

**ABBOTT STUDENTS ATTENDING  
CHARTER SCHOOLS: FUNDING  
DISPARITIES AND LEGAL IMPLICATIONS**

BY

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**Education Law Center**

*Standing Up for Public School Children*

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The conclusions and opinions presented in this paper are my own. I am solely responsible for any errors.

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## **Executive Summary**

In the landmark 1997 and 1998 *Abbott v. Burke* rulings, the New Jersey Supreme Court established specific standards and procedures to ensure that all students in the state's high poverty urban, or "Abbott," districts receive funding at levels adequate to provide them with a "thorough and efficient" education. These include foundation funding at a level equal to that of the state's educationally successful suburban districts and procedures to obtain additional state aid to support a package of required programs and services designed to ameliorate the effects of concentrated school poverty.

As described in this report, however, the regulations to implement the educational remedies ordered in *Abbott* exclude both the students who live in Abbott districts but attend charter schools and the charter schools located in Abbott districts from receiving funding at the levels constitutionally prescribed for all public schools and students in those districts. We examined this exclusion of charter school students from the benefits of Abbott and its impact on the schools and students. Our key findings are:

- Charter schools in New Jersey predominantly serve Abbott students, with 80% of those students enrolled in charter schools in 2004-05 residing in Abbott districts.
- Charter schools enrolling students from Abbott districts serve a population that is remarkably similar to that found in Abbott districts as a whole in terms of socioeconomic status and race/ethnicity.
- In 2004-05, charter schools received an average of \$7,648 in foundational education funding per student from Abbott districts. Since the guaranteed funding for foundational education in Abbott districts that year was \$11,298 per pupil, charter

schools received, on average, \$3,650 (or 32%) less per pupil than the amount provided for students in district schools.

- Unlike Abbott district schools, the charter schools have no opportunity to request additional state aid, based on need, to provide full-day kindergarten, tutoring and other “supplemental”, or “at-risk”, programs to address the effects of student poverty.

- There is no discernable basis in the *Abbott* rulings to support regulations that exclude students attending charter schools in Abbott districts from receiving the same funding as their peers in district schools.

## I. Introduction

Charter schools are a small, but important, means of providing public education in New Jersey. Authorized by the Charter School Program Act of 1995 (“Act”),<sup>1</sup> charter schools are public schools that operate under a charter, or contract, granted by the State Commissioner of Education (“Commissioner”) and are managed by a board of trustees. These schools operate independently from the school district in which they are located. In 2004-05, the year on which the data for this study is based, 50 charter schools located in 14 counties operated in the state, serving almost 13,400 students.<sup>2</sup>

Most of New Jersey’s charter schools are located in the state’s poorer, urban school districts, or “Abbott” districts, and exclusively serve students from those communities. A number of other schools are located outside of the Abbott districts but enroll students from these districts. Specifically, of the 50 charter schools operating in 2004-05, 39, or 78%, were located in Abbott districts. Seven more were located in other communities but still served Abbott students in addition to other students. In total, these schools served over 11,000 Abbott students; thus, 82% of students in charter schools in 2004-05 were Abbott students.

Under a series of New Jersey Supreme Court rulings in the landmark *Abbott v. Burke* education equity litigation, students in Abbott districts are entitled to remedial funding and other programs and reforms designed to ensure them a constitutionally “thorough and efficient” education, defined as an education that enables them to meet the

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<sup>1</sup> N.J.S.A. 18A:36A (effective January 1996).

<sup>2</sup> During the 2005-06 school year, 51 charter schools served about 15,000 students. In the fall of 2006, three additional schools opened and one currently operating school closed, bringing the total to 53 charter schools serving a projected enrollment of 16,400. Numbers based on New Jersey Department of Education, Office of School Funding (FY 2006-07 projected enrollments and state aid payments to charter schools).

state's Core Curriculum Content Standards ("CCCS").<sup>3</sup> This package of remedies includes rigorous, standards-based, foundational education supported by per-pupil funding equal to the average spent in successful suburban schools ("parity"), as well as supplemental ("at-risk") programs and funding to address the student and school needs associated with high-poverty communities.

