

The Supreme Court of South Carolina

Abbeville County School District, et al, Appellants-
Respondents,

v.

The State of South Carolina, et al, of whom Hugh K.
Leatherman, as President Pro Tempore of the Senate and
as a representative of the South Carolina Senate and
James H. Lucas, as Speaker of the House of
Representatives and as a representative of the South
Carolina House of Representatives are Respondents-
Appellants,

and

State of South Carolina, Nikki R. Haley, as Governor of
the State of South Carolina, are Respondents.

Appellate Case No. 2007-065159

ORDER

Pursuant to this Court's instructions in *Abbeville County School District v. State*, 410 S.C. 619, 767 S.E.2d 157 (2014) (*Abbeville II*) and in its order dated November 5, 2015, the defendants in this matter have submitted reports on steps they have taken to address the issues identified by this Court as underlying the defendants' failure to provide students in the plaintiff school districts with the constitutionally mandated opportunity to receive a minimally adequate education.

A joint report has been submitted by Hugh Leatherman, President Pro Tempore of the Senate, and Jay Lucas, Speaker of the House of Representatives. The report indicates both the Senate and the House of Representatives convened special study committees to investigate the issues identified by this Court in *Abbeville II* and to plot a legislative course forward to remedy the constitutional violation. The report

also notes the General Assembly considered and enacted a number of legislative initiatives that are designed to address the Court's concerns and included spending measures in the Fiscal Year 2016-17 state budget to help alleviate financial burdens borne by the plaintiff school districts.

Four of eight bills that were introduced with the intent to address issues identified by this Court in *Abbeville II* were enacted by the General Assembly and approved by the Governor. Those bills (1) provide for educational achievement goals for South Carolina high school graduates and students and the standards and areas of learning by which those goals are to be measured, using the principles outlined in the Profile of the South Carolina Graduate, developed by TransformSC, and approved by the South Carolina Department of Education, South Carolina Association of School Administrators, South Carolina Chamber of Commerce, Education Oversight Committee, and State Board of Education, among others (H.4936);¹ (2) eliminate outdated statutes and promote greater efficiency, cut

¹ This bill further states:

(A) . . . The State shall make a reasonable and concerted effort to ensure that graduates have world class knowledge based on rigorous standards in language arts and math for college and career readiness. Students should have the opportunity to learn one of a number of foreign languages, and have offerings in science, technology, engineering, mathematics, arts, and social sciences that afford them the knowledge needed to be successful.

(B) Students also must be offered the ability to obtain world class skills such as:

- (1) creativity and innovation;
- (2) critical thinking and problem solving;
- (3) collaboration and teamwork;
- (4) communication, information, media, and technology; and
- (5) knowing how to learn.

(C) Students finally also must be offered reasonable exposure, examples, and information on the state's vision of life and career characteristics such as:

- (1) integrity;

unnecessary expenses, and require the South Carolina Department of Education to offer technical assistance to struggling school districts (H.4939);² (3) require the

- (2) self-direction;
- (3) global perspective;
- (4) perseverance;
- (5) work ethic; and
- (6) interpersonal skills.

This language is taken directly from the Profile of the South Carolina Graduate.

² This legislation states the following:

Obsolete and federal education statutes identified

SECTION 1. The General Assembly directs the State Superintendent of Education, the Executive Director of the Education Oversight Committee, the Chairman of the House Education and Public Works Committee, and the Chairman of the Senate Education Committee to each appoint one representative to a committee to be chaired by the appointee of the State Superintendent of Education to review Title 59 of the South Carolina Code of Laws and report to the General Assembly all statutes that are obsolete or no longer applicable. In addition, the report must identify all the federal education statutes and regulations with which the State of South Carolina is required to comply. The committee, with the assistance of the Revenue and Fiscal Affairs Office, must include in the report the total cost to the State of South Carolina to comply with the identified federal education statutes and regulations. This report must be submitted by December 31, 2016, and updated at least every five years thereafter.

Assistance to districts, monitoring of performance

SECTION 2. (A) The State Department of Education shall develop a system for providing services and technical assistance to districts that shall include academic assistance and assistance with finances. The State Superintendent of Education shall report the design of the system to the General Assembly no later than December 31, 2016. Every year thereafter, the Superintendent shall

South Carolina Department of Education, through the Office of Transformation, to provide technical assistance to underperforming schools and school districts as directed by the Superintendent of Education, to include implementation of an external review team process, a diagnostic review of operations and academics that must include a leadership capacity report, a review of five systems consisting of mission/vision, governance, teaching and learning, resource allocation, and continuous improvement practices, an analysis of student achievement data, and an analysis of culture and climate including stakeholder surveys (H.4940); and (4) provide for a survey to be conducted to identify incentives to entice new teachers to live and work in rural, lower income districts, with a report summarizing recommendations based on the survey to be submitted to the General Assembly by February 1, 2017 (H.4938).³

By way of the General Appropriations Act, the General Assembly provided funding to increase the Base Student Cost by \$130 per pupil; expand the Rural Teacher Initiative; reimburse school districts' expenses for bus driver pay; upgrade technology in the plaintiff school districts to prepare for online testing and provide increased access; conduct efficiency studies in all of the plaintiff school districts; hire 213 new career specialists under the Education and Economic Development Act; give a 2% pay increase to teachers in addition to the STEP increase and "an

report on the progress of the system in regard to assistance provided to the local school districts and data documenting the impact of the assistance on student academic achievement and on high school graduation rates.

