
Subcommittee Meeting

of

JOINT COMMITTEE ON THE PUBLIC SCHOOLS ABBOTT SUBCOMMITTEE

“Recommendations for the Designation of Abbott Districts”

LOCATION: Committee Room 1
State House Annex
Trenton, New Jersey

DATE: August 5, 2003
9:30 a.m.

MEMBERS OF SUBCOMMITTEE PRESENT:

Assemblyman Donald Tucker, Co-Chair
Assemblywoman Rose Marie Heck, Co-Chair
Senator Ronald L. Rice
Senator Martha W. Bark
Assemblyman Patrick J. Diegnan Jr.

ALSO PRESENT:

Melanie M. Schulz
Executive Director
Joint Committee on the Public Schools



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ASSEMBLYWOMAN ROSE MARIE HECK (Co-Chair): Good morning, everyone.

Commissioner, welcome.

COMMISSIONER WILLIAM L. LIBRERA: Good morning, and welcome to you.

ASSEMBLYWOMAN HECK: We had a wonderful meeting with you the last time, so I'm looking forward to today -- and some new information, I hope.

COMMISSIONER LIBRERA: I think so, and it's always good to be here. It's always good to have the opportunity to present to you what work we're doing, to talk with you about the basis of that work, and then to continue to discuss how we are going to proceed, and why, and what the policy implications of all of this are.

ASSEMBLYWOMAN HECK: We appreciate that.

COMMISSIONER LIBRERA: I look forward to the dialogue that we're going to have today.

ASSEMBLYWOMAN HECK: And I know Senator Rice is very happy to see you here, as is Assemblyman Diegnan, and other assembly and senators may come as you're speaking, but I think we should begin.

COMMISSIONER LIBRERA: Fine.

ASSEMBLYWOMAN HECK: Thank you.

COMMISSIONER LIBRERA: Okay.

How would you like to proceed? Would you like me to make an opening statement?

ASSEMBLYWOMAN HECK: I would like you to make an opening statement, please.

COMMISSIONER LIBRERA: Okay. I'll be pleased to do that.

ASSEMBLYWOMAN HECK: Because you did mention some kind of a report that you were putting together and that's -- we're interested.

COMMISSIONER LIBRERA: Sure.

As you know, the 1997, I believe, facilities legislation required the commissioner to prepare and recommend criteria to the Legislature every five years on Abbott designation. That is, not only the designation of Abbott school districts, but a process by which school districts might become Abbotts and the process by which school districts who no longer fit the criteria may change. And this was due March of 2002. Now, that was approximately 30 days after I arrived, so we were not in the position to complete that report. It took us some time to do that, and we did do that, and it was sent, as you can see from the date on the letter of the copy that each of you has, in April of last year. That was sent to all legislators in response to that requirement.

The last time the Abbott designation was reviewed or considered, that is, the last time this process of applying criteria against school districts for purposes of having the Abbott designation be established, was 1978. So, essentially, it was done once, in 1978. The Legislature, in their wisdom, certainly saw that things changed significantly in periods of time, so there was a need to put a process together, and that's what we have done.

And to what you have in front of you (referring to statement), is the April of 2003 correspondence from the Department, specifically from me, to all

legislators. Now, knowing how much paper you receive, I thought it would be best to bring you that same correspondence--

ASSEMBLYWOMAN HECK: You're absolutely correct.

COMMISSIONER LIBRERA: --on the slight chance that you were not able to put your hands on it.

What you see in that, and by way of review, is an explanation of how this was done. The way we did it was -- go back through all of the *Abbott* decisions so that the criteria would not be the result, simply, of the Department developing new criteria, but instead, taking language that we find repeatedly in the *Abbott* decisions, because that's the only way which I believe this will remain true to the intent of all the *Abbott* decisions. And you know, there are many. That was done with a host of people, because there's a voluminous record on the *Abbott* decisions.

But what we find is that there are three themes in the *Abbott* decisions. Number one, the *Abbott* decisions repeatedly refer to poor urban districts. And those poor urban districts are exclusively K-12 districts. Now, there is nothing in the record that would say others may not be considered, but the fact of the matter is that's the language -- poor urban districts.

The second thing which we think is much more definitive is that *Abbott* designation rests on two criteria; one, educational adequacy, and economic adequacy -- those two. And that's identified, as you can see (referring to statement), on Page 1 of the Criteria and Process. The economic adequacy specifically deals with concentrations of poverty. And if you look through all of the decisions, you'll see the repeated reference to poor urban, and then you will see high concentrations of poverty.

The third theme in this is extracted word for word, and that is “the Abbott designation is a remedy, not a reward,” which means that within reason there will be times when the remedies, if you will, the additional support, provides us a level of progress where a district may no longer meet the educational inadequacy part of this. And since there have been many efforts and many in the way of resources that have been brought to Abbott school districts, and we have seen significant progress, that’s an area that must be considered as we deal with this.

Of the two-part test for Abbott, which is economic (*sic*) adequacy and concentrations of poverty, there’s another part of this of which we must take note, and that is, the dominant one of the two is concentrations of poverty. There is clearly language and the spirit of these decisions that says even if a school district were to be progressing in very significant ways -- if concentrations of poverty are so high in a school district as to make it not possible for the community to be able to provide continued support, then they must remain as an Abbott. So that’s an important piece of this, because you do have communities in the State of New Jersey who have above 75 percent of their children on free and reduced lunch. Now that is a huge proportion of concentrations of poverty.

Now, the range among Abbott school districts now goes anywhere from about 30 percent to about 80 percent. So there’s a huge range in there. So it’s important that we have those two-part criteria, that you understand that the economic -- that is, the concentrations of poverty component in here is dominant, and that when there is high concentrations of poverty those districts shall remain as Abbott regardless of how well they achieve.

ASSEMBLYWOMAN HECK: I'm going to interrupt you--

COMMISSIONER LIBRERA: Sure.

ASSEMBLYWOMAN HECK: --because you say it goes from 30 to 80. Am I hearing that correctly?

COMMISSIONER LIBRERA: Yes.

ASSEMBLYWOMAN HECK: So what do we use as a dominant poverty level? Do we say 40 percent, 50 percent, or over 50?

COMMISSIONER LIBRERA: Well, and that's where the criteria is in here, because it's not just concentrations of poverty. It has to do with tax rate. It has to do with per capita income. But there needs to be triggers in this that says when you are below, this is what we must look at.

Now, I'll come back to that in a minute.

ASSEMBLYWOMAN HECK: Okay. And I also would like to, at some point, look at the achievement levels over the years.

COMMISSIONER LIBRERA: Sure.

ASSEMBLYWOMAN HECK: Thank you.

COMMISSIONER LIBRERA: That's what we've been looking at as well.

ASSEMBLYWOMAN HECK: I know that. I know that. Thank you.

COMMISSIONER LIBRERA: The purpose of saying this is -- and I'll come back to it -- but the simplest illustration of this is, if you have greater than 60 percent of the children in high concentrations of poverty -- and that's part of this language, greater than 60 percent -- there is clear language that would suggest to us -- and naturally we've imparted to you in the

recommendation -- that Abbott designation stays, regardless of what the achievement is, though we are paying attention to the achievement. But we don't want to get into a situation in its most extreme form, where a community -- and we have some -- are achieving at very high levels and yet have 75 percent of their children who are on free and reduced lunch.

The achievement we ought to celebrate, but we ought to recognize that there isn't the economic support basis for those programs to continue. That's where Abbott, in its extreme form, needs to say concentrations of poverty are dominant. Okay?

ASSEMBLYWOMAN HECK: The questions that come into my mind is: how do we correct the concentration of poverty that could exist ad infinitum, unless we make some inroads to changing that poverty concentration in assistance?

COMMISSIONER LIBRERA: Sure. Some of that is within our control, the Department of Education. Some of it is not within our control. But one of the things that we've noticed, and I don't want to use specific school districts now, because I think that gets in the way of our discussion-- Well, one of the things that we have noticed in school districts where there are high concentrations of poverty and the progress, the academic achievement in those communities begins to increase in very dramatic ways, that becomes an attractive community for people to make investment, and we're seeing that. Now it certainly helps if you're approximate to New York City, and it certainly helps if you're approximate to other big cities and transportation. Schools alone are not going to do that. But when school achievement is high, and we have some incredibly high achievement in urban school districts -- and we're very,

very proud of that in some of them -- that's what happens. It is a portion of what attracts people. It is also something that usually reflects well on a relationship between the governing body and the school. And it also usually is associated with good planning. All of that brings private sector investments in, and we're seeing that. Okay.

ASSEMBLYWOMAN HECK: Thank you.

COMMISSIONER LIBRERA: Now, let me go a little bit further here in terms of this report. The report, as presented to the Legislature, was designed to give you as much detail as possible, while we still have another piece of this, which is not finished. And that is the 10-year revision of district factor group designation -- DFG. In the State of New Jersey, we have DFG categories that go from DFG-A, which is the lowest classification based on the lowest aggregate indices of wealth. So that if you were to identify the lowest income communities in the State of New Jersey, they're known as District Factor A.

