Education Overhaul: New Jersey’s Latest Legislative Measures for Public School Funding

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PART I: INTRODUCTION

The New Jersey State Constitution proclaims, “The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for all children in the State between the ages of five and eighteen years.” Unfortunately, New Jersey has yet to achieve such a system of free public education. For decades, students in impoverished communities have fought for their right to obtain an adequate education within the New Jersey Court system.

In 2008, the School Funding Reform Act (SFRA) was promulgated as an “innovative and new” approach to provide a constitutionally valid method of school funding. The New Jersey Supreme Court initially found the Act constitutionally sound. The Court believed the legislation offered an acceptable structure to efficiently fund education in the State of New Jersey. However, a few years after the enactment of the SFRA, the Court determined the state of New Jersey had reneged on its obligations to provide adequate funding to underprivileged school districts. On July 1, 2018, Governor Phil Murphy introduced into law a new financial scheme intended to resolve detrimental funding issues affecting underprivileged school districts. The new SFRA modifications aim to amend previous dilemmas by eliminating “Adjustment Aid,” “State Aid Growth Caps,” and allowing for the alteration of “Tax Growth

1 N.J. Const. art. VIII, sec. 4, par. 1.
3 Michael Booth, State Urges Supreme Court to End Micromanagement of School Budgets, 193 N.J.L.J. 13 (2008).
5 Id.
Limitations” in certain school districts. Although it is certainly no easy task to accomplish, the new funding formula promises to head New Jersey in the right direction of achieving the elusive goal of providing “thorough and efficient” education to all students across the Garden State.

Part II of this note will summarize the history of education litigation which has occurred in the state of New Jersey over the past decades. This section will highlight and summarize the major cases and decisions centered around predominant issues with education funding for public schools in the state of New Jersey. Part II will also provide an in-depth explanation of the education funding formula enacted by the State under the SFRA of 2008. Part III will provide insight on reasons why the SFRA formula of 2008 failed to adequately provide school districts with necessary funding. Part IV will discuss the 2018 alterations to the SFRA formula and provide insight on how the new formula will promote educational benefits to students in low income school districts. This section will also discuss the downside of the formula on school districts expected to see a decrease in the amount of state funding received. This note will argue that, in comparison to the old funding formula of the 2008 SFRA, the new formula offers a greater chance of achieving the New Jersey constitutional standard of a thorough and efficient system of education for all students attending public schools in the state.

PART II: HISTORICAL OVERVIEW OF EDUCATION FUNDING IN NEW JERSEY

A. Litigation History and Legal Issues

In 1875, the Education Clause of the New Jersey Constitution secured a constitutional right for all students ages five through eighteen to receive a “thorough and efficient education.”

By far the most litigated aspect of the Education Clause involves funding public schools.

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8 Id.
10 Lenihan, supra n. 2 at 124.
Public School education in the state of New Jersey is primarily funded by local property taxes.\textsuperscript{11} The most glaring issue with this method of funding is the creation of wide disparities in school expenditures resulting from the ability or inability of each individual school district to raise necessary funds through property taxes.\textsuperscript{12} In \textit{Robinson v. Cahill}, residents of New Jersey challenged the constitutionality of the 1972 system of funding public school education.\textsuperscript{13} The plaintiffs argued that a “thorough” education was only afforded to some students in the state and denied to others.\textsuperscript{14} The court alluded to the fact that overburdening disadvantaged communities with increased property taxes posed a serious ethical problem.\textsuperscript{15} The court also noted the State is obligated to assist in financing public schools through capital expenditures.\textsuperscript{16}

As a response to the \textit{Robinson} litigation, New Jersey state legislators promulgated the Public School Education Act (PSEA) of 1975.\textsuperscript{17} The PSEA, the first major piece of legislation regarding improvements in the education system, aimed to utilize the state of New Jersey’s first income tax as a way to fully fund education.\textsuperscript{18} However, following the conclusion of the \textit{Robinson} cases, a new string of education litigation arose to challenge the constitutionality of the PSEA in the cases of \textit{Abbott v. Burke}.\textsuperscript{19} In 1985, after years of data collection and preparation, The Education Law Center of Newark New Jersey brought a constitutional challenge against the State on behalf of indigent students receiving inadequate educations.\textsuperscript{20} Over the next twenty years, the \textit{Abbott} cases would repeatedly identify major issues with public education funding and

\textsuperscript{11} Robinson v. Cahill, 118 N.J. Super. 223, 265 (1972).
\textsuperscript{12} Id.
\textsuperscript{13} Id. at 228.
\textsuperscript{14} Id.
\textsuperscript{15} Id.
\textsuperscript{16} Lenihan, supra n. 2 at 127.
\textsuperscript{18} Id.
\textsuperscript{19} Abbott v. Burke, 100 N.J. 269 (1985). (hereinafter \textit{Abbott I})
\textsuperscript{20} Tractenberg, supra n. 17 at 904.
equality. These issues challenged lawmakers in the State to enact appropriate legislation while simultaneously invoking the court’s assistance to act as a watchful eye with regard to the constitutionality of each piece of legislation before it.

