

OTHER PEOPLE'S SCHOOLS: THE CHALLENGE OF BUILDING NEW  
SCHOOLS IN NEW JERSEY'S URBAN DISTRICTS: 2000—2010

by

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ABSTRACT OF THE DISSERTATION

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By ROBERT S. DANIEL

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This dissertation captures the 10-year contemporary history of implementing the facilities element of New Jersey's historic *Abbott V* decision. New Jersey's Legislature and Governor took this Supreme Court decision and created legislation responding to multiple constituencies and lobbyists while shaping a school construction program to be deposited within a government agency for implementation. While not the largest in nominal dollar value, New Jersey's program was possibly the widest in geographic scope and most detailed in ambition in the United States. Aspects of program implementation are described and linked to their sources in the political sphere and their implications for the school facilities.

New Jersey's program built 63 new school buildings within 31 of New Jersey's lowest-wealth school districts across the state in a fully centralized, highly controlled, and prescriptive manner. There is a political aspect of any public works program, and New Jersey's played against a background of six Governors, beginning with Republican Christine Whitman and ending with Republican Chris Christie over the 10-year period

July 2000 to July 2010. This program was a tool of Governors to be accelerated or dampened as needed through Executive Orders or more subtle controls.

There is importance to this study as New Jersey is once again a national leader among the 50 states in addressing its most difficult school facility issues on a statewide basis. New Jersey's program is a prototype and its experience, successes, and failures provide insight to other states that undoubtedly will be confronting these same problems as their school buildings age.

## Dedication

This dissertation is dedicated to “other people’s children.” They are all “our” children who are not yet attending school in an educationally adequate, safe, dry, warm, and healthful school building.

## Acknowledgments

Professor Alan R. Sadovnik, one afternoon in 2006, from his office in Bradley Hall, crowded with texts, set me on the path to research the problem of building schools in America's cities. Understanding my research interest in the New Jersey program specifically and school facilities in general, he suggested that I meet with Joan Ponessa, at the time Director of Research at the Education Law Center. Without Professor Sadovnik's support, guidance, and propelling me toward Joan, this dissertation could never have been written.

My deepest gratitude must be expressed to Joan Ponessa, who after our first inspiring meeting one rainy afternoon, shared with me her wealth of experiences, files, writings, memoranda, and insights into the nuances of the program. She is a fountain of knowledge on school facilities in America and New Jersey's program specifically. Her thoughts on this dissertation have been invaluable.

Rain is a common theme: I met both Dr. Gabrielle Esperdy and Joan Ponessa on the rainiest, most windswept days that the city of Newark, New Jersey, could offer. Both graciously welcomed me into their offices: dripping umbrella and soaked raincoat. Gabrielle provided insights and direction on writing and shaping the form of this dissertation and its narrative. For her endless patience with reading and reviewing the multiple drafts, I am grateful.

I thank Dr. Harold Wechsler of the Steinhardt School of Culture, Education and Human Development, New York University, for providing guidance and assistance on writing this contemporary history. He has been with me through this long journey as a patient and diligent reader and contributor. Dr. Jerry Byrd, who tirelessly edited the

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A special thanks to my brother-in-law, Dan Markewich, Esq., for dedicating hours upon hours in proofreading and marking drafts of this material. My sister, Frances Fredrick (Dan's wife) allowed her husband to spend all this time reading her "little brother's" dissertation.

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I thank my daughters, Moriel, Ayelet, and Tsufit, for patiently listening to their father discuss his school work, courses, poverty, school facilities, and urban education. I have been working on "that doctorate" for nearly 7 years. Thanks to my mother-in-law and father-in-law, Fay and Martin Novack, for being supportive of their son-in-law's midlife academic pursuit.

Finally, and most important of all, I am most grateful to my wife, Beth Ann Daniel. I am forever indebted to her for the support that she has provided throughout this long endeavor. She has boosted me and sustained my efforts by releasing me for the many years, months, days, and hours upon hours necessary to research and write. Without her encouragement and support, this dissertation would never have been started, written, nor completed.

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## CHAPTER 1

### Problem Statement

In the tug-of-war over resources, \$8.9 billion was approved by the State of New Jersey to improve school buildings in its lowest-wealth school districts. Expectations were high; sadly, the outcome was poor. What went wrong? This dissertation highlights that the students and their educations are peripheral to the efforts of adults and possibly the outcome.

