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Early Childhood Education and its Relation to a “Thorough and Efficient” Education: Why Pennsylvania Should Adopt the Abbott v. Burke Preschool Mandate

By: Courtney J. O’Brien

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Introduction

“The fundamental idea behind Head Start¹ was to get kids ready so they would have a chance in school. And a chance in school would give them a chance in life.”

– Sargent Shriver, founder of Head Start²

With almost half of all three and four year olds attending preschool or another early childhood education program in the United States,³ it is clear that early exposure to education is

¹ The Head Start Program was introduced in 1964 as a part of President Lyndon B. Johnson’s “War on Poverty.” What initially began as an eight-week summer program has grown into a mammoth early childhood education initiative run by the Department of Health and Human Services. The goal of the program is to address the preparedness and readiness of low-income children entering elementary school by “enhancing their cognitive, social, and emotional development, in a learning environment that supports children’s growth in language, literacy, mathematics, science, social and emotional functioning, creative arts, physical skills, and approaches to learning; and through the provision to low-income children and their families of health, educational, nutritional, social, and other services that are determined, based on family needs assessments, to be necessary.” 42 U.S.C. § 9831 (2011).

² PROJECT HEAD START: A LEGACY OF THE WAR ON POVERTY 59 (Edward Zigler & Jeanette Valentine eds., 1979).

becoming increasingly more important and more influential on a child's life than ever before. One need only look around a toy store to see that importance of learning is being enforced as early as infancy. The focus on early childhood education began in the 1960s when longitudinal studies were released that found that a child was most influenced, both intellectually and culturally, before the age of five, and that the basic skills needed for academic success began developing well before a child entered into the public school system.⁴ Children from middle or upper class families were routinely exposed to learning well before they began kindergarten, either through formal programs such as preschool, or through at home interaction with their parents reading and teaching them. But for children from the lower class, exposure was minimal and they were entering school severely behind their peers.⁵

In 1965 the President Johnson launched the Head Start program; it was the first federally funded public pre-school program. Over the ensuing decades the program grew and evolved, and has become a staple of social services for many impoverished individuals. Government provision of early childhood education has not just occurred at the federal level, several states have recognized the importance of early education for certain economically disadvantaged groups. In New Jersey, preschool education for low-income minority children⁶ became mandatory in 1998 when the New Jersey Supreme Court handed down *Abbott v. Burke (Abbott V)*.⁷ The court held that low-income students are lacking the basic skills needed when entering

³ *Critical Facts about Programs for Young Children*, NAEYC.ORG, <http://www.naeyc.org/policy/advocacy/ProgramFacts#ECEprograms> (last visited Dec. 4, 2011).

⁴ See, PROJECT HEAD START, *supra* note 2 at 44.

⁵ See generally, PROJECT HEAD START, *supra* note 2.

⁶ Not all low-income minority children are guaranteed preschool education in New Jersey. Only children who live in a "special needs" or "Abbott" district have been guaranteed preschool by the New Jersey Supreme Court. This is likely to change since the NJ state budget now makes preschool education mandatory for all students.

⁷ *Abbott v. Burke (Abbott V)*, 710 A.2d 450 (N.J. 1998).

into elementary school, and that, under the state's thorough and efficient education clause, mandatory preschool was necessary to lessen the skill gap.⁸

The neighboring state of Pennsylvania faces similar issues as New Jersey with the academic achievement of its low income, minority students, but does not mandate that preschool education be provided to qualifying students.⁹ The Pennsylvania cases concerning school finance have found the "thorough and efficient" education clause to describe the system of education, not an individual right to a certain level of education.¹⁰ However, given that the systemic and individual issues are intertwined with each other, both a thorough and efficient system and an individual right suggest that mandatory preschool is an appropriate preventative program.

Since the New Jersey and Pennsylvania constitutions contain almost identical education clauses,¹¹ the Pennsylvania Courts should adopt the reasoning of the New Jersey courts in the *Abbott* cases in terms of finding that a thorough and efficient education, requires mandatory preschool for students in at risk districts. Preschool equips students with the necessary skills for academic success and opens the door for equal opportunity for all students to achieve in school.

⁸ *Abbott V*, 710 A.2d 450, 463-64 (N.J. 1998).

⁹ *PA Pre-K Counts*, PA DEP'T OF EDUC. (2011), http://www.portal.state.pa.us/portal/server.pt/community/pre_k_counts/8742. Pennsylvania recently launched its "Pre-K Counts" Program, which is similar to, and works along side of, the federal Head Start program. However, unlike the *Abbott* preschool programs, eligibility for the Pre-K Counts program is based upon an individual family's income, not the district that a child resides in. Thus limiting the provision of services to a greater extent.

¹⁰ *Infra* Section II.C.2.

¹¹ *Infra* Section II.B.1 and II.C.1.

The New Jersey Constitution's education clause states, "the Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years." N.J. CONST. art. VIII, § 4, para. 1.

Pennsylvania's Constitution contains a similar education clause, located in Article III, Section fourteen: "the General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth." Pa. CONST. art III, § 14.

Section one examines the background of school finance litigation in terms of the history and the goals and core arguments of the third wave of the movement; and the relevance and importance of the movement for today's society. Section II discusses the current state of school finance litigation in the State of New Jersey and the State of Pennsylvania. It focuses first on the progression of school finance litigation in New Jersey through the *Abbott v. Burke* cases; then later discusses in parallel the history of school finance litigation in Pennsylvania. Section three lays out the current issues in Pennsylvania school finance litigation and discusses how the courts might deal with the hurdle of the political question doctrine. Finally, section four discusses how the Philadelphia school system has failed to provide an adequate education, that the remedy proposed by the courts will ultimately not address the problem, and how, therefore, the Pennsylvania courts should reexamine the school system under the "thorough and efficient clause" and should require mandate preschool as a preventative supplementary program.

I. Background of School Finance Reform Litigation

A. History of School Finance Litigation and Reform

The history of school finance litigation is typically divided into three phases or waves,¹² each characterized by the specific legal approach that education reform lawyers took when framing their argument challenging a state's school finance system.¹³

Wave III of the education finance litigation began in 1989 and is ongoing.¹⁴ Unlike earlier lawsuits, those of Wave III focused exclusively on a state's violation of its education

¹² MICHAEL PARIS, FRAMING EQUAL OPPORTUNITY: LAW AND THE POLITICS OF SCHOOL FINANCE REFORM 42 (2010).