Abbott I reiterated the argument of the plaintiffs in Robinson: property-poor school districts severely disadvantaged children attending school in those districts in comparison to children attending schools in property-rich districts.\(^{21}\) Because the New Jersey Supreme Court had originally remanded the action in Robinson to the New Jersey Department of Education, a holding as to the constitutionality of the PSEA had not yet been established since its enactment in 1975.\(^{22}\) Abbott II achieved a substantive declaration from the New Jersey Supreme Court that the education funding structure under the PSEA violated the New Jersey State Constitution for failing to provide adequate funding to poorer school districts\(^{23}\) Albeit roughly fifteen years after initial constitutionality challenges to the education clause in Robinson, the plaintiffs in Abbott II had finally secured a favorable ruling which required the State to re-assess the current education funding structure.\(^{24}\)

The court in Abbott II stressed the need for immediate change in the New Jersey education system.\(^{25}\) Abbott Districts, defined as poorer urban districts where lack of education adequacy and concentrated poverty present serious problems, were identified as the areas in most need of remedial action.\(^{26}\) Chief Justice Wilentz, writing the majority opinion for the court, opined that the Abbott Districts were “districts where not only the students and education are

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\(^{21}\) Abbott I, 100 N.J. at 269.

\(^{22}\) Tractenberg, supra n. 17 at 904.

\(^{23}\) Id. at 906.


\(^{26}\) Designation of Abbott Districts Criteria and Process, https://www.state.nj.us/education/archive/abbotts/regs/criteria/criteria2.htm (last visited April 2, 2019)
failing, these are districts where society is failing.”  

The Court held that funding for education in poorer, urban districts must reach the level of funding for property-rich districts. The Court also held that funding cannot only rely upon the school district’s ability to tax the local populace, but rather must be mandated and guaranteed by the State, and adequate to satisfy the needs of poorer urban districts in order to compensate for their extreme disadvantages.” In response to the Court’s holding in *Abbott II*, the New Jersey Legislature passed the Quality Education Act (QEA). The QEA attempted to achieve compliance with the Court’s demands by equalizing aid granted to the Abbott Districts through a massive increase in statewide taxes.

The QEA failed amid political backlash and alterations to the original Bill that undermined the Act’s equalization potential. *Abbott III* declared the QEA unconstitutional and reiterated the holding in *Abbott II* requiring parity education funding for poorer school districts as well as supplemental funding programs. The parity funding remedy aimed to ensure that poorer school districts would receive the same spending per pupil that wealthier districts were afforded without requiring an increase to local property taxes. The State’s next effort, the Comprehensive Educational Improvement and Financing Act of 1996 (CEIFA), aimed at solving school financing issues and set forth statewide academic achievement goals for all students known as the Core Curriculum Content Standards (CCCS). In *Abbott IV*, the court noted about CEIFA that, “The Legislature had taken a major step in detailing the components and meaning of

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28 *Id.* at 295.
29 *Id.*
30 Trachtenberg, supra n. 17 at 911.
31 *Id.*
32 *Id.*
33 *Abbott by Abbott v. Burke*, 136 N.J. 444 (1994); see also Trachtenberg, supra n. 10 at 913.
35 *Id.* at 914.
a constitutional education, an effort that strongly warranted judicial deference.”36 Despite the worthy attempt to find a constitutionally sound educational funding system, the court once again struck down the legislative effort because the fiscal standards adopted by CIEFA were based on costs in a hypothetical “model” school district, which would not take into account the special needs of students in the poorer Abbott School Districts.37

The New Jersey Supreme Court refused to comply with the State’s assertion that the court should defer to the State’s best judgment because experts were involved in formulating the amount of funding required for school districts.38 Justice Handler expressed his displeasure with the State acknowledging that:

“[c]hildren in the special needs districts have been waiting more than two decades for a constitutionally sufficient educational opportunity. . . . We have ordered the State to study the special education needs of students in the [Special Needs Districts]. 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.”39

In response to the State’s arguments, the Court ordered another parity remedy which required the amount of funding in wealthier school districts to act as an indicator for the amount of funding needed to sufficiently achieve the CCCS in the poorer districts.40 The Legislature appropriated roughly $246 million in order to effectuate full parity.41 The key takeaway from Abbott IV was not that the Court simply ordered more financial support to be directly infused into the Abbott districts, but that the court suggested an alternative formula approach could be a

39 Id.
41 Lenihan, supra n. 2 at 135.
long-term remedy so long as the State could show an efficient education could be met through expenditures lower than the parity remedy.\textsuperscript{42}

In \textit{Abbott V}, the Court focused on aspects of an educational experience aside from only learning.\textsuperscript{43} The Court set forth, “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.”\textsuperscript{44} Not only did the Court establish the necessary remedial parity funding required to educate students in the Abbott Districts, the Court stressed the need for adequate supplemental programs to meet special education requirements and solidified the importance of clean, safe, and sufficient schools.\textsuperscript{45}

From 2000 to 2008, the New Jersey Supreme Court heard a series of motions in aid of litigants’ rights.\textsuperscript{46} The Court confirmed that “the State is required to fund all costs of necessary facilities remediation and construction in Abbott Districts.”\textsuperscript{47} In 2002, the Court provided a schedule for decision-making to the New Jersey Executive Branch and Appellate Division to ensure that the Abbott Districts preschool program and budget proposals were reviewed in a timely fashion.\textsuperscript{48} Between 2005 and 2008, the Abbott litigants appeared before the Court seeking three more orders in aid of litigants rights.\textsuperscript{49} Constant appearances before the court by the Abbott District representatives demonstrate the lack of appropriate action undertaken by the State during this timeframe.