*Raymond Abbott, et al. v. Fred G. Burke, et al.* (A-155-97, 1998; herein *Abbott*), a landmark decision for school facilities, as well as *Abbott V* and the subsequent groundbreaking legislation Educational Facilities Construction Financing Act (EFCFA), highlight the dependency of New Jersey's urban school children on their suburban colleagues.

In 2000, New Jersey's legislature could not approve \$6 billion for new schools in *Abbott* school districts without \$2.6 billion for schools throughout the state. In 2008, the legislature could not approve another \$2.9 billion for new schools in *Abbott* school districts without \$1 billion for schools throughout the state.

In the future, as the state's bonding capacity runs out for the regular operating districts (RODs),<sup>1</sup> this capacity will most probably be expanded with funds for both inner-city and suburban schools. Governor Christine Whitman, when she chose to sign the EFCFA on July 18, 2000, at the non-*Abbott* Cranford High School, symbolized both

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<sup>1</sup> The ROD was defined by the New Jersey State Department of Education as part of the post-2008 grant program for non-*Abbott* districts in the state.

the statewide facility needs and the necessary compromises. As she signed the bill, Whitman said,

Crumbling buildings are no place to send our students. That's certainly true in the 30 *Abbott* districts, which will receive full state funding for all necessary facility improvements. But we know that many more schools are showing their age and need attention. The bill answers the Court's *Abbott* mandate responsively and responsibly. What's more, through the teamwork of the Legislature and my administration, our program will enable every district in New Jersey—urban, suburban, and rural—to give our children safe and secure classrooms. In the process, it will relieve pressure on the property tax for these projects. (New Jersey Office of the Governor, 2000, p. 1)

This research underscores the seminal influence of New Jersey's Governors on the state's school construction program. Each Governor's approach was consistently amplified, perhaps exaggerated, by the program's administrators. Be it apathy or compassion, zealousness or indifference, the Governor's temperament was felt within the construction agency and in the field. The sometimes tidal and other times subtle changes in the Governor's approach to school building is discussed in this dissertation. The influence of the Governor cannot be understated, so much so that several of the chapters are given the names of Governors.

All of New Jersey's Governors during this study period were White. The school program that this dissertation examines was directed to improve the facility conditions for minority children of color. Questions and discussions about the racial implications of the program began to emerge only as the program began to implode. These can be found in hearings held in the summer of 2005, when it became clear that many of the promised schools would not be built in the foreseeable future.

Four primary themes run throughout this dissertation. First is the sheer difficulty of managing a program of this magnitude. Propelled by the need to reconstruct inner-city schools, the State of New Jersey embarked in 2000 on one of the nation's most ambitious

megaprojects in the field of educational facilities. Mandated by the state Supreme Court's *Abbott V* decision, the Legislature provided Governor Whitman with \$6 billion dollars for facilities in 30<sup>2</sup> low-wealth school districts. The program's execution was deposited initially in the hands of the New Jersey Economic Development Authority (NJEDA), which was surprised, overwhelmed, and unprepared for this work.<sup>3</sup>

Thus, the theme of "managing" or administering this program is of major concern within this 10-year history. This includes managing the design and construction of school buildings, supervising their construction in 31 school districts across the state, financial management, public administration, and the ability to absorb unanticipated change within the legal constraints of state contracts and regulations. It is concerned with how public administrators led a complex multisited, multiyear, multibillion-dollar megaproject in the politically charged, turbulent, and cyclical environment of New Jersey state politics.

The second major theme of this research is the continuing political battle between New Jersey's urban and suburban constituencies. The tension between the state's cities and their suburbs can be traced to the turn of the past century when the Industrial Revolution profoundly changed New Jersey's socioeconomic and demographic composition. These changes in the late 1890s and early 1900s included the first suburbs

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<sup>2</sup> The number of *Abbott* districts noted within this dissertation will correspond to the historical reference point. Initially, in 1990, 28 districts were identified as "special needs" or "*Abbott*" districts. In March 1999 the *Abbott* umbrella was extended through legislation to include the Neptune and Plainfield School Districts. In June 2004, Salem City became the 31st *Abbott* district, again through legislation.