As discussed above, charter schools are public schools that are disproportionately located in Abbott districts and provide a public education to the disadvantaged students in those communities. However, students attending Abbott charter schools do not receive Abbott-mandated foundational funding equal to that of their peers who attend district-operated schools, nor do they have access to other Abbott remedial programs and reforms. A recent report from the National Alliance for Charter Schools concluded that, "funding for the state's Abbott districts, a revenue stream charters are not eligible to receive, is the primary source of the funding disparity."<sup>4</sup> Put differently, the substantial differences between per pupil funding for students enrolled in public charter schools and those enrolled in district schools are exacerbated in the high poverty Abbott districts.

This paper examines the state's current framework for funding the education of students enrolled in charter schools in Abbott districts. First, we describe the legal regime governing funding for students in Abbott charter and district-operated schools. This examination focuses on the most important education funding categories: per-pupil funding to support the K-12 foundational program defined by the CCCS and measured by

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<sup>3</sup> In the 1997 Abbott ruling, the Supreme Court accepted the State's curriculum content standards as the substantive definition of a thorough and efficient education for all New Jersey students. See *Abbott v. Burke*, 149 N.J. 145, 166 (1997) ("Abbott IV").

<sup>4</sup> The Study found that New Jersey school districts receive 23.1% more federal, state, and local funding per pupil than do the state's charter schools. Aspire Consulting. (2006). New Jersey District and Charter Revenue Analysis, FY 2002-03. Washington, DC: National Alliance for Public Charter Schools. p. 2.

State assessments; additional funding for K-12 “supplemental”, or “at-risk”, programs that address the effects of student poverty; and additional funding for preschool education and full-day kindergarten. Second, we examine enrollment levels in Abbott charter schools and the demographic characteristics of these students. Finally, we examine the funding disparities between students attending Abbott charter schools and students attending district schools.

## **II. The Funding Framework for Students in Abbott Charter and District Schools**

As a statutory and regulatory framework, the *Abbott* rulings determine the level of funding for students in Abbott charter schools and Abbott district schools.

### **A. The Charter School Act and Regulations**

The 1995 Act authorizes the establishment of charter schools statewide and governs their operation. The Act, along with regulations adopted by the State Board of Education, also specifies the funding amounts that the “school district of residence”—the school district that a charter school student lives in — must provide to support the student’s education in the charter school.

Specifically, with regard to K-12 foundational funding, also known as “regular education” or “base” funding, the Act specifies that the funding level be discounted at a “charter school rate”. This rate is below the per-pupil amount for students in district schools established by the state school funding law, the Comprehensive Education and Financing Act of 1997 (“CEIFA”)<sup>5</sup> which states:

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<sup>5</sup> The state makes adjustments for funding based on the level of schooling being provided. For example, elementary schools receive a lower level of funding than high schools. This report does not analyze funding levels based on the grade levels of students being served because the information is unavailable on a school-by-school basis.

The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to the lower of either 90% of the program budget per pupil for the specific grade level in the district or 90% of the maximum T&E amount.<sup>6</sup>

N.J.S.A. 18A:36A-12(b); see also N.J.A.C. 6A:23-9.1. The discounted charter school rate effectively establishes a scheme in which New Jersey school districts pass on to charter schools less than the full amount of per pupil funding for foundational education that is established for New Jersey's public school students under CEIFA. The 10% of CEIFA foundational funds that districts are authorized to withhold under the Act and other regulations purportedly serve to reimburse the district for ongoing fixed costs, such as facilities maintenance. There is no research available that analyzes whether or not this amount is sufficient to enable districts to meet ongoing fixed costs, nor is there any requirement that districts account for how the retained CEIFA funds are spent. See generally, N.J.S.A. 18A: 36A et seq.; N.J.A.C. 6A:23-9.1 et seq.

In contrast to foundational funding, the Act provides that the district of residence “shall [] pay directly to the charter school any categorical aid attributable to the student, provided the student is receiving appropriate categorical services, and any federal funds attributable to the student.” N.J.S.A. 18A:36A-12(b). Thus, federal and state categorical aid is required to be provided to charter schools by districts “in the amount that is attributable to each resident student enrolled in that charter school who participates in [] categorical programs.” These programs include: special education; bilingual education;