\begin{footnotes}
\footnotetext{42}{\textit{Id.}}
\footnotetext{43}{\textit{Abbott v. Burke} 153, N.J. 480 (1998).}
\footnotetext{45}{Trachtenberg, supra n. 17 at 925.}
\footnotetext{46}{\textit{Abbott v. Burke}, 199 N.J. 140, 187 (2009) (hereinafter referred to as “\textit{Abbott XX}” in all subsequent short cite footnotes).}
\footnotetext{47}{\textit{Abbott v. Burke}, 164 N.J. 84, 90 (2000).}
\footnotetext{48}{\textit{Abbott XX}, 199 N.J. at 187.}
\footnotetext{49}{\textit{Id.} at 189.}
\end{footnotes}
PART III: SCHOOL FUNDING REFORM ACT

Part III will discuss the most recent legislative attempt to equalize school funding within the state of New Jersey; the School Funding Reform Act. This section will discuss the process for how the state drafted the funding formula, define key terms and their applicability in determining state aid to school districts, and identify weaknesses in the original formula that lead to the most recent measures taken by the state in 2018.

A. SFRA Background; How We Got Here.

After approximately thirty-five years of litigation, state lawmakers produced legislation to not only provide proper funding for education, but also expected to survive scrutiny from the court. In 2008, The School Funding Reform Act was introduced as a collaborative effort by the Department of Education, working in close conjunction with various consulting firms, to determine the exact cost of providing an adequate education to the students of New Jersey.50 “The goal of the new formula [was] to create a fair, equitable, and predictable funding formula based on student characteristics, regardless of the community in which a student resides.”51

This time the State of New Jersey, rather than the Abbott litigants, requested the New Jersey Supreme Court assess the constitutionality of the new funding formula under the SFRA.52 The State’s motion sought a declaration that the SFRA’s funding formula would satisfy the thorough and efficient requirements of the New Jersey Constitution’s Education Clause.53 The Court remanded the case in order for a Special Master’s Report to conduct a full analysis of the SFRA and assess the proposed funding method prior to the release of a decision on

50 Tractenberg, supra n. 17 at 941.
52 Abbott XX 199 N.J. at 145.
53 Id.
Constitutionality.\textsuperscript{54} The Special Master’s Report applied a slightly heightened level of scrutiny the Court called a “convincing” standard as opposed to the preponderance of the evidence standard typically used in civil litigation.\textsuperscript{55} The Report found the SFRA design “exceeded the requirements necessary to provide a thorough and efficient education” to the students of New Jersey.\textsuperscript{56} The Supreme Court thereafter, in reliance upon the information in the Special Master’s Report, found the SFRA formula constitutional.\textsuperscript{57} With this decision, the Court simultaneously placed great faith in the New Jersey Legislative and Executive branches to carry out the SFRA funding accordingly and adjust the formula as needed in the future.\textsuperscript{58}

\textbf{B. School Funding Reform Act Formula}

The SFRA funding formula attempts to achieve three specific goals – equity, transparency, and predictability for both school districts and for the state.\textsuperscript{59} The SFRA formula is comprised of multiple components: The Adequacy Budget; Equalization Aid; Categorical Aid; Adjustment Aid; and Education Adequacy Aid.\textsuperscript{60} When combined, the various components of the SFRA supply each school district across the state with requisite funds that should, in theory, meet New Jersey’s constitutional requirements for providing every student a thorough education.

The Adequacy Budget is the “wealth-equalized” portion of the SFRA and is based upon a community’s wealth and ability to provide funding through local resources.\textsuperscript{61} The Adequacy Budget is the starting point for determining how much money is needed for public school

\begin{itemize}
  \item \textsuperscript{54} Id. at 151.
  \item \textsuperscript{55} Id. at 238.
  \item \textsuperscript{56} Id.
  \item \textsuperscript{57} Id.
  \item \textsuperscript{58} Id. at 146.
  \item \textsuperscript{59} Abbott v. Burke, 199 N.J. 140, 210 (2009).
  \item \textsuperscript{60} Id. at 211.
  \item \textsuperscript{61} Id. at 212.
\end{itemize}
financing.62 “For every school district, the state calculates what would be the necessary funding level to provide a ‘thorough and efficient education’ to every pupil in that district.”63 The Adequacy Budget contains four categories of aid provided to a school district by the state: 1) a per pupil base aid amount for each elementary, middle, and high school student; 2) additional aid for each at-risk and/or Limited English Proficiency (LEP) student, and for vocational districts; 3) two-thirds of the census-based costs for special education; and 4) all census-based costs for speech-only special education.64

The per-pupil base amount represents the amount of funding required by a school to provide educational resources to a single student in compliance with the Core Curriculum Content Standards.65 In Fiscal Year 2017, the base cost of educating an elementary school student in Kindergarten through Fifth Grade in New Jersey was $11,009.66 This base cost is then multiplied by a pre-determined amount when calculating the cost of educating a Middle School student (grades six through eight) and increases higher when calculating the cost of a educating a high school student.67

Once the per-pupil base cost of educating a student is determined, that number is multiplied by a weight factor to increase the base cost granted by the state if the student meets the following criteria: 1) the student attends a county vocational school; 2) the student is determined to be at-risk; 3) the student is bilingual or has Limited English Proficiency (LEP); or