<sup>3</sup> The NJEDA is an Independent Authority of the State of New Jersey that focuses on economic development through financing small and mid-size businesses and providing tax incentives to retain and grow jobs. It is also involved in community revitalization and redevelopment and has access to financial markets through the issuance of bonds that are backed by the State of New Jersey.

breaking away from their respective urban centers to distance themselves from the cities, with their immigrants from Central and Southern Europe.

Less than 60 years later, similar themes played out again in different forms and locations in New Jersey. Both *Robinson v. Cahill* and *Abbott v. Burke*, seminal court cases in the contemporary history of education in New Jersey, are manifestations of this suburban-urban tension. This was a battle over equity in funding, money, taxation, quality school buildings and, underlying all, keeping each school district's populations and problems constrained within its respective boundary.<sup>4</sup> As the Legislature struggled for 2 years to create a formula to meet the Supreme Court's *Abbott V* decision, all of these forces came into play as the clocked ticked toward the final days of the June 2000 legislative session.

The third theme of this study plays a more subtle role: It is the perceived threat of corruption. Little actual corruption has been found in New Jersey's program, possibly due to the state's aggressive efforts made to keep it at bay. However, as several researchers of public administration have pointed out, there is a point of diminishing returns. It appears that, within the New Jersey program, the efforts to combat corruption have been so successful, especially in the urban school districts, that they have entangled the program's staff, its contractors, and its consultants in proverbial "red tape."

The fourth theme of the study is the tendency of the construction program's advocates and administrators to be overly optimistic. To begin, the program's cost estimates for upgrading all of these school buildings was underestimated, either

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<sup>4</sup> See *Complex Justice: The Case of Missouri v. Jenkins* by Joshua M. Dunn (2008), *Milliken v. Bradley I and II*, cases before the U.S. Supreme Court (1974 and 1977) 418 U.S. 717, and *San Antonio Independent School District v. Rodriguez*, U.S. Tex (1973) 411 U.S. 1, 93 S. Ct 1278.

strategically or through a series of unacknowledged errors (Flyvbjerg, 2005, 2011; Flyvbjerg, Bruzelius, & Rothengatter, 2003; Flyvbjerg, Garbuio, & Lovallo, 2009; Flyvbjerg, Skamris Holm, & Buhl, 2002). Once these numbers and estimates were published and “anchored,” they took on a life of their own. Eventually, the advocates became trapped by their own timetables, cost estimates, and projections.

Two additional themes are not treated in detail but are not overlooked. First is education. Improving educational outcomes for New Jersey’s low-wealth children is the foundation of the *Abbott V* decision and the program that followed. The fate of New Jersey’s children slowly drove what became the construction program through the courts, the State Legislature, and eventually into construction. However, the issues involved in education became subordinate to many others, as this analysis of the program will indicate. The second theme not to be treated in detail is finance. The funding needed to fuel the building of schools was initially not a problem. The seemingly boundless optimism of the American economy at the turn of the 21st century allowed a \$2 billion program for urban schools to become an \$8.6 billion program for urban and suburban schools. Eventually, funding became the program’s central problem as the gap became apparent between the schools that were on the lists to be built and those that would actually be built.

All said, this was a program meant for New Jersey’s children of the lowest social economic status. Above all, it evolved quickly into a program about the adults. Who will build the schools? Who will design them? Who will manage the construction? What will the new schools look like, and whose contaminated land will be purchased?

The adjectives *overambitious, understaffed, unexperienced, unprepared, overpriced, and overscoped* are all part of the diagnosis of what happened during these 10 years. The best of intentions led to unintended outcomes.

### **The Problem**

Building new schools in the nation's urban school districts is easier said than done. Many school districts and organizations encounter difficulties in meeting the goals of their construction programs because building schools in cities plays out in the face of three constraints: land, money, and politics. Schoolhouses are the product of the efforts of government institutions, which need to mobilize resources to build school buildings in the face of these constraints. The construction, condition, or absence of school buildings is a reflection of a government's priorities, tenaciousness, ambitions, mobilization, and political structure.

One of the primary problems facing major governmental infrastructure programs is their inherent instability and fluctuations. Although a publicly funded project brings with it public resources (access to public finance and tax revenues), it also brings a vulnerability to political changes, vacillations, and a susceptibility to periods of administrative and functional drift.