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<sup>6</sup> Under the Act, the "maximum T&E amount" means the constitutionally “thorough and efficient” amount plus the T&E flexible amount for the budget year weighted for kindergarten, elementary, middle school and high school, respectively, while "program budget" means the sum in the pre-budget year inflated by the CPI rate published most recent to the budget calculation of core curriculum standards aid, supplemental core curriculum standards aid, stabilization aid (including supplemental stabilization aid and supplemental school tax reduction aid), designated general fund balance, miscellaneous local general fund revenue, and the district's general fund tax levy. See N.J.S.A. 18A:36A-12(a).

distance learning; instructional supplemental aid<sup>7</sup>; early childhood program aid (“ECPA”); and demonstrably effective program aid (“DEPA”)<sup>8</sup>. See N.J.A.C. 6A: 23-9.5(c)-(e). DEPA is the supplemental funding available under CEIFA to provide the additional programs, services, and staff needed by students in high poverty schools and districts; ECPA provides funding to support full day kindergarten and preschool programs.

In addition, charter schools are not eligible for some of the revenue sources available to school districts across the state, particularly state support for school construction and debt service.<sup>9</sup>

## **B. The Abbott Decisions and Regulations**

In the 1997 *Abbott IV* ruling, the Supreme Court held that the funding provisions of CEIFA violate the “thorough and efficient” clause of the State Constitution and are unconstitutional as applied to the students in the Abbott districts. *Abbott v. Burke*, 149 N.J. at 152-53; and see *N.J. Const.* Art VIII, sec. 7. Specifically, in the context of student and community poverty and fiscal distress in urban municipalities, the Court determined that CEIFA failed to provide adequate funding in the critical areas of foundational

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<sup>7</sup>Instructional supplemental aid shall be paid provided that the charter school “has a concentration of low-income students that is equal to or greater than five percent and less than 20 percent.” N.J.A.C. 6A:23-9.5(d).

<sup>8</sup>ECPA and/or DEPA shall be paid provided that “that charter school has a concentration of low-income students that is equal or greater than 20 percent;” and “the resident student is receiving appropriate services to be funded through that type of aid.” N.J.A.C. 6A:23-9.5(E).

<sup>9</sup>Under the Education Facilities Construction and Financing Act of 2000 (“EFCFA”) the State provides funding for school construction projects in non-Abbott districts at a district’s state aid percentage multiplied by 1.15, or a minimum of 40 percent, whichever is greater. In addition, any school system in district factor group A or B may apply for 100 percent state support of its project. Abbott districts receive 100 percent of their eligible school construction costs. See N.J.S.A. 18A:7G-5.

education, supplemental K-12 programs for low-income students, preschool education, and remediation of dilapidated, unsafe and overcrowded facilities. In other words, the Court ruled in *Abbott IV* that CEIFA did not provide enough funding to students in the high poverty Abbott schools and districts for them to achieve State academic standards.

To address the deficiencies in CEIFA, the Court in *Abbott IV* and *Abbott v. Burke*, 153 N.J. 480 (1998) (“*Abbott V*”), ordered the implementation of a set of remedial measures designed to provide students in Abbott districts with adequate funding and a constitutional education. The remedies include:

- Per-pupil funding for foundational education at the level spent in the state’s educationally successful suburban districts, known as District Factor Group I&J districts, also known as “parity level” funding.
- Supplemental, or “at-risk”, programs for K-12 students such as early literacy programs, drop-out prevention programs, and social and health services to address the effects of poverty on educational achievement. The funding level for these programs is to be determined by the particularized needs of students in Abbott schools and districts.<sup>10</sup>
- Universal, high quality preschool for all three- and four-year olds and full day kindergarten, with funding to be determined by particularized need.
- Full state funding for new and rehabilitated facilities to house all Abbott programs, relieve overcrowding, and eliminate safety violations.

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<sup>10</sup>The requirement for implementation of these K-12 supplemental programs was reaffirmed, and delineated in more detail, in a 2003 Supreme Court order. *Abbott v. Burke*, 177 N.J. 579 (2003)(“*Abbott X*”). As a result of that order, the supplemental programs are set forth in the “Abbott X Chart of Supplemental Programs,” incorporated into the Commissioner’s Abbott regulations. See N.J.A.C. 6A:10.

- Accountability directives, including early grade literacy and other reforms to improve curriculum and instruction, and an “affirmative” mandate upon the Commissioner to ensure the effective and efficient use of all funds.

