

SUPREME COURT OF NEW JERSEY

IN RE RENEWAL APPLICATION OF
TEAM ACADEMY CHARTER SCHOOL

IN RE RENEWAL APPLICATION OF
ROBERT TREAT ACADEMY CHARTER
SCHOOL

IN RE RENEWAL APPLICATION OF
NORTH STAR ACADEMY CHARTER
SCHOOL OF NEWARK

IN RE AMENDMENT REQUEST TO
INCREASE ENROLLMENT OF MARIA
L. VARISCO-ROGERS CHARTER
SCHOOL

IN RE AMENDMENT REQUEST TO
INCREASE ENROLLMENT OF
UNIVERSITY HEIGHTS CHARTER
SCHOOL

DOCKET NO.

ON PETITION FOR
CERTIFICATION FROM A
FINAL JUDGMENT OF THE
SUPERIOR COURT OF NEW
JERSEY, APPELLATE
DIVISION DOCKET NOS.

A-3416-15T1

A-4384-15T1

A-4385-15T1

A-4386-15T1

A-4387-15T1

A-4388-15T1

A-4398-15T1

CIVIL ACTION

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PETITION FOR CERTIFICATION OF EDUCATION LAW CENTER

EDUCATION LAW CENTER

David Sciarra, Esq.
(Attorney No. 026671978)
Elizabeth Athos, Esq.
(Attorney No. 028431983)
Jessica Levin, Esq.
(Attorney No. 096262014)
60 Park Place
Suite 300
Newark, NJ 07102
(973) 624-1815

PASHMAN STEIN WALDER HAYDEN

A Professional Corporation
Michael S. Stein, Esq.
(Attorney No. 037351989)
Brendan M. Walsh, Esq.
(Attorney No. 019312006)
Ranit Shiff, Esq.
(Attorney No. 028022006)
Court Plaza South
21 Main Street, Suite 200
Hackensack, NJ 07601
(201) 488-8200

Attorneys for Petitioner Education Law Center, o/b/o
Abbott v. Burke School Children

IN RE AMENDMENT REQUEST TO
INCREASE ENROLLMENT OF GREAT
OAKS LEGACY CHARTER SCHOOL

IN RE AMENDMENT REQUEST TO
INCREASE ENROLLMENT OF NEW
HORIZONS COMMUNITY
CHARTER SCHOOL

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“App” means Appendix to this Petition

“Pa” means Petitioner’s Appendix in the appeal below

STATEMENT OF THE MATTER INVOLVED

Education Law Center ("ELC"), on behalf of the Abbott v. Burke plaintiff schoolchildren, "the long-standing beneficiaries of specific judicial remedial orders. . . entered to correct proven constitutional violations," Abbott v. Burke, 206 N.J. 332, 340 (2011) ("Abbott XXI"), petitions for review of the Appellate Division's affirmance of the Commissioner of Education's ("Commissioner") unprecedented decision to grant the applications of seven Newark charter schools to increase enrollments by 8,499 students in multiple new facilities in the Newark Public School district ("NPS"). App4-49. This Court's review is compelled to correct the Appellate Division's egregious errors, ensure the charter school program satisfies constitutional mandates, and protect the rights of vulnerable Abbott district students.

The first glaring error is the Appellate Division's utter disregard of this Court's seminal holding In Re Grant of Charter School Application of Englewood on the Palisades Charter School, 164 N.J. 316 (2000) ("Palisades Charter") "superimposing" upon the Commissioner the obligation to prevent segregation when implementing the charter school program. The record before the Commissioner contained ELC's unrefuted evidence that NPS enrolls 18% students with disabilities compared to 9% in charter schools; 9% limited-English proficiency ("LEP") students compared to 1% in charters; and 51% Black and 40% Latino students compared to 82% to

94% Black students in five charters and to 62% and 81% Latino students in two others. In finding that "the Commissioner did not specifically address the [segregation] issue," App43 (emphasis added), the Appellate Division inexplicably issued a pass on his failure to assess the segregative effects of the charter expansion. That ruling is a shocking repudiation of our Constitution's "abhorrence" of segregation, whether caused by "official action, or simply...in fact." Palisades Charter, 164 N.J. at 324, 328.