Are these major infrastructure programs "once-in-a-generation" projects, each one detached from the "lessons learned" in earlier generations? Is each one destined never to transfer any lessons toward future projects? Would the public sector be better off with a slower, steadier pace of infrastructure work, rather than "boom and bust," with its associated waste?

### This Dissertation's Focus

New Jersey, after the fifth of its groundbreaking *Abbott v. Burke* State Supreme Court decisions, embarked on a pioneering effort to eliminate disparities between the educational facilities (among many other goals) in its poorest school districts and in its wealthier ones. The philosophical foundation for this undertaking was the belief that, at the most fundamental level, the schools attended by New Jersey's minority and low-wealth children should not stand in dramatic contrast to the schools attended by the state's middle- and upper-class (suburban) children.

Within 2 years of *Abbott V* (in 1998), Republican Governor Christine Whitman signed legislation on July 18, 2000, that began the process of repairing and rebuilding the state's urban school facilities. This dissertation focuses on the 10-year period following the enactment of the initial financing law, which provided \$6 billion in initial funding for upgrading schools in New Jersey's 30 poorest school districts.

Although this program was intended to improve inner city schools, the political compromise necessary to receive its approval included \$2.6 billion for grants (of at least 40% of cost) to regular school districts. This subsidy program, which allowed school districts throughout New Jersey to design and construct facilities independent of the state's larger (low-wealth and inner-city-focused) program, in retrospect may have had a greater impact on more children at a greater speed than the primary program aimed at the most deteriorated schools in the cities.

In an article published in the *Star Ledger* as the EFCFA edged toward approval, Dunstan McNichol, the reporter on the Statehouse beat,<sup>5</sup> observed,

The transformation of the Supreme Court order is a case study in how the state's suburban lawmakers can exact rewards for their communities before agreeing to fund city-focused initiatives. It is also the story of how big-money politics works in an economic boom time. (McNichol, 2000c, p. 1)

Therefore, paradoxically, the promise of EFCFA, despite its genesis as a response to the State's Supreme Court mandate to remedy facility conditions in inner-city schools, may have had its greatest impact on improving the facilities in the schools of the non-*Abbott* districts (by covering at least 40% of their construction costs through grants). In contrast to the impression conveyed in *Growth and Disparity* (Filardo, 2006), which highlighted the New Jersey program as the pinnacle of progressiveness, there is an uneasy sense that, in fact, more new seats may have been built outside the cities (not the intent of the *Abbott V* decision) than were built in the state's most deteriorated school districts. This was based on the rapid progress being made by several of the state's suburban and rural districts, which were quickly taking advantage of the program's grant funds.

Why is this important? The management of designing, building, and upgrading the school buildings in America's urban school districts is of interest to legislators, educators, researchers, and policy makers concerned with improving urban education in the United States. This audience extends to construction managers, architects, urban

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<sup>5</sup> Dunstan McNichol would play an important role in the school program as a tenacious reporter for the *Star Ledger*. He doggedly followed approval of the EFCFA and its implementation in the hands of the NJEDA, the NJSCC, and the NJSDA from 1998 through his last days at the *Star Ledger*. In 2009 he shifted to *Bloomberg News* and continued to follow news in Trenton. McNichol passed away suddenly on January 4, 2011, at age 54 (*Star Ledger* Staff, 2011).

planners, environmentalists, and real estate professionals involved in the process of finding land for educational facilities in cities. This dissertation is significant as it “bridges the gap” between the *intentions* to build or improve school buildings in cities and the *practice* of building those new facilities. Elements, patterns, and lessons can be unearthed from the New Jersey experience that are applicable nationwide.

The 21st Century School Fund (2011) reported that there were approximately 98,700 elementary and secondary public school buildings (including charter schools) in the United States in the 2008-2009 school year, serving 55.5 million school-age children. New Jersey contributed 2,588 buildings to the nationwide total (National Center for Education Statistics, 2010). The Fund reported its data as approximations because there is no national database and, for many states, no statewide database of school facilities. The nation’s school districts manage over 1 million acres of land, with an estimated 6.6 billion gross square feet of public school building space. In 2008, school districts spent \$58.5 billion for capital projects: construction and land acquisition. In the same year, they held \$369.4 billion in long-term capital debt.