¹³ Wave I, began in the 1960's with *Brown v. Board of Education* and continued until 1973 when the Supreme Court handed down *San Antonio v. Rodriguez*, which held that wealth was not a suspect classification and that educational was not a fundamental right under the federal constitution, *San Antonio v. Rodriguez*, 411 U.S. 1, 54-55 (1973). Litigation that occurred during the first wave was premised on federal equal protection clause claims. In light of the Supreme Court's holding in *Rodriguez*, the second wave of school finance litigation, occurring from 1973 to 1989, focused on equal protection clause claims based on state constitutions, Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 TEMP L. REV. 1151, 1157-58 (1995).

clause¹⁵ without an additional equal protection argument.¹⁶ As Paris notes, the third phase “is marked by far more success in court and more innovation in court decisions and remedies.”¹⁷ In 1989 alone, reformers saw victories in three states – Texas, Kentucky, and Montana; and in 1990 the New Jersey Supreme Court handed down *Abbott v. Burke* (Abbott II), holding that in a determination of what was adequate for poor, minority students, a comparison had to be made with what advantaged students received in the wealthy districts.¹⁸

B. The Heart of the Adequacy Movement

The core of the adequacy movement directly ties to the third wave of school finance litigation’s concentration on disparities in quality of education. Adequacy lawsuits¹⁹ focus on a state’s failure to provide that “high-minimum quality” and, as a result, their failure to afford each student equal educational opportunities stemming from a constitutionally mandated level of

¹⁴ Symposium, Issues in Education Law and Policy: Judicial Analysis During the Third Wave of School Finance Litigation: The Massachusetts Decision as a Model, 35 B.C. L. REV. 597, 603 (1994).

¹⁵ See Regina R. Umpstead, *Determining Adequacy: How Courts are Redefining State Responsibility for Educational Finance, Goals, and Accountability*, 2007 BYU EDUC. & L.J. 281, 291-292 (2007) (for a listing of various state education clauses and the wording of such clauses).

¹⁶ See *id.* at 286 (2007):

In the adequacy lawsuits of wave three, plaintiffs have argued that: (1) their state education clause requires that a specific substantive level of education, which is defined by state standards or goals, be provided to all students within the state; (2) this quality of education is not currently being supplied; and therefore, (3) the state has violated its constitutional duty with respect to education as embodied in its education clause; and (4) the court should impose a remedy.

¹⁷ PARIS, *supra* note 12 at 45.

¹⁸ *Abbott v. Burke* (Abbott II), 575 A.2d 359, 408 (1990).

¹⁹ Umpstead defines adequacy as: ““a level of resources or inputs that is sufficient to meet defined or absolute, rather than relative, output standards, such as a minimum passing score on a state achievement test. It is an outcome-oriented strategy.” Umpstead, *supra* note 15 at 282.

However, the definition of adequacy is impacted by various factors that are particular to the state in question, including the legal and political history of the education clause, the system of funding utilized by the state, the particular wording of the education clause, and the level of involvement of each branch in the decision making process.

education.²⁰ The aims of an adequacy lawsuit is to enhance the quality of educational offerings such that all students in a state, regardless of race or socioeconomic status, receive an equal education and, furthermore, are equally able to take full advantage of the educational opportunities provided in school.

A thorough and efficient education, under the third wave of school finance reform, has become synonymous with an adequate education.²¹ Plaintiffs have argued, and courts have found, that in order for an education to be considered “thorough and efficient,” it must be adequate.²² In *Robinson v. Cahill*, the court when discussing the meaning of a thorough and efficient education held that a system of education that failed to provide the skills necessary for a high school education “would hardly be thorough and efficient,”²³ and that the guarantee needed to be read as “equip[ping] a child for his role as a citizen and as a competitor in the labor market.”²⁴ Echoing the sentiments of Chief Justice Warren in *Brown*,²⁵ the New Jersey Supreme Court, in *Abbott IV*, defined an adequate education as one that will “prepare public school children for a meaningful role in society, one that will enable them to compete effectively in the economy and to contribute and to participate as citizens and members of their communities.”²⁶

C. Relevance Today

²⁰ Regina R. Umpstead, *Determining Adequacy: How Courts are Redefining State Responsibility for Educational Finance, Goals, and Accountability*, 2007 BYU EDUC. & L.J. 281, 298 (2007).

²¹ Paul L. Tractenberg, *Beyond Educational Adequacy: Looking Backward and Forward through the Lens of New Jersey*, 4 STAN. J. C.R. & C.L. 411, 420-21 (2008).

²² *Id.* at 421.

²³ *Robinson v. Cahill*, 303 A.2d 273, 295 (N.J. 1973)

²⁴ *Id.*

²⁵ *Brown v. Bd. of Educ. of Topeka, Kan.*, 347 U.S. 483, 493 (1954). Chief Justice Warren wrote, “In these days it is doubtful that any child may reasonably be expected to succeed in life he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

²⁶ *Abbott IV*, 693 A.2d 417, 428 (N.J. 1997).

The United States of American once led the world in terms of educational achievement and ability. Twenty five years ago the United States was ranked first in the world in terms of the number of adults between ages twenty-five to thirty-four that have at least a high school degree and the number of people who hold a college degree.²⁷ In 1995, the United States ranked second in college graduation rates, by 2008, that number fell to thirteenth; and only eight of the Organisation for Economic Co-operation and Development countries have a lower rate of high school graduation.²⁸ When the scores from the 2009 Programme for International Student Assessment were released, it was “an absolute wake-up call for America.”²⁹ Out of 34 countries in the assessment, the United States ranked fourteenth in reading, seventeenth in science and twenty-fifth in math.³⁰

The public education system in the United States is failing to teach its students even the most rudimentary skills, let alone the skills required to maintain a competitive edge over the rest of the rapidly developing world. If the United States wishes to regain its place as a leader in academic excellence, then early childhood education must be introduced as a means for at-risk minority students to obtain an adequate education. Many poor children enter kindergarten two or more years behind their affluent peers in terms of skills and the gap only increases as time passes.³¹ Studies of the federal Head Start program, and other similar early childhood education

²⁷ *U.S. Education Slips In Rankings*, CBS NEWS, (Feb. 11, 2009, 7:09 PM), <http://www.cbsnews.com/stories/2005/09/13/national/main838207.shtml>

²⁸ *In Ranking, U.S. Students Trail Global Leaders*, USA TODAY, (Dec. 7, 2010, 2:55 PM), http://www.usatoday.com/news/education/2010-12-07-us-students-international-ranking_N.htm

²⁹ *In Ranking, U.S. Students Trail Global Leaders*, USA TODAY, (Dec. 7, 2010, 2:55 PM), http://www.usatoday.com/news/education/2010-12-07-us-students-international-ranking_N.htm

³⁰ NAT'L CENTER FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., HIGHLIGHTS FROM PISA 2009 8; 24; 18 (Dec. 7, 2010) available at <http://nces.ed.gov/pubs2011/2011004.pdf>.

³¹ *Abbott IV*, 693 A.2d 417, 434 (N.J. 1997).

initiatives indicate that if poor minority students are going to be given a chance to succeed, to have real educational opportunities, then they must be given preschool education.³²

II. Current State of Education Law

A. Federal Law

The Supreme Court's ruling in *San Antonio v. Rodriguez* rejected the assertion that a fundamental right to education exists³³ and that, therefore, school finance systems should be analyzed under a strict scrutiny standard under Equal Protection Clause jurisprudence.³⁴ The ruling shifted the focus among education reformers from federal law to state law through state education clauses.