Further, the Appellate Division's holding that the Commissioner "was not required to evaluate" ELC's powerful evidence, Pa32-101, of the impact of funding loss attributable to the charter expansion "in the absence of objection by the District" is astonishing. App41 (emphasis added). The Appellate Division knew that NPS was State-operated when the applications were pending and the Commissioner, through the State District Superintendent, effectively controlled the District's ability to object. App7. Given ELC's role as "the equitable representative of all at-risk children in the State," Abbott XXI, 206 N.J. at 467 (Albin J., concurring), allowing the Commissioner to ignore ELC's evidence of funding loss impacts because it did not originate with the District runs afoul of the obligation to "evaluate carefully" those impacts when a constitutional education is threatened, Palisades Charter, 164 N.J. at 334-35, and ignores NPS' lack of independence when the decision not to object was made.

The Appellate Division also cavalierly dismissed core Abbott v. Burke rulings by not holding the Commissioner to a "different" - i.e., higher - standard "because of the District's former classification as an Abbott District." App41 (emphasis added). The Appellate Division should have mandated heightened scrutiny when, as in these charter applications, the decision will impact Abbott orders "imposed to provide the education funding and services required to ameliorate the [Abbott District] pupils' constitutional deprivation." Abbott XXI, 206 N.J. at 340.

Most disturbing is the Appellate Division's abandonment of bedrock principles of judicial review of agency decision-making when it absolved the Commissioner from giving reasons because "[t]here is no statutory or regulatory requirement that the Commissioner include reasons for granting, as opposed to denying" a charter application. App44 (emphasis added). The Appellate Division concedes the Commissioner's decision is wholly devoid of reasons, either directly stated or discernible from the record, addressing ELC's evidentiary showing of the impact of the charter expansion on segregation and a thorough and efficient education in the NPS. Absent reasons, the Commissioner's decision is "perforce" arbitrary, In Re Proposed Quest Acad. Charter Sch. of Montclair, 216 N.J. 370, 386 (2013) ("Quest Charter"), and the Appellate Division committed reversible error by not making that determination.

QUESTION PRESENTED

Whether the Commissioner of Education Is Obligated under In Re Grant of Charter School Application of Englewood on the Palisades Charter School, 164 N.J. 316 (2000), and the Abbott v. Burke Rulings to Evaluate the Impacts on Funding and Segregation in the Newark Public Schools, a State-Operated Abbott District, when Deciding the Applications of Seven Charter Schools to Expand Enrollment by 8,499 Students in Multiple New Facilities?

ERRORS COMPLAINED OF

- I. The Appellate Division Erred by Not Ruling That the Commissioner of Education's Failure to Evaluate and Address Segregation by Disability, English Language Proficiency and Race Rendered His Decision to Grant the Charter School Expansion Arbitrary, Capricious and Unreasonable**

Almost two decades ago, this Court established "the Commissioner's obligation to prevent segregation in the public schools" on review of applications under the Charter School Program Act ("Act"), N.J.S.A. 18A:36A-1 to 18. Palisades Charter, 164 N.J. at 329. As the Appellate Division recognizes, "[s]egregation is strictly prohibited in our schools" including charter schools, and "includes not just race and ethnicity," but also segregation based on disability status and "proficiency in the English language." App41-42; N.J.S.A. 18A:36A-7. Yet, the Appellate Division concedes the Commissioner "did not specifically address" the effects on segregation from a dramatic enrollment increase in Newark charter schools, App43 (emphasis added), in the face of unrefuted evidence of wide enrollment disparities between NPS and charter schools by disability and LEP status and the charter

schools' perpetuation of the racial isolation endured by generations of NPS students.