Because concentrations of poverty are such an important piece of this, the district factor group designations become important to us. Abbott schools now, and there are 30, are not all District Factor A. Most of them are, not all of them are. Some are District Factor B. And presently, a couple of them are neither A or B. They are C or C-D.

We believe that the way to understand this Abbott designation is to have the updated version of the DFG so that you can see how all of the criteria that we've established fits. The district factor grouping in the State of New Jersey relies exclusively on census data which is done every 10 years, but it takes a while for census data to become available to the school district, to the Department. We have spent some time working with people on the present

DFG designation, and we're improving that. We are also awaiting one final report from the Census Bureau, which is due at the end of August. And once we have that report, we will be able to complete our work as to: this is the district factor group designation in the State of New Jersey that you may use in this criteria to understand the impact of what it is that we're recommending.

Right now, we are relatively certain as to what is going to constitute district factor group components, with one exception. We are wrestling with -- do we make provisions or not for those few communities where the student population in the school is very different than the community at large? There are a few. That is, there are a few communities that are relatively wealthy, but the school population is predominantly children of very low income.

How do we account for that? We don't have an answer just yet, but I want you to understand that that's a small number of places. Because, for the most part, if the school population is predominantly children who come out of high concentrations of poverty, it's usually because the community is so identified. But we have some communities where that might have been true in 1978, but it isn't true now.

ASSEMBLYWOMAN HECK: I'm going to jump in with one question.

COMMISSIONER LIBRERA: Sure.

ASSEMBLYWOMAN HECK: When you're looking at the DFG-A and you're factoring in new criteria, are you looking at nutrition programs within the schools? Because we have received some data on children who have breakfast in the schools, have lunch in the schools, and the manner in which they improve in their workability. So I was wondering if you could look at that

so that we might be able to see whether or not that is also a factor. Because it's not just teaching, it's whether or not the child is geared to learn.

COMMISSIONER LIBRERA: We are looking at that because it is not purely a matter of what happens from 8:00 to 3:00. There's a whole host of other factors--

ASSEMBLYWOMAN HECK: Okay. Thank you.

COMMISSIONER LIBRERA: --particularly in communities where children come from high concentrations of poverty. It's not simply nutrition, though that is not a small matter. There are a whole series of other issues about support and support systems that need to be there.

ASSEMBLYWOMAN HECK: And I think that's a major one. It may seem simple, but it is major from my point of view.

COMMISSIONER LIBRERA: It is major, and it is clear.

ASSEMBLYWOMAN HECK: Good.

Thank you.

COMMISSIONER LIBRERA: It is clear.

Some other information of which you should be aware: When we have 30 school districts in the State of New Jersey that have been designated as Abbott school districts -- remember this is an outgrowth of a more than 30-year court case -- and so, 28 out of the 30 are those districts that had original standing in the case. And so, by virtue of rules of law, they are the population. There were two others that were added by legislation over the years.

We do have, over a 25-year period, situations where some school districts that are Abbott have made progress academically, progress economically, such that they represent higher levels of achievement, higher levels

of economic indicators than others who were not so designated. So what is largely an issue from a policy point of view here is what is the Abbott designation, and what is the update for those who are presently in the Abbott group, and what ought to be the criteria for others to be considered, and is that fair? Or, do we have some school districts who are more Abbott than those who are designated. One of them, which I've made a decision pending some appeals, is I have evaluated Salem City, and believe that Salem City meets all of the criteria that we have worked on and certainly deserves the Abbott designation. It has been so decided, and it's part of the recommendation.

The other side of this is, not every District Factor A school in the state is an Abbott, even though in order to be classified District Factor A you have to satisfy a number of conditions indicating economic difficulty and high concentrations of poverty -- about 20, about 20 right now. As we work on the final piece of this -- that is, what I told you, how do we account for the differences between student population and the community -- those 20 don't fit in this. Those 20 are places of high concentrations of poverty, and they are very low income communities.

So, as we proceed with this, what we have done is identified some characteristics, and we can go through this.

And we'll get back to your question, Assemblywoman, about the issue of triggers here, and percentage.

There's another important policy question here, which is, should there be other ways for communities with high concentrations of poverty to receive additional resources that the children need without being designated as Abbott, or is Abbott the only way that that happens? Our view is, it shouldn't

be the only way that it happens. Abbott has a long history and has a specific set of remedies, and those are appropriate certainly to the districts that were identified and who continue to meet the criteria. But there are other sets of circumstances where there are children in communities of high concentrations of poverty who should be able to get additional resources. Those are now permissible under the CEIFA legislation. That is, that the commissioner may do this. The commissioner may extend beyond the funding formula those additional resources, specifically to those communities.

Because our position from a policy point of view is, we want to make sure that Abbott and Abbott designation remains consistent with all of the court decisions and all of the language. We also want to work diligently to find ways that if you're a child in a community of high concentrations of poverty there are resources that come to you, rather than either it is Abbott or you don't get that. That is the way we are approaching, at least, the District Factor A communities now.

If we may go to (referring to statement) -- past the area of the educational adequacy that largely relies on the monitoring process, which we are in the process of making some revisions, so that our process to monitor educational adequacy reflects the new Federal requirements, puts standards together to reply to all school districts, and your designation in terms of economic adequacies, how well you meet them. So, instead of having four systems -- set of rules for State takeover, set of rules for Abbott, set of rules for those past monitoring -- we're going to have one system, one set of standards, criteria; then evaluate how well school districts-- And then we will decide what kind of category they belong in. But this gives you some idea of that.

But if you'll turn to what is, I think, the fourth page in this (referring to statement), you'll see on the designation-- You'll see the beginning of how we proceed with -- how we are recommending that the concentrations-of-poverty issue be established. It starts at the bottom of the page. "The district must be District Factor A and satisfy the following criteria. District Factor B districts that also meet the following criteria may be classified as Abbott if they demonstrate additional substantial economic hardship." Again, the governing piece of here is the economic hardship.

Now you see, low income concentration, free and reduced lunch of at least 40 percent, and then some other characteristics. Low income -- if the district has low income concentration less than 60, it must have equalized value per capita at least 3 percent below the State average and equalized tax rate at least 30 percent greater than the State average. Low-income concentration at least 60 percent, then equalized value per capita at least 3 percent below the State average. Equalized tax rate does not factor into the eligibility for the requirement of these districts.

So you see that there are two benchmarks here -- 40 percent and 60 percent. You must have at least 40 percent free and reduced lunch. Inside the 40 to 60, there are other characteristics. Above 60, then the Abbott designation continues so long as the other things still fit. So, we've tried to reduce these indicators of community wealth, which is just evidence of communities' ability to support to those characteristics.

Then we have a suggested process in this which is, once we conclude the process of -- I make the recommendation, we discuss this, and then the Legislature, after this whole process, decides what to support. Because that's a

Legislature's decision. It's not mine. Then the criteria would be applied. Now, let's assume, though, of course, this is not likely to ever happen, let's assume that everything in here were to be adopted. Then what would happen is this criteria would be applied to school districts and then there would be a second recommendation that says, "Here are the districts that do not fit this category any longer. Here are the districts that do." So that you would have a *D* designation or a new designation. Now you have Salem as one that has been evaluated by me to be certainly meeting all these characteristics.

We don't believe that it is good policy, fair, in any way consistent with what we're trying to do for those communities who should be designated, or no longer fitting this, to have their status change immediately -- that there needs to be a process by which this would happen, which is over a period of years, so that a community could be able to decide.

We also think that all of those obligations previously met, like facilities, even if your designation were to change, if you met those timetables you ought to, even if you were no longer an Abbott, if that has all been completed, you should still have the 100 percent facilities support. Because that was done while you were in Abbott, that was part of a commitment, and we should honor all the commitments made. So at the end of this we certainly should provide a transition for those school districts that no longer meet this criteria -- should.

Now there are, without mentioning specific communities, there are a couple of communities where the community wealth has changed dramatically since 1978 -- higher -- for a variety of reasons. But there are a number of others where there have been a number of changes. So we have to think about how fair

is this criteria, how clear is this criteria? That's step one in terms of the discussion that we need to have. We also need, in my view, to get to the point in the funding formula -- and this will not be solved by this -- however, I think we can move in this direction. That if you're a child of poverty, it shouldn't matter what community you're in. You shouldn't only receive additional support because there are more children in your community like you. There are children, who are in high concentrations of poverty, who do not get the same resources that other communities get, even though they are in need. That shouldn't be the result of a district designation. That should be, money and support ought to follow the needs of the child, particularly children in high concentrations of poverty.

And that's the information that provides the overall context for this. I'll be happy to respond to your questions, listen to your concerns, and discuss issues with you.

ASSEMBLYMAN DONALD TUCKER (Co-Chair):

Commissioner, how are you going to relate to the children who would not be in a 40 percent area, but in fact, clearly are living in abject poverty? How would you deal with that?

SENATOR RICE: Excuse me, before you respond. We're being transcribed. Would you just put your name in the record, Assemblyman.