B. New Jersey

School finance litigation and reform have been at the forefront of New Jersey politics since 1975, when the New Jersey Supreme Court held in *Robinson v. Cahill* that the state's school finance system violated the "thorough and efficient" clause of the New Jersey Constitution because there were disparities in per-pupil spending.³⁵ The *Robinson v. Cahill* cases, while independently important,³⁶ were crucial because they laid the foundation for the Education Law Center (ELC)³⁷ to bring the historic *Abbott v. Burke* cases, which forever changed the way New Jersey finances public education.

1. New Jersey Constitution

³² See generally, James E. Ryan, *A Constitutional Right to Preschool?*, 94 CALIF. L. REV. 49 (2006).

³³ *San Antonio v. Rodriguez*, 411 U.S. 1, 35-37 (1973).

³⁴ *Id.* at 39-40.

³⁵ *Robinson v. Cahill*, 351 A.2d 713 (N.J. 1975); *Robinson v. Cahill*, 358 A.2d 457 (N.J. 1976).

³⁶ See, *Robinson v. Cahill*, 351 A.2d at 720 (stating that the right to a thorough and efficient education is a fundamental right).

³⁷ *Mission & History*, EDUCATION LAW CENTER, <http://www.edlawcenter.org/about/mission-history.html> (last visited Dec. 2, 2011).

The New Jersey Constitution, like the constitutions of numerous other states,³⁸ contains an education clause giving the state legislature power to control the provision of elementary and secondary education. New Jersey's Education Clause, entitled "Maintenance and Support of Schools," states, "the Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the State between the ages of five and eighteen years."³⁹ The words "thorough and efficient" provided the crux of the ELC's argument for why the New Jersey legislature was violating its constitutional mandate to students. Thorough and efficient implied that a level of adequate education be provided to New Jersey's students, and the state was not meeting this minimum threshold for certain groups of students.⁴⁰

2. Case Law

Abbott v. Burke

The *Abbott* Cases⁴¹ began in 1981 when the Education Law Center, on behalf of twenty children attending schools in low-income areas, filed a complaint challenging New Jersey's

³⁸ See, *State Constitutions*, EDUCATION RIGHTS CENTER, http://www.educationrightscenter.org/State_Constitutions.html (last visited Nov. 27, 2011). The following is a list of states whose constitutions contain education clauses, the list is not an exhaustive: Alaska; Arizona; Connecticut; Georgia; Illinois; Michigan; North Carolina; Pennsylvania; Tennessee; Vermont; Wyoming. See also, Molly McUsic, *The Use of Education Clauses in School Finance Reform Litigation*, 28 HARV. J. ON LEGIS 307, 311 (1991)

³⁹ N.J. CONST. art. VIII, § 4, para. 1

⁴⁰ See, *Abbott II*, 575 A.2d 359, 403 (1990) (stating that "a thorough and efficient education requires such level of education as will enable all students to function as citizens and workers in the same society, and that necessarily means that in poorer urban districts something more must be added to the regular education in order to achieve the command of the Constitution").

⁴¹ *Abbott v. Burke (Abbott I)*, 495 A.2d 376 (N.J. 1985); *Abbott II*, 575 A.2d 359 (N.J. 1990); *Abbott v. Burke (Abbott III)*, 643 A.2d 575 (N.J. 1994); *Abbott v. Burke (Abbott IV)*, 693 A.2d 417 (N.J. 1997); *Abbott V*, 710 A.2d 450 (N.J. 1998); *Abbott v. Burke (Abbott VI)*, 748 A.2d 82 (N.J. 2000); *Abbott v. Burke (Abbott VII)*, 751 A.2d 1032 (N.J. 2000); *Abbott v. Burke (Abbott VIII)*, 790 A.2d 842, (N.J. 2002); *Abbott v. Burke (Abbott IX)*, 798 A.2d 602, (N.J. 2002); *Abbott v. Burke (Abbott X)*, 832 A.2d 891 (N.J. 2003); *Abbott v. Burke (Abbott XI)*, 832 A.2d 906 (N.J. 2003); *Abbott v. Burke (Abbott XII)*, 852 A.2d 185 (N.J. 2004); *Abbott v. Burke (Abbott XIII)*, 862 A.2d 538 (N.J. 2004); *Abbott v. Burke (Abbott XIV)*, 889 A.2d 1063 (N.J. 2006); *Abbott v. Burke (Abbott XV)*, 901 A.2d 299 (N.J. 2006); *Abbott v. Burke (Abbott XVI)*, 953 A.2d 1198 (N.J. 2006); *Abbott v. Burke (Abbott XVII)*, 935 A.2d 1152 (N.J. 2007); *Abbott v. Burke (Abbott XVIII)*, 956 A.2d 923 (N.J. 2008); *Abbott v. Burke (Abbott XIX)*, 960 A.2d 360 (N.J. 2008); *Abbott v. Burke (Abbott XX)*, 971 A.2d 989 (N.J. 2009).

school finance system under the Public School Education Act of 1975 (PSEA).⁴² In 1985 the New Jersey Supreme Court, in *Abbott I*, declared the need for an initial hearing and the case was transferred to an administrative law judge.⁴³

In *Abbott II*⁴⁴ the New Jersey Supreme Court held that the PSEA was unconstitutional when applied to the state's twenty-nine⁴⁵ "special needs districts."⁴⁶ The court ordered that the PSEA either be amended or replaced with new legislation to ensure that there was (1) equality of funding between the SNDs and higher wealth districts, and that (2) the level of funding was enough to provide for the higher educational needs of the SNDs through both regular educational programs as well as special programs and services.⁴⁷

In both *Abbott III*⁴⁸ and *Abbott IV*⁴⁹, the New Jersey Supreme Court held that the new legislation did not comply with the Court's mandate for both parity funding and the supplemental programs. The court found that the implementation of supplemental programs in the SNDs

In *Abbott III*, the New Jersey Supreme Court held that Quality Education Act of 1990 (QEA) did not adequately address the special needs of the students in SNDs and that the

⁴² Public School Education Act of 1975, N.J. STAT. ANN. § 18A:7A-1 (repealed 1996).

⁴³ *Abbott I*, 495 A.2d 376, 393 (N.J. 1985).

⁴⁴ *Abbott II*, 575 A.2d 359 (N.J. 199).

