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**TESTIMONY OF PROFESSOR PAUL L. TRACTENBERG  
TO THE NEW JERSEY DEPARTMENT OF EDUCATION ON ITS  
REPORT ON THE COST OF EDUCATION  
December 18, 2006**

Good afternoon. I am Professor Paul L. Tractenberg, Founding Director of the Rutgers-Newark Institute on Education Law and Policy. Thank you for this opportunity to present testimony on the Department's *Report on the Cost of Education*, which was released on Tuesday, December 12, less than a week ago.

The Institute on Education Law and Policy is a center for interdisciplinary research and innovative thinking on education law and policy based at Rutgers University – Newark. A primary mission of IELP is to bring to bear on New Jersey's most important and controversial education issues an objective, research-based approach that will inform and improve discussion and decision-making.

School funding reform has been one of IELP's primary focuses, especially during the past year. We have issued two reports—*Don't Forget the Schools: Fiscal, Budget and Policy Considerations for Tax Reform* and *Don't Forget the Schools: Legal Considerations for Tax Reform*—and a third report—*Don't Forget the Schools: School Funding Considerations for Tax Reform*—will be released shortly. We also have launched another, related project to develop proposals for new school funding legislation.

As many of you know, my own involvement in reforming New Jersey's school funding system goes back to 1970. During those 36 years, five school funding laws have been challenged in the courts. The first of them, the State School Aid Law of 1954, was replaced by the Legislature, effective July 1, 1971, by the State School Incentive Equalization Aid Law (better known as the Bateman or Bateman-Tanzman Act). The Bateman Act and the three school funding laws that followed (the Public School Education Act of 1975, the Quality Education Act of 1990 and the Comprehensive Educational Improvement and Financing Act of 1996) have all been struck down as unconstitutional under our state's education clause—the fabled T&E provision. In some ways, the Bateman Act may have been the best of the lot (the trial judge in *Robinson v. Cahill* believed it would have satisfied the T&E clause if the Legislature had fully funded it). Now we have a chance to finally get it right—to adopt a new school

funding law that fully complies with our state constitution and that, by doing so, fully meets our obligations to all of New Jersey's children.

Almost every state has decided that a good school funding law must be based on a good study of educational costs. Unfortunately, I have to tell you that the Department's *Report on the Cost of Education* is not a good study. It cannot, therefore, be the basis of a good new school funding law. It falls so far short in every respect that, in my judgment, the only responsible thing for us to do is to start over with a new, carefully devised and developed study. We don't have to look far for models.

The same consultants that NJDOE retained on a very limited basis, Augenblick, Palaich and Associates, have just been awarded a major contract by the Pennsylvania State Board of Education to do a year-long statewide costing-out study, pursuant to a legislative mandate. Augenblick, Palaich also are continuing to work on a study for The Connecticut Coalition for Justice in Education Funding, *Estimating the Cost of an Adequate Education in Connecticut*, which began about a year ago. The scope of its work, and the independence accorded it, in both instances is far broader than what occurred in New Jersey.

It is crucial we make certain that the process we use is open, transparent, carefully conceived, research-based and professionally sound, and that it affords the public ample opportunity for input. We can—we must—do much better than the current process. Indeed, it is ironic that the Bateman Act resulted from a far better process. A high-level commission, the State Aid to School Districts Study Commission, was established by the Legislature in 1966. It worked for nearly two years, with substantial staff support, to develop a report issued in late 1968. That report became the basis for the Bateman Act adopted in October 1970.

Beyond the importance of process, however, is the need for the cost study, and the rest of the legal, policy and educational issues that must be carefully considered in devising a new school funding law, to be constitutionally sound. The Department's report gets us off on the wrong foot in that regard as well.

*Abbott v. Burke* is a central fact of New Jersey's constitutional structure for education. Yet the report does not even mention *Abbott* and its constitutional mandates. The court contemplated that some of those mandates could be modified (e.g., which districts were identified as "special needs," and how the parity or foundation funding level was established), **but** that could be done only if there was a demonstrably sound, data-based justification, one that would assure students in poor urban districts an opportunity to achieve the state's Core Curriculum Content Standards and to compete with their advantaged peers.

Other *Abbott* mandates are not subject to alteration. These include high-quality early childhood education, full-day kindergarten, intensive early literacy programs and a range of supplemental services to meet the particularized needs of students in special needs

districts, all matters not fully addressed in the Department's report, if they are addressed at all.

The Department's report totally fails, in regard to either type of Abbott mandate, to bear the heavy burden of demonstrating that its costing out approach meets the court's constitutional requirements. It has proposed a foundational or baseline funding level derived from the combination of a four-year old, and otherwise flawed, "professional judgment panel" approach and median cost figures that are seriously suspect. It has proposed to meet all other educational needs by pupil weighting factors that apply to all students without regard to the special circumstances that the court addressed in *Abbott*.

In the time I have available today, I can't even begin to describe all the other ways, procedural and substantive, in which the Department's report falls short. I want to use my remaining time to do something else--to indicate briefly what I recommend should be done in the next year:

- A prominent, high-visibility commission, perhaps modeled after the Thornton Commission in Maryland, should be established as soon as possible to sponsor and oversee an independent, state-of-the-art professional costing-out study that gives careful attention to meeting the Abbott mandates, as well as to ensuring that all other students in New Jersey receive a T&E education. The commission also should study the other legal, policy and educational matters that are relevant to creating a new school funding law.
- An interim funding system should be adopted that corrects the dramatic funding problems caused by, among other things, the Legislature's failure to fully fund CEIFA for the past four years. A paper prepared by Professor Ernest Reock for IELP, which will shortly appear on our website, indicates that, if CEIFA had been fully funded during those years, non-Abbott districts, and especially those that are poor or mid-wealth, would have received dramatically more state education aid. To illustrate, for the 2005-6 school year alone the total under-funding amounted to about \$847 million, with poor non-Abbott districts losing about \$170 million and mid-wealth districts losing about \$508 million. In those categories of districts, that amounts to an average of \$1,627 per pupil in the poor districts and \$758 per pupil in the mid-wealth districts. That additional state aid could have been used to increase education spending, provide property tax relief, or do some of both. If the entire amount had been applied to property tax reduction, the poor districts could have reduced their local tax levies, on average, by more than 20%, and the mid-wealth districts, on average, by almost 9%. Perhaps fully funding CEIFA for 2006-7 might not be a bad interim measure.

Thank you for considering my initial reactions and recommendations. As always, the Institute on Education Law and Policy and I personally stand ready to assist the Department, the Legislature and the state in whatever way we can to help you seize this important opportunity to do right by all our children.