ASSEMBLYMAN TUCKER: Okay. Assemblyman Donald Tucker, sorry.

ASSEMBLYWOMAN HECK: And I'd like to recognize that Senator Martha Bark arrived earlier.

Thank you.

SENATOR RICE: Also, for the record, let me just indicate that I'm a member of the Committee, but I'm the Chairman of the Joint Committee on Public Schools, and my name is Senator Ron Rice. I'm here.

And we also have the Assemblyman, who can put his name in the record.

ASSEMBLYMAN DIEGNAN: Assemblyman Patrick Diegnan.

COMMISSIONER LIBRERA: Good morning, Assemblyman Tucker.

ASSEMBLYMAN TUCKER: Good morning.

COMMISSIONER LIBRERA: Well, there are a number of ways to do that. But one of them is that we think that there are programs that have already been started in terms of early childhood. In districts that are not so designated now as Abbott districts, but are designated as ECPA districts, or there's half-day programs for four-year-olds, as an example, we think that we ought to be moving in a direction where children who come from high concentrations of poverty, even if there aren't 40 percent or more, ought to be able to get some kind of support in terms of expanded early childhood. There also ought to be some way -- and we don't have this, just yet, done -- but there ought to be some way that we recognize specific needs that are likely to occur with children of poverty and provide some kind of additional categorical aid support for kids who are in that category. And maybe we would even work on the other intervals of 20 percent. Because as you probably know, the ECPA aid -- that is, the aid for four-year-olds -- has a threshold of 20 percent. So what we've got now is 20 to 40 percent.

I think that it would be likely -- it makes sense for us to further grade this -- that says, at 40 percent or 38 percent, these are the remedies; at 30 percent, these are the remedies; 20, 10, and so on. But what we think ought to happen is, there ought to be an array of remedies, not always a guarantee that this is what happens. Because different communities may already have successful early childhood programs, but they don't have this other area. We need some flexibility to do that.

ASSEMBLYMAN TUCKER: Commissioner, how would that, in effect, take place? Would that be a petition from the local boards, or would it basically be an evaluation from the Department of Education? In other words, how would that be triggered in some way or another?

COMMISSIONER LIBRERA: I think it should be triggered by at least two ways. The answer is that it ought to be triggered in more than two, if it was necessary. But, one, it ought to be triggered by a department of education looking at achievement, looking at other indices and making that determination, so that it doesn't fall on the community to ask for something that we should know they need. So that's the first part.

The second part, however, is that there may be parts of what exist in a community that the Department cannot tell as much as they need to from simple statistical analysis. And therefore, it ought to then be also available to a community to petition, based on what they can demonstrate, based on data that they have, because we shouldn't have to rely only on information every 10 years to tell what is the nature of need of children in a community. So there are at least those two.

Now, when I talked about department, I mean county superintendents. I mean regional superintendents. I mean the people who are responsible for knowing communities, knowing needs in the communities, and knowing achievement patterns. But at least those two.

And then, Assemblyman, what would follow from that is, hopefully, a simple, not layered, process where, if it came from the school district, then the Department would have some reasonable period of time, 90 days, to go in and ascertain whether that's true or not. That's part of what we would build into this.

ASSEMBLYMAN TUCKER: At this point, are you sharing with us what you believe conceptionally will take place, or are you sharing with us which, at this point in time, is more definitive?

COMMISSIONER LIBRERA: Well, the first part about this is Abbott designation, and we're very clear here as to what we think the Abbott designation approach ought to be. The second part of this is, if you are not designated as an Abbott, but you do represent children of need, which falls out of Abbott designation, that is being presented more conceptually, because one rides on the other. That we don't want to develop all of the second pieces until we know that we're somewhat in agreement on the Abbott designation part. But we've got to speak to the second part so you understand our whole approach.

ASSEMBLYMAN TUCKER: Okay. Based on your preliminary review, at this point, of the existing Abbotts -- which were determined many, many years ago, and in some cases more recently -- do you envision that some of these particular -- not some-- Can you share with us the number that you

believe would not necessarily, basically, fit the design of, in fact, 20 percent or -- no, I'm sorry -- 40 percent?

COMMISSIONER LIBRERA: I can give you an approximation. I don't want to go beyond that, because we still have one other piece of this. I can tell you without question, the 20 districts that are District Factor *A* will remain as Abbotts no matter what happens. And then inside the other 10, which happened to be those districts that may be classified as District Factor *B*, then we have to look at these other characteristics. We're not done with that yet. But certainly, two-thirds of what we're talking about, there's absolutely no question, that I don't need more time to look, in final gradation, on that.

I don't want people to think that, automatically, that means we're talking about 10 school districts. What it means is we're doing further analysis on the 10 that happen to be District Factor *B*, or likely to be. And there's a need to do that, because there are many District Factor *Bs* in the State of New Jersey, many of them. We want to make sure that what we're doing with Abbott designation is fair, not only to the Abbotts, but fair to them as well. So we've got more work to do there. What concerns us very much is, just as I can be very definitive about District Factor *A*, there are still District Factor *A* communities. Many of them small, rural communities that have needs that presently are not being met, and we have to find a way to deal with them, and that's another part of our considerations. It's a long answer, but the short answer is we're not done yet. However, District Factor *A* is certain, by our own criteria, that they must stay there regardless of the educational achievement, because the community's ability to pay is considerably below what is necessary to guarantee what those kids need.

ASSEMBLYMAN TUCKER: Based on your initial review, can you share with us a period of time that you envision that this would take place?

COMMISSIONER LIBRERA: If the Census Bureau gives us the report by the end of the month, which they say they will, it probably will take us 30 to 45 days to do the final analysis, and then put that together, and then begin to have the kind of review that we always want to do. We don't want to do a review in the Department and then come out with something, and then have people say, "Well, have you considered this, and have you considered that?" I think that this process -- 30 to 45 days.

ASSEMBLYMAN TUCKER: It's based on the census data, which would be-- Obviously, we currently, at this point in time, have head counts. But you're talking specifically about economic income, I assume, and family mix and other social--

COMMISSIONER LIBRERA: Yeah. And we're talking about more specific gradations in terms of what's the difference between the student population and the community population. Because we have some few communities where it's very different. The kids in the schools are not representative of the people in the community, and how do we account for that? That's fairly sophisticated information in a small group of places that we still have to deal with.

ASSEMBLYMAN TUCKER: Obviously, there's other questions -- the other committee people, or places, may want to raise. I don't want to just stay dominant just raising these particular questions. So it would be better to say of the members of the Committee, are there any points?

ASSEMBLYWOMAN HECK: To your right, someone is asking.

ASSEMBLYMAN TUCKER: Yes.

ASSEMBLYMAN DIEGNAN: Commissioner, I know that you're saying it's 30, 45 days to get the data, but are there a significant number of additional districts in your sense that would meet the factors that do not now qualify?

COMMISSIONER LIBRERA: No. No.

ASSEMBLYMAN DIEGNAN: Okay. And you -- again, I know this is dealing in the hypothetical -- but I have-- I mean, I have a spontaneous guess at why it would be -- what would your sense be in those districts if there was a disproportionate -- or the student population did not reflect the community economic makeup?

COMMISSIONER LIBRERA: Yeah. There's a couple of questions that have to be answered. Who's responsible for remediating those conditions? That's basically the issue. One is to say if the community wealth is such that it is different than the population in the schools and there's community responsibility, not the State responsibility, to provide for what those kids need; versus it is the State's responsibility, because you can't control what the community is going to decide in terms of level of support. The whole thing rests on that.

Now, just as I said that there's only a small number, there's a major policy question in this, because there's a small number where it applies right now, but it may be a growing number in the future. We don't want to do this every six months. We want to be able to do this every five years and satisfy the broad policy questions.

A place -- and I will use a community that's not an Abbott -- that's a fairly dramatic example of this. There's a lot of community wealth in Atlantic City. And yeah, if you take a look at the population of kids in Atlantic City, they don't -- they're not representative of the community wealth. The community wealth comes out of casinos. It doesn't come out of per capita income. So how do you grade that? And further, I'd add one other complicating factor. That is, when you take a look at the K-8 population in Atlantic City, it's different than the 9-12 population, because the 9-12 population draws from sending districts that are nearby where the wealth is quite high. So it is not, though there's a handful and a number of fairly significant policy questions that have to be answered. We want to make sure that we have that clearly understood so that you understand what we're recommending and why. That's the only exception that I'd like to make here, because they're not an Abbott school district, but I think they're illustrative of the kinds of questions.

SENATOR RICE: Mr. Chairman.

ASSEMBLYMAN TUCKER: Okay. Go ahead.

SENATOR RICE: Commissioner, good morning.

COMMISSIONER LIBRERA: Good morning, Senator.