The Appellate Division attempts to justify the Commissioner's failure by the absence of any "suggestion" from ELC that the charter schools are "deliberately" causing segregation through their "enrollment policies" or "nefarious post-enrollment practices." App42-43 (emphasis added). That justification brazenly conflicts with the firm constitutional command prohibiting all segregation. The Commissioner's "constitutional obligation to prevent segregation" when reviewing charter school applications is rooted in our Constitution's "abhorrence" of segregation, "is not tempered by the cause of segregation," and applies "with equal force" to segregation "due to an official action, or simply...in fact." Palisades Charter, 164 N.J. at 324, 328. The Commissioner must thus "be prepared to act" if "the *de facto* effect" of the enrollment increase sought by the Newark charters would contribute to - and perpetuate - enrollment patterns segregating NPS students by disability and LEP status, and race. Id. at 328. And, the Commissioner must use "the full panoply of his powers" to ameliorate the effects of segregation, id. at 329,

whether the charter schools “deliberately” intended those effects by policy and practice.¹

Similarly, the Appellate Division asserts that the ELC’s evidence of glaring trends in enrollment disparities between charter schools and NPS schools is “not sufficient to demonstrate a segregative effect.” App43(emphasis added). The Appellate Division offers no support for that unprecedented assertion, which is also based on a gross mischaracterization of the record. That record contained ELC’s undisputed evidence documenting the alarming growth of enrollment differences between Newark charter schools and NPS schools from 2009 to 2015, a period of dramatic charter growth. By 2014-15, charter schools enrolled 1% LEP students compared to 9% in NPS schools and 9% students with disabilities compared to 18% in NPS’ schools, a disparity resulting in the concentration of more costly to educate Newark students in NPS.² Pa33. Likewise, although NPS’ enrollment was 51% Black and

¹ Nothing in the record suggests the Commissioner examined the charter schools’ enrollment policies and practices for segregative effects. Even the evidence of TEAM enrolling 194 students from seven districts outside Newark, and all but one Black, Pa528-534, failed to prompt an inquiry into whether TEAM was “recruit[ing] systematically only pupils of a particular race,” grounds for charter revocation. Palisades Charter, 164 N.J. at 328.

² The vast enrollment disparities may contribute to the charter schools’ “higher” state test scores, a claim the Appellate Division asserts is a “significant factor in assessing a request to amend a charter.” App44.

40% Latino, five of the charters enrolled between 82% to 94% Black students, and the remaining two charter schools between 62% and 81% Latino students.³

The Constitution's command to address segregation on charter school applications is absolute. There is no justification permitting the Commissioner to ignore the stark evidence that the charter expansion would likely worsen two pernicious patterns of segregation: segregation based on disability and LEP status and persistence of the longstanding pattern of *de facto* segregation of Black and Latino students.

II. The Appellate Division Erred by Not Ruling That the Commissioner of Education's Failure to Evaluate Funding Loss Impacts Rendered His Decision to Grant the Charter School Expansion Arbitrary, Capricious and Unreasonable

In Palisades Charter, this Court also "superimposed" upon the Commissioner the obligation to evaluate the "economic impact" of a charter school application when a "preliminary showing" is made that a district's ability to satisfy the requirement for a thorough and efficient education "would be jeopardized" by the loss of presumptive payments to charter schools under the Act. 164 N.J. at 328, 331, 334-35. The Appellate Division did not question ELC's "overwhelming proof" that the charter expansion "would severely impair" NPS' "ability to deliver a thorough and efficient

³ The data on racial segregation was provided by the charter schools in their submissions to the Commissioner, Pa111, Pa124, Pa164, Pa439, Pa493, Pa521, and Pa322.

education." App33. Inexplicably, the Appellate Division ignored the Commissioner's "failure to consider" that record evidence. Quest Charter, 216 N.J. at 386. It also absolved the Commissioner of failing to provide any reasons, either directly or "discernible from the record," In Re Grant of Application of Red Bank Charter School, 367 N.J. Super. 462, 476 (App. Div.), certif. den., 180 N.J. 457 (2004), addressing ELC's "reliable" evidence that "a constitutional violation may occur" from an acceleration of NPS' funding loss and cuts to essential resources on the heels of six prior years of charter growth. Palisades Charter, 164 N.J. at 336.

The Appellate Division simply did not analyze the Commissioner's decision under basic principles of judicial review of agency decision-making. Instead, it offers several excuses for the Commissioner's failure to evaluate the enormous fiscal impact that adding 8500 students to the charter schools' rolls would have on NPS funding and education resources. For the following reasons, those excuses should be rejected outright.

