutory and regulatory compliance and guidance to schools and districts. The absence of substantive legislation in New Jersey that fully complies with the Abbott Court mandates further undermines the capacity of the State to provide useful guidance to local educators. By contrast, in Kentucky, the lack of continuing litigation, the enactment of KERA, and the large body of research on Kentucky, mostly complementary, all suggest more adequate state compliance and guidance to schools and districts. These conclusions were confirmed by this study. Given that the specific findings regarding each judicial, legislative, and executive mandate reflect only the experience and perception of the author, however, it is strongly recommended that persons interested in this topic, perhaps more removed from the day to day struggles involved, review and improve the methodology and study and comment on the adequacy of the mandates in these states. Further, a more exhaustive review and comparison of the adequacy of legal mandates in states other than Kentucky and New Jersey would add immeasurably to our knowledge about these matters and provide the opportunity to establish standards of excellence to guide both future implementation and future study.

Less adequate administrative regulations, the state legal framework most immediately impacting on local education authorities, can certainly be seen as correlating with less adequate implementation, if not directly causing implementation problems. Field research that examined the linkage between regulatory guidance and the success or failure of local implementation would add enormously to this field of inquiry. Such investigations need not be limited to the two states in this study. Given the constitutional role of states in providing education to begin with, and the increasingly important role state government is playing in pressing for local improvements, serious examination and comparison of the quality of regulatory guidance and local implementation would increase awareness among policymakers and practitioners alike of the importance of clear, meaningful, and comprehensive state guidance in the form of fully adequate regulations.

The regulations implementing KERA included the role of the KDE. By contrast, the Abbott regulations contain virtually no reference to the responsibilities of the DOE. The evidence of more powerful implementation in Kentucky may be underscored by the prescribed role of the KDE. It would be helpful to identify the relative importance of written regulations and on-site assistance to effective implementation. There does not appear to be any research yet that examined both factors and discovered through observation and interviews the relative importance of the written word and technical help in effective local implementation. Here again, Kentucky may well be the role model. But such inquiry should clearly look at the experience in other states as well.

While the Abbott Court in New Jersey cannot do more than order substantive reform, i.e. it cannot preside over substantive program implementation, it can and did mandate and assure adequate funding. By contrast, the Rose Court in Kentucky merely

ordered adequate funding, and, unlike the Abbott Court, expressly permitted local funding to support programs over and above that which were necessary to achieve universal common schools throughout the state. The differences in funding-- far more state than local in New Jersey, the reverse in Kentucky, and a 40% greater New Jersey increase in total education expenditures over the decade -- suggest the need for independent investigation into the adequacy of the respective funding increases. Indeed, there is precious little research available that documents the long-term consequences of Court-ordered school finance reform, both in terms of comparative increases, and the relative adequacy of such additional education spending. Further, the differences in the way states define, provide and assure funding and program adequacy would yield important information for policy-makers.

In Kentucky, specifically, research on the consequences of growing reliance on local property taxes and the adequacy of state funding may well help to identify weaknesses in the implementation of KERA that, though designed well, may not have been adequately supported.

REFERENCES

Achieve, Inc.(2000,November). MEASURING UP: A Standards and Assessment Benchmarking Report for New Jersey, Washington, D.C.

Adams, J. E. Jr. (2000). Resource Equity and Educational Adequacy. *All children can learn, Lessons from the Kentucky reform experience*, Pankratz & Petrosko, ed., San Francisco: Josey-Bass.

American Heritage Dictionary, Fourth Edition, online, 2000, <http://www.bartleby.com/61/>

ASBO, (May 2001). *News notes: Education finance issues focus of new national center*. (May 2001) Association of School Business Officials International, Reston, VA.

Augenblick, J. (2001, July). The Status of School Finance Today. *ECS Policy Paper*. Education Commission of the States. Denver, CO.

Augenblick J.& Silverstein, J.(Summer 2000). The Status of School Finance in 2000. *The State Education Standard*. National Association of State Boards of Education. Alexandria, VA.

Barnett, S. (2001). *Fragile lives, shattered dreams*, New Brunswick, NJ: Center for Early Education and Research (CEER), Rutgers University.

Black, J. (1997) *Rules and regulators*. New York: Oxford University Press.

Center for Educational Policy (2001). *An analysis of state capacity to implement the Massachusetts Education Reform Act of 1993*, School of Education, University of Massachusetts, Amherst.

Clements, S. K. (1999). Conclusions and Policy Options. *Kentucky's teachers: charting a course for KERA's second decade*. Frankfort, KY: Kentucky Long-Term Policy Research Center.

Clements, S. K. (2000). *Professional development*. KIER 2000 Review of Research. Georgetown, KY: Kentucky Institute for Education Research.

Clements, S. K. (2000). Linking Curriculum and Instruction to Performance. *All children can learn, lessons from the Kentucky reform experience*. Pankratz & Petrosko, (Eds.). San Francisco, CA: Josey-Bass.

Coe, P.& Rodgers, L.A.(2000). *The Kentucky leadership academy: Training school leaders to be instructional leaders*. Lexington, KY: Partnership for Kentucky Schools.

Cohen, M. (2001). *Transforming the American high school, New directions for state and local policy*. Washington, D.C: Aspen Institute.

Cohen, D.K. & Hill, H.C. (1998, January). *State policy and classroom performance: Mathematics reform in California*. CPRE Policy Briefs. Philadelphia: University of Pennsylvania.

Consortium for Policy Research in Education. (1989, November). *State education reform in the 1980s*. CPRE Policy Briefs, New Brunswick, NJ.

Consortium for Policy Research in Education. (1992, June). *Ten lessons about regulation and schooling*. CPRE Policy Briefs, New Brunswick, NJ.

Consortium for Policy Research in Education. (1993, February). *School finance reform: The role of the courts*. CPRE Policy Briefs, New Brunswick, NJ: Author

Consortium for Policy Research in Education. (1998, May). *States and districts and comprehensive school reform*. Philadelphia, PA.

Cross City Campaign for Urban School Reform. (1995). *Renewing central office*. Chicago.

Cunningham, G.K. (1998). *Standards-based education reform: The Kentucky experience*. Paper presented at the 1998 AERA Conference. University of Louisville, KY.

David, J.L. (2000). Educators and parents as partners in school governance. In Pankratz & Petrosko, (Eds.) *All children can learn, Lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Education Law Center. (1996). *Wiping out disadvantages-The programs and services needed to supplement regular education for poor school children*. Newark, NJ.

Education Law Center. (1997). *Establishing family and community schools in Abbott districts*. Newark, NJ.

Education Law Center. (1997). *Transforming teaching and learning in special needs districts*. Newark, NJ.

Education Law Center. (2000). *Plaintiffs' brief, challenge to the Abbott regulations*. Newark, NJ.

Education Law Center. (2000). *Supplemental brief, Challenge to the Abbott regulations*, Newark, NJ.

Education Law Center. (2001). *Plaintiffs' brief, Challenge to 2001-02 statewide preschool implementation*, Newark, NJ.

Eisner M.A., Worsham, J., & Ringquist, E. J. (2002). *Contemporary regulatory policy*. Boulder, CO: Lynne Rienner Publisher, Inc.

Encarta World English Dictionary (North American edition). (2002).online.
<http://encarta.msn.com/encnet/features/Dictionary/DictionaryHome.aspx>

Erlichson, B., Goertz, M., & Turnbull, B. (1999). *Implementing whole school reform in New Jersey: Year one*. New Brunswick, NJ: Rutgers, The State University of New Jersey, Department of Public Policy and Center for Government Studies.

Erlichson, B. & Goertz, M. (2001). *Implementing whole school reform in New Jersey: Year two*. New Brunswick, NJ: Rutgers, The State University of New Jersey, Department of Public Policy and Center for Government Studies.

Firestone, W., Goertz, M., & Natriello, G. (1997). *From cashbox to classroom: The struggle for fiscal reform and educational change in New Jersey*. New York City: Teachers' College Press.

Fisher, H. C. (October 29, 2001). A court bent on school reforms. Newark, N.J. *New Jersey Lawyer*.

Foster, J. D. (1999). *Redesigning public education*. Lexington, KY: Diversified Services, Inc.

Foster, J. D. (2000). A New Vision for Public Schooling. In Pankratz & Petrosko, (Eds.) *All children can learn, Lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Fuhrman, S. H. (September 1994). Challenges in Systemic Education Reform. *CPRE Policy Briefs*. New Brunswick, NJ: Rutgers University.

Fuhrman, S. & Elmore, R. (1995, March). Ruling out rules: The evolution of deregulation in state education policy. CPRE Research Report Series #33. New Brunswick, NJ: Rutgers University.

Fuhrman, S., Huddle, E. & Armstrong, J. (April 1986). Improving Schools: The state role. *Phi Delta Kappan*. Vol. 67 (8), 594-596.

Fullan, M. (1992). Getting reform right: What works and what doesn't. *Phi Delta Kappan*, Vol. 73(10), 744-754.

Fullan, M., (April, 2000). The three stories of education reform. Bloomington, IN: *Phi Delta Kappan*. Vol. 81(8), 581-584.

Fullan, M. & Watson, N. (2000). School-based management: Reconceptualizing to improve learning outcomes. *School Effectiveness and School Improvement*, Vol.11 (4), Toronto

Gnadinger, C., McIntyre, E., Chitwood-Smith, T. & Kyle, D. (2000). *Primary Program*. KIER 2000 Review of Research. Georgetown, KY: Kentucky Institute for Education Research.

Goertz, M. & Duffy, M. (2001). *Assessment and accountability systems in the 50 states: 1999-2000*. Philadelphia: Consortium for Policy Research in Education (CPRE).

Guskey, T. R., (Ed.). (1994). *High stakes performance assessment*. Thousand Oaks, CA: The Corwin Press.

Hemmeter, M.L. (2000). *Preschool Program*. KIER 2000 Review of Research. Georgetown, KY: Kentucky Institute for Education Research.

Heuendorf, K. A. (2002). *Content analysis guidebook*. Thousand Oaks, CA: Sage Publications.

Hoachlander, G., Alt, M., & Beltranena, R. (2001). *Leading school improvement: What research says*. Atlanta: Southern Regional Education Board.

Hodson, R. (1999). *Analyzing documentary accounts*. Thousand Oaks, CA: Sage Publications.

Holland, H. (November 1995). In *Kentucky new money, new teaching techniques, new assessments lift 'worst state in the country.'* (November 1995) *Catalyst*. Chicago

Holland, H. (2000). A legislator's viewpoint—A once-in-a-lifetime opportunity. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Holland, H. (2000). A student's viewpoint—You've got to learn to work with people above you and below you. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Holland, H. (2000). A teacher's viewpoint—We don't have any answers. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Holland, H. (2000). A school leader's viewpoint—I didn't realize how far-reaching this one would be. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Holland, H. (2000). A parent's viewpoint—It's going to take a whole lot of people to do it. (2000). In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Huberman, M., & Miles, M. (1984). *Innovation up close: How school improvement works*. New York: Plenum.