SENATOR RICE: The issue of concentration of poverty and the economic indicators -- a strong emphasis has been put on that, via your articulation of your interpretation of the court's decision and, I think, everybody in New Jersey's. One of the concerns I have, the community has, and many of my colleagues have, as we have been reading the paper and I've been making meetings, is how we're really going to address that. It does not appear to be --

and this is really in my personal opinion -- no reflection on you, personally, but I'm not so certain that Governor McGreevey is really committed to this whole Abbott scenario, as he indicated as a candidate on more than one occasion. And the reason I said that is that -- we recognize-- We went through 30-plus hours of budget. We also recognized that we inherited a \$14 billion budget deficit, and we're trying to clean it up. But none of that changes, in my estimation, the court determination and decision to fully fund Abbott. And as we move through the rules process to implement Abbott V, and in the future we know that that's still going to be the number one issue -- is funding the decision. And even during the rule-making process, the concentration should be not on who agrees or disagrees, but how do we implement what the costs have actually stated. And once again they stated a fund.

And so it is up to the Legislature and the Governor to figure out where the funding is coming from. But what appears to be happening is, because of the budget deficit and the economics of our State with our budget, is there's movement to eliminate and find excuses for not funding the Abbott districts at capacity. And the reason I raised that, number one, is the Department of Education -- not yours, but I will call a name. Gordon has seemed to be cheerful on his statements in the press and at other meetings, and he continued to indicate that we're not-- He feels we have more money than we need, and we're not spending it correctly.

Now, I don't disagree with oversight and I don't disagree with accountability -- something I've always argued for here in the state, come out of the Newark school district. But one of the things that concerns me is the fact that recently we went back into court and there was a decision rendered recently.

And when we thought -- the Governor has spoken to those of us in the Legislature and the Black Legislative Caucus, and we argued. We did not go back to court for an extension. He said he had to. He also indicated that funding was not his issue. He wanted flexibility. And we questioned: flexibility for what? Because we wanted to know if we're on the same page. He indicated that we can not do Whole School Reform and move out forward with everything being a cookie cutter. What one school needs versus another may be different, and those administrators need their building to be flexible.

From our perspective, that's fine, but that requires dollars. For example, one school -- the flexibility, the way the Governor articulates it, is that as an administrator you can make choices, but the choice is based on the dollars you have. And therefore, in order to get the progress that's indicated here with these criteria, a school may need some after-school programs, may need some social workers, may need more teachers. The Governor says, "Fine. You make a choice which one you're going to eliminate." Where the mere fact that you eliminate one of those elements, if you will, tells you you're not going to be successful, because it's already been identified that you need it all. And if you don't fund those elements, then all of this is null and void.

So I guess my question is, based on the recent article where several schools -- and I recognize this coming from Treasury, but I also believe that the administration had to have some input or at least raise some questions -- recognizing that they're going to audit between now, the 4th and the 15th, some of the Abbott districts, not all of them; it disturbs me. Because the Governor, in my mind, does not want to spend money. If anything, he wants to cut money

in the Abbotts or abolish the Abbott. He's only awarding those districts that are requesting additional funding.

And then Gordon's statement implied that in those districts there may be some improprieties, or some mismanagement, or lack of management, or whatever category you want to choose. The problem I have with that is when a school or an entity -- we'll say entity, not necessarily a school -- does not request additional funding, does not mean they are doing things correctly. As a former investigator, I can assure you the best way to rip off people and do things wrong is to keep everybody happy. So if no one in the district is complaining, it does not mean that they are meeting these criteria or performing, or providing. How do we reconcile that? Because it is my belief, if we're going to move in and audit 23, or whatever number of school districts are in Abbotts, then immediately after that we need to move in and audit the rest of them. And then from that, we need to audit every school system, basically, in New Jersey. An audit is an audit. The State--

The other part that bothers me -- and this is a question, and maybe you can respond. If you can't, maybe you can get it back to us. If, in fact, we're going to audit the Abbott district schools, for the life of me I cannot understand why the State is auditing itself with the three takeover districts. They should never be a part of that auditing because we're supposed to know from day one exactly what is happening in those schools, how we're managing those dollars, and how we're spending. That was the problem I had with the Newark district when we had the previous superintendent -- \$70-million-plus were just mismanaged, for lack of a better word. We'll never recoup from it, but our concerns at times, "Wait a minute. How can this happen if it's a State

district?” The State is supposed to be the watchdog. It is their district. That’s who we’re working for. That’s who is running our system. And to go back into the three districts and say we’re going to audit you between the 4th and the 15th because you asked for additional funding, to me is a slap in the face to State government.

To be quite frank about it, I think the Treasurer is unjustly slapping the Department of Education. Because if, in fact, Treasury had asked, the Department would have said, “Well, look. We don’t have a problem if you’re going in, possibly. We understand where you’re coming from. But the three districts, we’re on top of that. Just ask us what we think.” Can you, kind of, respond to that?

COMMISSIONER LIBRERA: Sure.

Senator, as always you’ve raised a number of very important questions, and I’m going to try and deal with all of them. The things that I happen to omit, would you please remind me and I’ll try to answer every one of your questions.

I need to start with the Governor and the Governor’s role and the Governor’s commitment. Now, let me assure you that the Governor has been completely supportive of our work with Abbott, and he’s completely supportive of the *Abbott* decision. The Governor has not told us what to do with the *Abbott* decision or the Abbott budget reviews. He has, instead, listened to how we’re approaching things, why we’re telling him what we’re doing. He knows that at the end of all of our reviews of the budget, at the end of all of the appeals, which we know there are going to be some, because that’s a guarantee to Abbott districts, that if there is a shortfall between what we determine to be necessary

to fund the Abbott schools consistent with the decision, that we, not the Governor, but that I will go to the Legislature and say, "This is the amount of money that we presently need above the budget in order to do this." There is no question about whether I am going to do that. The only question is, "How much?" It's the only question. I told him that. He knows that.

His position on the budget was simply: I don't want to put money into the budget until we are absolutely sure what that number is. I understand what you have to do. You have my support when you go to the Legislature with your process, because we understand it.

So I don't think you should interpret the Governor's actions that it's in any way not being supportive of Abbott. I think it's the exact opposite. I think we also need to understand -- and I know you do -- that Abbott is enormously complex. This is something, that I would say, that I don't believe the Department, even though this is no reflection on the people that were there, I don't believe the Legislature -- no reflection on the people -- I don't think anybody expected the decision in 1997. I don't think anybody did. But if you study the *Abbott* decision, that's a radical departure from everything that happened before; reflective of the court, I think, concluding that if they didn't do this nobody would, and they were tired of going through this. And so they were going to specify in great detail what had to be done. Now, I'm of the position that you can be completely committed to the *Abbott* decision and have some differences as to how we're going to get there. And I think that everything that we've been talking about -- and you quote Gordon and the newspaper. I don't really want to deal with what newspapers may have said, he may have said. I can only tell you this -- that our position is that our argument with the

ELC and with other people is never about the ends in Abbott. Never. It is always about the means. And I think that that's a legitimate discussion to have. I think this is the most important -- as *The New York Times* says, and I agree -- this is the most important educational decision since *Brown*.

Now we all know that we're entering the 50th year of the *Brown* decision, and there are still a lot of unfulfilled parts of that. It takes a long time to do the kinds of things that that decision, this decision, require. And so we don't apologize for saying we think there is another way to do this. Our problem continues to be -- and I've said this to whoever would listen -- we have to make the decisions while we're doing this. We don't have the luxury of saying, let's take three years and figure out all the-- We have to administer and we have to evaluate and we have to change, and we also have very difficult budget circumstances on top of all of that.

I think the degree to which we find people demonizing others, and I know you're not doing that -- but people characterizing other peoples' position with all of this shrill rhetoric -- gets in the way. For instance, you have never seen a reference anywhere from me about waste. Never. I don't use that. I do understand the difference between what's absolutely necessary and what you may consider to be desirable and helpful.

We have an obligation to say that the *Abbott* decision is connected in terms of resources to those things that make a difference, and that those things are directly connected. We'll stand behind that. And that's really what we want to do.

And when we went back to court -- we went back to court because we really ran out of time. We keep working with the ELC. And because these

are hard issues, there are points in time where you can't do it with each other any more. So we needed somebody to do this. And Carchman is a brilliant mediator -- absolutely brilliant. And not surprisingly, in three weeks or two week, whatever it was -- it seems like it was years, but it was a relatively short period of time -- we resolved every issue but the maintenance issue. Every single one of them was done, and that's because we needed a little help. Which also should tell you that our position -- and you should read into that the Governor's position -- not that far away from those who are arguing with us. But we still ran out of time. We still have to have budgets.

Now, I'd like to just comment on the last piece of this, which is the audits of 25 of the 30 school districts. And it is 25, it's not 23. Twenty-three are going to be done by outside firms, and two others that are going to be done because it's a relatively small amount of money. That was a recommendation made by the Treasurer. And I want to tell you very clearly, it is a recommendation that I support, because we will stand behind our work, and we continue to do that. But when somebody says, with this amount of money, and your requirement to do this, you should have another set of independent eyes looking at their budgets, meaning the Abbotts, and your work -- they're auditing both here. They're auditing the districts, and they're auditing our work. If they find additional money that we didn't find that would help us, that satisfies our continuing criteria of effectiveness, then we will respond. If they don't find that much money, it will answer, for a while now, this question of Abbotts having more money than they need. I am not of that opinion. I haven't been of that opinion. We are not, however, of the opinion that we ought to say no to additional scrutiny.