⁴⁵ *Abbott Districts*, EDUCATION LAW CENTER, <http://www.edlawcenter.org/cases/abbott-v-burke/abbott-districts.html> (last visited Nov. 25, 2011). There are currently thirty-one Abbott Districts: Asbury Park; Bridgeton; Burlington City; Camden; East Orange; Elizabeth; Garfield; Gloucester City; Harrison; Hoboken; Irvington; Jersey City; Keansburg; Long Branch; Millville; Neptune Township; New Brunswick; Newark; Orange; Passaic; Paterson; Pemberton; Perth Amboy; Phillipsburg; Plainfield; Pleasantville; Salem City; Trenton; Union City; Vineland; and West New York.

⁴⁶ Special Needs Districts have come to be known as SNDs or Abbott Districts.

⁴⁷ The New Jersey Supreme Court held that, in order for the state to achieve the "constitutional standard for the students from . . . poor urban districts . . . the totality of the districts educational offering must contain elements over and above those found in the affluent suburban district." *Abbott II*, 575 A.2d 359, 402 (N.J. 199).

⁴⁸ *Abbott III*, 643 A.2d 575 (N.J. 1994).

⁴⁹ *Abbott IV*, 693 A.2d 417 (N.J. 1997).

Commissioner of Education never conducted the required study to identify the appropriate remedial programs and their costs.⁵⁰

The “key” *Abbott* decision for the purpose of this paper is *Abbott V*,⁵¹ in which the New Jersey Supreme Court held that, in order for the “special needs districts” or “Abbott Districts” to meet the Common Core Curricular Standards under CEIFA, and therefore provide a thorough and efficient education, the districts needed to provide certain supplemental programs, including early preschool education.⁵² The Commissioner of Education himself noted the powerful impact of preschool education, “well-planned, high quality half-day preschool programs . . . help close the gap between the home and school environments and the educational expectations that lead to academic success.”⁵³ The court held that “because the absence of such early educational intervention deleteriously undermines educational performance once the child enters public school, the provision of pre-school education also has strong constitutional underpinning.”⁵⁴ Pre-school, while considered a supplemental program in New Jersey, is aimed at decreasing the deficits that children enter with so that they are able to acquire an adequate education over the next thirteen years in school.

C. Pennsylvania

1. Pennsylvania Constitution

Similar to the New Jersey Constitution, the Commonwealth of Pennsylvania’s Constitution also contains a “thorough and efficient” education clause.⁵⁵ Located in article three,

⁵⁰ *Abbott III*, 643 A.2d 575, 579 (N.J. 1994).

⁵¹ *Abbott V*, 710 A.2d 450 (N.J. 1998).

⁵² *Id.* at 463.

⁵³ *Id.* at 462.

⁵⁴ *Id.* at 464.

⁵⁵ Pa. CONST. art III, § 14.

section fourteen, the “Public School System Clause” states “the General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”⁵⁶ The language of Pennsylvania’s education clause is not identical to that of New Jersey’s,⁵⁷ but the clause still provides for a thorough and efficient system of public education,⁵⁸ and while Pennsylvania’s clause does not specify the ages of the children, because Pennsylvania has compulsory attendance laws for children for students between the ages of (no later than) eight and seventeen,⁵⁹ it can be inferred that a “thorough and efficient” education is guaranteed to approximately the same age group in Pennsylvania as in New Jersey.⁶⁰

2. Pennsylvania Case Law

As in New Jersey, there has been a fair amount of litigation surrounding school finance systems⁶¹ and the adequacy of public education in Pennsylvania. The Pennsylvania Supreme Court, similar to New Jersey,⁶² held that public education is both a fundamental right,⁶³ as well as a civil right that cannot be denied to a person based on their race.⁶⁴

⁵⁶ *Id.*

⁵⁷ New Jersey’s education clause provides for a “thorough and efficient system of free public schools for the instruction of all children . . . between the ages of five and eighteen years.” N.J. CONST. art. VIII, § 4, para. 1.

⁵⁸ Pa. CONST. art III, § 14.

⁵⁹ 24 PA. STAT. ANN. § 13-1326 (West 2011); 24 PA. STAT. ANN. § 13-1327 (West 2011).

⁶⁰ New Jersey’s education clause states that a thorough and efficient education must be provided for children between five and eighteen years old, N.J. CONST. art. VIII, § 4, para. 1. Pennsylvania’s education clause, through the compulsory education laws, impliedly mandates a thorough and efficient education for children between (no later than) eight and seventeen years old. Pa. CONST. art III, § 14.

⁶¹ See generally *Danson v. Casey*, 399 A.2d 360, 363-364 (Pa. 1979) (describing generally the school finance system in Pennsylvania and where education funding derives from, as well as the problems with the Philadelphia school board levying taxes for education). See also, 24 PA. STAT. ANN. § 5-507 (West 2011) for a description of a school board’s power and authority to levy taxes on a locality: “the board of school directors in each school district is hereby vested with all the necessary authority and power annually to levy and collect . . . the necessary taxes required, in addition to the annual State appropriation.” *Id.*

⁶² *Robinson v. Cahill*, 351 A.2d 713, 720 (N.J. 1975). Although, unlike Pennsylvania, New Jersey has not found that education is a civil right under the equal protection clause.

The Pennsylvania Supreme Court, when presented with a school finance issue, has consistently held that school districts do not have a duty to provide a certain level of educational services to its students;⁶⁵ thus, as long as the financing system enacted by the legislature is reasonably related to the maintenance and support of a public school system, the system will be in accord with the constitutional mandate.⁶⁶ The court, under the purview of separation of powers,⁶⁷ has also declined to define either what comprises an adequate education or what funds are necessary to support an adequate education.⁶⁸

While *Giacomucci v. Southeast Delco School District* predominantly deals with refunding tuition of students who choose to go to schools outside the district, it also represents one of the few judicial decisions discussing the options of financially overburdened tax districts that serve proportionally high low-income, minority students.⁶⁹

The court made several points about the options available to municipally overburdened school districts, two of which are relevant here. First, since a school district has no greater duty

⁶³ Sch. Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass'n, 667 A.2d 5, 9 (Pa. 1995); Pennsylvania Human Relations Comm'n v. Sch. Dist. of Phila. (*PHRC-Phila. 1996*), 681 A.2d 1366, 1380 (Pa. Commw. Ct. 1996).

⁶⁴ *PHRC-Phila. 1996* at 1380-1381.

⁶⁵ See, *Danson v. Casey*, 399 A.2d at 363. The Pennsylvania Supreme Court rejected the plaintiffs' claim that the current school finance system did not provide Philadelphia's public school children with a thorough and efficient education and that, therefore, the students were being denied a normal level of education, *id.* at 365, and equal opportunities on the basis of their residence in Philadelphia, *id.* at 363. The failure of the plaintiffs to argue that the students were entitled to an "adequate" education rather than a "normal" education was fatal to their claim. *But see*, *Lisa H. v. State Bd. of Educ.*, 447 A.2d 669, 671 (Pa. Commw. Ct. 1982) (holding that, although education is not a fundamental right in Pennsylvania, *id.* at 673, and therefore there is no mandate that each student receive a particular level or quality of education, *id.*, there is an exception for exceptional children to receive "an individualized level or quality of education," *id.*

⁶⁶ *Danson v. Casey*, 399 A.2d at 367.