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63 Id.
67 Id. (Table 3A shows the weight factor applied to a Middle School student in FY 2017 was 1.04 and the weight factor applied to a High School Student was 1.16. This equates to $11,449 as the base cost for a Middle School student and $12,735 as the base cost for a High School Student.)
4) the student is a “combination student” who is both at risk and bilingual.\textsuperscript{68} Presumptively, students that fall within one or more of the weight factor categories require additional aid in order for the school district to adequately educate the student. For example, in Fiscal Year 2017, the Adequacy Budget added a weight factor of 0.25 for students attending county vocational high schools, raising the per pupil base cost of those students from $12,735 (the cost per pupil of a High School Student) to $15,929.\textsuperscript{69}

The state must determine the amount of money each school district is required to contribute once that school district’s Adequacy Budget is calculated by totaling the per pupil costs of all students within the district.\textsuperscript{70} Each school district’s local fair share is calculated by an equation which uses a series of factors including the school district’s property wealth and district income.\textsuperscript{71} Essentially, the local fair share is the amount of money that can be raised by the local tax levy on the district’s citizens.\textsuperscript{72} Each school district then receives Equalization Aid from the state to make up the difference between the Adequacy Budget and the local share.\textsuperscript{73}

The state provides other sources of aid beyond that which is provided to the school district through Equalization Aid. Categorical Aid is an additional stream of revenue provided to each school district in the state which does not consider a district’s wealth or ability to raise local revenue.\textsuperscript{74} Categorical Aid is provided to school districts in order to cover: 1) the remaining one-third cost of Special Education Aid not accounted for in the Adequacy Budget; 2) Security Aid for students and staff; 3) Preschool Aid; 4) Extraordinary Aid for special education

\textsuperscript{68} Id. at 5. \\
\textsuperscript{69} Id. at 6. \\
\textsuperscript{70} New Jersey’s School Funding Formula 101, https://www.njsba.org/news-information/parent-connections/school-finance-101/ (last visited October 12, 2018). \\
\textsuperscript{71} N.J.S.A. 18A:7F-52. \\
\textsuperscript{72} Id. \\
\textsuperscript{73} Id. \\
\textsuperscript{74} Abbott XX, 199 N.J. at 223.
purposes; and 5) additional aid categories. Adjustment Aid enables a school district that is spending above its adequacy budget to maintain current levels of spending without forcing increases in taxes or cutting programs and services. Education Adequacy Aid allows for an Abbott district that is spending below its Adequacy Budget to receive additional state aid or an effort to bring spending up to adequacy.

C. Failure of the 2008 Formula

The promise to cure educational funding woes through the original SFRA formula was short lived. Further litigation ensued just two years after the New Jersey Supreme Court declared the SFRA formula constitutional in Abbott XX. Abbott plaintiffs came forth arguing the State had failed to fully fund the SFRA as promised for the Fiscal Year 2011. In 2009, The Education Law Center conducted a study revealing the gap between urban and suburban school districts had actually widened under the new formula in the first year following the enactment of the SFRA. The Education Law Center contended that requiring the Abbott Districts to raise additional local revenue was not a reality because poorer municipalities brought in substantially less tax revenue while spending substantially more on essential municipal services. The State counter argued that although it was willing to finance public education, it could not possibly do so by setting forth a blank check. Slashes in state funding came at a dire time for schools throughout New Jersey, especially for Abbott districts who could not afford to suffer any

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75 Id.
76 Id. at 228.
77 Id. at 229.
79 Id.
81 Lenihan, supra n. 2 at 129.
82 Id.
reductions in funding. The State found itself back in court arguing that due to financial difficulties, the State must reduce funding to the Abbott districts.

The State asked the court to defer to the Legislature rather than impose sanctions, noting that the New Jersey Constitution gives the Legislature plenary authority over funding appropriation. The court did not back down, finding the State’s action “amounts to nothing less than a reneging on the representations it made when it was allowed to exchange SFRA funding for the parity remedy.” The court ordered that funding for Abbott districts in Fiscal Year 2012 must be calculated in accordance with the SFRA. In making its calculations, the State was also required to include its failure to fully fund the Abbott districts properly in the previous year. According to the court, the cost of providing a full remedy to the Abbott districts for the State’s lack of adherence to the SRFA formula was approximately $500 million. Because the Court was limited in ruling only on behalf of the children in Abbott Districts, the Court announced it could not restore the total amount of funding owed to all schools statewide. The amount of funding owed to all school districts equaled approximately $1.7 billion that had been eliminated over the previous two years.

In the wake of a substantial victory for underfunded Abbott districts, concerns about funding statewide and how to implement proper funding procedures arrived front and center in the debate over the SFRA’s viability. State lawmakers expressed concern over the lack of benefit

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83 Corbett, supra n. 80.
84 Id. at 342.
85 Id.
86 Id.
87 Id.
88 Id. at fn. 23.
89 Id.
90 Id.
91 Michael Booth, Court Orders $500 Million in State Aid to Abbott Districts, 204 N.J. Law Journal 4 (2011).
to taxpayers whose children attended schools outside the Abbott Districts.\textsuperscript{92} Other lawmakers worried about potential fraud and useless spending that may occur as there appeared to be limited methods of ensuring that such a large sum of money, aimed at remedying educational deficiencies, would actually make its way into classrooms that so desperately needed it.\textsuperscript{93} It was further claimed that the Court was ignoring New Jersey constitutional provisions that “all education aid be distributed for the equal benefit of the state.”\textsuperscript{94} It became evident following the Court’s 2011 decision in \textit{Abbott XXI} the state’s school funding system would not succeed long-term the way it had been operating for the past decades, a loose funding guideline subject to whimsical budget cuts and remedial orders handed down by the high court was sure to repeatedly fail.