Now, why 25 out of 30? If you do not ask for supplemental aid in the budget, then you are getting what is your entitlement from the *Abbott* decision, no questions asked. The five that are not being audited are not asking for additional supplemental funds. The only ones who are being audited are those who represent the amount of money that will be greater than what the budget presented. So that's why they're doing that. Should they have done all 30? In time, they probably should. If we would have had more time, we probably should. I would recommend to school districts that periodically they ought to go to some kind of process like this. But we're back again to having to do a lot of things in a short period of time, and we're three weeks, or so, away from opening school.

So I don't want this to be laid on the Treasurer, because the Treasurer said this and I agreed to it. We'll continue to agree to people who want to evaluate our work, because we'll stand behind our work. We've made mistakes, but when they see things that we don't and it allows us to do the work we need to do better, we're going to continue to do that.

Did I get all the questions?

SENATOR RICE: Yes.

One final question on that, and then I'll yield.

Okay. We'll take it the way you articulated it. And I respect the fact that -- a supplemental. The question then becomes-- There are various ways to do an audit, as we learned from (indiscernible). The issue -- and I hope none of those folks are doing audits, because they worked for us before, and I never liked them when I was on the Committee before.

COMMISSIONER LIBRERA: I think they're out of business, those folks.

SENATOR RICE: I hope so. But the people may have transitioned.

The supplemental piece -- a lot of that is related directly to a criteria that addresses the concentration of poverty and economic indicators. To me, it's like doing a polling. They can go in and look for one thing. If they go in and look to see how to diminish the funding that the courts mandated, that's one issue. If they're going in to audit and lay it against what the court is requiring, that's something else. And if, in fact, they, too, are going to scrutinize DOE, particularly in the takeover districts, then it seems to me that the Legislature -- and for the record, let the Treasurer know -- we should have a list of those things they're looking for, a list of questions they're raising, and also something to indicate that this is being audited in line with the court decision, so that technically you're not really messing with the level of funding, per se. You're looking at managing those dollars that are required to get it done. I'm not so sure that these auditors -- most auditors do not come from Abbott districts, in terms of their livelihoods. Most of them don't have kids meeting these criteria. They usually just go on and do some cost -- some numbers game, and they will tell you that \$2 million is greater than \$1 million, and I would disagree with that. The point is, is that they should be doing a true cost-benefit analysis. And if, in fact, there's going to be a true audit and a true cost-benefit analysis, they have to factor in some of the elements of the socioeconomics, the concentration of poverty. Then the issue raised was-- The question would be, do you look at those things? Who is responsible for what, in terms of the

community? Well, the community could very well be responsible for assisting us with the drop-out rate by doing some things within the community, to get kids in school, like feeding them at home where they can come in with healthy minds. They can't afford it. The community could very well be responsible for the security of that environment, policing. Can't do it if the government cut dollars, the feds cut dollars, and you can't keep your level of policing up and crime fighting.

I don't believe the court intended that if the community cannot do it that all this fail. I just don't believe that. And I think, just like you said, the court is frustrated. They're saying, hold it. However you get this done, if there's community participation, then to me that's implied. Then government, you find a way to provide to the community the kinds of things they need to meet their responsibility to be a part of this team, and you provide it to the district. If you're not going to provide it to the community directly, then you know what? You find a way to get this done. If that means that you have to put money in Health and Human Services and you have to put nurses and doctors in those schools, then you do that. We can't rely totally on the community if we are talking concentration of poverty and socioeconomics.

The Atlantic City scenario is an interesting one, because we did casinos and the money goes to education -- higher education. And maybe we looked at that wrongly, maybe we should go back and revisit that Constitution issue. But my question-- Well, you may not know, but my concern would be, the need to go back, is-- We want to know -- on this Committee and the Joint Committee and its totality, and I would like to think that my colleagues in both Houses, and both parties would like to know -- what is this order of criteria,

etc., so that we don't wind up with someone doing someone else's bidding and diminishing what the costs have said in terms of funding, and find an excuse to demise it. Because if you put all the public conversations together and all the meetings I've attended, and our mind -- it's only our mind set. This perception is that the goal is to demolish Abbott and to diminish funding. That's the way you get there.

Listening to you, I sense that is not your case. I've always told you that, but I'm not going to speak for those other human resource pieces that you're surrounded by and with, including the Governor. And I keep saying that publicly, so I just want to be clear.

COMMISSIONER LIBRERA: Okay. I'll continue to be clear about the gentleman for whom I work -- is that I respectfully disagree with your conclusions about his commitment and would just leave that alone right now, because I think his commitment has been real clear. It's been very clear to me. The way I think your question is rightfully framed, about the scope of the audit -- can probably be best answered initially -- is for us to get you a copy of the request for proposals that went out, that define the scope of the work. We will do that.

I think that in terms of the further analysis -- a sample set of audits and recommendations, because it's a public record -- you should have access to that. I think it's also important to understand that ultimately the decision about cut the budgets or not, reduce the funds or not, is not as a result of the audits. It's a result of us getting the information and agreeing with it. If we see that that information was a straight numbers run, and it missed some context that's important to that, we're not going to do it. But it is incumbent upon us

to answer the questions of the audit, and we're ready to do that. This is not a matter, I think, of diminishing Abbott or cutting Abbott funds. It's a matter of responding in the best possible way with terrible economic times, so that we make sure that the yardstick of effectiveness is what guides everything that we do.

I want to assure you, Senator, that the overall decision about what the Abbotts need is not going to be made by auditors. It's going to be made by the Department. And if that is unsatisfactory, as a district believes it is, they have the right to appeal, to the Supreme Court, our decision. Auditors can't make educational decisions. They can't. They don't want to. They will not. We are looking for their expertise pointing us in directions which we may not have seen. Then we're going to evaluate them.

SENATOR RICE: Thank you, Commissioner, for good.

COMMISSIONER LIBRERA: Thank you, Senator.

ASSEMBLYWOMAN HECK: Commissioner, we're talking about the audits, but I'm more concerned about the improvements in the classrooms and the resulting improvements in our children's lives through education. I wanted to ask you, do we have, first of all, any type of report card in evaluating the moneys we've used as it equates to the better education that the Abbott schools are getting? Are we looking at whether the money is going into the classroom directly to the children via teachers, teachers' aids, computers, libraries, etc., or is it going into administration? Is there unnecessary funding of administration? I ask you that not because I'm critical of what you're doing, but I recall years ago a couple of bus loads of people coming in from Newark -- of parents complaining that the money was not reaching their children. They

had no books. They had no pencils. They had no paper, but that administrators were getting lots of money and that's where it was going. Are we looking at a report card? Are we seeing examples of Abbott districts or specific schools doing a good job that we can use as examples for others?

COMMISSIONER LIBRERA: Absolutely. And we have a number of examples of that, and it is our responsibility. That is, it's the Department's responsibility to share that information, because the idea that the Abbotts uniformly don't achieve is wrong -- that we have some very clear examples of high achievement in districts, and then high achievement in some schools in low-achieving districts. And that what we are trying to do -- what we are doing is using those examples, as well as using threshold numbers. When you're above 10 percent in an administration, we want to know why. When you have these positions and you have no change in results, we want to know why. And I think, rather than a report card, it might be really useful for us to give an annual report of the Abbott school districts, including, here's our criteria.

ASSEMBLYWOMAN HECK: With comparisons?

COMMISSIONER LIBRERA: Yes. Here's our criteria Here's our-- And what I think we would do is pick the outliers. That is, pick the real high achieving places and why, and associate them, I think, with budget issues, because I think we need to do that. The setup for all of this is-- The important outcome of the mediation was that we got agreement that low-performing schools would not continue to do what they've been doing without getting the results, and that those results were going to be largely directed outside of specified frameworks. And the court agreed to that. That's our opportunity to identify what low achievement is and what kind of responses we've had.

In addition to that, what we also got was an agreement that high-performing districts ought to have more choices by virtue of having high achievement. If you achieve and know -- and have produced that over a period of time, you would have more control over those decisions. You ought to not be bound. So it's set up to do that. But in all of our budget review, we have talked about: the dollars have to go to the classroom. And there are threshold numbers. We don't say you're not going to get a penny over 10 percent for administration. We don't say that. But we do say, if you're above what is the average that we believe is appropriate, we want to know why.

ASSEMBLYWOMAN HECK: Do we, under those circumstances that you just mentioned, send in monitors?

COMMISSIONER LIBRERA: Yes, we do.

ASSEMBLYWOMAN HECK: We do?

COMMISSIONER LIBRERA: Yes, we do.

ASSEMBLYWOMAN HECK: And that information that you just alluded to -- an annual comparison -- would we be able to get a copy of that?