Kannapel, P. & Coe, P. (2000). Improving schools and school leaders. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

KDE. (October 2000). *Kentucky Preschool Program 1999-2000 Performance Report*. Lexington, KY.

KDE. (December 1998). *Kentucky School and District Accountability Results, Cycle 3 1994-95 to 1997-98*. Lexington, KY.

KDE. (June 1995). *Kentucky Education Reform, The First Five Years 1990-1995*. Lexington, KY.

Kentucky Administrative Regulations (KAR), Title 701, Chapter 5, *Office of Chief State School Officer* (035, 055, 070, 080, 090, 100, 110, 120), <http://www.lrc.state.ky.us/home.htm>

Kentucky Administrative Regulations (KAR), Title 702, Chapter 1, *General Administration* (001,035, 080, 100, 115, 130, 140, 150), Chapter 3, *School Administration and Finance* (020, 030, 045, 050, 060, 070, 075, 080, 090, 100, 110, 120, 130, 135, 150, 170, 190, 220, 246, 250, 260, 270, 275, 285, 300), Chapter 4, *Facilities Management* (005, 050, 090, 100, 160, 170), Chapter 5, *Pupil Transportation* (0110, 020, 030, 040, 050, 060, 070, 080, 090, 100, 110, 120, 130, 150), Chapter 6, *Food Services Program* (010, 020, 030, 040, 045, 050, 060, 075, 090, 100), Chapter 7, *School Terms, Attendance and Operation* (065, 125), <http://www.lrc.state.ky.us/home.htm>

Kentucky Administrative Regulations (KAR), Title 703, Chapter 3, *Assistance and Intervention Services* (205), Chapter 4, *Learning Results Services* (030, 040, 060), Chapter 5, *Assessment and Accountability* (010, 020, 040, 050, 060, 070, 070E, 080, 120, 130, 140), <http://www.lrc.state.ky.us/home.htm>

Kentucky Administrative Regulations (KAR), Title 704, Chapter 3, *Office of Instruction* (035, 285, 292, 303, 305, 307, 325, 335, 340, 345, 365, 390, 401, 406, 410, 420, 440, 455, 470, 480, 490, 500), Chapter 4, *Health and Physical Education Programs* (010, 020), Chapter 5, *Kindergartens and Nursery Schools* (060), Chapter 7, *Office of Learning Support Services* (050, 060, 070, 080, 090, 100, 120, 130), Chapter 10, *Elementary and Secondary Act* (022), Chapter 15, *Teacher Education* (100), <http://www.lrc.state.ky.us/home.htm>

Kentucky Administrative Regulations (KAR), Title 705, Chapter 2, *Fiscal Management* (140), Chapter 3, *Facilities and Equipment* (141), chapter 4, *Instructional Programs* (041, 081, 231, 240), <http://www.lrc.state.ky.us/home.htm>

Kentucky Administrative Regulations (KAR), Title 707, Chapter 1, *Exceptional and Handicapped Programs* (270, 280, 290, 300, 310, 320, 330, 340, 350, 360, 370, 380), <http://www.lrc.state.ky.us/home.htm>

Kentucky Legislature Home Page, <http://www.lrc.state.ky.us/home.htm>, Kentucky Revised Statutes, Title XIII, Chapters 156-161.

Kentucky Legislature *House Bill No. 940*, General Assembly, Commonwealth of Kentucky, Regular Session 1990, Thursday, March 24, 1990, *Kentucky Education Reform Act*.

Kerwin, Cornelius M. (1999). *Rulemaking: how government agencies write law and make policy*. Washington, DC: Congressional Quarterly Press.

Kirchhoff, S. (1998). Congress looks to Kentucky for lessons on education. *Congressional Quarterly Weekly Report*, 56 (9). Washington, DC.

Kirp, D. L. & Jensen, D. N., (Eds.). (1986). *School days, Rule days*. Philadelphia, PA: The Falmer Press, Taylor & Francis.

Krippendorff, K. (1980). *Content analysis, An introduction to its methodology*. Newbury Park, CA: Sage Publications.

Kroll, J., Sexton, R. F., Raimondo, B.N., Corbett, H.D., & Wilson, B. (Nov. 2001). *Setting the stage for success: Bringing parents into education reform as advocates for high student achievement*. A report on the Commonwealth Institute for Parent Leadership. Lexington, KY.

Ladd, H.F., (Ed.). (1996) *Holding schools accountable*. Washington, DC: The Brookings Institution.

Ladd, H.F. & Hansen, J. (1999). *Making money matter, Financing America's schools*. National Research Council. Washington, DC: National Academy Press.

Ladd, H.F., Chalk, R. & Hansen, J.S.. (1999). *Equity and adequacy in education finance, Issues and perspectives*. National Research Council. Washington, DC: National Academy Press.

Latham, A. & Holloway, J. (2000), *The profession of school superintendent*. Princeton, NJ: Education Testing Service.

Legislative Research Commission. (January 1997). *Kentucky Education Reform Act, A Citizens Handbook*. Frankfort, KY.

Lindle, J. C. (2000). *Curriculum reform, the education professional standards board, and the Kentucky department of education*. KIER 2000 Review of Research. Georgetown, KY: Kentucky Institute for Education Research.

Lindle, J. C. (2000). *School-based decision making*. KIER 2000 Review of Research. Georgetown, KY: Kentucky Institute for Education Research.

Long, D. (August 1999). *School finance litigation*. Education Finance Statistics Center. Washington, DC: National Center for Education Statistics.

Lusi, S. F. (1997). *The role of state departments of education of complex school reform*. New York, NY: Teachers College Press.

Lusi, S.F. & Goldberg, P.D. (2000). A new mission for the department of education. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

MacInness, G.A. (April 18, 2002). Certification in support of state's motion to suspend full Abbott implementation for one year. Trenton, NJ.

Madsen, J. (1994). *Educational reform at the State Level*. Bristol, PA: The Falmer Press, Taylor & Francis Inc.

Martineau, R. J. (1991). *Drafting legislation and rules in plain English*. West Publishing Company

Marzano, R.J. & Kendall, J.S. (1996). *Designing standards-based districts, schools, and classrooms*. Alexandria, VA: Association for Supervision and Curriculum Development.

Massell, D. (July 1998). *State strategies for building local capacity: Addressing the needs for standards-based reform*. CPRE Policy Briefs, Philadelphia, PA: University of Pennsylvania.

Massell, D. (1998). *State strategies for building capacity in education: Progress and continuing challenges*. CPRE Research Report Series, RR-41. Philadelphia, PA: University of Pennsylvania.

Massell, D. (September, 2000). *The district role in building capacity: Four strategies*. Philadelphia, PA: Consortium for Policy Research in Education.

Massell, D., Kirst, M. & Hoppe, M. (March 1997). Persistence and change: Standards-based reform in nine states. Philadelphia, PA: CPRE Research Report Series.

McDermott, K.A., Berger, J.B., Bowles, S., Brooks, C.C., Churchill, A.M., & Effrat, A. (July 2001). *An analysis of state capacity to implement the Massachusetts*

education reform act of 1993. University of Massachusetts, Amherst: Center for Education Policy.

McDiarmid, G.W. & Corcoran, T. (2000). Promoting the professional development of teachers. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

McLaughlin, M.W., Talbert, J.E., Gilbert, S., Hightower, A.M., Husbands, J.L., Marsh, J.A., & Young, V.M. (April, 2002). *Districts as change agents: Levers for system-wide instructional improvement*. Presentation at the Annual Meeting of the AERA. New Orleans, LA.

Merriam-Webster Online Dictionary, 2002,
<http://www.m-w.com/cgi-bin/dictionary>

Mills, C. W. (2000). *The sociological imagination* (1959, 2000). New York, NY: Oxford University Press.

Minorini, P.A. & Sugarman, S.D. (1999). *School finance litigation in the name of educational equity: Its evolution, impact and future*. Equity and Adequacy Issues in Education Finance: Issues and Perspectives. In H. Ladd, R. Chalk, & J. Hansen, (Eds.). Washington, D.C. National Academy Press

Mitchell, S. (1996). *Tidal waves of school reform*. Westport, CT: Praeger Publishing.

Moore, T. (2000). *High school restructuring*. KIER 2000 Review of Research. Georgetown, KY: Kentucky Institute for Education Research.

Muirhead, M. (2000). *Study of whole school reform implementation in New Jersey Abbott districts*. Region III Comprehensive Center. Washington, DC: George Washington University, Center for Equity and Excellence in Education.

Murray, S.N., Evans, W.N. & Schwab, R.M. (September 1998). Education-finance reform and the distribution of education resources. *American Economic Review*, 1998, vol. 88, issue 4, pages 789-812. Nashville

Neal, T. (1996). *Lawmaking and the legislative process*. National Conference of State Legislatures. Phoenix, AZ: Oryx Press.

New Jersey Administrative Code. (2000, July 3). Chapter 24, *Urban education reform in the Abbott districts*. New Jersey State Board of Education. Trenton, N.J.

New Jersey Department of Education. (1997). *A study of supplemental programs and recommendations for the Abbott districts*. (Corrected Version), Trenton, NJ.

New Jersey Lawyer Magazine. (1999, December). Vol. 8(52).

New Jersey Governor James McGreevey (2002, Feb. 19) *Executive Order #6*, establishing the Abbott Implementation and Compliance Coordinating Council,, Trenton, NJ.

NJSA 52:14B-4.1a. Director, determination of compliance with rules, standard of clarity; application. The Administrative Procedures Act. NJ Legislature. Trenton, NJ.

NY Times Editorial. (2002, February 9). *A Truce in New Jersey's School War*.

Odden, A. (1991). *Education policy implementation*. Albany, NY: The State University of New York Press.

Odden, A., Busch, C. & Hertert, L. (Winter 1994). School financing inequities among the states: The problem from a national perspective. *Journal of Education Finance*. Vol. 19(3), 231-255

Odden, A. & Anderson, B.(April 1986). State initiatives can foster school improvement. (April 1986) *Phi Delta Kappan*. Vol. 67 (8), 578-581.

Odey, J., Goertz, M.E. & Fioden, R.E.. (1995). Building capacity for education reform. *CPRE Policy Briefs*. New Brunswick, NJ: Rutgers University.

Pankratz, R. S. (2000). The legal and legislative battles. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Pankratz, R.S. & Banker, B.J.. (2000). Setting standards for teachers and teacher education. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Pankratz, R.S. & Petrosko, J.M.. (2000). Insights from a decade of school reform. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Paris, M. (1998). Legal mobilization and social reform: *A comparative study of school finance litigation in New Jersey and Kentucky*. Dissertation, Brandeis University, MA.

Paris, M. (In press). *Legal mobilization and the politics of reform: Lessons from school finance litigation in Kentucky 1984-1995*. American Bar Foundation.

Petrosko, J.M., Lindle, & Pankratz, R.S..(2000). *Executive Summary*. KIER 2000 Review of Research. Kentucky Institute for Education Research, Georgetown, KY.