(B) In addition to the provisions of subsection (A), the State Department of Education shall monitor the professional development of teachers, staff, and administrators in districts it determines are underperforming to ascertain what improvements and changes are necessary in accordance with the provisions of the Education Accountability Act. The department also shall monitor the operations of school boards in underperforming districts in order to determine if they are operating efficiently and effectively. These improvements and changes must be communicated to the school districts and other parties or entities involved.

³ The bills that were not enacted and/or approved by the Governor would have recreated the Education and Economic Development Coordinating Council to allow the business community to work with K-12 and higher education to ensure students are college and career ready; established a process funded with recurring revenue by which struggling and poor school districts can petition the state for facility infrastructure needs; called for uniformity in school accreditation; and allowed the state to take control if a school district is failing financially.

increase in the state [] salary schedule to 23 years, adding dual enrollment weighting"; to provide high-speed mobile internet service for students who do not have such service at home and are participating in a course of study that requires such access; assess facilities across the entire state; purchase new buses to work toward a 15-year replacement cycle; reduce school districts' costs for providing transportation services to students who would otherwise have to walk in hazardous conditions; add 18 new teachers of online courses to the VirtualSC program; purchase instructional materials; "for the K-12 Technology Initiative in the Lottery"; "for full day 4K instructional cost increase for public and private providers"; provide school districts in need with instructional leadership and standards based on curriculum support; provide technical assistance for schools and school districts performing below expectation; and to recruit and retain teachers in the Abbeville County School District and school districts with a poverty index of 80% or higher.

In addition to the measures above, the Speaker of the House of Representatives commissioned the Education Policy Review and Reform Task Force, comprised of legislators, education and business leaders, and representatives of the plaintiff school districts. Initially, the Task Force conducted four hearings, two of which were held in the plaintiff school districts, and during those hearings heard from numerous invited speakers and concerned citizens. At the final meeting, ninety recommendations were presented on behalf of the plaintiff school districts. Thereafter, the Task Force created five subcommittees to explore transportation and facilities infrastructure; accountability (academic and financial), continuous improvement, and leadership (district, school, and community); educator recruitment, retention, effectiveness, and professional development; college and career pathways of high quality learning opportunities in elementary, middle, and high schools; and high quality early childhood education and family engagement. The Task Force prepared a comprehensive report focused on improving the educational opportunities in the plaintiff school districts. The report contains the findings of the Task Force, a proposed timeline for implementation of its findings and proposals, and the recommendations of its subcommittees. It is clear much time, effort, and thought was put into the report and that the Task Force paid special attention to the issues identified by this Court in *Abbeville II* in gathering information and making recommendations.

The President Pro Tempore of the Senate named a group of five Senators to serve on the Senate Special Committee and to propose a plan to address the issues raised

by this Court in *Abbeville II*.⁴ The committee sought input and a direct working contact from each of the plaintiff school districts and relied heavily on the South Carolina Department of Education, Education Oversight Committee, and staff of the plaintiff school districts. The committee concluded the Profile of the Graduate should serve as its blueprint moving forward, with the goal that every child graduate from a public high school in South Carolina with the knowledge, skills, and abilities defined in the profile. The committee held seven meetings during which it focused on specific issues identified in *Abbeville II*, including transportation, data and information related to the needs of the plaintiff school districts to improve educational outcomes, teacher recruitment and retention, and the importance of early childhood development and education. It does not appear the committee has developed a plan, as one has not been submitted to this Court nor does one appear on the General Assembly's website.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate state the House and Senate are working diligently to improve the educational system in South Carolina for the benefit of all students, and to that end, their efforts are ongoing. The Speaker and President Pro Tempore state additional measures will be taken during the remainder of 2016 and in the legislative session that will begin in 2017.