The Court also directed the Commissioner to adopt regulations “codifying” these remedial measures, including standards and procedures for Abbott districts and schools to request additional state funding for supplemental programs and preschool based upon a demonstration of particularized need. See *Abbott V*, 153 N.J. at 516. It is important to note that the Court explicitly directed the Commissioner to ensure implementation of the Abbott remedial measures for the benefit of *all* students in Abbott districts and schools. The ruling does not suggest that Abbott students attending public charter schools are not constitutionally entitled to these measures.

In adopting the required Abbott implementing regulations, however, successive Commissioners have taken it upon themselves to expressly exclude charter school students from receiving Abbott funding and other remedial measures. These regulations defined Abbott districts as not “including” charter schools within the districts. See *N.J.A.C. 6A:10A-1* (“An Abbott school district shall not include any charter school”). The Legislature, however, has never authorized this exclusion directly, by an amendment to CEIFA or the Act, or by any other separate legislation. The Abbott implementing regulations, therefore, are the sole basis for excluding students in charter schools from receiving funding at the levels determined to be adequate in the Abbott rulings.

Moreover, in every successive State Budget since 1998, the Legislature has appropriated foundational education funding at the Abbott-prescribed levels for all students in Abbott districts, including those attending charter schools. Under these

Annual Appropriations Acts, Abbott districts receive foundational funding for charter school students at the Abbott mandated “parity,” or suburban district per-pupil benchmark, and not at the lower CEIFA level. Because of the regulatory exclusion in the Abbott implementing regulations, the districts pass on only 90% of the lower CEIFA foundational amount to charter schools for their students, not 90% of the parity level amount. The Abbott districts thus retain a higher portion of foundation funding than other districts whereas students in Abbott charter schools are funded at an even lower rate than their district school peers. This is despite the ruling in *Abbott IV*, which states that the CEIFA foundational funding amount fails to provide minimally adequate educational opportunities for students in these impoverished urban school districts.<sup>11</sup>

In addition, as explained above and analyzed more fully below, while Abbott charter schools receive DEPA and ECPA categorical aid under CEIFA for their students, these schools are excluded from accessing the supplemental preschool and K-12 programs approved in *Abbott V* to remedy the constitutional deficiencies in CEIFA’s categorical aid. Most significantly, the numerous and varied required, need-based supplemental preschool and K-12 programs that the Court mandated to address deficiencies in DEPA and ECPA are available to Abbott students attending public schools but not to their peers at neighboring charter schools. Furthermore, charter schools do not have the opportunity to request and demonstrate the need for additional state aid to support these programs based on the particularized needs of their students as Abbott districts and schools are authorized to do under *Abbott V*.

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<sup>11</sup>The Appellate Division rejected a facial legal challenge to this regulatory exemption. *See In Re 1999-2000 Abbott v. Burke Implementing Regulations*, 348 N.J.Super. 382 (2002). The issue, however, has not been addressed and resolved by the Supreme Court.

## II. Charter School Enrollment and Demographics<sup>12</sup>

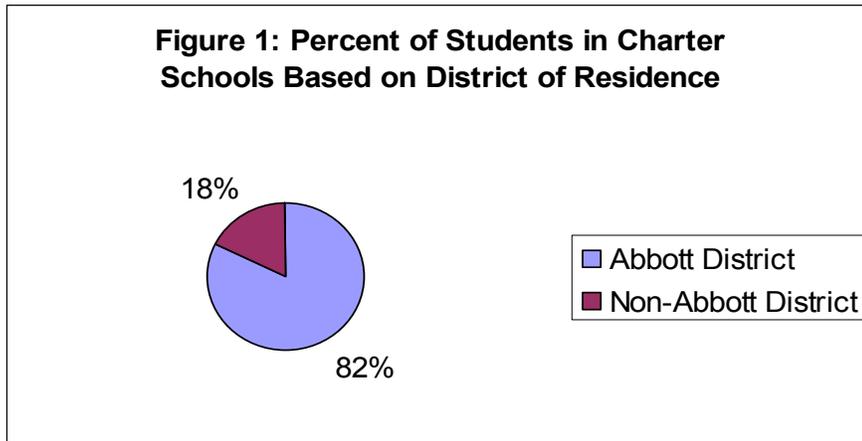
As stated above, most of New Jersey’s charter schools serve students from Abbott districts. In this section, we first examine the extent to which charter schools are enrolling students who reside in Abbott districts, and then we describe the racial and poverty profile of charter school enrollments as compared with enrollments in Abbott districts as a whole.