COMMISSIONER LIBRERA: Well, what I'll have to do is go back -- and we'd be pulling out pieces here and there, but I think we ought to move to this as soon as possible, because it was -- build the public understanding of where we are. It is our responsibility, as those--

ASSEMBLYWOMAN HECK: And the people deserve those answers--

MR. ANDERSON: They absolutely do.

ASSEMBLYWOMAN HECK: --because it's very hard for all of us, because they've asked us to explain it.

COMMISSIONER LIBRERA: Yes.

ASSEMBLYWOMAN HECK: We can't explain it.

COMMISSIONER LIBRERA: Right. Do you know, for instance, and probably don't, that we have a couple of school districts that are Abbott school districts whose student achievement results, over a period of time, is equal to the suburban average in this state?

ASSEMBLYWOMAN HECK: I think we've seen that. And there's a school in Newark that's doing very well.

COMMISSIONER LIBRERA: A couple of these places were on the verge of takeover seven, eight years ago. We think that they ought to be one of the best-practice models that we use with some of our low-performing school districts. That's what we're doing. Yes.

Let me-- I will go back--

ASSEMBLYWOMAN HECK: I really would appreciate that, because I think it's concomitant upon both of us to make sure that we have that information readily available for the people, because seeing is believing if they see those comparisons.

COMMISSIONER LIBRERA: Yes.

ASSEMBLYWOMAN HECK: We would like to know, over these 30 years, how many of our children have succeeded in life. I'm not saying just going on to higher education, but succeeding in life.

COMMISSIONER LIBRERA: A much harder set of statistics to get, because most people's follow-up studies in school districts rely on under 20 percent, and that's not information that we have readily available, though those are questions we should be asking.

ASSEMBLYWOMAN HECK: Well, let's go back to -- sometimes it is more available than perceived.

COMMISSIONER LIBRERA: Okay.

ASSEMBLYWOMAN HECK: Because when we went through our children's summit years ago, about five or six years ago, and we learned the reading ability of our children -- how many are dyslexic in the state, have reading difficulties, we went into the corrections facilities and learned that 40 to 50 percent of those people in corrections cannot read. So there is some kind of a relationship between education and the paths that some people follow. I think it's more important, and we've said this for years -- including Commissioner Terhune when he was here -- I'd rather see more money spent on education than the 45,000 a year to keep somebody in prison.

COMMISSIONER LIBRERA: Sure. Absolutely.

I'm not saying there aren't some places where we could go for information. Because the one piece of information you just said, about those who are inmates, is absolutely clear. And there's another piece to this.

ASSEMBLYWOMAN HECK: It's an indicator.

COMMISSIONER LIBRERA: There's another piece to this. My daughter was involved in a study in California where, when they analyzed who didn't return after being released, it generally were those people who could read. And as a result of that, I talked with the Commissioner of Corrections, and he's putting a tremendous emphasis on changing the kind of information that's available and making it possible for inmates to learn how to read, because they'd want to learn how to read.

ASSEMBLYWOMAN HECK: It's very important.

COMMISSIONER LIBRERA: But the other part of this is something that-- What I will do is talk to people in the Department to find out what we could assemble, and to do it quickly, because I think that's an important piece of public policy.

ASSEMBLYWOMAN HECK: I would appreciate that.

COMMISSIONER LIBRERA: That the achievement levels in Abbott districts are not known largely in this state, and it is a very good story, especially in certain communities. And we ought to know that.

ASSEMBLYWOMAN HECK: I appreciate that.

COMMISSIONER LIBRERA: And you ought to know that what we continue to do is to say we're not going to make school district X be like school district Y, but if school district Y can do this with 70 percent of their kids in high concentrations of poverty, you must, in your district, who's not producing, at least listen to this. We must say, why are you continuing to do that when it isn't working?

ASSEMBLYWOMAN HECK: I appreciate that.

Thank you very much.

COMMISSIONER LIBRERA: Sure.

ASSEMBLYMAN TUCKER: Commissioner, I just have a couple of questions on them. What constitutes the maintenance year? Is it the freeze of 2001 to 2002; or the funding level of 2002 to 2003, which was last year; or is it county; or is it part of the 2003 or 2004? You see, what my concern on there is, is that each one of our districts, locally, are going to have some sort of escalation based on personnel salaries, based on things that at least -- that local boards have to acquire. If the State does not relate to that, then what takes

place is, is we're taking the budgets, locally, and turning them internally. So what constitutes a maintenance year, at this point that you're dealing with?

COMMISSIONER LIBRERA: I will give you my understanding of what a maintenance year is, but the court has ruled as to what this is. I don't think my understanding is different than theirs. It doesn't use terms like *freeze*. It doesn't use terms that *freeze at this level*. It, instead, is a decision -- because we're the ones who argued for this -- no additional programs beyond what it is that you have right now. That's the strictest definition of maintenance. And our position on that was, a year ago we said we want to support only those programs which are critical to classroom achievement, and if you included them in your budget a year ago, we are saying, in these times we can't support expanding programs above that. In the most general sense, that's the definition of maintenance.

I don't recall seeing any language anywhere that says, "You shall not provide for cost of living. You shall not provide for additional salary," not at all. I think, instead, we have said, give us a standard against which we can evaluate programs and say to districts, this is not a year that we can support expanding the program.

ASSEMBLYMAN TUCKER: I think there's a major difference between cost-of-living increases and expansions, or taking the inflationary increases that -- not just local districts, but the State would come up against. You see, my concern on the matter is, when I say maintenance, if that is not maintained, then what takes place is programs, in effect, are -- they are in receipt of a cut, just based on inflationary increase. And if they're not able to at least look forward to at least the inflationary increase being matched, then that

means that the local boards are going to have to work out some sort of ingenious ways of dealing with it, but it would be negative in regards to at least trying to maintain programs that we know are effective.

COMMISSIONER LIBRERA: Your understanding of what maintenance ought to be is the same as what my understanding is, and that I will revisit that court's decision again. And if it's different than our understanding, I will report to you.

ASSEMBLYMAN TUCKER: All right.

The other point I wanted to raise is -- and that is the State review, now and projected review-- I think it's similar to what Senator Rice is talking about. Obviously, the Supreme Court decision talked about some sort of evaluation being made. My concern on the matter is, is that in what way is the State Department of Education or, in fact, the Treasury going to make the evaluation. Is it an evaluation just based upon expenditures of fiscal expenditures or is it, in effect, related to educational achievement or, in effect, does it mean both?

COMMISSIONER LIBRERA: Well, if you're talking about the audits that are presently underway, as let by the response to the proposals for the 25 districts, what we are going to get as a result of those audits-- They're given to us. And then we are going to look at what it is that they say, and use it against effectiveness or not. All that they can do is give you numerical irregularities, really. All they can do is to say, "This year the number was this. Next year, that number increased by 9 percent. Have you thought about why that would be?" Give it to us, and we're going to take a look at those targets of where they have that and ask the very question about educational and

operational effectiveness, which is the same thing that we did through the whole budget review process, because there's no way to do this if you don't do that.

ASSEMBLYMAN TUCKER: I have another question on it. This is more the question of the -- Treasurer McCormac sending private auditors to the Abbott districts, considered to be a process to evaluate the effectiveness, the efficiency, and non-instructional programs. Would that be part of their particular review on that?

COMMISSIONER LIBRERA: That's a part of the scope that they're doing, and that's directed by specific language of the Supreme Court. It falls generally into that same category again, except that what -- the approach, as I understand it -- and the Treasurer would be better able to answer this than me, although I think I have a pretty good understanding of it. What he did was let the proposal, so that the non-instructional issue was done by one company only, so that you don't have 27 different versions of what non-instructional is. Same general approach again -- they're going to look at that, and they're going to come up with recommendations. They're going to come up with questions about money. They're going to come up with suggestions and recommendations given to us, and then we're going to have to respond to that.

ASSEMBLYMAN TUCKER: The other question is, is that when will you be sending the notices to the district that refers to four and six? Within 30 days? The Department of Education provides a date and time. This is what we were talking to about before. In other words, those particular audits are going to start when some of the other recommendations that were made directly by the Supreme Court are going to be initiated. When?

COMMISSIONER LIBRERA: Well, I believe the Supreme Court is real clear. They've said 30 days after the report was-- After their opinion was made public, we had an obligation to inform the districts of what their final number was. So the audits are going to be done a week from this Friday. They can't be done any later than that. We've got to turn that work around so that we can respond to the 30-day deadline that's been provided by the Supreme Court. The only change in that is if there might be reasons why there is a request of the court to add some more days to that, but we're not doing that. That would only come out of the Attorney General's office. We're working on the 30-day timetable the Supreme Court set.

ASSEMBLYMAN TUCKER: Okay. When you say the 30-day timetable and the completion of the audits, how long is it going to take the Department of Education to look at the particular achievement levels at the local district and compare that to the expenditure levels at the local district?

COMMISSIONER LIBRERA: Well, since we've already been doing that in our own reviews, what we're going to be doing is -- because we don't have any choice in this -- we have approximately seven to 10 days to evaluate what has come as a result of these audits, so that we can make a final determination about what the districts need to know, because we've been given 30 days.