Besides Ortiz’s (1994) work about California, there is virtually nothing written on the subject of implementing the massive facility infrastructure programs necessary to remove disparity in conditions in the thousands of schools across the nation. What little is written is found within transcripts of legislative hearings, reports from state and municipal auditors, evaluations by state Inspectors General, and penetrating articles by investigative journalists. None of this is scholarly work prepared under academic auspices.

Despite an aggregate annual nationwide investment of billions of dollars, the growing gap in school facilities improvement is underscored in the report *Growth and Disparity* issued by the Washington-based advocacy group Building Educational Success Together (BEST; Filardo, 2006). The report found that, “despite record spending on school construction, low-income and minority students . . . have had far less investment in their school facilities than their more affluent, White counterparts” (p. i). Furthermore, there is no academic research on the subject of managing large-scale school district reconstruction programs.

Beyond an interest in New Jersey’s program as a prototype for others that will be needed across the United States, there is another reason that this dissertation is important to educational administrators. Brent and Cianca (2003) observed that, undoubtedly, the state of America’s school facilities and the extent of necessary repairs will make facility upgrades, repairs, and renovations a situation that every school administrator will encounter at some time in her or his career.

Questions of scale, control, and accountability face any state that desires to improve its inventory of school buildings. It is important to learn from New Jersey’s experience, as it is a prototype for programs across the country. The State of New Jersey’s scope and allocation of over \$8.9 billion to repair and reconstruct school buildings in 31 of its low-wealth school districts is unequaled in the United States at the time of the writing of this dissertation. The dollar values of the school facility programs in New York City or Los Angeles may be higher, but their geographic scope is significantly narrower and their political complexity is smaller. As the other 49 states

begin to address their own aging school buildings, the relevance of the New Jersey experience becomes increasingly salient.

Building schools in older cities is not an easily accomplished task and there are no shortcuts. Programs that will create substantial facility upgrades and increases in capacity on environmentally safe sites require “lead time” and predevelopment planning. Such programs cannot be set up overnight, or even within months. They cannot create new schools on safe, new sites in decaying cities and then disappear. The tasks involved and the mobilization of talented persons and resources require team building, benchmarking, experience, and learning best practices.

When a school district begins a serious large-scale facility reconstruction program after a 40- to 50-year hiatus, it most probably lacks the experience and the human capital to plan and implement such a program. This is compounded by the *nature of a school district*. The primary concern of a school district is educating children; the experiences and skill sets of its leadership are not in the fields of architecture, planning, and construction management. For these reasons, Ortiz (1994) recommended that each school district have a steady, long-term, multiyear construction program shepherded by a core internal staff supplemented by external consultants. This is in contrast to the boom-and-bust phenomenon that can only lead to some of the poor outcomes detailed in this dissertation.

The perspective of school construction occurring throughout history in periodic bursts is found in a fascinating report prepared as the British re-embarked on their nationwide school facility program around 2005 (Woolner et al., 2005). The authors proposed that the Buildings Schools for the Future program should look back on recent

history for perspective on building programs to prevent making the same mistakes as their predecessors made.

The wide variations and fluctuations in the financing of school construction (causing “boom-and-bust” or “bursts”) are the causes of two phenomena. First, deceptive practices are employed in underestimating project costs, complexity, and time. Second, and probably related to the first, is the lack of experience of those engaged in the process of school construction. The two phenomena are linked. The track record and broad patterns over a span of years show cycles of school building followed by long periods of dormancy. Because of this cycle, institutional history, applied experience, and expertise are lost during the dormancy period as project teams disintegrate and school district staff members retire. This once-in-a-lifetime temporal phenomenon increases costs, decreases reliability and decreases the credibility of the entire process. It seems that, every time, in every school district, municipality, and state, the lessons of “how to build schools” are learned anew by each new team. The only way to break free of this trend is to embrace Ortiz’s (1994) suggestion to retain a small core team that leads a stable but slower flow of facility replacement.

The observations noted in this paper are based on writing by Professor Bent Flyvbjerg, a Danish researcher currently at University of Oxford (Flyvbjerg, 2005; Flyvbjerg et al., 2002; Flyvbjerg et al., 2003; Flyvbjerg et al., 2009). His work on mega-projects (large-scale publicly financed projects) is expanded throughout this paper.