Petrosko, J. M. *Assessment and accountability*. KIER 2000 Review of Research. Georgetown, KY: Kentucky Institute for Education Research.

Poggio, J. P. (2000). Statewide performance assessment and school accountability. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Pugh, D. J., Korbakes, C. A., Alfini, J. J. & Grau, C. W. (1984). *Judicial rulemaking*. Chicago, IL: American Judicature Society.

Putman, W. H. *Legal Analysis and Writing*, 2nd edition. (2003). Clifton Park, NY: Delmar Publishing.

Raths, J. (2000). Challenges in implementing Kentucky's primary school program. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Region III Comprehensive Technical Assistance Center. (2001). *A study of WSR implementation in New Jersey's Abbott districts*. George Washington University.

Resnick, G. (2001, June). *The evaluation of early childhood education programming in the 30 Abbott school districts: First-year report on program implementation and descriptions of children and families*. Rockville, MD: Westat.

Rodriguez V San Antonio Isd.. The Handbook of Texas Online. <http://www.tsha.utexas.edu/handbook/online/articles/view/RR/jrrht.html>. Dec 27, 2001.

Sexton, R. E. (2000). Engaging parents and citizens in school reform. In Pankratz & Petrosko, (Eds.), *All children can learn, lessons from the Kentucky reform experience*. San Francisco: Josey-Bass.

Slavin, R. (1995). *Sand, bricks and seeds: School change strategies and readiness for reform*. Baltimore, MD: Center for the Research on the Education of Students Placed at Risk, Johns Hopkins University.

Spillane, J. & Thompson, C. (1998). *Looking at local districts' capacity for ambitious reform*. Philadelphia, PA: Consortium for Policy Research in Education.

Steffy, B. E. (1993). *The Kentucky education reform*. Lancaster, PA: Technomic Publishing Company, Inc.

Tractenberg, P. (2002). *Developing a plan for establishing local control in the state-operated school districts*, Vol. 1 & 2. Rutgers University, Newark, NJ: Institute on Education Law and Policy.

Tucker, M. & Coddling, J. (1998). *Standards for our schools*. San Francisco: Josey-Bass.

Walker, E. M. (2000, December). *Decentralization and participatory decision-making: Implementing school-based management in the Abbott districts*. Research Brief, Seton Hall University, South Orange, NJ: Center for Urban Leadership, Renewal and Research.

Weber, R.P. (1990). *Basic content analysis*, (2nd Ed.). Newbury Park, CA: Sage Publications.

Webster's Unabridged Dictionary of the English Language (2001). Random House. New York

West, W. F. (1985). *Administrative rulemaking*. Westport, CT: Greenwood Press.

Whitford, B. L. & Jones, K. (2000). *Accountability, assessment, and teacher commitment*. Albany, NY: State University of New York Press.

Williams, W. & Elmore, R. F., (Eds.). *Social program implementation*. New York, NY: Academic Press.

Wilson & Taylor. (2000). *Family resource and youth service centers*. KIER 2000 Review of Research. Georgetown, KY Kentucky Institute for Education Research.

Wise, A. (1968). *Rich schools, poor schools: The promise of equal educational opportunity*. Chicago. University of Chicago Press.

World Bank. (1998). *Assessing aid. What works, what doesn't, and why*. New York: Oxford University Press.

List of Cases

Abbott v. Burke, 100 N.J. 269. *Abbott I.* (1985). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, Initial Decision, (1988). Steven Lefelt, A.J. Trenton, N.J. NJ Office of Administrative Law.

Abbott v. Burke, 119 N.J. 287. *Abbott II.* (1990). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, 136 N.J. 444, 643 A.2d 575. *Abbott III* (1994). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, 149 N.J. 145. *Abbott IV.* (1997). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, 153 N.J. 480. *Abbott V.* (1998). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, 163 N.J. 95. *Abbott VI.* (2000). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, 164 N.J. 84, 751 A.2d 1032. *Abbott VII.* (2000). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, 170 N.J. 537. *Abbott VIIIA.* (2001) & *Abbott VIIIB* (2002). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, 172 N.J. 294. *Abbott IX.* (2002). Trenton, N.J. New Jersey Supreme Court.

Abbott v. Burke, M-1131 September Term 2000, (Oct. 22, 2001), Preschool Scheduling Order, New Jersey Supreme Court, Trenton.

Abbott v. Burke, M-670 September Term 2001, (Feb. 11, 2002), Preschool Scheduling Order Modification, New Jersey Supreme Court, Trenton.

Abbott v. Burke, M-504/505 September Term 2001, (December 21, 2001), Preschool Scheduling Order Modification, New Jersey Supreme Court, Trenton.

Bacon et al v. NJDOE. (2002) Initial Decision. Solomon A. Metzger, A.J. Trenton, N.J. New Jersey Office of Administrative Law.

In RE. Abbott Global Issues. (2001). Initial Decision. Jeff Masin, A.J., Newark, N.J. New Jersey Office of Administrative Law.

In RE. The Matter of the 1999-2000 Abbott v. Burke Implementing Regulations A-1420-99T3 (Slip Opinion). Trenton, N.J. New Jersey Superior Court, Appellate Division. .

In RE. The Matter of the 1999-2000 Abbott v. Burke Implementing Regulations. Order to Stay the Filing of the Petition for Certification for six months (March 14, 2002), NJ Supreme Court, Trenton.

Robinson v. Cahill, 118 N.J. super. 223. (1972). Theodore Botter. Jersey City, N.J. Superior Court of New Jersey.

Robinson v. Cahill, 69 N.J. 449 *Robinson V.* (1976). Trenton, N.J. New Jersey Supreme Court.

Rose v. Council, 790 S. W .2d 186(1989). Lexington, KY. Supreme Court of Kentucky.

APPENDIX A
KERA Content Analysis by Section

#	topic	authoriz implmnt rules	status	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
PART I CURRICULUM									
1	title	n	new	1	2	2	2	2	
2	restates student capacities	n	new	14	2	2	1	1	fails to add to Court language, no further guidance to the field
3	establishes student goals, school goals, deadlines for measurable indicators and curriculum frameworks	n	new	39	3	3	3	3	clearly states expanded responsibilities and operations of Council on School Performance Standards and role of State Board
4	create and implement statewide assessment program, with standards	y	new	29	3	3	3	3	details to State Board for implementation
5	establishes system of rewarding successful schools, and assisting unsuccessful schools, with standards and procedures	y	new	99	3	3	3	3	details to State Board for implementation
6	establishes purposes, standards and procedures for distinguished educator program	y	new	45	3	3	3	3	details to State Board for implementation
7	standards and procedures for school improvement fund	y	amnd	41	3	3	1	2	details to State Board but no assurance of funding adequacy
8	definitions	n	amnd	26	2	2	2	2	
9	amends State Advisory Committee for Educational Improvement	n	amnd	19	2	2	2	2	
10	requires standards to determine school/district deficiency and provides for state appointed school board	y	amnd	38	3	3	3	3	details to State Board for implementation
11	requires assessment, planning, implementation in deficient schools/districts	n	amnd	34	3	3	3	3	details for local implementation
12	professional development	n	amnd	36	3	3	3	3	details to State Board, DOE, local districts for implementation

#	topic	authoriz implmnt rules	status	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
13	prof dev planning grant	n	new	15	3	2	1	1	no assurance of funding adequacy
14	school based decision-making, funding	y	new	116	3	3	2	2	details to local boards, schools and State Board but no assurance of funding adequacy
15	state early childhood council and education programs	y	amnd	19	2	2	2	2	
16	preschool mandate for disadvantgd 4yr olds	y	new	47	3	2	1	2	details to State Board and local districts, no assurance of funding adequacy
17	preschool mandate for disabled 3's & 4's	y	new	17	2	2	1	1	limited details to State Board and local districts,, no assurance of funding adequacy
18	family resource and youth services centers	y	new	71	3	3	1	2	details to Task Force, no assurance of funding adequacy
19	technology definitions	n	new	4	2	2	2	2	
20	affirmation of technology	n	new	3	2	2	2	2	
21	technology council & planning for entire state	y	new	45	3	3	1	2	details to Council, no assurance of funding adequacy
22	objectives & standards for technology	y	new	35	3	3	3	3	details to Council and State Board
23	help teachers purchase and learn computers	n	new	8	2	2	2	2	
24	powers of educational TV authority	n	amnd	51	1	1	2	2	overly complex language
25	common school and primary school program defined +	y	amnd	14	2	2	2	2	
26	school day & month, duty free lunch, nonteaching time	n	amnd	26	2	2	2	2	
27	instructional days, school calendar, continuing ed	y	amnd	50	2	2	2	2	

#	topic	authoriz implmnt rules	status	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
28	required programs, additional program permitted	n	amnd	9	1	2	2	2	insufficient clarity
29	compulsory enrollment, withdrawal	n	amnd	25	1	2	2	2	insufficient clarity
30	transfer enrollment	n	amnd	5	2	2	2	2	
31	authorizing rules on standards, ungraded primary program, HS graduation, technology acquisition, et.al.	y	amnd	47	2	2	2	2	
32	basal textbooks	n	amnd	16	2	2	2	2	
	Section Average	16n 16y		32.6	2.34	2.34	2.03	2.16	
PART II GOVERNANCE									
33	define chief state school officer	n	new	3	2	2	2	2	
34	temporary state board	n	amnd	24	2	2	2	2	
35	new state board	n	new	28	2	2	2	2	
36	temporary ed management selection committee	n	new	14	2	2	2	2	
37	removal of Governor appointed persons	n	amnd	8	2	2	2	2	
38	qualifications of various board members	n	amnd	14	2	2	2	2	
39	date for appointing first commissioner	n	new	2	2	2	2	2	
40	sup't of public instruction	n	amnd	8	2	2	2	2	
41	commissioner of education	n	new	13	2	2	2	2	
42	one-time re-organization and restaffing of KDE	n	new	19	2	2	2	2	
43	temporary continuance of structure and staffing and eventual commissioner's duties	n	amnd	92	2	2	2	2	

#	topic	authoriz implmnt rules	status	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
44	regional service centers	n	new	10	2	2	2	2	
45	principals assessment center	y	new	15	2	2	2	2	
46	sup training & assessment center	y	new	21	2	2	2	2	
47	state board duties	y	amnd	64	1	1	2	1	overly complex language and topics that are not similar
48	state voc ed board	y	amnd	26	2	2	2	2	
49	more on state voc ed board	y	new	41	2	2	2	2	
50	removal of local board members, administrators, or other staff	n	amnd	58	2	3	3	3	details to State Board and affected staff and local board members
51	filling vacancies caused by suspension	n	amnd	11	2	2	2	2	
52	departments, program cabinets, administrative bodies	n	amnd	167	2	2	2	2	
53	some definitions	n	amnd	16	2	2	2	2	
54	classified employees	y	amnd	17	2	2	2	2	
55	required certification	n	amnd	7	2	2	2	2	
56	establishing Ed Prof Standards Board	y	new	56	2	2	2	2	
57	certification, beginning teachers, approval of pre-service curriculum	n	amnd	105	2	2	2	2	
58	requirements for alternative certification	y	new	28	2	2	2	2	
59	standards for alternate certification programs	y	new	46	2	3	3	3	Details to Professional Standards Board, local districts, and staff
60	principal preparation and certification	y	amnd	42	2	2	2	2	
61	adjunct instructors	y	amnd	18	2	2	2	2	
62	emergency certification	y	amnd	12	1	2	2	2	overlong sentences