ASSEMBLYMAN TUCKER: I will be frank. I'm not dealing with the evaluation of the fiscal audit. I'm talking about the comparison of looking at the achievement level of the children versus the actual report that comes out of the audit.

COMMISSIONER LIBRERA: Okay. And what I-- I probably didn't make this clear. We've used the achievement outcomes already in terms of our evaluation. We know the different levels of achievement. What we are simply waiting for is this independent result coming out of these audits, that we will then take against what we already know to be the achievement levels. If we know that achievement levels are very high in a district, or very low, we know that already. And we are simply going to take the two pieces of information and bring them together. We don't have to generate information about the achievement. We already have it.

ASSEMBLYMAN TUCKER: All right.

In that analysis, are you going to be dealing with the differences in regards to the urban districts versus the non-urban districts?

COMMISSIONER LIBRERA: Well, we've tried to be sensitive to that from the beginning in terms of our work. Our work is really mostly based on comparisons to districts over a period of time -- the districts in Abbott, not the districts in the suburbs. We're looking at progress they've made against their own indications. That's how we've been doing our work with achievement all along. But at the high end, our reference, as I said to Assemblywoman Heck, is we have some average data from suburban groups of certain sizes, and we just use that as a comparison. But for the most part, we're looking at how well has each of these districts improved over their initial starting points four and five years ago. That we have.

ASSEMBLYMAN TUCKER: Commissioner, I guess the point -- and I'll try to be a little bit more specific. The cost of educating a child within an urban district -- the comparison of educating a child within the suburban

district, that's the two-part factors that I'm talking about. The entities that have to be paid for within an urban district and what is paid for within a suburban district. Those are the two points I'm dealing with, because any kind of audit or analysis in dealing with educational achievement, and also trying to counterbalance that against financial expenditures, has got to have a separation of what cost is at an urban versus cost being in a suburban or a -- not totally a suburban district. I'd say, basically, a district that is near an urban and a suburban district. These are what I call the districts in transition.

COMMISSIONER LIBRERA: We agree completely. And if you think that what the auditors are going to be doing is bringing in all of these suburban statistics, they're not. They're not doing that. We understand that. That's our original position about designation. We understand that when you have children in high concentrations of poverty the costs are going to be higher because their needs are higher. We understand that. Our understanding and approach on achievement already takes account for that. We are comparing, largely in our achievement analysis of Abbotts, Abbotts against other Abbotts. And we certainly are, however, looking at broad ranges like 10 percent of administration. We think that, whether you're an Abbott or not, that those statistics generally do hold, especially since those percentages should be more favorable as you get bigger, because you have economies of scale on your side.

I don't want you to think -- I don't want anybody to think -- that these auditors are coming in and applying all these suburban frameworks against urban school districts, because they're not. We have already differentiated that, because we must. And there are differences, we know that.

ASSEMBLYMAN TUCKER: Commissioner, what would be the difference in regards to dealing with the Abbott urban districts and the three takeover districts? Because there the State has more direct control, there the State has more of a sign-off on expenditures and other kinds of activities, so how would you look at the urban district that is part of their analysis versus the urban takeover districts and their analysis?

COMMISSIONER LIBRERA: Well, the difference is that we have far more data on the State takeover. The other part of it is that the differences between the three State takeover districts and many of the other Abbotts is small, negligible, if existent at all. The difference is that we have far more information, a much better understanding of the three State takeover districts. So we're able to take what comes out of those audit reports and respond to them quicker, because we have much more information. There isn't a great difference between the three State takeover districts and some of the other Abbott school districts that we have.

ASSEMBLYMAN TUCKER: Okay.

SENATOR BARK: Mr. Chairman?

ASSEMBLYMAN TUCKER: Yes. Go ahead.

SENATOR BARK: Thank you.

I think that there has certainly been a great many good questions on Abbott, but I would like to follow up on one statement that you did make, which is not directly related to Abbott, but it's that talking about the pockets of poverty that may exist elsewhere outside of Abbotts, and certainly those children deserve, as you indicated, some additional help along the way. Do you

have any -- or could you express what you think you might be doing for those areas?

COMMISSIONER LIBRERA: Let me give you an illustration. We would focus first on the communities with the highest concentrations of poverty. So those would be likely the District Factor A schools and districts, once this DFG is finished, who are not Abbotts, because by definition alone they have high concentrations of poverty.

SENATOR BARK: Right.

COMMISSIONER LIBRERA: We'd be looking at a series of additional responses, like taking half-day urban childhood programs for four-year-olds and extending them to full day. We'd be looking at other kinds of remedies that they may need that haven't heretofore been provided, but we're probably going to start with early childhood full-day programs, because we think that's the highest leverage. We think that it's unlikely, regardless of what happens with our deliberations, that we're going to be talking about more than 20 school districts who are in District Factor A, not Abbott, but therefore have high concentrations of poverty. More needs to be done than presently done.

SENATOR BARK: Okay. Would you also think about looking at the designation of B, just to be sure that we don't have high concentration of poverty in those districts, or are you going to strictly leave it to the As?

COMMISSIONER LIBRERA: No, we're not going to strictly leave it to the As, but we're going to start with As because those are the places of greatest need.

SENATOR BARK: That's logical, yes. That's a good starting point.

COMMISSIONER LIBRERA: Yes. Yes. We'd also look at the population of District Factor *B*, because that's a much bigger population. There's a range in that that we all need to be sensitive about, as we deal with Abbott designation, to make sure that what we're doing is fair here. And that if you're not going to be designated as Abbott because you accept this criteria, then there has to be some other response.

SENATOR BARK: And when do you anticipate starting this review?

COMMISSIONER LIBRERA: We hope to be able to do the District Factor *A* changes maybe as soon as September of 2004, and then maybe have some plan as to how we would roll it out beyond that.

SENATOR BARK: Thank you.

COMMISSIONER LIBRERA: Sure.

ASSEMBLYMAN TUCKER: Commissioner, one other question, and this is basically dealing with the Supreme Court determination on the 3-year-olds, and the inclusion of that as part of the educational program with the local levels. Are you going to be in a position to evaluate why these particular, the 3-year-olds, have not been totally included at the local boards, and are you in a position to look at the dollar amount that is made available directly by the State, and also made available directly by the local boards, in regards to reaching that particular level?

COMMISSIONER LIBRERA: I think we're already doing that kind of work, and I'm pleased to say that we anticipate that our percentage of age-eligible kids who are going to be in programs next September may be as high as 80 percent. That's gone up from 55 percent two-and-a-half years ago. So we

feel very good about the progress that we've made. We also know that's 20 percent of a population still not serviced, and we have to look at different ways with local communities about reaching children. Because we probably can't hypothesize that the children not in school are probably the children who are in greatest need, and they may very well represent children from very transient families that we haven't been able to locate. That's where we have to do some work with other agencies, like DHS, in order to make sure that we do everything we can to see that we are reaching children who should be served.

ASSEMBLYWOMAN HECK: Excuse me. Including the rural areas?

COMMISSIONER LIBRERA: Yes.

ASSEMBLYMAN TUCKER: The point I wanted to raise on reaching those particular children -- and this goes back to the question of maintenance -- is there any reason why the appropriation in those local districts or by the State has not increased in trying to get those children directly involved?

COMMISSIONER LIBRERA: Well, I think that there is an increase. What has happened is that the projected increase of a couple of years ago never materialized. That is, we had higher estimates of what we were going to get and didn't get them. And so we adjusted that to that other level.

Maintenance has nothing to do with age-eligible, early childhood kids. If a 100 percent showed up in September, it has nothing to do with maintenance. That's a requirement of the court decision, like parity is. It has nothing to do with a maintenance definition. Part of our problem in thinking about going over 80 percent is we have a capacity issue that we may not, even if we found all of the kids and found all the kids that were eligible, we may not

be able to find the places for them, because we're still lagging behind in that area. But that's how I think the flat line, or what looks like a flat line in terms of the budget, is really an increase over a number a year before that had to be lowered because the population never arrived to the extent that we thought.

ASSEMBLYMAN TUCKER: The point I'm trying to raise is, is that rather than put the responsibility of the population arriving, is it the responsibility of the Department of Education to be of direct assistance to the local boards to assure that they reach out for these children, rather than just waiting for them to come in?

COMMISSIONER LIBRERA: I think it's both, and I think we're doing both. I think the Department recognizes its responsibility. It recognized it can't do it alone. It has to be doing it in a complimentary way with the local board. The local board has got to do that with community organizations, otherwise they're not going to be successful.

ASSEMBLYMAN TUCKER: The other point I wanted to raise, and going back to the 3-year-olds, and this again deals with the capability of the local boards to basically house those children. In what way are, at this point in time, are you envisioning working out either renovations of existing schools to basically include those particular children or, in fact, dealing with renovations of other agencies, educational agencies, to at least expand their particular capability?