⁶⁷ *Marrero by Tabales v. Commonwealth*, 709 A.2d 956, 965-66 (Pa. Commw. Ct. 1998), *aff'd sub nom. Marrero ex rel. Tabalas*, 739 A.2d 110 (Pa. 1999) (holding that "Article 3, Section 14 places the responsibility for the maintenance and support of the public school system squarely in the hands of the legislature. Thus, this court will not inquire into the reason, wisdom, or expediency of the legislative policy with regard to education . . . these are matters which are exclusively within the purview of the General Assembly's powers, and they are not subject to intervention by the judicial branch of our government."

⁶⁸ *Id.* at 965.

⁶⁹ *Giacomucci v. Se. Delco Sch. Dist.*, 742 A.2d 1165 (Pa. Commw. Ct. 1999).

to provide education than the Legislature has delegated to it, a district is not powerless if the “means by which the General Assembly has authorized it to raise money to fund education are inadequate.”⁷⁰ Therefore, if a district proves that it’s funding is inadequate to comply with the constitutional mandate for a thorough and efficient education system, a court can order the state to provide additional resources.⁷¹

The second option the court discusses is pursuant to Pennsylvania’s school code. Under section 691 of the School Code, the Secretary of Education, after a proper investigation, can declare a school district in financial distress.⁷² The court in *Giacomucci* articulated that if a school district operates in an area with municipal over-burden, and thus cannot count on local taxes to produce enough revenue to provide an adequate education, it might be an appropriate remedy to declare the district distressed.⁷³ Such a declaration triggers a series of control mechanisms by the Department of Education, who, in lieu of the school directors, assumes control until a sound financial structure is reestablished.⁷⁴

In the *Pennsylvania Human Relations Commission v. School District of Philadelphia* line of cases, the Commonwealth Court of Pennsylvania ordered the School District of Philadelphia to provide both equal educational quality and educational opportunity to all of its students.⁷⁵ The *PHRC* cases did not employ a claim of educational adequacy through the thorough and efficient

⁷⁰ *Id.* at 1173-74.

⁷¹ *Id.* at 1174.

⁷² 24 PA. STAT. ANN. § 6-691 (West 2011) (listing several reasons for which the Secretary can find a district in distress, including, but not limited to, the salaries of teachers or employees remaining unpaid for a period of ninety days, the school district has accumulated and has operated with a deficit equal to 2% of the asset valuation of the taxable real estate within the district for two successive years, and the school district has failed to provide for an educational program in compliance with the provisions of the act.)

⁷³ *Giacomucci*, 742 A.2d at 1174.

⁷⁴ 24 PA. STAT. ANN. § 6-692 (West 2011); *Giacomucci*, 742 A.2d at 1174.

⁷⁵ *Pennsylvania Human Relations Comm’n v. Sch. Dist. of Phila. (PHRC-Phila. 1994)*, 651 A.2d 186, 188 (Pa. Commw. Ct. 1994).

clause, rather the cases centered on the *de facto* segregation in the Philadelphia public schools and the inherent racial disparities that resulted from such segregation.⁷⁶

III. Overview of the Problem

Pennsylvania's constitution states that the General Assembly must provide a "thorough and efficient" education for the students in the Commonwealth. However, the General Assembly has not adopted a school financing system that ensures that a "thorough and efficient," and therefore an adequate, system of education is provided to all the students; nor have the Pennsylvania courts found that the state's financing systems violate the constitutional guarantee.

Prior cases brought on behalf of the poor, minority students and the School District of Philadelphia⁷⁷ have failed to bring about any meaningful changes either in how the education system is funded or in the quality of education provided to its students, yet the it has been declared that "the denial of equal educational opportunity to thousands of public school children in Philadelphia will have immeasurable adverse impacts on the citizens of the entire Commonwealth."⁷⁸

The Philadelphia school system faces remarkably similar problems as the "Abbott Districts" in New Jersey, in terms of insufficient funding as well as the underlying factors that effect the educational attainment of its students.⁷⁹ In spite of the almost identical education clauses, and remarkably parallel circumstances, which implies that the similarly situated students

⁷⁶ *PHRC-Phila. 1996*, 681 A.2d 1366, 1370 (Pa. Commw. Ct. 1996). The trial record demonstrated that Black and Hispanic students in racially isolated schools were being denied equal educational opportunity. *Id.*

⁷⁷ There are numerous school districts in the Commonwealth of Pennsylvania that face municipal overburden and cannot provide a thorough and efficient education because the local tax base is inadequate to fund the level of education required. This paper does not seek to claim that the School District of Philadelphia is the only district for which municipal overburden is an issue, it merely uses Philadelphia as an example because it is the largest school district in the state and has such high percentages of economically disadvantaged minority students.

⁷⁸ *PHRC-Phila. 1996*, 681 A.2d 1366, 1381.

⁷⁹ Such factors include high poverty rates, high crime rates, increased rate of welfare dependency, higher health issues, increased likelihood of being in single parent (typically single mother) households.

would benefit from *Abbott*-like programs, the Pennsylvania courts ruled that school financing is a non-justiciable political question.⁸⁰ Consequently, as long as the school-financing scheme set forth by the General Assembly bears a reasonable or rational relation to provision of education, it is valid.⁸¹

The Pennsylvania courts will not consider questions concerning the adequacy of school finance systems under the political question doctrine because there has been a textual commitment of the authority over school finance to the General Assembly.⁸² However, in the *PHRC-Philadelphia* cases, the Pennsylvania Supreme Court held that if the state has delegated an obligation to a political subdivision⁸³ and that subdivision does not have adequate resources to “carry out its functions, the Commonwealth is obligated to adequately fund the political subdivision to satisfy its legally delegated obligations.”⁸⁴ If the court so desires, it can utilize the language of the *PHRC-Philadelphia* cases to circumvent the holding in *Danson* and to evaluate whether, in light of the fact that the Commonwealth has made the school district an agent required to carry out its constitutional burden of providing a thorough and efficient system of education, it is necessary to mandate that a thorough and efficient system requires an adequate education beginning with preschool and that the State must provide the additional funding.⁸⁵

⁸⁰ *Marrero by Tabales v. Commonwealth*, 709 A.2d 956, 965-66 (Pa. Commw. Ct. 1998), *aff’d sub nom. Marrero ex rel. Tabalas*, 739 A.2d 110 (Pa. 1999).

⁸¹ See *Danson v. Casey*, 399 A.2d 360, 367 (Pa. 1979); *Marrero*, 709 A.2d at 964; *Giacomucci*, 742 A.2d 1165, 1173; *Bensalem Twp Sch. Dist. v. Commonwealth*, 524 A.2d 1027, 1029 (Pa. Commw. Ct. 1987).