#	topic	authoriz implmnt rules	status	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
63	deletion or restoration of areas of certification	n	amnd	26	2	2	2	2	
64	revoke certificate, termination of employment for cause	n	amnd	43	1	2	3	2	overlong sentences, details to Prof Standards Board, local districts, staff
65	interstate agreement on qualifications of educational personnel	n	amnd	104	1	2	2	2	overly complex language
66	signing the interstate agreement	n	amnd	8	2	2	2	2	
67	student teacher experiences	y	amnd	15	2	2	2	2	
68	teachers aides and volunteers	y	amnd	34	2	2	2	2	
69	school board representation and elections	n	amnd	63	1	2	3	2	overly complex language, assures adequate representation
70	school board vacancies	n	amnd	10	2	2	2	2	
71	school board ethics, qualifications, training	n	amnd	35	2	3	3	3	details on preventing conflicts of interest
72	school board oath	n	amnd	13	2	2	2	2	
73	campaign financing	n	amnd	62	2	2	3	3	detailed standards
74	general duties of school boards	y	amnd	27	2	2	2	2	
75	appointment & removal of superintendent	n	amnd	35	3	3	3	3	details to local boards and superintendents
76	superintendent screening committee	n	new	13	2	1	1	1	no real authority
77	free school supplies and lunch	n	amnd	6	2	2	1	1	legitimizes fees to parents (who can't get a waiver) for necessary costs that must be free
78	patronage, nepotism, filling vacancies	n	amnd	70	2	3	3	3	details to local districts
79	political interference and discrimination in employment prohibited	n	amnd	14	2	3	3	3	standards to local districts

#	topic	authoriz implmnt rules	status	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
80	certain definitions	n	amnd	29	2	2	2	2	
81	districts contract w teachers	n	amnd	2	2	2	2	2	
82	continuing service	n	amnd	34	1	2	2	2	overlong sentences
83	limited contract renewal or non-renewal	n	amnd	16	2	2	2	2	
84	notice of teacher assignment & salary	n	amnd	20	2	2	2	2	
85	contract termination	n	amnd	57	2	3	3	3	
86	fines for violating law	n	amnd	15	2	2	2	2	
87	more fine & other penalties	n	amnd	12	2	2	2	2	
88	board of ed, powers, facilities procurement	n	amnd	33	1	2	2	2	overly complex language
89	role of superintendent	n	amnd	11	2	2	2	2	
90	more role of superintendent	n	amnd	12	2	2	2	2	
91	board secretary	n	amnd	12	2	2	2	2	
92	State Office of Education Accountability	n	new	54	2	3	3	3	details to guide implementation
	Section Average	45n 15y		31.1	1.90	2.10	2.15	2.10	
PART III FINANCE									
93	purpose of KERA	n	amnd	9	1	1	2	1	only assures uniformity of state supported education, permits local options
94	definitions	n	amnd	47	2	2	2	2	

#	topic	authoriz implmnt rules	status	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
95	fund to support ed excellence	n	amnd	5	2	2	1	1	no assurance of funding adequacy
96	district eligibility to share in the fund	y	amnd	25	2	2	2	2	
97	funding formula, class size	y	amnd	117	2	3	1	2	details to the State Board, no assurance of funding adequacy
98	transportation funding	y	amnd	49	1	2	2	2	overly complex language
99	classify teachers by rank, teacher compensation, more funding formula	y	amnd	51	2	3	1	2	details, no assurance of funding adequacy
100	distribution of state funds	n	amnd	20	2	2	2	2	
101	appropriations determine level of funding	n	amnd	5	2	2	1	1	no assurance of funding adequacy
102	technology-base audits	n	new	5	2	2	2	2	
103	successful schools trust fund	n	new	9	2	2	1	1	no assurance of funding adequacy
104	taxing authority	n	amnd	17	2	1	2	2	
105	tax procedures, local budgets	y	amnd	132	1	1	2	2	details, no assurance of funding adequacy
106	permitted expenditures	y	amnd	61	2	2	1	2	details, no assurance of funding adequacy
107	permissible taxes	n	amnd	37	2	2	2	2	
108	publish annual financials	n	r & r	5	2	2	2	2	
109	equalizing taxes from personal and real property	n	r & r	12	2	2	2	2	
110	additional taxes	n	r & r	16	2	2	2	2	

#	topic	authoriz implmnt rules	status	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
111	ad valorem taxes	n	amnd	6	2	2	2	2	
112	site acquisition fund	n	amnd	23	2	1	1	1	no assurance of funding adequacy
113	special facilities fund	n	amnd	51	2	1	1	1	no assurance of funding adequacy
114	emergency loans	y	amnd	39	2	1	2	1	no assurance of funding adequacy
115	cable TV services tax	n	new	10	1	1	2	1	overly complex language
116	required minority representation on all boards	n	new	4	1	1	2	1	no standards
	Section Average	17n 7y		31.46	1.79	1.75	1.67	1.63	
	TOTAL Average	78 n 38y		31.63	2.00	2.10	2.02	2.02	

APPENDIX B

**Content Analysis of Administrative Regulations
Adopted to Implement Kera**

KAR	topic	KERA section	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
701 5:055	procedures to govern a hearing to remove a board member or employee	50	38	2	2	2	2	
701 5:070	one week summer institutes for teachers with follow up weekends during the year	366	39	2	2	2	2	
701 5:080	application for approval of alternative school-based decision-making model	14	4 pp	3	3	2	3	10 line regulation but separate application fully tracks the statute and seeks comprehensive information
701 5:100	guidelines for alternative models for school-based decision-making	14	32	2	2	2	2	
701 5:110	permits use of local funding to reduce unmet technology needs to supplement "offers of assistance from the Education Technology Trust Fund	31	28	2	2	1	1	no requirement for adequate funding or standards/procedures for assuring adequacy
702 1:100	Merger of independent and county school districts	225	21	2	2	2	2	
702 1:115	annual in-service training for board members	71	62	2	2	2	2	
702 3:050	Application to exceed approved budget	234	14	2	2	1	1	No standards provided; Commissioner's discretion is absolute as is the State Board's
702 3:060	Procedures for payment of employees	229	33	2	2	2	2	
702 3:070	Teachers' salary scheduling	94	15	2	2	2	2	
702 3:190	exemptions to maximum class sizes	97	46	2	2	2	2	

KAR	topic	KERA section	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
702 3:220	Guidelines for waiver of school fees	77	50	2	2	1	1	The concept of fees is inconsistent with a free education
702 3:246	Guidelines for districts to fund local school councils	14	90	2	2	1	1	No assurance of funding adequacy. If funds to the school are inadequate "the local board shall make every reasonable effort to make up the deficit."
702 3:250	Preschool funding through grants	16 & 17	33	2	2	1	1	No standards or procedures to assure adequate funding. "If state funds appropriated are not sufficient, the funding formula shall be adjusted proportionately."
702 3:270	Support Education Excellence in Kentucky (SEEK) funding formula	31, 47, 127	214	1	2	1	1	Overly complicated language and no standards or procedures to assure funding adequacy
702 3:275	School district tax rate formulas	31, 47	213	1	2	2	2	
702 5:020	Transportation cost calculation	98	107	1	1	2	2	
702 5:030	Superintendent's responsibility in transportation	31, 37	52	2	2	2	2	
702 5:040	Board's responsibility in transportation	31, 47	53	2	2	2	2	
702 5:050	Supervision and discipline of pupils on buses	31, 47	30	2	2	1	1	No standards or procedures to determine "a serious safety or discipline problem," no due process protection for students
702 5:080	Bus driver's qualifications and responsibilities	31, 47	225	3	3	3	3	Comprehensive details on qualifications and responsibilities

KAR	topic	KERA section	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
702 5:090	Pupil's responsibilities on the bus	31, 47	26	2	2	2	2	
702 5:150	Transportation of preschool children	201	42	2	2	2	2	
702 6:010	Local responsibilities for the federal school lunch program	47, 127	20	2	2	2	2	
702 6:030	Principal's responsibilities for the federal school lunch program	47, 127	26	2	2	2	2	
702 6:050	General breakfast and lunch requirements, payment options, and non-discrimination	47, 127	20	2	2	2	2	
702 6:060	Adequate time required for breakfast and lunch	47, 127	12	2	2	2	2	
702 6:100	Appeal procedures for food vendors	35, 47	79	2	2	2	2	
702 7:065	Establishing an agent to manage high school sports	47	81	2	3	3	3	Comprehensive details and standards for the operation of the Athletic Association
702 7:125	Establishes a uniform method of calculating pupil attendance for various funding and other purposes	31, 47	279	2	3	3	3	Comprehensive details and standards to define school day, pupil attendance, and uniform reporting
703 3:205	management improvement in deficient districts	214, 408	95	2	2	2	2	Comprehensive detail on issues, but thin on improvements
703 4:030	establishes criteria for selecting distinguished educators	6	47	3	3	3	3	Comprehensive details and standards

KAR	topic	KERA section	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
703 4:040	"interim" methods for verifying successful completion of the primary school program	25	36	2	1	2	2	good listing of skills and knowledge but no standards to guide both judging and quantifying student accomplishments; could lead to great subjectivity
703 5:010	reducing teacher & student time to prepare writing portfolios	4	23	2	2	2	2	
703 5:020	formula for determining school performance classification and rewards	5	251	1	3	3	3	Comprehensive details and standards
703 5:040	accurate accountability reporting by school type	5	48	2	2	2	2	
703 5:050	procedures for schools appealing state performance judgements	5	28	2	2	3	2	DOE committee to advise commissioner on appeals includes local practitioners
703 5:060	procedures for determining successful schools	5	59	1	2	2	2	Complicated language
703 5:070 E	Inclusion of special students in the state-required assessment and accountability programs (emergency)	5	25 pp	3	3	3	3	Comprehensive details and standards
703 5:080	Educational Assessment Program	4, 5	15 pp	3	3	3	3	Comprehensive detail and standards for test administration, security, and preparation
703 5:120	standards for assisting schools and for scholastic audits	5	184	3	3	3	3	Comprehensive details and standards
703 5:130	assistance from and consequences to districts for schools in need of help	5	53	2	2	2	2	
703 5:140	standards for school and district report cards	4	179	3	3	3	3	Comprehensive details and standards