### **Why Not a Program Evaluation?**

This dissertation does not include a program evaluation. The difficulties facing New Jersey’s efforts to execute its ambitious school facility improvement program in the

first decade of the 21st century are summarized. The study captures the efforts by New Jersey's leaders, politicians, architects, engineers, and administrators to execute an historic, expansive, and ambitious program. The task of program evaluation is left to future studies.

Absent a database of school facility status, investments, and quality, it is not possible to determine accurately the required investments or to track the rate of improvement or deterioration in New Jersey's school buildings. Although there is a sense that disinvestment in New Jersey's school facilities is deepening, absent basic statistical data, this disinvestment, if present, cannot be quantified. Overall, there seems to be an acceleration of the pace of underinvestment in New Jersey's school buildings, despite the periodic appearance of a few new buildings built by the New Jersey Schools Construction Corporation (NJSCC) and the New Jersey Schools Development Authority (NJSDA). This is not a new trend, as evidenced in reports and handbooks from 100 or 50 years ago, or as recent as 1967 or 1992.

Therefore, program evaluation is deferred for two reasons, one logistic and one personal. Logistically, a program evaluation of an \$8.9 billion construction program is beyond the scope and resources of a sole doctoral student. The dearth of usable statistical information on New Jersey's existing educational facilities seems almost inversely related to the financial investment in concrete and steel (compared with other states, which spend less but have better statistics).

To prepare a program evaluation would require a preprogram baseline of data from 1999-2000. Initial analysis of data from the New Jersey Department of Education (NJDOE) showed that its database contained readily identifiable shortcomings that would

have generated statistically flawed data. Second, I am unable to evaluate this program's success due to my personal proximity as a part of this program since January 2003. I performed most of this research while employed by organizations that were and still are part of the program. This places me within the program to be evaluated and in an untenable ethical, professional, and academic position to perform program evaluation.

Nonetheless, a simple comparison must be made between the program's achievements and the number of projects the NJDOE initially approved within each district's Long Range Facilities Plan (LRFP). Due to the constantly changing scope of this mega-project and the unknown cost of its component school projects, the numbers are as vague today as they were fluid 13 years earlier.

In December 2000 the Education Law Center (ELC) added up all the projects in the 30 LRFPs (ELC, 2000b). They calculated that the program would include 217 new school buildings and 317 renovations/additions and renovations. This projection from 2000 should be contrasted with the NJSDA's 2011 annual report (NJSDA, 2012a), which claimed completion of 63 new buildings and 68 rehabilitation/additions since the program's conception.

The auditor's section of the NJSDA 2011 annual report noted that 65.2% of the program funding for the "SDA Districts" had been disbursed as of December 31, 2011. The figure of 65.2% should be compared with the completion of 29% (63 new buildings) of the approved (in the LRFP<sup>6</sup>) 217 new schools and 21% (68) of the approved renovation/additions. The *Abbott V* decision was direct. The State of New Jersey was

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<sup>6</sup> See New Jersey Appellate Court's response to East Orange School District that placing a project within a long range facility plan is not a guarantee that it will be funded for construction (Larini, 2009; "East Orange BoE," 2009)

ordered to remedy the school facilities in the state's special needs districts (SNDs) at the state's expense. It was to begin construction by spring 2000. There was no timetable for when this work was to be completed. As of the writing of this dissertation (2013), it is at best 30% completed and more than 65% of the funds have been utilized.

As the nationwide need to improve school buildings will generate recognition that more programs of New Jersey's magnitude are needed, it will be important to invest resources in a full-scale study of this program's success. To that end, this researcher stands ready to support the efforts of others.

### **Recording History as a Participant**

My personal involvement in this program presented a mixture of advantages and challenges as a researcher. New Jersey state law bounds my reporting to publically available information. As a participant in this historic program, first as an employee of a consultant and later as an employee of the NJSDA, I witnessed New Jersey's school building from within.

As Semel observed about her role of participant in research on the Dalton School in New York City (Semel, 1994, 1995), there is a challenge to remain objective when writing a history of such a recent period. I often heard colleagues, who knew that I was working on this dissertation, remark that they were looking forward with relish to reading a report "bashing" the situation and the organization that had caused them such aggravation and professional frustration.