⁸² *Marrero by Tabales v. Commonwealth*, 709 A.2d 956, 966 (Pa. Commw. Ct. 1998), *aff’d sub nom. Marrero ex rel. Tabalas*, 739 A.2d 110 (Pa. 1999); *Sweeny v. Tucker*, 375 A.2d 698, 705 (Pa. 1977).

⁸³ The Pennsylvania Supreme Court held that the School District of Philadelphia qualified as a political subdivision because the School District was “an agent of the Commonwealth delegated with authority to administer the Commonwealth’s obligation” under the state’s education clause. *PHRC-Phila. 1996*, 681 A.2d 1366, 1382 (Pa. Commw. Ct. 1996).

⁸⁴ *Id.* at 1383.

⁸⁵ *PHRC-Phila. 1996*, 681 A.2d at 1383: “the State must provide the political subdivision with the taxing power, or the appropriations, necessary to discharge its statutorily delegated duty.”

IV. Pennsylvania's Public School System is Neither Thorough and Efficient, Nor is it Adequate

A. Philadelphia's Current Education Statistics

The Philadelphia School District is among the ten largest school districts in the nation,⁸⁶ and is the largest in Pennsylvania. The district is primarily comprised of economically disadvantaged minority students, with 56.2 percent African American students, 18.6 percent Hispanic or Latino students,⁸⁷ and 80.6 percent of students are categorized as economically disadvantaged.⁸⁸ The demographics of the school district typify those of at-risk minority students who require increased educational services in order to achieve academic success.

For the 2009-10 academic year, the four-year graduation rate for the School District of Philadelphia was fifty-eight percent; the six-year rate was sixty-three percent.⁸⁹ The statistics are even more revealing when broken down by demographics: for students in special education programs, forty-five percent graduate in four years;⁹⁰ for African American males, the rate is around fifty percent, for females, around sixty-three percent;⁹¹ for Latino males, the number is hovering around forty-five percent, and for females it is fifty-two percent.⁹² In 2008-09

⁸⁶ *About Us*, SCHOOL DISTRICT OF PHILADELPHIA (Nov. 02, 2011), <http://www.phila.k12.pa.us/about/>, (Philadelphia is the eighth largest school district in the United States in terms of enrolled students).

⁸⁷ *Enrollment*, SCHOOL DISTRICT OF PHILADELPHIA (Sept. 30, 2011), <http://www.phila.k12.pa.us/about/#enrollment>.

⁸⁸ *Id.*

⁸⁹ Paul Socolar, *6-Year Graduation Rate Grows to 63%*, PHILADELPHIA PUBLIC SCHOOL NOTEBOOK (Apr. 2011), <http://www.thenotebook.org/april-2011/113527/6-year-graduation-rate-grows-63>.

⁹⁰ *Id.*

⁹¹ *Racial Gaps Persist, But Graduation Rates Inch Up*, PHILADELPHIA PUBLIC SCHOOL NOTEBOOK (Apr. 2011), <http://www.thenotebook.org/april-2011/113555/racial-gaps-persist-graduation-rates-inch>.

⁹² *Id.*

Philadelphia spent approximately \$6,345 per student.⁹³ By comparison, the Lower Merion School District, located less than ten miles from Philadelphia's City Hall,⁹⁴ had a graduation rate of ninety-three percent for 2009-10 year,⁹⁵ and spent around \$23,000 per student.⁹⁶

According to the Pennsylvania Department of Education's Academic Achievement Report for 2010-2011, the Philadelphia School District did not make adequate yearly progress (AYP)⁹⁷ and is in its ninth year of corrective action.⁹⁸ The Philadelphia school system is neither meeting the academic performance requirements of No Child Left Behind, nor is it graduating a majority of its students from high school with the skills necessary to become productive members of society. The school district is failing to meet its constitutional mandate to provide a thorough and efficient education.

B. *Giacomucci's* Remedy is Inadequate to Provide a Thorough and Efficient Education

When a school district is seen or labeled as "failing," the common response is to blame the administrators in charge of the district; accusations of money mismanagement and ineptitude are frequent. The major issue, nonetheless, facing school districts such as Philadelphia is not the

⁹³ Melissa Dribben, *Corbett's Bad Math on School Funding: The Governor says money won't Buy Educational Success. The Numbers Don't Agree*, PHILA. INQUIRER (May 1, 2011), http://articles.philly.com/2011-05-01/news/29493389_1_school-districts-education-cuts-catholic-schools

⁹⁴ Driving Directions from Lower Merion High School to City Hall, Philadelphia, PA, GOOGLE MAPS, <http://maps.google.com> (follow "Get Directions" hyperlink; then search "A" for "Lower Merion High School, Ardmore, PA" and search "B" for "Philadelphia, PA"); then follow "Get Directions" hyperlink.

⁹⁵ COMMONWEALTH OF PA. DEP'T OF EDUC., *LEA Preliminary 2009-10 4-Year Cohort Graduation Rate*, at 6, available at http://www.education.state.pa.us/portal/server.pt/community/pennsylvania_department_of_education/7237/info/757639.

⁹⁶ Melissa Dribben, *supra* note 93; *School District Snapshot Report (2005-2009): Financial, Lower Merion School District, Pennsylvania*, NAT'L CTR. FOR EDUC. STATISTICS, <http://nces.ed.gov/surveys/sdds/acs09/esdr/Financial.aspx?state=42&dist=4214160> (last visited Dec. 5, 2011).

⁹⁷ *Philadelphia City SD: District AYP Overview*, PA. DEP'T OF EDUC. ACADEMIC ACHIEVEMENT REPORT: 2010-2011 (2011), <http://paayp.emetric.net/District/Overview/c51/126515001>. For Grades 3-5: only 4/9 measures were met in reading, and 8/9 were met in mathematics. For Grades 6-8: only 9/10 of the measures were met in reading, but five of the nine measures met were through the "growth model", and only 7/10 measures were met in mathematics. For Grades 9-12: only 1/9 of the measures were met in reading, and 1/9 in mathematics.

⁹⁸ *Id.*

individuals who run the district or the inefficient use of available funds; rather, it is the fact that the available tax base is unable to produce the local revenues needed to support a school system like Philadelphia's, which requires additional funding in order to meet the needs of its students.⁹⁹

The primary source of school funding, both in Pennsylvania and the United States, is local property tax revenue,¹⁰⁰ meaning that the quality of education provided to students directly relates to the amount of wealth in and property values of the district.¹⁰¹ A logical conclusion drawn from this type of school finance system is that the at-risk students, the ones who need increased services, in the form of supplemental programs, in order to obtain an adequate education, are the students who are least likely to receive the services because they live in school districts with low property values and less revenue to support the supplemental programs.