KAR	topic	KERA section	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
704 3:035	guidelines and procedures for professional development plans	27	88	2	3	2	2	Details on needs assessment, what doesn't qualify as PD, but not on those PD activities that are based in research
704 3:285	programs for the gifted and talented	182	264	3	3	2	2	extraordinarily comprehensive, but fails to assure adequate funding
704 3:305	minimum requirements for HS graduation	31	49	2	2	2	2	
704 3:307	Awarding credits w/o a transcript	31, 47	34	2	2	2	2	
704 3:325	criteria for instructional leadership improvement program	130	61	2	2	2	2	
704 3:340	Criteria and conditions for State awarding the Commonwealth diploma	31, 47	71	2	2	2	2	
704 3:345	Requirements for local district staff evaluation programs	47	127	3	3	3	3	Comprehensive details and standards
704 3:365	Chapter 1 complaint procedures	31, 47	39	2	2	2	2	
704 3:390	extended school services	27	136	3	3	2	2	Comprehensive details and standards but no assurance of adequate funding
704 3:401	principal assessment centers (repealed 1996)	45	102	3	3	2	2	Comprehensive details and standards but does not address funding
704 3:406	training and assessment centers for superintendents	46	96	3	3	2	2	Comprehensive details and standards but does not address funding

KAR	topic	KERA section	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
704 3:410	preschool for "at risk" 4 year olds	16	216	3	3	2	2	Comprehensive details and standards but provides discretion, and therefore funding, as the basis for other children's participation while overall funding adequacy is not addressed
704 3:420	preschool associate teachers	16	37	2	2	2	2\	
704 3:440	primary school program guidelines	25	59	2	2	1	1	lacks standards and procedures, note difference in length between this and both preschool & gifted
704 3:455	book and material adoption process	145	223	3	2	1	1	lacks assurance of funding adequacy, charging rental fees for HS books is not consistent with constitutional definition of efficient schools
704 3:470	Process for ranking certified employees	99	16	2	2	2	2	
704 3:500	Professional Development Leadership and Mentor Fund	99	60	2	1	1	1	no standards and no assurance of adequate funding
704 4:010	Exemption or modification of physical education based on religion or health	31	32	2	2	2	2	
704 4:020	School health services for staff and students	31	108	3	3	3	3	Comprehensive details and standards
704 5:060	Enrollment of five-year-olds	29	12	2	2	2	2	
704 7:050	Requires local discipline code consistent with State guidelines	204	30	2	2	2	2	

KAR	topic	KERA section	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
704 7:060	Notification and reporting requirements for missing children	372	60	2	2	2	2	
704 7:070	Dropout prevention programs	204	53	2	2	1	1	No assurance of funding adequacy
704 7:080	State matching funds to support the Ride to the Center for the Arts program	190	24	2	2	2	2	
704 7:090	Education for Homeless Children	35, 127	162	3	3	2	2	Comprehensive program guidelines and requirements but funding is based not on need but on competition
704 10:022	Standards for accrediting public and private schools	31, 47	36	2	2	2	2	
704 20:696	Standards for accrediting a teacher preparation program	56	12 pp	3	3	3	3	Comprehensive details and standards
704 7:130	Reporting requirements for recruitment of minority teachers	78	90	2	2	2	2	
71	TOTALS			2.17	2.24	2.03	2.03	

APPENDIX C

Content Analysis of Abbott Court Mandates

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
1 1985 1	Thus, in litigating the equal protection claim, it is anticipated that the parties will address issues that will overlap substantially with the questions raised by the claim based on the thorough and efficient clause. Both turn on proof that plaintiffs suffer educational inequities, and these inequities derive, in significant part, from the funding provisions of the 1975 Act. The claims may differ, however, in that the thorough and efficient education issues call for proofs that, after comparing the education received by children in property-poor districts to that offered in property-rich districts, it appears that the disadvantaged children will not be able to compete in, and contribute to, the society entered by the relatively advantaged children. (295-296)	Y	2	3	3	3	Standard of <i>competition</i> went beyond the Robinson Court's standard of <i>participation</i> and eventually led to funding and program parity remedy
1 1985 2	Insofar as plaintiffs allege that their school districts suffer from municipal overburden, the parties should directly address the question of how to determine when a taxing district cannot be required to increase its taxes to fund public schools. (293)	Y	2	2	2	2	
1 1985 3	We, therefore conclude that this case can and should be considered in the first instance by the appropriate administrative agency. This action is proper because the ultimate constitutional issues are especially fact-sensitive and relate primarily to areas of educational specialization. Accordingly, the matter is to be remanded and transferred to the Commissioner of Education . . . This will expedite the litigation by enabling the parties to rely on their existing pleadings, as well as on other relevant matters of record that have been developed in the course of the judicial proceedings. (301)	Y	2	2	2	2	
1 1985 4	The OAL [Office of Administrative Law] rules provide, in some cases, for an agency head to postpone transfer of a contested matter while the parties negotiate . . . In this case, given that the parties have had almost five years to reach an accommodation, there can be no justification for the Commissioner to postpone a reference to the OAL. Further, although in some cases the Commissioner may retain the matter in order to act as the presiding official . . . where, as here, the Commissioner and the State Board are defendants, it would constitute an abuse of discretion for the Commissioner not to transfer this case. (fn. 302)	Y	2	2	2	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
I 1985 5	... we are confident that all proceedings before the administrative agencies – the OAL, the Commissioner ... and the State Board ... can and will be expedited. This remand shall not be construed to postpone adjudication at the administrative level in order for the Commissioner to design, propose and implement new programs. However, the administrative hearing pursuant to this remand will not prevent the Commissioner and State Board from undertaking any remedial action ... that otherwise would be appropriate, provided administrative adjudication of the claims is not delayed. (303)	Y	2	2	2	2	
5	subtotals	5 Y	2.00	2.20	2.20	2.20	
II 1990 1	The Act must be amended, or new legislation passed, so as to assure that poorer urban districts' educational funding is substantially equal to that of property-rich districts. "Assure" means that such funding cannot depend on the budgeting and taxing decisions of local school boards. Funding must be certain, every year. ... We leave it to the Legislature, the Board, and the Commissioner to determine which districts are "poorer urban districts." It appears to us that twenty-eight of the twenty-nine school districts designated by the Commissioner as "urban districts" located in DFGs A and B should qualify. (We omit Atlantic City since its tax base for 1989-90 is far in excess of the statutory guaranteed tax base.) Perhaps more should qualify, perhaps fewer. The assured funding per pupil should be substantially equivalent to that spent in those districts providing the kind of education these students need, funding that approximates the average net current expense budget of school districts in DFGs I and J. (385-86)	Y	2	3	3	3	Court goes out of its way to amplify the meaning of its words and to provide a standard – substantial equality – that is measurable and achievable.
II 1990 2	The level of funding must also be adequate to provide for the special educational needs of these poorer urban districts and address their extreme disadvantages. (385) In addition, provision will be made, presumably similar to categorical aid, for the special educational needs of these districts in order to redress their disadvantages. Such provision will necessarily depend upon the legislative judgment, informed by the Board and Commissioner. (386)	Y	2	1	2	1	By contrast, here the Court is vague and provides full latitude to the other branches.

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	adc	Comments
II 1990 3	We find the evidence of the importance of competent management to the quality of education substantial. While the State has pointed to mismanagement as one of the causes of the failure of education in the poorer urban districts, it has not complained of the lack of statutory authority to redress it. If there is any such lack and if it impairs the constitutional obligation, that matter would be judicially cognizable. Our power to require a thorough and efficient education is not limited to a money remedy. 388	Y	2	2	3	2	
II 1990 4	The increased funding ordered here for the poorer urban districts may be more than they can efficiently absorb immediately. We are also aware of the fact that the increased funding may constitute a heavy burden for the State to adjust to. We, therefore, rule that while the new funding mechanism must be in place legislatively so as to take effect in the school year 1991-92, it need not be fully implemented immediately, but may be phase in.	Y	2	2	2	2	
4	subtotals	4 Y	2.00	2.00	2.50	2.00	
III 1994 1	The Court required "substantial equivalence of the special needs districts and the wealthier districts in expenditures per pupil for regular education. . . for school year 1997-98 along with provision for the special educational needs of students. . .(447 By "regular education" we mean what was known as the Net Current Expense Budget, now called under the QEA the Local Levy Budget. By "provision for special educational needs" we mean sums in addition to those for regular education. By a "law assuring substantial equivalence," we mean a law that will by its own terms automatically achieve substantial equivalence in per pupil regular education expenditures without depending on the discretionary actions of officials and, to the extent local fair shares or their equivalent are required, will automatically, and without procedural delay, result in the raising of funds for such shares. (448)	N	2	3	3	3	Repeats the same concepts as above, with more explanation and a deadline.

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
III 1994 2	If movement towards that end at any time suggests less than a reasonable likelihood of achieving compliance by 1997-98, we will entertain applications for relief from any party to this action. More specifically, if the relative disparity, now at 16%, is not further addressed in both school years 1995-96 and 1996-97, we will hear such applications. Furthermore, if a law assuring such substantial equivalence, approximating 100% for school year 1997-98 and providing as well for special educational needs is not adopted by September 1996, we will consider applications for relief. (447-448)	Y	3	3	3	3	Places clear deadlines, benchmarks for interim compliance, and further explanations.
III 1994 3	But recognizing the legitimate public concerns that the added funding directly benefit the children in the special needs districts, and the State's argument that funding should not be increased at a rate faster than the districts can constructively absorb and allocate, we find inescapable the conclusion that the Legislature or the Department should ensure that the uses of the additional funding available to the special needs districts are supervised and regulated. Such supervision could include the authority to withhold disbursement of funds (but not their appropriation) until the Department is satisfied that the additional funds will be spent constructively to meet the most pressing educational needs of the district's school children. 452	N	3	3	3	3	Identifies the clear and overriding State interest to assure accountability in the use of the new funding.
III 1994 4	We retain jurisdiction. (447)	Y	2	2	2	2	
4	subtotals	2 Y 2 N	2.50	2.75	2.75	2.75	
IV 1997 1	ORDERED that the State provide increased funding to the twenty-eight districts identified in the Comprehensive Educational Improvement and Financing Act as "Abbott districts" that will assure that each of those districts has the ability to spend an amount per pupil in the school year 1997-1998 that is equivalent to the average per-pupil expenditure in the DFG I & J districts for that year, based on actual, budgeted expenditures, by the commencement of the 1997-1998 school year. (id. 224)	N	2	3	3	3	Clear, unambiguous order and date with the same quantifiable remedy.