It is important to record New Jersey's effort to build schools. This was a major event in the history of American education. It was the first time any state had focused billions of dollars on a handful of its lowest-wealth school districts, with the objective of

reconstructing their school buildings to meet the “state’s proposed adequacy standards (EAS) satisfied constitutional obligations,” provide “specialized instructional rooms for art, music and science,” “issue bonds . . . [to] address the need for adequate facilities and capital improvements inherent in reform plan” (*Abbott v. Burke*, “Remedial Relief Ordered”). This effort, only partially successful as of July 2010, carries important lessons for educational leaders across the United States and around the world.

To provide a measure of distance between my role of researcher and my role of participant (employee), I concluded the study period at July 18, 2010. This was 10 years after the EFCFA had been signed by Governor Christine Whitman and 6 months into the term of Governor Chris Christie. Three more years would pass between that date (July 2010) until this dissertation was concluded (September 2013). The need to separate these two roles focused my efforts on capturing and recording the impact of this surge of resources in a meaningful way for future researchers. It is hoped that this approach will allow someone more distant and more objective to perform additional research on the topic at a future time.

To contrast with Semel’s research at the Dalton School, New Jersey’s school construction program was a very public program. It was in the spotlight so often that the amount of publicly available information was overwhelming. As a result, I was able to avoid many of the issues that Semel encountered because I could focus on written records: testimony to the Legislature, newspaper articles, press releases, and statements of legislative committees, as detailed in the pages of references. Semel’s work included interviews; mine did not.

I am confident in the value of this scholarly record of an important event in the history of American education. This dissertation is a faithful report of the history of New Jersey's school building program from 2000 to 2010 and the *Abbott V* decision in 1998 that catalyzed it.

### **Use of the NJEDA, NJSCC, and NJSDA**

As this is an historical account of a state program over a 10-year period, the names of the organizations that were charged with running the program are used deliberately and with significance. Therefore, if reference is made to the NJSCC, it is to an event that took place between the time when Governor James McGreevey created the NJSCC via Executive Order No. 24 on July 29, 2002 (Governor of the State of New Jersey, 2002c) and when the NJSDA was created via legislation signed by Governor Jon Corzine August 6, 2007 (New Jersey State Legislature, 2007a). The by-laws of the NJSDA were enacted on August 15, 2007, setting the Authority into action. When two or more of the organization's names are used together, this is to signify that a process, theme, or issue common to both or all is being discussed.

### **Significance of the Study**

The purpose of this examination of 10 years of New Jersey's school construction program was to capture its historic moments, its evolution, its successes, and its failures. The focus, exclusively on New Jersey from July 2000 to July 2010, provides insights into best practices, lessons learned, and common themes that emerge from the historic material. An in-depth study of New Jersey's program, which is the broadest and most ambitious in the nation, provides insights that are relevant to school district infrastructure improvement efforts across the country.

The lessons learned from New Jersey carry implications for programs to repair old and construct new schools in cities across the country. On the one hand, the problem of rapidly deteriorating schoolhouse infrastructure is a problem that is not unique to New Jersey. On the other hand, the ambition, mobilization, and magnitude found in the New Jersey program are unusual. They are not found in any other program in the United States.

## CHAPTER 2

### Literature Survey

As this study focuses on New Jersey's 10 years of building schools in its lowest-wealth school districts, it also provides answers to the larger question: "How are schools built in cities throughout the United States?" Therefore, this literature survey places the New Jersey program in both geographical and historical contexts that are deeper and broader in scope than the current study's narrow focus.

The absence of research on the management of large-scale school district facility reconstruction programs in the United States can be explained by the interdisciplinary nature of this research topic. There is a hesitation by those involved in construction management to write about their work, as well as a lack of interest by professionals in school administration to learn about a field dominated by "others." This divergence of interests and lack of common ground leaves this subject in an unaddressed void (Tanner, 2010). Other than Ortiz (1994), existing research on school facilities deals primarily with design issues—for example, which type of classroom lighting correlates with better educational outcomes or reduced energy costs.