The Governor, noting she "has little authority over education in South Carolina," given the current governance structure, states she has nonetheless worked, since 2013, to identify and craft solutions to challenges facing South Carolina public schools. The Governor introduced a K-12 Education Reform Initiative that included recommendations to adopt a fairer and simpler education funding formula, promote student success by emphasizing reading, invest in educational technology and connectivity, and expand high quality public school options for families. The Governor acknowledges all of these recommendations "were substantively adopted by the General Assembly." The Governor reports that in her 2015-16 Education Reform Proposal she recommended continuing with the above

⁴ The issues identified by the President Pro Tempore included: (1) streamlining funding to ensure resources and instrumentalities of learning are accessible by and distributed equally to all school districts; (2) improving access to adequate transportation so that students do not miss instruction time and other constitutionally required education opportunities provided for them; (3) placing and retaining certified teachers with college degrees in rural schools and methods to mitigate turnover; (4) possible cross-county consolidation of school districts to reduce administrative costs; (5) provisions to assure safe and adequate facilities; and (6) improving local organizational effectiveness to ensure prioritization of available funding for instruction and resources (curriculum, teachers and programming).

initiatives but also recommended a teacher quality and recruitment initiative be added, specifically in rural and underserved school districts. In her 2016 Education Agenda, the Governor recommended the following: (1) reform the governance structure of the Department of Education; (2) fund the basics of education; (3) continue to recruit and retain effective teachers, specifically in rural and underserved school districts; (4) integrate technology into student life; (5) improve school facilities; and (6) reform South Carolina First Steps to School Readiness. The Governor states her commitment to ensuring every child in South Carolina receives a quality education and a pathway to a promising future will remain a priority of her administration irrespective of this Court's ultimate determination of necessity of its continued jurisdiction in this case.

The plaintiff school districts have submitted a response critical of the above reports. The plaintiff school districts assert that while the reports indicate the defendants have studied the issues identified by this Court in *Abbeville II*, they have failed to set forth a remedial plan or a timeline for implementation of a plan to cure the constitutional violation. The plaintiff school districts further contend the four bills enacted by the General Assembly do not reflect a comprehensive plan to address the myriad issues identified by this Court and to eliminate, through comprehensive educational reform, the constitutional violation found by this Court in *Abbeville II*.⁵ The plaintiff school districts acknowledge the "robust set of recommendations" proposed by the House Task Force, but maintain the bills enacted do not reflect the recommendations. With regard to the funding and appropriation measures taken by the General Assembly, the plaintiff school districts assert most of the appropriations distribute funds statewide in a "one size fits all" manner. The plaintiff school districts maintain that because they have fewer students, their proportionate share of the funds will be lower despite the fact that their needs are much greater than many other school districts. The plaintiff school districts contend the appropriations specific to their districts do not reflect an effort to consider their needs or to fund those needs in a systematic and rational way. They argue the funding provided by the General Assembly continues the "fractured formula" for educational spending identified by this Court in *Abbeville II*. Finally, the plaintiff school districts request this Court retain jurisdiction over

⁵ For instance, the plaintiff school districts note that while the General Assembly re-defined the expectations of a high school graduate, it did not provide for funding or assistance to support school districts in meeting the standard. The plaintiff school districts further maintain the only technical assistance specified in H.4940 consists of reviewing and analyzing data, and provides "little to nothing that is new to the kinds of limited assistance" provided by the Education Accountability Act. The plaintiff school districts assert the remaining two bills only direct further study.

this case and impose a concrete deadline of one week after the 2017 legislative session for submission by the defendants of a new report specifically setting forth a comprehensive educational reform plan and identifying as precisely as possible a timeline for implementing the plan.

The Speaker of the House of Representatives and President Pro Tempore of the Senate subsequently filed a Petition to Vacate Continuing Jurisdiction in this case. Therein, the Speaker and President Pro Tempore acknowledge more work remains to be done to ensure a system of public education that complies with the South Carolina Constitution, and they note their report to this Court specifically contemplates further legislative action to provide a remedy. The Speaker and President Pro Tempore urge this Court to acknowledge the defendants are acting in good faith to implement a remedy for the issues identified by the Court and that the rationale for the reservation of continuing jurisdiction is no longer applicable, and to defer to the prerogative of the General Assembly, recognized by the Court, to make policy choices regarding education in compliance with *Abbeville II*. Finally, the Speaker and President Pro Tempore note the plaintiff school districts' criticism of the defendants' efforts to remedy the issues identified by the Court, but assert "[c]onsensus as to the precise policy choices to be made . . . may be neither possible as part of an adversarial process, or even desirable, because constructive disagreement may lead to better programs in the future." The Speaker and President Pro Tempore submit the proper forum for those discussions is not in this Court, but rather in the marketplace of ideas and in the halls of the General Assembly, where the plaintiff school districts and the public can provide input.