The solution put forth by the court in *Giacomucci*, to have a school district that is unable to fund an adequate education declared financially distressed, will ultimately do nothing or little to nothing to address the underlying issues facing overburdened districts. Under the Pennsylvania School Code, one of the primary powers of the "Special Board of Control" to remedy a district's financial distress is the ability to order the school board to levy an additional tax on a district.¹⁰² However, it is illogical to assume that a school district, which has been declared financially distressed due to municipal overburden, will be able to support an additional tax imposed by the Special Board, thus negating the effectiveness of the remedy imposed by the Special Board.

⁹⁹ See generally, *PHRC-Phila. 1996*, 681 A.2d 1366 (Pa. Commw. Ct. 1996) (discussing the additional requirements that the School District of Philadelphia must implement with in order to comply with the court's remedial order, as well as the necessity of additional funding from the state to introduce and maintain such requirements.)

¹⁰⁰ *Danson v. Casey*, 399 A.2d 360, 363 (Pa. 1979).

¹⁰¹ *Umpstead*, *supra* note 15 at 287-88.

¹⁰² 24 PA. STAT. ANN. § 6-694 (West 2011). "When the operation of a distressed school district has been assumed by the special board of control, the board of school directors of the district shall, upon the recommendation and with the approval of the special board of control, levy an additional tax or taxes sufficient to liquidate the indebtedness of the district."

The *Giacomucci* solution is just short of state takeover of a school district, and such a solution, as demonstrated by New Jersey's takeover of the Newark School System, is not a suitable approach to address municipal overburden. In April of 1995 a New Jersey judge ordered the state to take over the Newark School District after investigations uncovered financial mismanagement and failing achievement scores from students, with only one in four high school juniors passing the High School Proficiency Assessment.¹⁰³ Sixteen years and five governors later,¹⁰⁴ the Newark School System is still under state control but student achievement and assessment scores have not increased dramatically. For 2009, less than sixty percent of students on all grade levels passed the language arts assessment; less than sixty percent of students passed the math assessment, with most grades having less than fifty percent of students passing.¹⁰⁵

The appropriate solution is not to change who controls the School District, but rather to change how much money is provided to the school district and how the funding is allocated¹⁰⁶ to best serve the student population because “the polestar in any decision requiring the assignment of priorities of resources available for education must be the best interest of the student.”¹⁰⁷

C. Reinvesting in High Quality Pre-K

¹⁰³ Neil MacFarquhar, *Judge Orders a State Takeover of the Newark School District*, N.Y. TIMES, Apr. 14, 1995, <http://www.nytimes.com/1995/04/14/nyregion/judge-orders-a-state-takeover-of-the-newark-school-district.html?pagewanted=all&src=pm>.

¹⁰⁴ Christine Todd Whitman (1994-2001); Donald DiFrancesco (2001-2002); Jim McGreevey (2002-2004); Richard Codey (2004-2006); Jon Corzine (2006-2010); Chris Christie (2010-present). http://en.wikipedia.org/wiki/List_of_Governors_of_New_Jersey#cite_note-75.

¹⁰⁵ *Analysis of Student Performance*, NEWARK PUBLIC SCH., available at <http://www.nps.k12.nj.us/2286101221122652893/site/default.asp>

¹⁰⁶ *Abbott IV*, 693 A.2d 417, 428 (N.J. 1997): “Both additional money and reformation of the way in which that money is spent are required to improve the conditions in failing school districts.”

¹⁰⁷ *Sch. Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass’n*, 667 A.2d 5, 9 (Pa. 1995) (quoting *Sch. Dist. of Phila. v. Twer*, 447 A.2d 222, 224-225 (Pa. 1982)). “Any interpretation of legislative pronouncements relating to the public educational system must be reviewed in context with the General Assembly’s responsibility to provide for a “thorough and efficient system” for the benefit of our youth.” *Id.*

If the Pennsylvania courts mandate that preschool be provided to low-income, at-risk children, it will clearly result in an increased tax burden for the residents of Pennsylvania; and at a time when the entire nation is concerned about the state of the economy, no judge or politician wants to propose a measure that will make it harder for Americans to make ends meet. However, the long-term benefits of a high quality preschool program have been shown to greatly outweigh the initial expenditures of the program, ultimately cutting costs to taxpayers in later years.¹⁰⁸ When children are better prepared for school, they are more willing to learn and, as a result, learn more efficiently and more effectively, which ultimately “reduces the pressure on school resources and budgets.”¹⁰⁹ Mandatory preschool is early intervention in an at-risk child’s academic career; it is a preventative compensatory program to stave off future negative effects of being an economically disadvantaged student.

Children who participate in high quality preschool have shown marked improvements in not just academic areas, but social and economic areas at various later points in life.¹¹⁰ Preschool programs can be the difference “between failing and passing, regular or special education, or staying out of trouble.”¹¹¹ “The High Scope/Perry Preschool Project, a model pre-k program, provided high quality preschool to approximately one hundred and twenty low-income African

¹⁰⁸ Ryan, *supra* note 32 at 58-59.

¹⁰⁹ Clive R. Belfield, *Early Childhood Education: How Important Are the Cost-Savings to the School System?*, CENTER FOR EARLY CARE AND EDUC. 11 (Sept. 10, 2008), available at http://www.winningbeginningny.org/publications/documents/belfield_report_000.pdf.

¹¹⁰ Pennsylvania Human Relations Comm’n v. Sch. Dist. of Phila. (*PHRC-Phila. 2001*), 784 A.2d 266, 273 (Pa. Commw. Ct. 2001): “state test results for the past year of fourth grade students provided full-day kindergarten exceeded the statewide averages in reading and math and that subsequent groups of children who received full-day kindergarten are entering first, second, third and fourth grades with much higher skill levels than before . . . and the fact that students who received full-day kindergarten have consistently performed at higher levels in reading and math and that a review of the past 5 years of the kindergarten program indicates that it will have a lasting effect in terms of student achievement.”

¹¹¹ W. Steven Barnett, *Long-Term Effects of Early Childhood Programs on Cognitive and School Outcomes*, 5.3 THE FUTURE OF CHILDREN 25, 43 (1995), available at http://futureofchildren.org/futureofchildren/publications/journals/journal_details/index.xml?journalid=58.

American children for two and a half hours a day, five days a week, for either one or two years.¹¹²

The numerous follow up studies found that participants had better grades, higher achievement scores, higher graduation rates, and lower rates of grade retention and special education placement.¹¹³ Participants also had lower rates of welfare dependency and criminal activity, and higher employment rates and income.¹¹⁴ One study found that by the time the participants reached twenty-seven years old, the public saved over twice as much as what it spent on the program,¹¹⁵ with a return of between \$2.54 and \$8.74 for every dollar put in.¹¹⁶ Similar savings have been seen in the Chicago Child-Parent Care Programs, where for every dollar invested, the public received back about seven dollars and fourteen cents in benefits.¹¹⁷ The long-term benefits of the federal Head Start program have not been studied due to the varied nature and large size of the programs, but it is estimated that the short and medium term benefits offset forty to sixty percent of the total costs¹¹⁸

One of the larger “medium term” cost-savings for society as a result of high-quality preschool programs is the reduction in the number of children in special education programs.¹¹⁹ Special education programs require high levels of resources for students, and studies have shown that students who are enrolled in preschool programs are statistically less likely to be placed in

¹¹² *HighScope Perry Preschool Study*, HIGHSCOPE.ORG (2011), <http://www.highscope.org/Content.asp?ContentId=219>.