Although the state clearly did not live up to its obligation of providing adequate financing for school districts, it is worth noting that New Jersey was not the only state at this time struggling to fund education. Numerous states across the country were forced to take action due to a lack of financial resources, leading to increased class sizes, eliminated funding for advanced placement courses, and terminated pre-school services.\textsuperscript{95} The impact of budget cuts on education was especially serious for low-income and minority students whose schools found themselves deprived of essential resources.\textsuperscript{96} In 2011, the New Jersey Assessment of Skills and Knowledge (NJASK) produced alarming results which demonstrated only 45% of economically disadvantaged students in third through eighth grade scored proficient on the exam in

\begin{footnotesize}
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\item \textsuperscript{92} Id.
\item \textsuperscript{93} Id.
\item \textsuperscript{94} Id.
\item \textsuperscript{95} Michael A. Rebell, \textit{Safeguarding the Right to a Sound Basic Education In Times of Fiscal Constraint}, 75 Alb. L. Rev. 1855, 1858 (2012).
\item \textsuperscript{96} Id. at 1860.
\end{itemize}
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comparison to 76% of economically advantaged students in the same grades.\textsuperscript{97} Patterns of economic turmoil create massive issues for students as children who fail to succeed early in elementary school struggle to catch up down the road and high school students who drop out altogether are typically disadvantaged for life.\textsuperscript{98}

Regardless of the economy’s fiscal impact, a child’s constitutional right to an education does not cease to exist.\textsuperscript{99} As of 2014, there were approximately 75 public schools in New Jersey deemed “priority schools” and another 183 public schools known as “focus schools” where children appeared to receive a less than adequate education.\textsuperscript{100} In 2018, the opportunity presented itself to reverse previous inequity and institute a state funding policy that will once and for all guarantee the promise of a “thorough and efficient education” to New Jersey students of all socioeconomic statuses.

\textbf{PART IV: THE NEW SCHOOL FUNDING REFORM ACT}

In recent years, the New Jersey education system has continued to experience massive underfunding. According to the Education Law Center, New Jersey school systems were underfunded by more than $9 billion from 2010 to 2017.\textsuperscript{101} According to the most recent available figures, 55.3% of New Jersey’s education spending comes from local municipalities, 40.9% comes from the state and 3.8% comes from the federal government.\textsuperscript{102} On July 1, 2018, the first major alterations to the SFRA were signed into effect, implementing a new formula to

\begin{footnotesize}
\begin{enumerate}
\item[98] Rebell, supra n. 95 at 1861.
\item[99] Id.
\item[100] Julio C. Gomez, \textit{A Child’s Right To A Thorough And Efficient Education} 286-Feb N.J. Law. 65 (2014).
\item[102] Sitrin, infra n. 106.
\end{enumerate}
\end{footnotesize}
directly fund all school districts within the state fairly and equitably.\textsuperscript{103} According to state legislators, “The law envisions a massive redistribution of state aid . . . from districts with shrinking enrollment or growing tax bases to those with booming populations and large numbers of high-need students.”\textsuperscript{104} Taxpayers could obtain relief or additional burden, depending on which type of district they reside in.\textsuperscript{105} Over the next seven years, the state will continue to inject funds of up to nearly $2 billion more per year and, barring another recession, the plan will theoretically get New Jersey school districts to full, uncapped funding under the SFRA formula as originally intended.\textsuperscript{106} While increasing the amount of aid to underfunded school districts, the new laws will also decrease state funding to school districts which are determined to be overfunded.\textsuperscript{107} The new SFRA formula anticipates achieving the financially demanding goals set forth in the Act, but the methods of achieving these goals will be received with both praise and animosity.

A. State Aid Differential

The new legislation supplements, amends, and repeals various provisions of the original School Funding Reform Act of 2008. Set to go into effect for the 2019-2020 school year, the new legislation’s first course of action is to determine whether or not each school district in the state of New Jersey is spending above or below adequacy based on 2018 calculations.\textsuperscript{108} As previously noted, the Adequacy Budget is the total funding necessary for a particular school district to educate its students based on a variety of separate calculations.\textsuperscript{109} According to data compiled by the Education Law Center, from the 2008-2009 school year to the 2018-2019 school

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\textsuperscript{103} Id.
\textsuperscript{104} Id.
\textsuperscript{105} Id.
\textsuperscript{106} Carly Sitrin, \textit{Everything You Need To Know About School Funding In NJ}, http://www.njspotlight.com/stories/18/07/25/explainer-everything-you-need-to-know-about-school-funding-in-nj/
\textsuperscript{107} 2018 Legis. Bill Hist. NJ S.B. 2
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year the number of low-wealth districts spending below their adequacy level increased from forty-two to sixty-five statewide. 110 The Education Law Center also estimates that roughly sixty percent of New Jersey’s poorer school districts are spending at a level that does not meet the level necessary to provide a “thorough and efficient education.” 111 Under the new funding scheme, school districts across the state will see drastically different outcomes depending if the district is determined to be spending above or below adequacy.