We commend the efforts of the defendants, especially the yeoman's work of the House Task Force, to address the issues identified by this Court in *Abbeville II*. This Court asked the defendants in its November 2015 order to submit a written summary detailing their *efforts* to implement a constitutionally compliant education system, and that they have done. We would expect, as they do, that the defendants' efforts would include the studies necessary to determine the best courses of action to be taken to provide the students in the plaintiff school districts, and across this state, with the constitutionally mandated opportunity to receive a minimally adequate education. Indeed, without such studies, the defendants could be accused, as the plaintiff school districts have done, of not considering the needs of the plaintiff school districts or not funding those needs in a systematic and rational way.

Based on our review of the reports submitted, most notably, the report of the House Task Force, we find the criticism leveled at the defendants by the plaintiff



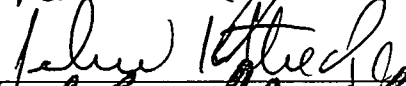

school districts unnecessary and unfounded. The House Task Force report contains a timeline as a framework for the General Assembly. It appears that the General Assembly has taken action on a majority if not all of the findings/recommendations of the Task Force within the proposed time period, including enacting legislation creating the Office of Transformation and providing for increased funding for school bus purchases or leases, for school bus driver salaries, and to assess school facilities across the state. We note the timeline suggests benchmarks for other stakeholders as well, including the plaintiff school districts. The Task Force suggests that in June 2016 the plaintiff school districts begin implementation of the Task Force's recommendations that do not require approval of the General Assembly.

The General Assembly has also implemented other findings/recommendations of the Task Force that are not included in the timeline, for instance, enacting legislation that, to an extent (1) incorporates the Task Force's finding that the plaintiff school districts should have a vision for its leaders, to include measurable objectives for the school districts, complete with action plans developed collaboratively with the Department of Education, that will enable the school districts to achieve the ultimate expectations outlined in the Profile of the South Carolina Graduate, with the General Assembly specifying metrics to measure progress toward that goal; (2) implements the Task Force's finding that a review of existing legislation should be conducted along with measures to update, modify, expand and consolidate goals for student achievement in order to better focus and guide school districts; and (3) incorporates portions of several of the Task Force's findings that suggest stronger involvement by and assistance from the South Carolina Department of Education.

In sum, we find the combined reports indicate a studied and dedicated approach has been and will continue to be taken by the defendants to resolve the issues identified by this Court in *Abbeville II* and to provide the students in the plaintiff school districts with an opportunity to obtain a minimally adequate education. Again, we commend the defendants on their efforts and await, with anticipation, reports on further implementation of the findings and recommendations that have already been made by the extremely qualified stakeholders who the General Assembly has consulted and that will emanate from the studies the General Assembly has requisitioned.

On that note, we opt to continue to monitor the progress towards a constitutionally compliant education system by requiring the submission of another report by the

parties in approximately one year. However, as this Court directed in *Abbeville II*,⁶ we expect the plaintiff school districts, in addition to the defendants, to present a report of their efforts in addressing the issues identified by this Court in *Abbeville II*. This Court specifically stated in its opinion that the plaintiff school districts "must work in concert with the [d]efendants to chart a path forward which appropriately prioritizes student learning," to set balanced priorities and consider and apply the benefits of consolidation, and to "discuss with county legislative delegations and school boards the prudence of creating school districts filled with students of the most disadvantaged socioeconomic background, exposing students in those school districts to substandard educational inputs, and then maintaining that nothing can be done to improve those school districts' unacceptable performances." The report submitted by the plaintiff school districts should contain information regarding their progress in those areas as well as the other areas of concern identified in *Abbeville II*. The reports of the defendants and the plaintiff school districts should be submitted by Friday, June 30, 2017.


_____ C.J.

_____ J.

_____ J.

_____ J.

Justice John Cannon Few, not participating

Columbia, South Carolina

September 20, 2016

cc:

Swati Shah Patel, Esquire

Joel W. Collins, Jr., Esquire

⁶ We acknowledge this Court's November 2015 order only addressed the submission of a written summary by the defendants.

Matthew Terry Richardson, Esquire
Amanda Gibson Adler, Esquire
Elizabeth Scott Moise, Esquire
Alan McCrory Wilson, Esquire
Edward W. Laney, IV, Esquire
Stephen Keith Benjamin, Esquire
Carl B. Epps, III, Esquire
Laura Callaway Hart, Esquire
Tina Nicole Herbert, Esquire
J. Emory Smith, Jr., Esquire
R. Hawthorne Barrett, Esquire
Susan B. Berkowitz, Esquire
Rachel Atkin Hedley, Esquire
Robert E. Stepp, Esquire
Elizabeth Van Doren Gray, Esquire
Roland M. Franklin, Jr., Esquire
Ellen M Boylan, Esquire
William F. Halligan, Esquire
Kenneth L. Childs, Esquire
Keith Robert Powell, Esquire
W. Allen Nickles, III, Esquire
Susan Marie Fittipaldi, Esquire
Holly G. Pisarik, Esquire