COMMISSIONER LIBRERA: We're dealing with School Corp on the building of new facilities as quickly as we can. That's their responsibility and they're doing, I think, a very good job. Part of their problem is the acquisition of property, that they continue to tell us is troublesome. We know

that under the best case scenario, 70 percent of the early childhood children, 3- and 4-year-olds, are going to be educated in programs and facilities outside the district. So we're trying to work on a way in which we can ensure that uniform standards apply, even though there are different agencies who are doing this. So we're working on that in a number of different ways.

School Corp work on the area of building facilities with our encouragement. We work on the standards and work on making sure that the community providers understand the law, which is that the local school district is the one who must approve the providers. They have to work through them. We want to see that the decisions on the local level are made on standards, rather than on arbitrary kinds of conclusions that somebody may have about some kind of program. So it's standards and results, and we're doing it in a number of ways.

ASSEMBLYMAN TUCKER: The point, again, and when it's not necessarily the standards, because I think that most of the providers outside of the structured educational system understand the standards. The question is, is that, are there any resources that's going to be made directly out of Abbott, to at least ensure that those particular housing issues can meet standards? In other words, you're talking about the implementation of standards which may or may not be part of what the contract agencies are dealing with. But in effect, if the State can make funds available to do renovations of those facilities, in what way does the State envision doing that? Because at this point, there's a difference of opinion as to the number of children that are actually eligible to be enrolled versus the actual number that we know right now are enrolled.

COMMISSIONER LIBRERA: Well, I'd like to tell you that that's a relatively easy thing for us to deal with, but it hasn't been. Because what we're trying to do is work through school districts and then do an analysis of their capacity, their facilities, as well as the community providers, and then support the construction of more facilities as fast as we can within the guidelines that are set up by the law, which is we don't make that determination for a community provider's facility. The school district does that. And we are doing everything we can to build facilities and to provide space as fast as possible, because we know, even at 80 percent, you're 20 percent short.

SENATOR RICE: Mr. Chairman.

With that said, a couple of issues. One, you don't have to discuss here, but would you reach out for Senator Turner and also speak with staff here, Melanie, and work with SCC to address a Head Start Trenton program in terms of--

COMMISSIONER LIBRERA: A Head Start Trenton program.

SENATOR RICE: It's a building that I understand that the community action went out-- I think the business community raised some dollars, the Feds raised some dollars, local raised some dollars, and the State seems to be renegeing. And as a time factor, they may lose all those commitments. They wanted to appear before this Committee. I suggested that you'll be busy here with this subject, that it's something we'll look into, and if necessary, we'll call everybody back. But I think it's something you can get resolved and expedited. But please reach out for Senator Turner.

COMMISSIONER LIBRERA: I will do that.

SENATOR RICE: On the other issue of young people, early childhood education, reading by a certain age, there's a problem which I'm trying to legislate and hope you will support it, but I guess the question is whether it can be done immediately through regulations until we can change it. Some of the problems in the districts happen to be one of age, where I've had problems in Irvington and elsewhere and my school districts, where parents attempt to enroll students into the school system. The problem is they get cut off because the kid's birthday is the end of October or November 1. We're under the opinion that the laws should at least allow that enrollment up to November 1, because it's a lot of time and they're wasting it anyway. I'm trying to move legislation, but sometimes my colleagues don't understand. So could you check to see if, in fact, the Governor and the administration and the legislators and the courts are committed to early childhood education? See if you can change that by way of regulations, at least going to the school year? And then, ultimately, we will try to change it by way of legislation when I can get my colleagues back in session.

COMMISSIONER LIBRERA: I will do that.

SENATOR RICE: Okay.

ASSEMBLYMAN TUCKER: I was just going to say, Commissioner, for the most part, most of the local districts basically deal with the date of birth as a determination by the State. It's not necessarily something that the local board usually decides. What the local board says is that if the State Board of Education changes the stipulation of dates as to when a child would be able to go directly into the school, then they would entertain that. The problem is, is that this matter is -- we're now talking about the educational

institution. What is now taking place is they just expanded. There were certain dates and times in which a child could go directly into kindergarten and what the local districts did, when they were dealing with the 3-three-olds, they just backed it up two years. They didn't change the date.

So at this point in time, the State, in effect, is really the determining factor on the date, as to what particular day a -- based on the child's birth -- they can be enrolled within the educational system.

COMMISSIONER LIBRERA: Okay. I'm not fully cognizant of that. It is my recollection that that typically is done at the district level, but I will look into that, especially in terms of early childhood and the Abbott kids.

ASSEMBLYMAN TUCKER: Let me see, are there any additional questions?

SENATOR BARK: Just one more. I just wanted to follow up on something that the Senator said, because I know that in my county we also have a very new Head Start facility that was just built and probably opened, maybe, two years ago. I'm assuming that you do use these kind of facilities for early childhood. Now, I know in my county I only have two Abbott districts, but one of them could be well-served by the Head Start facility, and I would hope that those would not be ruled out.

COMMISSIONER LIBRERA: Well, we work very closely in this state, and I think successfully, with Head Start. I certainly wouldn't want facilities that were adequate not to be used because of some kind of jurisdictional problem as to who the agency of responsibility is. They're still all our kids, and they have to be educated. We need all the partners and agencies that we can get.

SENATOR BARK: Thank you very much.

COMMISSIONER LIBRERA: Sure.

SENATOR BARK: I do appreciate it, but I just know that it's a brand new building, and it's a wonderful facility.

COMMISSIONER LIBRERA: Okay.

ASSEMBLYWOMAN HECK: Commissioner, we're discussing the fact that we'd like to have another meeting, perhaps in September, when you get this information put together, and Co-Chairman Tucker wants it to be after school begins.

COMMISSIONER LIBRERA: Sure.

ASSEMBLYWOMAN HECK: So we will determine a date.

COMMISSIONER LIBRERA: I think that would be a good idea.

ASSEMBLYWOMAN HECK: It's a good idea.

COMMISSIONER LIBRERA: And I'll work with Melanie in terms of the exact agenda items that we want to deal with.

ASSEMBLYWOMAN HECK: We'll look at a date so that the entire Committee might be represented.

SENATOR RICE: Sure.

Let me apologize. I have to meet with Community Affairs upstairs, you know. Some of us do work for a living.

COMMISSIONER LIBRERA: I think we're near the conclusion anyway.

Good-bye, Senator.

SENATOR BARK: I think so.

ASSEMBLYWOMAN HECK: Yes.

SENATOR BARK: We are.

ASSEMBLYMAN TUCKER: Commissioner, I wish we could do this, though. You indicated that the Supreme Court made a decision on 30 days in regards to dealing with the audits. My concern on it is that we meet. But if the school has started -- and where we would be able to get some data as to what is taking place at the local level -- the audits will not be done by that time. But at least we can get some sort of indication as to what is taking place at that point.

COMMISSIONER LIBRERA: Let's do this. The audits will be done, because they have to be done. Why don't I give you the results of the audits, you look at that, and then we decide when we're going to meet to talk about the specific things that have to be done.

ASSEMBLYMAN TUCKER: When you say they will be done, what is the date that you're dealing with on that?

COMMISSIONER LIBRERA: The audits have to be done next Friday, in order for us to respond to the 30-day deadline. The 30 days from the Supreme Court is not about the audits. It's about us giving the districts the number. The audits have to be done before that. Okay.

ASSEMBLYMAN TUCKER: Okay.

ASSEMBLYWOMAN HECK: And the other data that we discussed earlier, do you think that might be available as well?

COMMISSIONER LIBRERA: I'm not sure. I'm going to go back and check.

ASSEMBLYWOMAN HECK: All right. But then we'll have to meet in October.

COMMISSIONER LIBRERA: Well, I don't mind meeting--

ASSEMBLYWOMAN HECK: I know. All right.

COMMISSIONER LIBRERA: --but it might take us a little while to assemble this stuff. Okay?

ASSEMBLYWOMAN HECK: I'm just joking.

COMMISSIONER LIBRERA: Sure.

ASSEMBLYMAN DIEGNAN: Mr. Chairman, could I ask one question?

ASSEMBLYMAN TUCKER: Yes.

ASSEMBLYMAN DIEGNAN: While we have you, it's a little bit off field. We had hearings earlier in the year. How did we do in terms of the upgrades for health and safety items, especially in the urban districts? We had some horror stories. I know there was a commitment by the administration, that by the time this school year started, the vast majority of those issues would be resolved.

COMMISSIONER LIBRERA: I think that they are resolved, but I think that the people responsible for that are the School Corp people, and they're the ones that ought to give that report. I will tell them of the wishes of the Committee and see that the report's given there.

ASSEMBLYWOMAN HECK: I just want to thank the Commissioner. He has been very generous with his time and very informative. Thank you very much.

COMMISSIONER LIBRERA: Well, it's always good to be with you.

Thank you for this opportunity. I look forward to working with you again.

ASSEMBLYMAN TUCKER: Okay.

ASSEMBLYWOMAN HECK: The meeting is adjourned.

ASSEMBLYMAN TUCKER: The meeting is adjourned.

(MEETING CONCLUDED)