First, the Appellate Division contends "[t]here is no statutory or regulatory requirement" that the Commissioner give reasons when "granting, as opposed to denying," a charter school application. App44 (emphasis added). Given ELC's detailed showing of the severe threat to a thorough and efficient education posed by increasing NPS' year-to-year loss of millions in presumptive payments from the charter expansion, the Appellate Division erred

by absolving the Commissioner from explicitly demonstrating that he "consider[ed] all the evidence in a record" and that there is "sufficient support in the record to sustain the decision." Quest Charter, 216 N.J. at 386. The absence of reasons is more egregious given the constitutional obligation to "evaluate carefully the impact that loss of funds would have on the ability of [NPS] to deliver a thorough and efficient education." Palisades Charter, 164 N.J. at 334-35 (emphasis added).

Second, the Appellate Division excused the Commissioner from evaluating funding loss impacts because that evidence was submitted "by another entity, and not the District itself." App38 (emphasis added). Although the Act confers on the district the right to "review" and submit a "recommendation" on a charter school application, N.J.S.A. 18A:36A-4(c), there is nothing in the Act or judicial precedents that restricts evidentiary submissions only to the "affected district." App38. That is especially so where ELC's evidence addressed the constitutional threat posed by the loss of funding from the charter expansion, not just compliance with the Act. Palisades Charter, 164 N.J. at 328-29.

Third, in restricting the ability to submit evidence to the "affected district," the Appellate Division ignores the critical fact that, when the expansion applications were pending, the Commissioner was also operating NPS through a State District Superintendent. N.J.S.A. 18A:7A-35 and 49(c). Thus, the

Commissioner, in reviewing the charter expansion applications while simultaneously operating NPS, effectively controlled whether the State District Superintendent would object to applications the Commissioner himself would decide. The Commissioner's control of NPS precluded the Appellate Division from relying on the State District Superintendent's decision to "not object to the expansions" and not to "join in ELC's appeal," App37, to excuse the Commissioner from not evaluating ELC's evidence of funding loss impacts.

Fourth, the Appellate Division held that the enactment of the formula in the School Funding Reform Act, N.J.S.A. 18A:7F-43 to 63 ("SFRA"), addresses any impacts that the loss of funding may have on NPS because the formula "is designed to maintain school funding at the constitutionally required level despite the existence of charter schools." App39 (emphasis added). There is no basis to conclude that the SFRA's "design" - district adequacy budgets, weighted to provide additional funding for students with disabilities and LEP students, Abbott v. Burke, 199 N.J. 140, 153-57 (2009) ("Abbott XX") - a fortiori ameliorates any funding impact on NPS from the charter expansions. App38-39. That conclusion is also belied by the Appellate Division's recognition of an extreme NPS "budget crisis" driven by "both" the State's chronic SFRA underfunding and Newark's rapid charter expansion over the preceding six years. App38.

Finally, the Appellate Division contends ELC did not submit evidence of funding loss impacts on which the Commissioner "could rely" because ELC "was required" to "separate the two sources" contributing to the NPS budget crisis - SFRA underfunding and charter enrollment growth - "and failed to do so." App37-38 (emphasis added). That proposition is baseless. ELC proffered reliable evidence that the threat to a thorough and efficient education in NPS was caused by two "conscious and calculated" State decisions - refusing to adequately fund the SFRA since 2012 and dramatically expanding charter enrollments from 2009. Abbott XXI, 206 N.J. at 359. Both State actions are inter-related and cannot be "separated." Nor should they be. The evidence together is essential to evaluating whether another vast increase in charter enrollment would further erode the funding and resources needed to provide NPS students a thorough and efficient education. If anything, the State's SFRA underfunding compels a rigorous examination of the impact that would occur if the already underfunded NPS budget were further depleted by the forced diversion of higher levels of presumptive payments to accommodate continuing charter growth in future years.

