



May 11, 2012

The Honorable Paul A. Sarlo, Chair
Senate Budget and Appropriations Committee
496 Columbia Blvd. 1st floor
Wood Ridge, NJ 07075

The Honorable Brian P. Stack, Vice Chair
Senate Budget and Appropriations Committee
301 45th St. 1st floor
Union City, NJ 07087

The Honorable Vincent Prieto, Chair
Assembly Budget Committee
1249 Paterson Plank Rd.
Secaucus, NJ 07094

The Honorable Gary S. Schaer, Vice Chair
Assembly Budget Committee
1 Howe Ave. Suite 302
Passaic, NJ 07055

Re: Christie Administration's Circumvention of Legislature's
Process for Adjustments to the School Funding Formula

Dear Senator Sarlo, Senator Stack, Assemblyman Prieto, and
Assemblyman Schaer:

I write to bring to your immediate attention serious constitutional and Separation of Powers issues resulting from the Christie Administration's proposal to use the FY13 appropriations act as a vehicle to effect substantive, multi-year adjustments in the education cost and school aid amounts in the School Funding Reform Act of 2008 ("SFRA"), N.J.S.A. 18A:7F-43 to 63.

In enacting the SFRA, the Legislature established a discrete and detailed statutory process for adjusting the State funding formula. N.J.S.A. 18A:7F-46. This process is initiated by the Commissioner of Education's responsibility to issue an Education Adequacy Report ("EAR") by September 1, 2010 -- and

every three years thereafter -- to the Legislature proposing changes in the education cost and aid amounts in the SFRA. The Legislature then has 90 days to adopt a concurrent resolution stating that it disagrees with all or any specific part of the report. The resolution must also direct the Commissioner to submit a revised report by January 1. Unless the Legislature adopts a concurrent resolution, the cost and aid amounts in the EAR shall be deemed approved for the two successive fiscal years beginning one year from the subsequent July 1.

This explicit statutory procedure has significant legislative features that have been undermined and blatantly disregarded by the Christie Administration. First, the prerequisite for any changes in the cost and school aid components of the SFRA formula is the EAR, which, according to Acting Commissioner Christopher Cerf's admission before the Assembly Budget Committee on April 23, 2012, has not yet been issued and will not be provided to the Legislature before the end of the year -- well beyond the statutory deadline of September 2010. Second, the Legislature intended to have the process initiated in September and concluded no later than January 1. The clear intent of this timeframe was to ensure separate, focused and deliberative legislative consideration of any adjustments to the SFRA formula outside of the complicated budget process, and long before the Governor's Budget Message and the development of the appropriations act for the following fiscal year. Third, the Legislature intended that any changes would be in effect for only three years until the Commissioner initiates another formula review cycle through the issuance of a new EAR.

In its FY13 school aid proposal, the Christie Administration seeks legislative approval of adjustments to the cost and aid amounts of the SFRA formula through the budget process prior to the issuance of the EAR, and for a period of five years rather than the three years required by the Legislature. This school aid proposal should be rejected outright by your respective Committees on the ground that significant decisions relating to cost and school aid amounts in the formula must be assessed in accordance with separate and distinct procedural requirements in the SFRA statute, and not through the present budgetary process, especially when those legislative requirements have been so cavalierly ignored by the Administration.

The Acting Commissioner sought to explain to the Assembly Budget Committee his failure to issue the EAR as not wanting to burden legislators during the budget process. This explanation is ironic given that the Administration seeks to burden the Legislature in that same budget process with significant adjustments to the school funding formula without the benefit of the EAR, the mechanism intended by the Legislature to serve as a prerequisite to the careful consideration of such formulaic adjustments. It is obvious, therefore, that the Christie Administration's budgetary school aid proposal encroaches upon explicit legislative prerogatives, and substitutes overreaching Executive power during the annual budget process for the carefully designed, focused and deliberative procedure enacted in the SFRA, in violation of the letter and spirit of the Separation of Powers Clause in the New Jersey Constitution. Indeed, if the Administration can so baldly and transparently override the explicit EAR process mandated in the SFRA statute, then there is no longer any limit to the Governor's exercise of Executive power.

Beyond ignoring the Legislature's required procedure in the SFRA, the Administration's refusal to issue the EAR flagrantly disregards the Judicial Branch's rulings in Abbott v. Burke, 206 N.J. 332, 376 (2011) ("Abbott XXI"). Specifically, last May, the Supreme Court, in addressing the State's failure to fully fund the SFRA formula, explicitly ordered the Administration to complete a "look back" analysis of the SFRA through the issuance of the EAR. The Court also directed the Administration to undertake the analysis necessary to recommend future formula adjustments in the EAR in a manner that is "meaningful and relevant" and ensures "the SFRA continues to operate optimally and as intended for future years." Id. The Administration's proposal severely impairs the "meaningful and relevant" review of the SFRA required by the Supreme Court and the Legislature. In so doing, the Administration appears to simply assume that it can act in a manner that disregards or dismisses the express dictates of the Legislature and the Judiciary.

Finally, approval of the Administration's adjusted formula in the FY13 Appropriations Act, rather than through the SFRA's deliberative process, runs afoul of the constitutional prohibition against "logrolling" more than one object in a single legislative enactment. N.J. Const. Art. 4, sec.7, par.4. The annual Appropriations Act bears the sole purpose of creating "statutory authorization to expend specified sums for specified purposes," or, in other words, "govern[ing] the state's spending program for the given fiscal year." N.J. Attorney General Formal

Opinion No. 15-1975. It is a patent misuse of the annual budget process and appropriations act to effect fundamental adjustments to key substantive components of the SFRA formula -- adjustments that will affect all school districts in the State for a period of five years - while simultaneously disregarding the process for making such adjustments enacted by the Legislature in the SFRA. As a result, the Administration's school aid proposal, because it is based upon formula adjustments that have not been reviewed or approved by the Legislature through the EAR process, lies well beyond the core statutory objective of the annual appropriations act.

In sum, the Governor's FY13 school aid proposal should be rejected as an unauthorized and legally improper incursion by the Executive upon the other branches of government, in defiance of clear legislative and judicial mandates. The Legislature's separate -- and careful and deliberative -- process for consideration of substantive changes in the SFRA formula must be preserved and maintained in the face of such threatened Executive overreaching.

We are available to work with your respective Committees to develop an alternative school aid proposal for the FY13 budget that is fully consistent with the cost and aid amounts in the SFRA formula as presently enacted.

Thank you for your consideration of this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "David G. Sciarra". The signature is fluid and cursive, written in a professional style.

David G. Sciarra, Esq.
Executive Director