Our first analysis looks at how many charter schools statewide serve Abbott students and, of those that do, what percentage of their students come from Abbott districts. As Table 1 shows, almost all (94%) of the New Jersey charter schools operating in 2004-05 served at least some students from Abbott districts and 31 out of 50 of these schools enrolled Abbott students almost exclusively.

| <b>Percent Abbott Students in School</b> | <b>Number of schools</b> | <b>Total Charter Students</b> | <b>Percent of Total Charter Students</b> | <b>Number of Charter Students from Abbott Districts</b> |
|--|--------------------------|-------------------------------|--|---|
| 0%                                       | 4                        | 776.4                         | 6%                                       | 0   |
| 1-39%                                    | 7                        | 1368.2                        | 10%                                      | 189.3   |
| 40-79%                                   | 3                        | 588.6                         | 4%                                       | 413.8   |
| 80-94%                                   | 5                        | 1652.4                        | 12%                                      | 1452  |
| 95-100%                                  | 31                       | 8987.7                        | 67%                                      | 8947.7  |
| <b>Total</b>                             | <b>50</b>                | <b>13373.3</b>                |  | <b>11002.80</b>   |

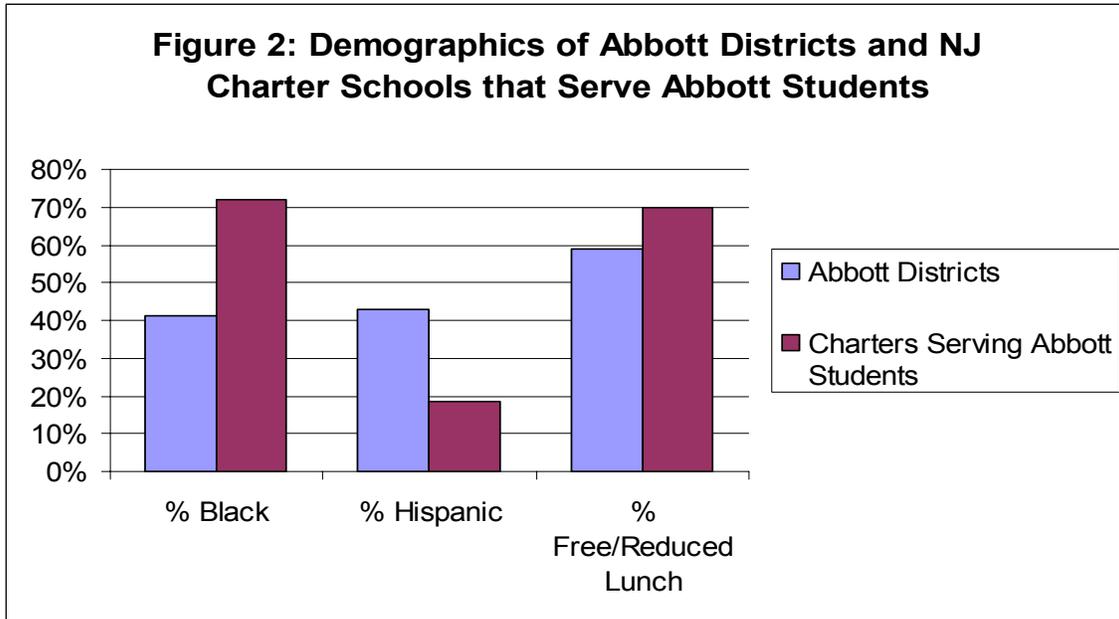
<sup>12</sup> Data sources for the analyses in this section include: New Jersey School Report Cards, direct contacts with New Jersey public schools, and data provided by the Education Law Center. One of the charter schools serving Abbott students, Right Path charter school, closed after the 2004-05 school year. As a result, we were unable to obtain demographic information about the school, such as the ethnic background of students and the number of students who received free or reduced lunch. However, since the school was quite small (66 students) and all the students were from Abbott districts, it seems unlikely that information from this school would have had a substantial impact on the findings reported here.

The disproportionate representation of Abbott students in charter schools statewide is even more evident when viewing student-level data. As Figure 1 shows, 82% of the students in charter schools operating in 2004-05 were from Abbott districts.