III. The Appellate Division Erred by Ruling There is No Heightened Standard for Evaluating Funding Loss Impacts on a Charter School Application in Abbott Districts

Relying on the "absence" of an "objection" by the State District Superintendent - who at the time was under the State's

control - the Appellate Division held that NPS' status as an Abbott district did not require the Commissioner to evaluate the impact of funding loss from increasing charter school enrollment by 8,499 students in multiple new facilities. App41. The Appellate Division also permitted the Commissioner to disregard ELC's evidence of the expansion's threat to a constitutional education within NPS, App37, even though ELC was acting on behalf of the Abbott plaintiff class, which includes NPS students. App41. Those draconian rulings ignore the judicial remedies and protections ordered for Abbott district students who have suffered a severe constitutional deprivation of extended duration. See Abbott v. Burke, 196 N.J. 544, 556-63 (2008) ("Abbott XIX") (recounting history of key Abbott rulings); Abbott XXI, 206 N.J. at 348-352 (same).

At the outset, the Appellate Division misconstrues ELC's role in submitting evidence on the charter expansion applications. ELC was not merely "another entity," nor can ELC's detailed evidence be considered "unsolicited comments" from "local citizens." App37-38 (emphasis added). Rather, ELC was acting in its capacity to "speak for and represent the at-risk children" in Abbott districts, a role recognized by this Court as vital to securing State remediation of the constitutional violation in those districts. Abbott v. Burke, 153 N.J. 480, 527-28 (1998) ("Abbott V").

Next, the Appellate Division concludes the Commissioner's obligation to evaluate funding loss is not heightened on a charter

school application in an Abbott district. App39-40. The Appellate Division acknowledges that this Court left "for another day" the "question" of whether requiring the district to "come forward" with evidence that the requirements of a "thorough and efficient education cannot be met" should apply "in the context of an Abbott district." Palisades Charter, 164 N.J. at 334. The Appellate Division cites Quest Charter as "reaffirm[ing]" that requirement "without addressing the Abbott school [sic] issue," App40, knowing full well that the charter application in that case was not in an Abbott district.⁴ Just because this Court has yet to answer the "question" of the standard applicable in Abbott districts provides no support for placing the onus solely on the State District Superintendent to put forth evidence of those impacts, App41, especially where, as here, the charter schools sought an increase of thousands of students to be housed in multiple facilities.⁵

⁴ The Appellate Division also cites the unreported opinion in Bd. of Educ. of Hoboken v. N.J. State Dep't of Educ., No. A-3690-14 (App. Div. June 29, 2017), a case where the question of the standard to be applied on charter applications in an Abbott district was not at issue or addressed.

⁵ The Appellate Division compounded its error by finding that even non-Abbott districts "bear the burden to demonstrate that charter school funding will prevent delivery of a thorough and efficient education." App41. This Court only requires a non-Abbott district to make a "preliminary showing" of funding loss impacts, Palisades Charter, 164 N.J. at 336, - not bear the burden of proving the impacts would result in a constitutional violation.

Further, the Commissioner's constitutional obligations in NPS and other Abbott districts have been "the subject of more than twenty court decisions, or orders, defining its reach, and setting out judicial remedies" for students in those districts. Abbott XXI, 206 N.J. at 363-64. That well-defined obligation requires, at the very least, the Commissioner to affirmatively and rigorously evaluate the funding loss impacts from the charter expansion on NPS' ability to deliver a thorough and efficient education, whether or not the State District Superintendent submitted objections. Palisades Charter, 164 N.J. at 334-35; Abbott v. Burke, 149 N.J. 145, 196-97 (1997) ("Abbott IV") (placing burden on State to demonstrate constitutionality of replacing the parity and supplemental funding remedies); Abbott XIX, 196 N.J. at 565-66 and 568-69 (placing burden on State to demonstrate SFRA's constitutionality, "as it has been each time the State has advanced a new funding program"). The funding loss from the charter expansion will impact Abbott district students who are the "victims of a violation of constitutional magnitude" spanning decades, Abbott XXI, 206 N.J. at 340, and who "have worked long and hard to obtain a constitutionally sound, mandated educational program that is supported by a consistent level of State funding," Abbott XIX, 196 N.J. at 549.