Once an adequacy budget is determined for each district, the amendments seek to determine what is identified in the new statutes as “State Aid Differential.” The State Aid Differential is the difference between the sum of a school district’s allocation of equalization aid (the Adequacy Budget minus the district’s local fair share in tax revenue), Special Education Categorical Aid, Security Categorical Aid, Transportation Aid, Adjustment Aid and non-SFRA aids calculated for the pre-budget year and current budget year. 112 All of the above-mentioned forms of state aid are still to be determined by the same provisions that were promulgated in 2008 version of the SFRA. 113 However, the key difference in determining the State Aid Differential for the current budget year is that Adjustment Aid and non-SFRA aids are not factored into these calculations. 114 Non-SFRA aids refer to a variety of supplemental categories which include, but are not limited to PARCC readiness aid, professional learning community aid, and host district support aid. While not applicable to all school districts, these forms of aid may still constitute a substantial sum of funds which will not be held against school districts in determining their State Aid Differential.

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111 Id.
113 Id.
114 Id.
B. Elimination of Adjustment Aid and State Aid Differential

Under the previous SFRA formula, Adjustment Aid was provided to school districts to ensure that districts would receive the greater amount of state aid either calculated pursuant to the provisions of the SFRA when enacted in 2008 or the amount of state aid under the pre-SFRA formula for the 2007-2008 school year. Adjustment Aid, also referred to as “hold harmless aid,” was initially intended to be eliminated over time when the SFRA went into full effect. Because no end date for Adjustment Aid was ever established, the funding had continued to be distributed to school districts until the recent enactment of the new amendments in 2018. Although many school districts spending below their adequacy budgets will be receiving sizeable aid increases for the first time in quite a while, there remain a multitude of districts projected to suffer as a result of the Adjustment Aid cuts. It is estimated that twenty school districts currently spending below adequacy will be in the negative with regard to overall state aid when compared to 2017-2018’s budget as a result of the elimination of Adjustment Aid.

Although the elimination of Adjustment Aid will most certainly not be welcome by those twenty districts mentioned above, the elimination of Adjustment Aid as well as other categories of aid made available by calculating State Aid Differentials will open up opportunity to redistribute aid elsewhere. In order to redistribute state funds to school districts in need, the new statutes look to gradually decrease the State Aid Differential of schools that are already sufficiently funded when calculated. Over the seven year timeframe established by the

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116 Sitrin, supra. n. 106.
117 Id.
118 Education Law Center, supra n. 110.
119 Id.
legislature, schools which have a positive State Aid Differential will see decreases in aid starting at thirteen percent for the 2019-2020 school year culminating to a one-hundred percent decrease in the 2024-2025 school year.\textsuperscript{121} In order to ensure that the money obtained by these reductions is, in turn, allocated to school districts in need, the statutes make clear that:

An . . . Abbott district that is located in a municipality in which the equalized tax rate is greater than the Statewide average equalized tax rate for the most recent available calendar year and is spending below adequacy . . . shall not be subject to a reduction in state aid . . .\textsuperscript{122}

The statutes also ensure Abbott Districts that are currently spending above adequacy remain in a prominent financial position. The statutes expressly prevent any future reduction not to exceed the amount by which the district is spending above adequacy multiplied by the corresponding percentages for yearly decreases for school districts which are losing funds.\textsuperscript{123} The order in which any decrease in state aid will be deducted is as follows: 1) Adjustment Aid; 2) Non SFRA Aids; 3) Equalization Aid; 3) Special Education Aid; 4) Security Aid; and 5) Transportation Aid.\textsuperscript{124} A gradual decrease in aid as oppose to an abrupt halt will allow school districts the time to make appropriate internal decisions in regard to how to allocate the decreased budgets.

C. Repeal of Tax Growth Limitations and Enrollment Increases

In an effort to ensure that schools districts that are spending under adequacy do not slip further below the standard, the new legislation allows for previous “Tax Growth Limitations” to be lifted.\textsuperscript{125} Without allowing an increase in the local tax levy, some school districts may remain

\textsuperscript{121} Id.
\textsuperscript{122} N.J.S.A. 18A:7F-68(c)(1).
\textsuperscript{123} N.J.S.A. 18A:7F-68(c)(2).
\textsuperscript{124} N.J.S.A. 18A:7F-68(d).
\textsuperscript{125} supra n. 6.
underfunded even though viable school funds from property taxes would remain undisturbed. When a school district does not meet its calculated local fair share raised through property taxes, the district is likely to be considered under adequacy.126

Districts that lose funding and spend under what is considered adequate will be required to increase their tax levy by two percent, the law dictates. However, former Abbott districts . . . which spend below adequacy but have a high municipal tax burden, will not be affected by aid losses through 2025.127

The repeal of tax limitations will, in theory, allow school districts that are spending under adequacy to lean on raising local property taxes in order to make up the difference between the Adequacy Budget and state aid received. However, this raises the question of whether legislation designed to provide more equitable and fair funding to all school districts in the state may accomplish its objective where some districts are left in limbo facing state aid cuts and increases in taxes. As long as these districts required to raise the local tax levy are not of lower socioeconomic status, a two percent increase should satisfy the need of the district to meet the Adequacy Budget and ensure the schools are sufficiently funded.