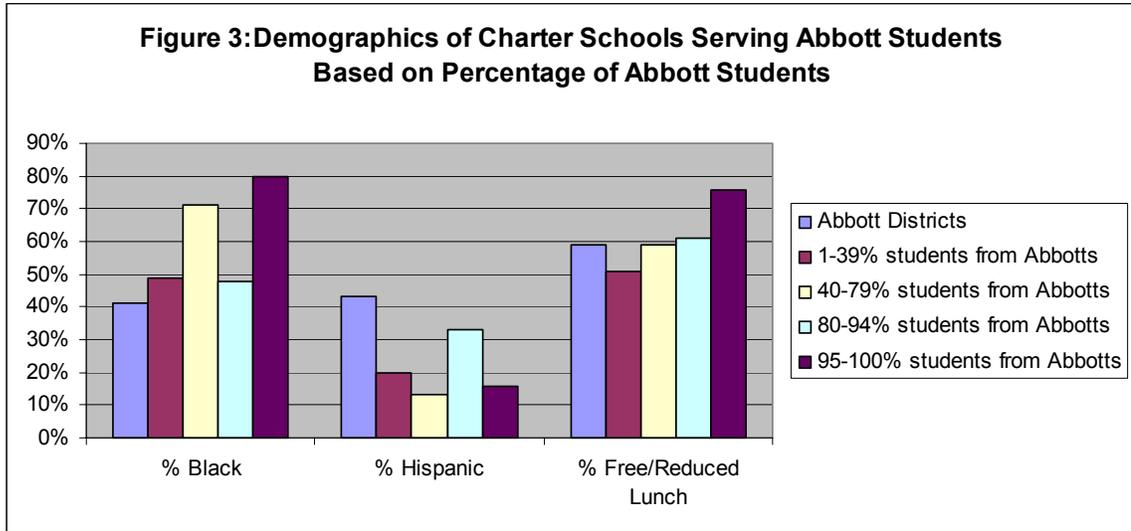
Second, since charter schools predominantly serve Abbott students, it is important to look at the characteristics of those students to examine whether they are different from their peers enrolled in district-operated schools. To do this, we examined the demographics of those charter schools serving Abbott students and compared them to the demographics of the Abbott districts as a whole. Overall, as shown in Figure 2, charter schools that serve Abbott students have a larger percentage of African-American students than the districts as a whole (72% in the charter schools versus 41% in the Abbott districts) but a smaller percentage of Hispanic students (18% versus 43%). In terms of socioeconomic status, charter schools serve a slightly larger percentage of poor students — defined as those students who are eligible for the federal free and reduced price lunch program — than are enrolled in the Abbott districts as a whole: 70% of charter students receive free or reduced lunch compared to 59% of the students in the Abbott districts collectively. Of course, districts face logistical and administrative difficulties maximizing student enrollment in the free and reduced lunch program, which may

account for the differences in student poverty between Abbott charter schools and district schools.



In addition to looking at all the charter schools serving students from Abbott districts, we looked at the demographics of students in these charter schools based on the percentage of Abbott students in those schools (see Figure 3). The more students from Abbott districts, the higher the percentage of students that are black and that are eligible for free or reduced lunch. The percentage of Hispanic students did not vary substantively based on the percentage of students from Abbott districts. When one looks only at those charter schools with 95% or more Abbott students, the percentage of students who receive free and reduced lunch climbs to 76% (see Figure 3). In comparison, the percentage of students who receive free and reduced lunch is only 70% when one looks at the charter schools that serve Abbott students as a whole (See Figure 2). Thus, these

schools serve a percentage of poor students that is comparable to that of many of the high poverty Abbott districts.<sup>13</sup>



### III. Funding Disparities<sup>14</sup>

In this section, we examine in greater detail the level of foundational education funding that Abbott students in charter schools receive and compare this amount to the level provided to those attending district schools. The demographic analysis shows that students enrolled in Abbott charter schools are just as likely to be poor, black and Hispanic as students attending Abbott district schools. This provides an important context for considering the funding of students in these charter schools.