In this case, the Commissioner surely is obligated to apply heightened scrutiny to applications that would, if approved,

increase total charter school enrollments to over half of all Newark students. Further, if the Commissioner decides to approve the applications, he must convincingly demonstrate that the expansion would not impair NPS funding or undermine the NPS ability to provide a thorough and efficient education. Abbott IV, 149 N.J. at 196 (requiring convincing demonstration by State); Abbott XX, 199 N.J. at 158-169 (applying convincing standard to review of SFRA's constitutionality).⁶

IV. The Appellate Division's Affirmance of the Commissioner of Education's Expansion of Charter Schools in Multiple Remote Facilities Violates the Charter School Program Act

Two Newark charter schools - TEAM and North Star - applied for an extraordinary amendment: approval of aggregate enrollment increases that would allow them to open multiple additional facilities at undisclosed locations at an unspecified future time. In response to TEAM's application, the Commissioner approved an enrollment increase of 3800 students requiring, at a minimum, four new facilities: two elementary schools, one middle school and one high school. App19-21. On North Star's application, the Commissioner approved an increase of 1600 students requiring, at

⁶ The heightened standard for assessing constitutional impacts in an Abbott district should also include "exploration in a more formalized" hearing. Red Bank Charter, 367 N.J. Super. at 485 (criticizing lack of hearing on non-Abbott district charter).

a minimum, three new facilities. App22-24.⁷ The Appellate Division upheld the Commissioner's decision to grant these applications based on his "interpretation" and "possible" understanding of N.J.A.C. 6A:11-1.2, App49 (emphasis added), a regulation allowing an existing charter school in an Abbott district to open a "satellite campus," id., when the charter schools did not - and could not - comply with that regulation.

The Appellate Division's speculations aside, the Act does not authorize existing charter schools to expand enrollment by the thousands in the aggregate "first" in order to "then" put the schools "in a position to secure approvals for any proposed satellite locations" at some future date. App49 (emphasis added). The regulation governing charter amendments, N.J.A.C. 6A:11-2.6(a), permits a charter school to expand enrollment and grade levels only in space within, or adjacent to, its present facility. Educ. Law Ctr., on behalf of Abbott v. Burke Plaintiff Schoolchildren v. N.J. State Bd. of Educ., 438 N.J. Super. 108, 120-21 (App. Div. 2014) ("ELC v. SBOE") (allowing an enrollment

⁷ TEAM and North Star are two of 88 "currently operating" New Jersey charter schools approved by the Department of Education ("DOE"). See <https://www.state.nj.us/education/chartsch/>. The DOE, however, does not publicly disclose that, under one approved charter, TEAM operates 11 separate charter schools: 5 elementary, 4 middle and 2 high schools. See <http://kippnj.org/schools/>. Under its one approved charter, North Star operates 13 charter schools: 5 elementary, 5 middle, and 3 high schools. See <http://northstar.uncommonschoools.org/nsa/campuses>.

increase in an operational facility, an addition to that facility, or in an adjacent facility).

The only mechanism for a charter school to expand into a remote facility is by applying under a regulation allowing charters in "former Abbott districts" to open a "satellite campus" or "a school facility" that is "in addition to" its existing facility. N.J.A.C. 6A:11-1.2 and 2.6(a); ELC v. SBOE, 438 N.J. Super. at 120. But the Appellate Division ignores the fact that TEAM and North Star did not apply to open a satellite campus because, to do so, would require them to identify the additional facility where they would expand. Absent a satellite campus, there is nothing in the Act or regulations that allows the Commissioner to approve enrollment increases in the thousands up front to set the stage for the addition of numerous remote facilities in future years, regardless of how "arduous" the "process of identifying and securing" locations for those facilities might be. App48.

The Appellate Division also profoundly misinterprets the Legislature's intent in authorizing the charter school program under the Act. That Act authorizes charter schools on a school-by-school basis to assist the State in providing a thorough and efficient education to all students in the districts in which they are approved to operate. Palisades Charter, 164 N.J. at 319-23. It is crystal clear that the Legislature's choice "to include charter schools" among the entities providing public education is

appropriate "so long as the constitutional mandate to provide a thorough and efficient system of education in New Jersey is satisfied." Id. at 323 (emphasis added).