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
IV 1997 2	ORDERED that the State, through the Commissioner of Education (Commissioner), manage, control, and supervise the implementation of said additional funding to assure that it will be expended and applied effectively and efficiently to further the students' ability to achieve at the level prescribed by the Core Curriculum Content Standards, as adopted by the Department of Education and incorporated by reference into the Comprehensive Educational Improvement and Financing Act (<i>ibid.</i>)	N	2	2	3	2	
IV 1997 3	In conjunction with the increased funding herein ordered, the Commissioner shall be required forthwith to develop for each SND a program for the improvement of education at the classroom level, and shall monitor, supervise, and audit expenditures for regular education in the SNDs to assure maximum educational benefits. (<i>id.</i> 198)	Y	2	2	2	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
IV 1997 4	<p>ORDERED that the case is remanded to the Superior Court, Chancery Division, to effectuate the remedial relief ordered by the Court; and that, on remand, the Superior Court shall direct the Commissioner to:</p> <p>(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 the Comprehensive Educational Improvement and Financing Act;</p> <p>(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 the Comprehensive Educational Improvement and Financing Act;</p> <p>(3) Devise a plan for State or State-assisted implementation of the identified programs in each of the twenty-eight Abbott districts;</p> <p>(4) Review the facilities needs of the twenty-eight Abbott districts, and provide recommendations concerning how the State should address those needs. That review shall include consideration of appropriate and alternative funding, as necessary;</p> <p>(5) Provide for the participation by the parties to this action in any proceedings required to fulfill the requirements set forth by the aforementioned paragraphs (1) - (4), including opportunities to respond and to take exception to proposed specific findings, recommendations, or conclusions of the Commissioner concerning said programs and facilities needs;</p> <p>(6) Prepare and submit to the court interim progress reports, as may be required by the court, and submit a final report that shall include the Commissioner's specific findings, conclusions, and recommendations, together with the responses and exceptions of the parties, as required by the aforementioned paragraphs (1) - (5); (<i>id.</i> 224-25)</p>	N	3	3	3	3	Clearly and fully establishes an unprecedented Court-supervised process to make policy and arrive at decision in substantive areas the State has ignored. Transcends the normal deference Court's grant the other branches, based on the history of non-compliance.
IV 1997 5	<p>ORDERED that the Superior Court shall be permitted to conduct proceedings to adduce additional evidence relating to said special programs and facilities needs in the Abbott districts, as required, and that the Commissioner and all parties to this action shall be permitted to participate in such proceedings (<i>id.</i> 225)</p>	Y	2	2	3	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
IV 1997 6	ORDERED that the Superior Court shall be permitted, with the approval of the Supreme Court, to appoint a Special Master to assist the court with such proceedings and with the court's review of the report of the Commissioner, and to submit to the court, as may be required, a report including findings, conclusions, and recommendations for special programs and facilities needs in the Abbott districts (<i>ibid.</i>)	Y	2	3	3	3	Provides opportunity for the Court and its expert to set policy, bypassing normal deference to the other branches, since the State defied Abbott III.
IV 1997 7	ORDERED that the Superior Court shall render a decision, based on the court's review of the report submitted by the Commissioner, any report that may be submitted by the Special Master, and any additional evidence. The decision shall include the court's findings, conclusions, and recommendations, including its determination whether the proposals contained in the report submitted by the Commissioner satisfy the requirements of this Order, consistent with this Court's opinion in this case (<i>id.</i> 226)	Y	2	3	3	3	Provides opportunity for the Court and its expert to set policy, bypassing normal deference to the other branches, since the State defied Abbott III.
IV 1997 8	ORDERED that the Superior Court, Chancery Division, shall render its decision by December 31, 1997, and that its decision shall be then reviewed by this Court (<i>ibid.</i>)	y	2	2	3	2	
IV 1997 9	ORDERED that the Court retains jurisdiction (<i>ibid.</i>)	N	2	2	3	2	
9	subtotals	5 Y 4 N	2.11	2.44	2.89	2.44	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
V 1998 1	Directed the " State[to] require the Abbott districts to adopt some version of a proven, effective whole school design with SFA-Roots and Wings as the presumptive elementary school model."(501) Other models would be permitted if the school "could show convincingly that the alternative model it choose would be equally effective and efficient as SFA or that the model was already in place and operating effectively." (<i>id.</i> 494) The Court further directed that "implementation proceed according to the schedule proposed by the Commissioner and that SFA contain the essential elements identified by the Commissioner." (<i>ibid.</i>) Finally, the Commissioner was directed "to implement as soon as feasible a comprehensive formal evaluation program, modeled on SFA's formal evaluation precedents, to verify that SFA is being implemented successfully and is resulting in the anticipated levels of improvement in the Abbott elementary schools." (<i>ibid.</i>)	Y	2	2	2	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
V 1998 2	<p>The "essential elements" to be implemented include:</p> <p>"reading groups of fifteen," for "ninety minutes each day," in classes "that are organized according to reading level regardless of age or grade;" (<i>id.</i> 495)</p> <p>"additional daily twenty-minute one-on-one tutoring session[s]" for "first through third graders who are having trouble with reading," and "daily group tutoring session[s]" with "slightly larger groups" for "students in higher elementary grades;" (<i>ibid.</i>)</p> <p>assessment "every eight weeks to determine their [the students'] progress and their need for the extra tutoring session;" (<i>ibid.</i>)</p> <p>a "family support team that assists students with non-academic problems," including "health, counseling, nutritional, tutorial or other needed services," and includes the school nurse plus "social workers, counselors, parent liaisons, administrators, teachers and parents;" (<i>id.</i> 496)</p> <p>a "program facilitator" to "ensure that all the elements of SFA are properly implemented and coordinated;" (<i>ibid.</i>)</p> <p>"school-based management or advisory team consisting of school administrators, teachers, and parents;" (<i>ibid.</i>)</p> <p>for "every Abbott school," a "professional development program that is continuous, focuses on student achievement of the CCCS," is "based on ongoing professional renewal," and includes "at least three days of in-service" before the school year begins, one "week long training" for the "principal and program facilitator," as well as "additional training for the "tutors and for the family support team," and "weekly in-school training sessions" during "the school year;" (<i>ibid.</i>)</p> <p>"three two-day evaluations by SFA staff" for each year; (<i>ibid.</i>)</p> <p>a vote of "eighty percent of the teachers and other school staff" to "approve or buy into whole school reform;" (<i>id.</i> 497)</p> <p>class size limits of "twenty one students per class for kindergarten through third grade and twenty-three students per teacher for fourth and fifth grades;" (<i>id.</i> 498)</p> <p>"[c]lass sizes for reading would be fifteen for grades k-5;" (<i>ibid.</i>)</p> <p>"zero-based budgeting" requiring the school to "combine all of its sources of revenue or funding streams" for using "the aggregated amount as</p>	Y	3	3	3	3	Full and very clear explanation of the mandated components of WSR as proposed by the Commissioner.

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
V 1998 3	<p>"full-day kindergarten be implemented immediately," meaning by September 1998; (<i>id.</i> 503)</p> <p>for schools "unable promptly to locate or obtain adequate classroom space or instructional staff, full day kindergarten shall be provided by the commencement of the September 1999 school year;" (<i>ibid.</i>)</p>	Y	2	2	3	2	
V 1998 4	<p>the Commissioner "exercise his power . . . to require all Abbott districts to provide half-day preschool for three- and four-year-olds (<i>id.</i> 508), "as an initial reform," (<i>id.</i> 507) as "expeditiously as possible;" (<i>ibid.</i>)</p> <p>such programs must be "well-planned and high quality" (<i>id.</i> 503), and "adequately funded," (508)</p> <p>"[t]he Commissioner may authorize cooperation with or the use of existing early childhood and day-care programs in the community;" (<i>ibid.</i>)</p> <p>schools that are able "to obtain the space, supplies, teaching faculty, staff, and means of transportation . . . necessary to implement these programs for the 19998-99 school year . . . should be supplied with the necessary funding to enable them to do so;" (<i>ibid.</i>) and</p> <p>for all other schools, "[t]he Commissioner shall ensure . . . the resources and additional funds that are necessary to implement pre-school education by the commencement of the 1999-2000 school year." (<i>ibid.</i>)</p>	Y	2	2	3	2	
V 1998 5	<p>The provision of supplemental programs involving necessary services should not be detached from the actual needs of individual Abbott schools and districts. (511) The particularized needs of an individual school will inform the decision of what type of program is necessary. (<i>ibid.</i>) If a school demonstrates the need for programs beyond those recommended by the Commissioner, including programs in, or facilities for, art, music, and special education, then the Commissioner shall approve such requests and, when necessary, shall seek appropriations to ensure the funding and resources necessary for their implementation." (<i>id.</i> 518)</p>	Y	3	3	3	3	Very clearly directs the State to approve and fund plans for extended or additional programs if the need can be demonstrated locally, thus providing a mechanism for assuring adequate funding.

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
V 1998 6	[T]he Commissioner [is directed] to implement his proposal to provide a community services coordinator in every middle and secondary school for the purposes of identifying student need and arranging for community-based providers to furnish essential health and social services. However, because the general need for social services for children in Abbott schools is acute and indisputable, there must be an effective and realistic opportunity for these schools to provide on-site services that go beyond mere referral and coordination. Thus, we hold that individual schools and districts have the right, based on demonstrated need, to request and obtain the resources necessary to enable them to provide on-site social services that either are not available within the surrounding community or that cannot effectively and efficiently be provided off-site. Conversely, we hold that the Commissioner has a corresponding duty to authorize requested school-based social service programs for which there is a demonstrated need and to provide or secure necessary funding.(<i>id.</i> 512-13)	Y	3	3	3	3	Mandates the staffing as proposed by the Commissioner but gives middle and high schools the right to demonstrate the need for on-site services and clinics and orders the State to approve and fund such requests, once again assuring adequate funding based on local initiatives.
V 1998 7	[I]ndividual Abbott schools or districts have a right to request supplemental programs for security and that the Commissioner must authorize the requested programs that are based on demonstrated need and secure or provide necessary funding. (<i>id.</i> 514)	Y	2	2	2	2	
V 1998 8	The Commissioner is directed to "implement technology programs at the request of individual schools or districts or as he otherwise shall direct," (<i>id.</i> 517) including "one computer for every five students in grades K-12," (<i>id.</i> 514) "peripherals and software," (<i>ibid.</i>) a "full-time media/technology specialist," (<i>ibid.</i>) and "a full-time technology coordinator." (<i>id.</i> 515)	Y	2	3	2	2	
V 1998 9	each Abbott district [shall] establish an alternative middle school program and an alternative high school program," (<i>ibid.</i>); for each middle and high school "there be a dropout prevention specialist or counselor," (<i>ibid.</i>) and the Commissioner shall "provide adequate funds" sufficient "to ensure that quality education extends to such alternative schools as well." (<i>ibid.</i>)	Y	2	2	2	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
V 1998 10	The Commissioner was directed to establish "accountability programs, as may be deemed necessary or appropriate, and to coordinate them with whole-school reform," (<i>id.</i> 517) including the "establishment of baseline data and the identification of progress benchmarks and standards that are linked to the Core Curriculum Content Standards," using "[t]he results obtained from this accountability system . . . to make informed decisions about program improvement," and establishing "a system of rewards and sanctions for students, teachers, and entire schools." (<i>id.</i> 515)	Y	2	2	2	2	
V 1998 11	The Court directed the Commissioner "to implement school-to-work and college-transition programs in secondary schools in the Abbott districts at the request of individual schools or districts or as . . . [he] otherwise shall require." (<i>id.</i> 516)	Y	2	2	2	2	
V 1998 12	the Commissioner is directed "to provide or secure the funding necessary to implement those programs for which Abbott schools or districts make a request and are able to demonstrate a need," with a special emphasis on "middle and secondary schools" since they "will not have the benefit of whole-school reform," (<i>id.</i> 517.) and "such supplemental [including after school, summer school, and enhanced nutrition, <i>id.</i> 516] programs may be necessary to ensure the educational success of their students." (<i>id.</i> 517)	Y	2	3	3	3	The Court once again emphasizes that the schools and districts are in the driver's seat, that they will determine what is needed and, once that need is demonstrated, the State is directed to approve and fund such requests, thus assuring adequate funding.