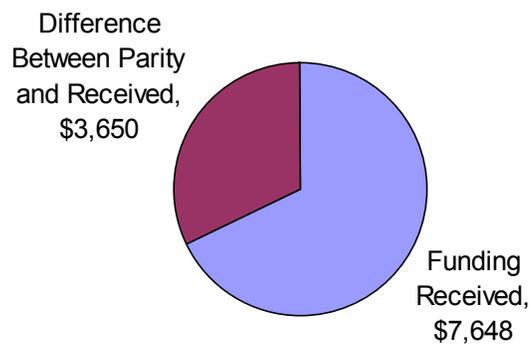
<sup>13</sup>While 59% of students in Abbott districts as a whole received free or reduced lunch, the percentage in some individual districts is much higher.

<sup>14</sup>Data sources for the analyses in this section include: An August, 2005 response by the New Jersey Department of Education to requests for information from the New Jersey Office of Legislative Services, and data on Abbott districts included in reports published by the Education Law Center.

## A. Foundation Education Funding

As described above, the *Abbott* rulings mandate that students in Abbott districts receive per-pupil foundation funding at “parity,” or the average level spent to educate students in the most educationally successful suburban districts, known as the District Factor Group I&J districts. In 2004-05, the I&J average or parity amount was \$11,298 per-pupil. As Figure 4 shows, Abbott students in charter schools receive substantially less money per pupil than the I&J average or parity level. Specifically, charter schools received an average of \$7,648 per student, \$3,650 less than parity; in other words, they only received about 68% of the foundation funding provided to support the education of their counterparts attending district schools.

**Figure 4: Average Funding for Charter School Students from Abbott Districts Relative to Parity Aid (2004-05)**



In the 2004-2005 school year, Abbott charter schools received about \$84.1 million in foundation funding for their program budgets, not including state categorical aids or federal aid. If those schools had received foundation funding at the Abbott parity level, they would have received about \$124.5 million, or \$40.3 million more than the actual funding level, an increase of about 48%.

### **B. Funding For Supplemental Programs**

In order to get a more complete picture of the funding available for Abbott students in charter schools, it is important to examine the DEPA and ECPA categorical aids because these aids, despite being declared constitutionally inadequate under *Abbott IV*, support additional programs and interventions for poor, or “at-risk”, students. DEPA is intended to support “effective programs that have been shown to enhance the teaching/learning process, improve school governance, and provide students with collaborative learning environments and health and social service programs.”<sup>15</sup> ECPA provides funding for the provision of preschool classes and full-day kindergarten.

As explained above, district and charter schools that serve high concentrations of low-income students — defined as those students who are eligible for the federal free and reduced price lunch program and who meet other relevant criteria — receive DEPA and ECPA under the CEIFA funding formula. CEIFA provides a per-pupil amount of DEPA and ECPA based on a district’s percentage of low income students, with one amount for districts that have 20-40% low income students and a higher amount for districts with 40% or more low income students.

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<sup>15</sup>Tracking progress, engaging communities: Abbott Indicators Technical Report for Camden, NJ. Newark, NJ: Education Law Center, p. 155

The Legislature has not increased DEPA and ECPA amounts since the 2001-02 fiscal year, even failing to adjust for inflation. As a result, the amount of DEPA and ECPA funds provided to Abbott and other eligible districts statewide has remained flat since 2002. However, under *Abbott V*, Abbott districts have the right to apply for additional state aid above the DEPA and ECPA levels based on the particularized needs of their schools in order to provide the Court-mandated preschool and to support the K-12 supplemental programs. Since 1999-2000, most Abbott districts applied for, and the Department of Education approved, “Abbott supplemental funding” for K-12 programs. Beginning in 2002-2003, however, the DOE has obtained court orders to limit or suspend the districts’ access to such funding.<sup>16</sup>

Local school districts transfer DEPA and ECPA funds to charter schools within their geographical jurisdiction under the terms of CEIFA. The amount of aid that a charter school receives is based on a number of factors:

- The percentage of low-income students in the charter school.
- The percentage of low-income students in the district schools that charter school students would attend if not enrolled elsewhere.
- The total DEPA and ECPA funds that a “sending” district (or the district of residence for each individual student) receives from the state.