¹¹³ Ryan, *supra* note 32 at 58-59.

¹¹⁴ *Id.*

¹¹⁵ Ryan, *supra* note 32 at 66.

¹¹⁶ Belfield, *supra* note 109 at 6.

¹¹⁷ Belfield, *supra* note 109 at 6.

¹¹⁸ Belfield, *supra* note 109 at 6.

¹¹⁹ Belfield, *supra* note 109 at 8.

special education, saving an estimated two to seven thousand dollars per child.¹²⁰ A lower rate of grade retention and placement in special education classes provides a clear decrease in taxpayer costs over time and a clear benefit to students who are receiving higher quality and more effective educations, and therefore is an unmistakable advantage of investing in preschool education for at-risk children.

Out of the numerous deficits resulting from an inadequate education, one of the more striking is the increased likelihood that the individual will later commit a crime. Belfield notes the extreme social costs of certain crimes and the resulting benefit to society, through a decrease in the number of such crimes committed, if high school completion rates increase by one percent. For murder, the estimated social benefit is \$1,128,085,907, and for assault, \$368,267,795.¹²¹

A follow up study of the *Perry Preschool Project* found that by age twenty-seven, children who didn't attend the Perry Preschool were five times more likely to become chronic offenders with five or more arrests,¹²² and by age forty they were fifty percent more likely to become chronic offenders with more than ten arrests and fifty percent more likely to be arrested for violent crimes.¹²³ Those left out of the program were also four times more likely to be arrested for drug felonies by age forty, and seven times more likely to be arrested for possession of dangerous drugs.¹²⁴

¹²⁰ *Id.* at 10.

¹²¹ THE PRICE WE PAY: ECONOMIC AND SOCIAL COSTS OF INADEQUATE EDUCATION 154 (Clive R. Belfield & Henry M. Levin eds., 2007). All figures are in 1993 dollars. The estimated total cost per murder is \$3,024,359, and the estimated change in the number of murders if high school completion increases one percent is -373. The social benefit amount is equal to the cost per murder (\$3,024,359) times the change in the number of crime (373), *id.* For assault, the cost per crime is \$9,400 and the estimated change in crime is -37,135, *id.*

¹²² *Quality Matters: High-Quality Early Care and Education Can Cut Crime in New York*, WINNING BEGINNING NY 1 (2011), available at http://www.winningbeginningny.org/documents/fcik_report_qualitymatters.pdf.

¹²³ *Quality Matters*, *supra* note 122 at 1.

¹²⁴ Ryan, *supra* note 32 at 66.

Similar follow up studies of the Chicago Child-Parent Care Center found that by age eighteen non-participants were seventy percent more likely to be arrested for violent crime,¹²⁵ and that for those between ages eighteen to twenty-four, non-participants were thirty-nine percent more likely to be convicted of a violent crime and twenty-four percent more likely to have been incarcerated in jail or prison.¹²⁶ Overall, it is estimated that by the time the participants reached age eighteen approximately thirty-three thousand crimes were prevented.¹²⁷

In 2010, the Pennsylvania Department of Corrections housed a population of roughly 51,300 inmates at an annual cost of \$32,986 per inmate.¹²⁸ In 1980, the Department of Corrections had an inmate population of 8,243 and spent approximately \$11,450 per inmate.¹²⁹ From 1980 to 2010, there has been a six-fold increase in the prison population and a 188 percent increase in the cost of housing the inmates.¹³⁰ Forty-seven percent of the Pennsylvania prison population were incarcerated for “Part I” Offenses¹³¹ and eighteen percent for drug related crimes.¹³²

Pennsylvania is currently facing a four to five billion dollar budget deficit and the state’s Auditor General Jack Wagner has advocated for a new approach to the state’s correctional

¹²⁵ *Quality Matters*, *supra* note 122 at 1.

¹²⁶ *Quality Matters*, *supra* note 122 at 1.

¹²⁷ *Quality Matters*, *supra* note 122 at 1.

¹²⁸ OFFICE OF PLANNING, RESEARCH, STATISTICS AND REENTRY, PA. DEP’T OF CORR., *Cost & Population 2* (2011), available at http://www.cor.state.pa.us/portal/server.pt/community/research_statistics/10669.

¹²⁹ *Id.*

¹³⁰ Joe Mandak, *Wagner: Pa. Can Save Millions on Prison Costs*, PHILLY.COM (Apr. 2, 2011), http://articles.philly.com/2011-04-02/news/29374713_1_inmate-prisons-spokeswoman-susan-bensinger.

¹³¹ OFFICE OF PLANNING, RESEARCH, STATISTICS AND REENTRY, PA. DEP’T OF CORR., *Cost & Population 2* (2011), available at http://www.cor.state.pa.us/portal/server.pt/community/research_statistics/10669. Part I offenses include: aggravated assault, arson, burglary, vehicular homicide, involuntary manslaughter, murder (murder 1, 2, and 3), rape, robbery, theft, and voluntary manslaughter.

¹³² *Id.*

system, citing the staggering increase in costs over the past few decades.¹³³ While the implementation of a mandatory preschool program for at-risk children will not decrease the budget for the department of corrections immediately, or in the next few years, the long-term impacts of the program will translate into far greater savings for the state in terms of costs of crime as well as costs of social programs.

Conclusion

Although Pennsylvania's previous court decisions precluded examination of what a "thorough and efficient" or an "adequate" education entails, both in terms of inputs and outputs, the Pennsylvania Supreme Court's decision in *Wilkinsburg* that education represents a fundamental right, and in *PHRC-1996* that students in Philadelphia are constitutionally guaranteed equal educational opportunities, enables the court to examine whether the provision of mandatory pre-school education, which has been shown in various studies and social science reports, to be the key to students' success later in life. Pre-school education allows students to enter elementary school with the skills to learn and grow, rather than fall further behind as they progress through school. The Pennsylvania Court should look at mandatory preschool education through the lens of New Jersey's *Abbott* cases as the appropriate remedy to school overburden.

¹³³ Joe Mandak, *Wagner: Pa. Can Save Millions on Prison Costs*, PHILLY.COM (Apr. 2, 2011), http://articles.philly.com/2011-04-02/news/29374713_1_inmate-prisons-spokeswoman-susan-bensinger.