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
V 1998 13	adequate funding remains critical to the achievement of a thorough and efficient education (<i>id.</i> 517-18) . . . sufficient funds [shall] be provided for whole-school reform and for the additional or modified supplemental programs that are constituent parts of such reform (<i>id.</i> 518) . . . there must also be in place a clear and effective funding protocol (<i>ibid.</i>) consistent with zero-based budgeting. . . [and] . . . before seeking new appropriations. . . [the Commissioner may] first determine whether funds within an existing school budget are sufficient to meet a school's request for a demonstrably needed supplemental program (<i>ibid.</i>). . . any determination that existing appropriations are sufficient . . . [recognizes that] funds may not be withdrawn from or reallocated within the whole-school budget if that will undermine or weaken either the school's foundational education program or already existing supplemental programs (<i>ibid.</i>)	N	3	3	3	3	Establishes a comprehensive process for determining if sufficient funds exist, can be reallocated from other areas, or must be added to current budgeted amounts, but, recognizing the history of State resistance to adequate funding of urban schools, the Court limits the extent to which reallocation can be required.
V 1998 14	The Court directs that "each district . . . complete an enrollment projection and Five-Year Facilities Management Plan," and that "the formulation of these Plans be undertaken immediately," to "be completed by January 1999," with "architectural blueprints. . . completed by the fall of that year," and "[c]onstruction" to "begin by the spring of 2000." (<i>id.</i> 520) Further, the "Commissioner is directed to ensure that the Plans are completed and that the deadlines are met." (<i>ibid.</i>) and "individual Abbott schools and districts should have the discretion to decide initially whether specialized rooms for art, music, and science instruction are required at the elementary level," that if it is "determine[d] that such rooms are educationally necessary based on particularized need, its determination should be included in its Five-Year Facilities Management Plan," that "the DOE should review that request and determination," and that "[t]he determination of the local education authorities should be reviewed with deference and with the understanding that the local educators are in the best position to know the particularized needs of their own students." (<i>ibid.</i>)	Y	3	3	3	3	Clear and full language establishing the basic parameters and timetable for local involvement in facilities improvement, giving local authorities the right to seek more facilities than the State initially will provide.

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authority	ade	Comments
V 1998 15	the State [shall] . . . fund 100% of approved costs," (<i>id.</i> 524) and defined such costs as "the complete cost" of "remediating infrastructure and lifecycle deficiencies that have been identified by Abbott districts," constructing "any new classrooms needed to correct capacity deficiencies," and providing "facilities adequate to ensure a thorough and efficient education," (<i>ibid.</i>) as defined by the Core Curriculum Content Standards. The Court approved and directed that "[t]he EFA . . . serve as construction manager for all projects," (<i>id.</i> 523) in order to "ensure efficient and satisfactory construction," (<i>id.</i> 524) including "prepar[ing] specifications for construction, solicit[ing] bids for all work and materials required, enter[ing] into project contracts, invest[ing] any monies not required for immediate disbursement, and review[ing] all completed work before dispensing requisitioned funds." (<i>ibid.</i>)	Y	3	3	3	3	Establishes what the State must do and what the standards are for full compliance.
V 1998 16	The Court directed the Commissioner to "promulgate regulations and guidelines that will codify the education reforms incorporated in the Court's remedial measures," including "the procedures and standards that will govern applications by individual schools and districts for needed programs and necessary funding;" (<i>id.</i> 526) to "facilitate the implementation process by providing resources to help review budgets, coordinating necessary support, and assisting in the transition from centralized to site-based management," (<i>id.</i> 497) and to "exercise its essential and affirmative responsibility to ensure the necessary changes," in the event that "a district or school is hesitant in its implementation of whole-school reform." (<i>ibid.</i>) To facilitate implementation of full-day Kindergarten, the Commissioner will "ensure the availability of adequate temporary facilities," (<i>id.</i> 503) and "to implement [preschool] programs as quickly as possible. . . the Commissioner must ensure that such programs are adequately funded and assist the schools in meeting the need for transportation and other services, support, and resources related to such programs." (<i>id.</i> 508)	Y	3	3	3	3	Expands the role of the Commissioner and the DOE in implementing all the remedies ordered by the Court.

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	adc	Comments
V 1998 17	The Court directed that "districts and individual schools . . . be accorded full administrative and judicial protection in seeking the demonstrably-needed programs, facilities, and funding necessary to provide the level of education required by CEIFA and the Constitution." (<i>id.</i> 527) When a dispute arises, the Court directs that "[a]n aggrieved applicant may appeal to the Commissioner from an adverse decision on any such application made to the DOE," and [i]f the dispute is not resolved or if the applicant is not satisfied with the disposition, the case may be transferred under the Administrative Procedure Act to the Office of Administrative Law as a contested case."(<i>id.</i> 526) The Court further directs that "[a]fter conducting a hearing, the Administrative Law Judge will make a recommendation, which the Commissioner may, in his discretion, accept or reject," with "[e]ither party. . . then appeal[ing] to the State Board of Education" whose "determination will constitute a final agency determination that may then be appealed to the Appellate Division and, ultimately, to this Court."(<i>id.</i> 526-27)	Y	3	3	3	3	Established a comprehensive appeal process based on the experience that the State will not voluntarily and fully comply with the directives of the Court and the likelihood that in any event, differences will arise in the assessment of how well local authorities have documented need to justify requests for additional funding and facilities.
V 1998 18	The State is committed to prioritize construction projects that will facilitate full implementation of early childhood programs. While awaiting the construction or renovation of the necessary facilities, the Commissioner should, in order to meet his obligation to begin providing a half day of pre-school for three- and four-year-olds in the fall of 1998, make use of trailers, rental space, or cooperative enterprises with the private sector. . . these temporary [classroom] spaces should be in buildings free of Code violations, should be at least 600 square feet, and should contain toilet rooms visible to the teacher. (<i>id.</i> 524)	Y	3	3	3	3	Clearly and comprehensively establishing the duty of the State to provide temporary preschool facilities with standards.
18	subtotals	17 Y 1 N	2.50	2.61	2.67	2.56	
VI 2000 1	Substantive educational guidance for all Abbott district preschool programs. . .an essential component of the DOE's commitment to the Abbott districts . . .must be adopted by April 17, 2000, so that the districts will be able to prepare for the 2000-01 school year. (<i>id.</i> 107)	Y	2	2	3	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
VI 2000 2	Existing teachers who have experience working with young children but who otherwise lack academic credentials should be given four years to obtain certification and should be evaluated each year to determine whether they will be retained. (id. 111) New teachers . . . must be college graduates and should have until September 2001 to obtain the proposed preschool-3 certificate. (id. 111-12)	Y	2	2	3	2	
VI 2000 3	one certified teacher for every fifteen preschool children. (id. 114)	N	2	2	3	2	
VI 2000 4	Only by delineating the specific responsibilities of the district and the provider, can there be evaluation and accountability based on the specific tasks assigned to each. Ultimately, it is the district that must have the power to assess and evaluate providers and to impose improvements if necessary. Termination of the contract by the district must be an option when the provider cannot or will not adhere to quality standards. On the other side, the support to be provided by the district is also critical, whether in the form of supervision, professional development, access to specialized staff, or assistance in complying with federal and state requirements for special education, bilingual education, and other needed services. Ultimately, it is the responsibility of the districts and the DOE to monitor operating preschools on a regular basis and to ensure that they are delivering quality programs. Contracts between the districts and providers must spell out these and other requirements deemed appropriate by the Commissioner. (id. 116)	Y	3	3	3	3	Establishes clear, detailed, and full language necessary for holding providers, districts, and DOE accountable for improved services to children
VI 2000 5	The districts can exclude Head Start children from their preschool enrollment projections only when it can be demonstrated that the excluded children attend Head Start programs that meet DOE standards. (id. 116)	N	2	2	3	2	
VI 2000 6	Preschool programs are for <u>all</u> Abbott district children – no child may be excluded from a preschool program that is part of a district plan because of parental status. (id. 117)	Y	2	2	2	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
VI 2000 7	reasonable requests to fund supplemental programs must be handled fairly and quickly. (id. 118) Only after a review of individual applications from the districts can it be determined whether adequate funding . . . critical to the achievement of a thorough and efficient education has been provided. We urge the Commissioner to work with the districts to resolve funding issues expeditiously; when an amicable resolution is not possible, decision making must occur early enough in the school year to allow programs to be implemented by the next school year (<i>ibid.</i>)	N	2	2	3	3	Repeats mandate for adequate funding but also identifies the process for assuring it.
VI 2000 8	We expect that existing enrollments can now be reviewed and that low enrollments will trigger a determination whether parents in the community are aware of the district's preschool programs. If parents are not, the district must make concerted outreach efforts to improve enrollments; if needed, the Commissioner must make funding available for this purpose through the DOE's supplemental program procedures. (id. 119)	Y	2	2	3	2	
8	subtotals	5Y 3N	2.12	2.12	2.50	2.25	
VII 2000 1	the State is required to fund all the costs of necessary facilities remediation and construction in the Abbott districts.	N	2	3	3	3	Leaves no doubt.
1	Subtotals	1N	2.00	3.00	3.00	3.00	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
VIIIA 2001 1	It is ORDERED that submission, review, and appeal of Abbott District pre-school program and budget proposals be carried out pursuant to the following schedule: <ol style="list-style-type: none"> 1. Submission by November 15, 2001, of final pre-school program and budget proposals by the Abbott Districts, including, among other things, use and funding of community providers where applicable; 2. Issuance by January 5, 2002, of initial DOE determination on pre-school program and budget proposals; 3. Notice filed by January 10, 2002, of administrative appeal in a contested case, such notice to be transferred immediately to the Office of Administrative Law for accelerated proceedings; 4. Issuance by February 15, 2002, of the Administrative Law Judge's Opinion and Recommendations, including itemization of the record; 5. Issuance by March 1, 2002, of Final Decision by the Commissioner of Education, 6. Notice of appeal filed by March 5, 2002, in the Superior Court, Appellate Division; and 7. Resolution by March 30, 2002, of any Appellate Division appeal; (<i>id.</i> 4) 	Y	3	3	3	3	Clearly identifies the process and schedule for judicial review of disputes over funding to assure adequacy and to limit role of politics in deciding how much funding is available.
VIIIA 2001 2	ORDERED that DOE staff work with the Abbott districts to ensure that plans submitted on or before November 15, 2001, are complete (<i>id.</i> 4-5)	Y	2	2	3	2	
VIIIA 2001 3	ORDERED that if a district plan is nonetheless incomplete when submitted, the DOE will accept supplemental documentation and continue to assist the District in an effort to cure any deficiencies; (<i>id.</i> 5)	Y	2	2	3	2	
VIIIA 2001 4	ORDERED that all appeals from the initial DOE decision must be referred to the Chief Judge of the Office of Administrative Law (OAL), who either will hear those matters himself or, when necessary, will specially designate certain Administrative Judges for that purpose; (<i>ibid.</i>)	Y	2	2	3	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
VIIIA 2001 5	ORDERED that Part A of the Superior Court, Appellate Division, is designated to hear all appeals from Final Decisions of the Commissioner that come within the scope of this Order. (<i>ibid.</i>)	Y	2	2	3	2	
5	subtotals	5Y	2.20	2.20	3.00	2.20	
VIIIB 2002 1	To ensure availability of detailed curricula for use in the 2002-03 school year, and to meet the DOE's time frame for implementation workshops, the DOE must, as scheduled, complete a final draft of the <u>Framework</u> by April 30, 2002.	N	2	2	3	2	
VIIIB 2002 2	The DOE must work with the districts to develop corrective action plans when the districts do not meet enrollment goals and must review, with the districts, the effectiveness of these plans during the implementation phase.	N	2	2	3	2	
VIIIB 2002 3	districts should utilize Head Start providers unless they are not "able and willing to comply" with Abbott preschool standards, or unless the cost of doing so is demonstrably more expensive than other high-quality alternatives. The districts must develop budget proposals based on a careful analysis of a provider's pre-existing obligations and funding sources . . . reasonable supplemental funds must be provided so that Head Start (and other appropriate community providers) can meet the more demanding State preschool requirements	N	3	3	3	3	Clearly directs the incorporation of Head Start and establishes the standard for assuring adequate funding.
VIIIB 2002 4	Districts must address salary parity between district-run and community provider-run programs in their needs assessment evaluations. If community providers, such as Head Start, can demonstrate an inability to retain qualified staff due to salary parity problems, the DOE must consider additional funding for teacher salaries.	Y	3	3	3	3	"Revolutionary" requirement that establishes the right of qualified (certified) teachers of 3 and 4 year olds working in community centers to be paid at the rate of public school teachers