The DEPA funds provided to Abbott charter schools in 2004-05 ranged from \$217 to \$463 per pupil, a total of about \$4.45 million that was transferred from Abbott

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<sup>16</sup> The level of additional “Abbott supplemental funding” for preschool and K-12 supplemental programs varies widely among the districts, reflecting the directive in *Abbott V* that any additional funding to implement these programs must be driven by the unique needs of each district and its schools. For data on the amount and use of supplemental funding for preschool and K-12 programs, see Education Law Center, Abbott Indicators Reports for Camden, Union City, Trenton and Newark, 2005 available at [www.edlawcenter.org](http://www.edlawcenter.org).

districts to charter schools. Most of the Abbott charter schools received DEPA allocations; of the charter schools that did not, most did not meet the required enrollment threshold. There is no data, analysis, or other information available from any source, including the State Department of Education, regarding the Abbott charter schools' use of additional DEPA aid and what extra programs, services and staff positions are supported by DEPA funds. In addition, there is no data concerning the extent to which DEPA aid, as it is currently provided to Abbott charter schools, is adequate to meet the extra educational and educationally related needs of students in those schools.

Abbott charter schools also received ECPA aid ranging from \$169 to \$817 per student, totaling about \$5.74 million. Again, there is no information available from the Department of Education regarding the programs in Abbott charter schools that ECPA supports – full day kindergarten, preschool or other programs – or the extent to which the current ECPA allocations meet the need for these programs.<sup>17</sup>

Finally, as discussed above, charter schools cannot request additional funds to augment their ECPA and DEPA allocations by showing a particularized need for K-12 supplemental programs, full day kindergarten, or preschool - a remedy afforded annually to Abbott districts and schools under *Abbott V*. So, unlike Abbott districts and schools, Abbott charter schools have no opportunity to demonstrate to the Commissioner a need for additional funding to support these programs. This is a direct result of the exclusion of

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<sup>17</sup>Under regulations governing ECPA, a district may allocate ECPA to support not only preschool programs, but programs, services, and staff in kindergarten through grade 3. N.J.A.C. 6A:23-5.4. This ability to reallocate ECPA to make up for shortfalls in foundation funding or funding for K-12 supplemental programs was a major deficiency cited by the Court in declaring ECPA unconstitutional in *Abbott IV*.

charter schools from the Abbott remedies in the Commissioner's Abbott implementing regulations.<sup>18</sup>

### **C. Funding For Facilities Costs**

As discussed above, charter schools are ineligible for facilities improvements under the school construction program that was established to address the facilities needs of Abbott districts. Charter schools are also ineligible for debt service aid under CEIFA. Charter school facilities are not publicly owned, but rather leased or owned by the charter school operator. There is no special support from the State to alleviate the costs of financing, leasing and maintaining these facilities. Facilities costs must be supported by the existing foundation funding and categorical aids under the reduced levels prescribed by CEIFA and the Act.

## **IV. Conclusion**

Charter schools are a small, but growing means of providing public education in New Jersey, especially for low-income students and students of color residing in the state's most impoverished urban school districts. While the New Jersey Supreme Court has prescribed remedies to ensure that students in these districts receive a constitutionally adequate education — per-pupil parity funding for foundational education, supplemental programs to address the effects of poverty, and the opportunity to request additional funding to implement such programs — charter schools, and the Abbott students who attend them, have been excluded by regulation from receiving these remedies. Thus,

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<sup>18</sup>The exclusion also exempts these schools from providing the supplemental programs, staff, and services identified by the Court in *Abbott V* as necessary to ensure a thorough and efficient education to Abbott students. The Department of Education has not undertaken any study or analysis that shows that Abbott students in charter schools do not need these supplemental programs and services.

although Abbott charter school students share the same characteristics as their peers who attend neighboring public schools, they nevertheless receive foundational education funding at a rate below the CEIFA formula levels and far below the level determined in the Abbott rulings to be adequate and necessary to educate all students attending high-poverty urban schools. Furthermore, charter schools receive additional aid for supplemental preschool and K-12 programs at the formula levels prescribed by CEIFA, even though these supplemental aid formulas were declared unconstitutional.

Although enrollments in Abbott charter schools mirror the socio-economic and racial makeup of their district counterparts, their students receive substantially less educational funding than their peers. The funds that charter schools receive are far below the level determined by the court to be sufficient for the programs and services that are necessary to ameliorate the effects of concentrated poverty. Neither the *Abbott* rulings, nor the Legislature, have endorsed this funding disparity.