Neither the Act's plain language, its history, nor this Court's precedents suggest the Legislature intended to delegate to the Commissioner authority to allow an existing charter school to establish a network of multiple schools remote from its facility to operate alongside district schools for the express purpose of competing with the district for funding and students. Even assuming a "need for an increase in charter school enrollment in Newark," App45, the Appellate Division's interpretation of the Act eviscerates the State's "inviolable" obligation to provide one thorough and efficient system of public schools in Newark. Palisades Charter, 164 N.J. at 323. Without question, that obligation does not countenance what the Appellate Division has condoned: allowing a charter school to establish a parallel system of charter school facilities across Newark, thereby reducing NPS' funding, segregating students, and undermining a thorough and efficient system of education for all Newark students.

REASONS WHY CERTIFICATION SHOULD BE GRANTED

This petition satisfies R. 2:12-4 for certification.

1. THIS CASE PRESENTS A QUESTION OF GREAT PUBLIC IMPORTANCE

Nothing is of greater public importance than the twin, inter-related obligations imposed upon the State in our Constitution: to

provide a thorough and efficient system of public education for all students; and to prevent discrimination and segregation in our public schools. Palisades Charter, 164 N.J. at 323. Determining whether the Commissioner's decision to approve a massive expansion of Newark charter schools violates these two principles presents a question of profound importance, implicating the rights of Abbott district students to a constitutional education.

2. THE DECISION BELOW IS CONTRARY TO THIS COURT'S RULINGS

The Appellate Division's opinion plainly conflicts with two seminal Supreme Court precedents: the Abbott v. Burke rulings to remedy the proven constitutional deprivation endured by generations of NPS students, Abbott XXI, 206 N.J. at 340, and the Palisades Charter decision, 164 N.J. 316, "superimposing" on the Commissioner the constitutional obligation to evaluate funding loss and segregation when deciding charter school applications. The opinion also conflicts with basic principles governing judicial review of agency decision-making.

3. THE INTERESTS OF JUSTICE REQUIRE REVIEW

ELC seeks review on behalf of the Abbott schoolchildren who attend NPS. "Only they have the historic finding of constitutional deprivation and only they [are] the beneficiaries of the remedial orders that the State asked [this Court] to switch for the SFRA funding." Abbott XXI, 206 N.J. at 369. The interests of justice require this Court's continuing protection.

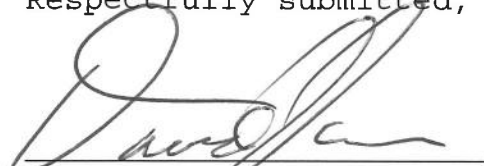
COMMENTS ON THE APPELLATE DIVISION DECISION

The Appellate Division's opinion has already been cited as precedential authority in three charter expansion appeals: In re Approval of Charter Amendment of Central Jersey College Prep, 2019 WL 2402541 (App. Div. June 7, 2019); North Brunswick Twp. Board of Educ., New Brunswick Board of Educ., and Piscataway Twp. Board of Educ., 2019 WL 2402543 (App. Div. June 7, 2019); and Highland Park Board of Educ. and Piscataway Twp. Board of Educ., 2019 WL 2402544 (App. Div. June 7, 2019). Four charter expansion appeals affecting NPS are still pending: In Re Renewal Application of Philip's Academy Charter School, Dkt. No. A-003356-16T3; In Re Charter Amendment Request of University Heights Charter School, Dkt. No. A-003357-16T3; In Re Charter Amendment Request of Great Oaks Legacy Charter School, Dkt. No. A-003358-16T3; and In Re Charter Amendment Requests of M.E.T.S. Charter School, Dkt. No. A-003359-16T3.

CONCLUSION AND CERTIFICATION

The Court should grant certification for all the reasons set forth above. Pursuant to R. 2:12-7(a), the undersigned certifies that the Petition presents a substantial question, filed in good faith and not for purposes of delay.

Respectfully submitted,


David G. Sciarra, Esq.

Dated: June 20, 2019