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
VIIIB 2002 5	District budgetary requests must be developed and articulated with specificity, and, equally important, the DOE must respond with appropriate explanation. Formulaic decision-making neither assists the districts nor provides a basis for further review on appeal.[F]unding decisions [must be] based not on arbitrary, predetermined per-student amounts, but, rather, on a record containing funding allocations developed after a thorough assessment of actual needs.	N	3	3	3	3	Rephrases previous mandate that funding adequacy must be based on need and includes language on standards and process for assurance
VIIIB 2002 6	To accommodate every child whose parents seek placement in an Abbott preschool program, Abbott districts anticipating increased enrollments should have in place a contingency facilities plan that has been reviewed and approved by the DOE. Those districts should identify specific facilities that can be renovated quickly if needed, or should seek DOE authorization for TCUs that can be obtained on short notice and appropriately situated on previously designated sites.	N	2	1	1	1	Replaces earlier requirement that State provide such facilities with a district plan for contingencies and, therefore, reflects a retreat in meaning, legal authority, and adequacy.
6	subtotals	1Y 5N	2.50	2.33	2.67	2.33	
IX 2002 1	It is ORDERED that the DOE's request for authorization to preclude any district appeal as seeking supplemental funding for 2002-2003 in excess of the funding, as adjusted, for fiscal year 2001-2002 be and the same hereby is denied subject to the DOE's authority presumptively and preliminarily to establish districts' supplemental funding for 2002-2003 at the level of expenditures contained in the 2001-2002 K-12 DOE approved district budget, as increased by actual and documented 2001-2002 expenditures for the second half of kindergarten, as modified by DOE to take into account 2001-2002 actual expenditures and available revenues based on the district annual audits;	Y	2	2	2	2	

decision/ number	Mandate	new idea	lang clarity	meaning clarity	legal authrty	ade	Comments
IX 2002 2	It is FURTHER ORDERED that the DOE's request for one year to afford districts flexibility to eliminate, reduce, or limit growth of certain whole school reform enhancements as specified, to eliminate positions and make staffing modifications in various needs-based programs as specified, and to make educationally appropriate decisions about retention of certain positions as specified be and the same hereby is granted subject to the districts' right of appeal based on educational need related to impairment of the core elements of whole school reform and essential enhancements thereof;	Y	2	2	2	2	
IX 2002 3	it is FURTHER ORDERED that the DOE is authorized to impose educationally-appropriate limits on the categories for which needs-based funding requests may be submitted;	Y	2	2	2	2	
IX 2002 4	it is FURTHER ORDERED that the DOE may suspend for one year the regulatory requirement for middle schools and high schools to implement whole school reform models, may permit voluntary implementation of models in such schools, and may suspend for one year formal evaluation of whole school reform.	Y	2	2	2	2	
4	subtotals	4N	2.00	2.00	2.00	2.00	
61	TOTALS	48-Y 16-N	2.27	2.38	2.67	2.38	

APPENDIX D

**Content Analysis of the Permanent Abbott Regulations
(Chapter 24, New Jersey Administrative Code)**

6A:24-	topic	Court mandate	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
General Provisions								
1.1	Purpose and Applicability of the rules	<i>Abbott V</i> #16	19	2	2	1	1	Citation to CEIFA, declared unconstitutional by the Supreme Court; no reference to Abbott V mandates
1.2	Definitions	<i>Abbott V</i> #16	195	2	2	2	2	
1.3	Assignment of DOE School Review and Improvement Teams	<i>Abbott V</i> #16	15	2	1	2	1	no standards or procedures to specify the work, the relationship to central offices, or the authority vested in state personnel
1.4	Responsibilities of the local district	<i>Abbott V</i> generally	126	2	1	0	0	repeats, rather than develops court mandates; fails to include many court mandates; includes security program explicitly rejected by the Court
1.5	Accountability	<i>Abbott V</i> #10	8	2	1	0	0	provides even less language and meaning than the Court mandate, fails to develop the Court mandate
1.6	Designation of Abbott districts	<i>Abbott II</i> #1	4	2	2	2	2	
	subtotals		61.17	2.00	1.50	1.17	1.17	
School Management Teams								
2.1	Establishment of School Management Teams	<i>Abbott V</i> #2	80	2	2	2	2	
2.2	Responsibilities of the teams	<i>Abbott V</i> #2	72	2	1	2	1	No standards, definitions or procedures to help SMTs understand both what they are to do and how to do it

6A:24-	topic	Court mandate	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
2.3	Training of the teams	<i>Abbott V</i> #2	24	2	1	2	1	No standards, definitions, or procedures to assure sufficiency and quality
	subtotals		58.67	2	1.33	2	1.33	
Early Childhood Education								
3.1	Early childhood general provisions	<i>Abbott V</i> #4	7	2	2	2	2	
3.2	Full-day Kindergarten	<i>Abbott V</i> #3	4	2	1	2	1	No definitions or procedures, inadequate standards, simply repeats Court directive
3.3	Early childhood education programs	<i>Abbott V</i> #4	196	2	1	1	1	Covers a lot of ground, but too often simply repeats Court mandate, fails to address needs-based planning and implementation, does not assure funding adequacy, and is silent on Court ordered facilities.
3.4	Early childhood operational plan	<i>Abbott V</i> #4	54	2	1	0	0	Authorizes districts to seek waivers for expanded programs but fails to assure state role in "providing or securing" construction and funding for facilities, no standards, definitions, or procedures for needs assessment, references irrelevant WSR regulation
	subtotals		65.25	2	1.25	1.25	1.00	
Whole School Reform								

6A:24-	topic	Court mandate	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
4.1	Implementation of WSR model	<i>Abbott V</i> # 1,2	206	2	0	1	0	Illegally authorizes HS WSR implementation; simply restates some Court mandates with no definitions, standards, or procedures; excludes many other Court mandates
4.2	Whole School alternative program design	<i>Abbott V</i> # 1,2	169	2	3	2	2	comprehensive topical coverage but suffers the same lack of standards, definitions, and procedures as the other regulations, no guidance on what a successful application would look like
4.3	Submission of WSR implementation plan	<i>Abbott V</i> # 1,2	42	2	2	1	1	no standards, definitions, or procedures; illegally links need to WSR models rather than students
4.4	School-based budgets	<i>Abbott V</i> # 2	110	2	2	1	1	assigns huge new responsibilities to principals who have not been trained to make budgets; no standards, definitions, or procedures; confuses role of central office
4.5	WSR implementation issues	<i>Abbott V</i> # 1,2	35	2	2	2	2	
	subtotals		112.4	2.00	1.80	1.40	1.20	
Supplemental Programs and Services								
5.1	Demonstration of particularized need	<i>Abbott V</i> # 5	65	2	1	1	1	fails to incorporate Court mandates, establishes incorrect bases for applications

6A:24-	topic	Court mandate	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
5.2	Application for supplemental programs or services	<i>Abbott V</i> # 5	64	2	1	1	1	same as above, fails to assure funding adequacy, fails to establish standards for documented needs and acceptable applications
	subtotals		64.5	2.00	1.00	1.00	1.00	
Required Programs in Secondary Schools								
6.1	Implementation of required programs in secondary schools	<i>Abbott V</i> # 6, 9, 12	77	2.00	1.00	1.00	1.00	ignores several Court mandates; repeats rather than augments several other Court mandates; requires security program explicitly rejected by the Court;
District Budget and Request for Additional State Aid								
7.1	Application for additional state aid	<i>Abbott II</i> #2 <i>Abbott V</i> #4, 12, 13	120	2.00	1.00	1.00	1.00	Relationship to WSR incorrectly replaces student need as the basis for additional funding; no standards for demonstration of need; incorrectly requires direct instructional dividend for each request
Facilities								
8.1	Reserved							
Appeals								
9.1	Applicability of this subchapter	<i>Abbott V</i> #17	6	2	2	2	2	
9.2	Filing, service and documentation of petition	<i>Abbott V</i> #17	23	2	2	2	2	

6A:24-	topic	Court mandate	# lines	language clarity	meaning clarity	legal authority	overall adequacy	comments
9.3	Filing, service and documentation of answer	Abbott V #17	8	2	2	2	2	
9.4	Review of pleadings	Abbott V #17	7	2	1	1	1	No schedule for Commissioner's review
9.5	Submission of position statements and replies	Abbott V #17	14	2	2	2	2	
9.6	Commissioner review and decisions	Abbott V #17	23	2	1	1	1	No standards or schedule for Commissioner decisions
28	subtotals		13.5	2.00	1.67	1.67	1.67	
	TOTALS		63.3	2.00	1.46	1.39	1.21	