Although New Jersey’s public school enrollment has remained relatively steady from 2008-09 to 2018-19, the number of students eligible for free or reduced price lunch has increased substantially from twenty-seven to thirty-nine percent.128 The number of students classified as English language learning has increased from four to six percent.129 These statistics are significant in that students who fit these criteria qualify as at-risk students and thus, the per pupil base amount a school district receives for these students increases. To account for increases in the enrollment of students in a school district, the new SFRA legislation allows for increases in

126 supra n. 52.
127 Claire Lowe, Press of Atlantic City; Gov. Murphy Signs Sweeney School Funding Reform (2018) (Last visited February 7, 2019
128 supra n. 107.
129 supra n. 107.
the local tax levy based on “weighted enrollment increases.”\textsuperscript{130} The weighted enrollment of a district is equal to the applicable weight used in determining the per pupil base amount multiplied by the actual number of students enrolled in the school district.\textsuperscript{131} For an increase in weighted enrollment from the previous year between one and two and one half percent, the local adjusted tax levy may be multiplied by 0.50.\textsuperscript{132} As the increase in enrollment continues to climb, the multiplier in which the tax levy may be increased adjusts upward as well.\textsuperscript{133} Should an average class size in a school district exceed ten percent above the facilities efficiency standards, a district may request approval from the Education Commissioner for an increase in the local tax levy as well.\textsuperscript{134} Allowing for an increase in the local tax levy for increases in enrollment is a sound principle that helps to ensure that school districts which are experiencing population booms are not caught off guard if additional funding is required to educate and provide services to those students.

**D. State Aid Growth Limitations**

Another key component of the new formula which aims to bring severely under-funded school districts up to par quickly is the repeal of “State Aid Growth Limits.” Under the previous SFRA formula, the total amount of aid received by a school district from one pre-budget year to the next was not to exceed ten percent in the case of a district that was spending above adequacy.\textsuperscript{135} In the case of a district that was spending below adequacy, state aid was not to be increased by more than twenty percent.\textsuperscript{136} By lifting these restrictions of the old formula, the state may now appropriate funds directly into school districts free of any statutory limitations.

\begin{itemize}
\item[133] Id.
\item[134] Id.
\item[136] Id.
\end{itemize}
For example, the City of Passaic School District will receive roughly nine to ten million more dollars for the 2018-2019 school year.\textsuperscript{137} This drastic increase in state funding is alleged to benefit the school district at an opportune time and will be used to create new learning experiences, increase security, and offer college prep courses for high school students.\textsuperscript{138}

Lifting the State Aid Growth Limitations will likely create instant beneficial results not just for the quality of the education which students receive, but will also benefit the overall experience in New Jersey public schools as well. Massive increases in funding will allow underprivileged school districts to hire more teachers and help in the furtherance of ensuring students receive a quality education in compliance with New Jersey Standards. As part of the state’s promise to supply needed funds to school districts, 172 school districts that are spending below adequacy will receive a $323 million increase in state aid for Fiscal Year 2019.\textsuperscript{139} Many of the aid increases that will be experienced by these schools spending below adequacy will be substantial in order to make up for the shortfalls of roughly eight previous years of flat funding.\textsuperscript{140} Additionally, it is estimated that 219 school districts which are spending above adequacy with receive roughly $50 million dollars in aid.\textsuperscript{141} Substantial increases in state aid of this magnitude would have most likely been impossible under the restrictions of the previous SFRA State Aid Growth Limits. These allowable increases will have an immediate impact on the educational experience of students in lower socioeconomic districts.

\section*{E. Backlash and Potential Solutions}

\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} Id.
While a majority of school districts will arguably see immediate benefits from the new funding policy, others will face state funding decreases over the next several years. "The Governor and the Legislature made progress in 2018-19, by increasing aid to districts spending below their adequacy budgets. But lawmakers also backtracked by cutting aid to districts already lacking the resources necessary to give students a meaningful opportunity to achieve state academic standards." For example, in Jersey City, the new legislation reduces state aid to the school district over time by $175 million, an amount that represents nearly 30 percent of its total 2018-19 budget.

Multiple school districts have banded together in an effort to take legal action against the State for funding cuts they argue are necessary for the day to day operation of adequately educating students. The school districts of Brick, Lacy, Jackson and Manalapan-Englishtown are the first of many school districts anticipated to join in litigation to challenge the legitimacy of the new funding policies. District administrators are concerned the new policies "will lead to devastating cuts to our academic programs, increased class sizes, the possible elimination of courtesy busing, increased taxes and the introduction of significant fees that parents will need to pay for extracurricular activities." In Brick Township, for example, school district officials have braced themselves to be without approximately $1.9 million in state aid for the 2018-2019 school year. Officials have also anticipate that over the next seven years, state aid cuts will

145 Mark Rosman, Manalapan-Englishtown School District Will Sue Over Funding
result in the loss of nearly $23.2 million in total.\textsuperscript{147} The Brick Township School District claims, inter alia, that the Legislature is violating the New Jersey Constitution by failing to appropriate funds for the equal benefit of all people within the state, as well as denying local Brick taxpayers due process of law by imposing arbitrary and unreasonable property tax burdens.\textsuperscript{148}

One way to counter an unequitable situation such as this would be to authorize the Education Commissioner to evaluate the necessity of funds allocated for certain school districts in which the state aid may be used in an inefficient manner. In Fair Lawn, New Jersey state funding increased under the new SFRA formula by roughly sixty percent from $3.96 million to $6.35 million.\textsuperscript{149} The district allegedly opted to apply $1.2 million dollars of this state aid toward tax relief for homeowners in the district, saving roughly four dollars for the owner of a home with an average value assessed at over $300,000.\textsuperscript{150} Fair Lawn voters had also recently approved of a $25 million project to address a recent student enrollment increase of approximately 400 students.\textsuperscript{151}

According to these statistics, it is evident that Fair Lawn may not be in dire need of the additional funding supplied by the new SFRA formula. By approving a $25 million local resolution and opting to apply state aid towards nominal tax breaks for taxpayers, Fair Lawn readily demonstrates additional aid increases may be superfluous. In this instance, one could argue the SRFA formula is flawed to allocate such a large increase in state aid to a school district that, while most likely appreciative of the received aid, is more than likely not in need of a substantial aid increase in comparison to more underprivileged districts in the state. The Education Commissioner and/or other appropriate government officials should have discretion to

\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} supra n. 110.
\textsuperscript{150} Id.
\textsuperscript{151} Id.
re-evaluate on a case by case basis if school district aid is allocated most efficiently to each district. In this instance, if it is determined that a district remains overfunded, the Commissioner or appropriate governing body may look to reduce aid to a particular district. This reduction could then be applied to districts such as Brick who can show substantial decreases in state aid which are likely to result in diminished educational quality provided to students in that district.

Another way to alleviate the pressure of reduced funds to school district arrives in the form of a nominal tax to coincide with taxes already collected via property. Simultaneous with the enactment of the new SFRA amendments, state legislators introduced a bill which would allow for a payroll tax to be implemented in certain school districts in an effort to alleviate reductions in state education aid. The new payroll tax law allows any municipality, by ordinance, to collect a payroll tax of up to one percent on all employers within the municipality.\(^\text{152}\) Should the median household income in the municipality exceed $55,000 according to the most recent American Community Survey, then all payroll tax revenues collected are to be used exclusively for school purposes only.\(^\text{153}\) This new form of taxation will prove quite helpful to some of the roughly two-hundred school districts expecting to see decreases in funding over the next few years.\(^\text{154}\)

The municipal payroll tax provides an effective means of counteracting reductions in state aid for education without requiring calculations into the property wealth of a particular area. Densely populated areas in which the majority of those residents are not per se property owners are precisely the populace who will help to support school funding. One way to make the payroll tax even more effective in countering reductions in state education funds would be to authorize

\(^{152}\) N.J.S.A. 40:48C-15

\(^{153}\) Id.

an increase of larger than one percent of a payroll tax on a sliding scale rate which coincides with median household income.

CONCLUSION

According to the most recent available data, the state of New Jersey maintains 2,516 individual public schools operating within 678 school districts.\textsuperscript{155} Adequately funding each school district to provide quality public education is a challenging duty for lawmakers to accomplish, evidenced by past decades of litigation at the state Supreme Court level as well as forthcoming political strife in response to the new funding laws. Regardless of one’s political views on spending or position on public education, it is vital for lawmakers to collectively maintain focus on the overall goal of funding education in New Jersey; “The state Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for all children in the State between the ages of five and eighteen years.”\textsuperscript{156} While the new funding formula may have some flaws when applied to certain school districts, the amendments to the SFRA put forth a good faith effort to reinvest finances directly to school districts in the most dire need of resources without stifling statutory limitations as to exactly how much may be invested on a year by year basis.\textsuperscript{157} It is not out of the realm of possibility that should the reduction of state aid to certain school districts prove too burdensome, remedial measures will be available in the future, such as implementing a new Adjustment Aid, to assist those districts.

Other critics of the new funding formula outside of school officials will likely proclaim to the redistribution of finances does not guarantee educational success. For instance, statistics

\begin{footnotes}\footnotetext[155]{New Jersey Public Schools Fact Sheet, https://www.state.nj.us/education/data/fact.htm (last visited November 8, 2018). (this information is up to date as of the 2016-2017 school year).}\footnotetext[156]{N.J. Const. art. VIII, sec. 4, par. 1.}\footnotetext[157]{N.J.S.A. 18A:7F-47 (Repealed July 1, 2018) (referencing the former SFRA’s cap on State Aid Growth Limits).}\end{footnotes}
showed in 2015 that while Newark, New Jersey spent approximately $22,000 per pupil, only 22% of students graduated high school compared with Chatham, New Jersey which spent $12,000 per pupil and a 100% graduation rate.\textsuperscript{158} Statistics such as this demonstrate that although funding is an important aspect of operating state public school systems, it is not the only factor that influences educational quality.\textsuperscript{159} But massive increases in education funding, such as a projected twenty-five million dollar increase for the city of Newark in the 2019-2020 school year, allow the district to allocate funds in a multitude of ways which will hopefully help to reshape the education system and improve grave statistics such as that above.\textsuperscript{160}

It is unrealistic to believe that standardized test scores and pass rates will ever reach a level where each student in the State is beyond proficient in every subject at all grade levels. There are far too many extrinsic factors in day to day life which impede education quality and a student’s ability and/or motivation to learn. However, ensuring that each school district is adequately funded to provide a “thorough and efficient” system of education at least gives all students the opportunity to maximize their educational potential without facing an uphill battle due to inequalities out of their control. Given the troublesome history of school funding over the previous decades, should Abbott Districts and other districts in need of financial support see any marginal improvements in the quality of education by the end of 2025, it shall be appropriate to deem the new funding initiative a success.


\textsuperscript{159} Id.