Great Britain's centralized, top-down, nationally run school facilities program allowed several of its members the luxury of stepping back and memorializing their experiences in articles and books. The British program also focused on disseminating information internally and through the Commonwealth, which the writers did through printed reports and books made available to libraries for distribution, cataloging, and preservation. Therefore, the legacy and message of the British program was widespread at the time and is accessible today. New York City, with the largest school construction

program in North America, also had several senior staff members who shared their experiences through books and reports that are in circulation today.

Consequently, this literature survey contains significant contributions from two locations: New York City and Great Britain. New York City's program across the Hudson River from New Jersey and Great Britain's program across the Atlantic from New Jersey provide a measure of context for what New Jersey's program was trying to achieve.

### **General Literature Review**

The problem that is the focus of this study is framed in particular ways within the various bodies of literature. An arbitrary choice of where to begin this subsection had to be made because complaints about inadequate schoolhouses go back to the very first of them built in the American colonies and are found in the earliest books on this subject (Burton, 1833). Therefore, the review begins with the early submissions for *Abbott v. Burke*, the series of New Jersey Supreme Court decisions that led to New Jersey's facilities program, as well as Jonathan Kozol's book *Savage Inequalities* (Kozol, 1991). Kozol was among the earliest to bring the issue of school facility disparity into sharp focus.

Darling-Hammond (2010), in *The Flat World and Education*, which is focused on the larger impacts of educational inequality, reported that, 19 years after *Savage Inequalities*, despite Kozol's highlighting disparities in facilities in one city, nothing had changed. She included descriptions of inequalities recognized by a 16-year-old New York City student whose classroom featured ceilings with holes and where rainy days brought streams of water into the classrooms. Darling-Hammond wrote,

You can understand things better when you go among the wealthy. You look around at their school, although it's impolite to do that, and you take a deep breath at the sight of all those beautiful surroundings. Then you come back home and see that these things you do not have. You think of the difference (Kozol, 1991, p. 104). Another student: "If you . . . put White children in this building in our place, this school would start to shine. No question." The parents would say, "This building sucks. It's ugly. Fix it up." They'd fix it fast, no question. . . . People on the outside may think we don't know what it is like for other students, but we visit other schools and we have eyes and we have brains. You cannot hide the differences. You see it and compare. (Darling-Hammond, 2010, p. 23)

What Kozol found in New York in 1991 was also found in Miami Beach over 12 years later. Describing conditions in Miami Beach's Senior High School early in 2003, as part of an extensive series of articles on problems involving Miami-Dade's school facilities program, a student was quoted: "'It's like no one pays attention to us,' said Alan Cook, a linebacker on the football team. 'You kind of feel like if they don't care, why should we?'" (Cenziper, 2003a, p. 1A).

The children who attend Baltimore's public schools are exposed to the same conditions that Kozol described. A 2010 report by the American Civil Liberties Union (ACLU) described several of Baltimore's schools:

Unlike their suburban counterparts, city students typically attend old schools, surrounded by concrete, with damaged and opaque windows that don't open. Some of the doors are damaged and/or do not shut securely. In many schools, the custodians' hard work in cleaning the building and buffing the floors is barely noticeable as students make their way through dimly lit hallways. Depending on the season, teachers often struggle to engage drowsy children due to excessive heat, and faulty boiler systems compel some children to wear coats during class in the winter. (Verdery & Patinella, 2010, p. 16)

The inability of the Baltimore school district to control classroom temperatures in any meaningful way was described by the ACLU. These descriptions are strikingly similar to those of schools in other cities across the United States, as typified by testimony given as part of the *Abbott v. Burke* proceedings.

Any parent whose child attends one of the 106 schools [out of 162] in poor condition will tell you how hot the classrooms are in the warm months and how cold they are in the winter. And some teachers and students will tell that their school building, with cages around broken windows and rusted barbed wire on the roof edges, looks more like a prison than a school. (Verdery & Patinella, 2010, p. 33)

A Sisyphean frustration emerges from a presentation at a national conference held in 1967 describing the number of school buildings then over 100 years old and how many dated to the 1800s (Graves, 1968). The presenter, focusing on the nation's 15 largest cities, stated that nearly 13% of the public schools had been built before 1900 and more than 36% had been built before 1920. At that time (1967), one sixth of America's public school classrooms had been in use for more than 50 years.

Graves, at the 1967 conference, said, "So today we find ourselves with old schools getting older. On top of this we have our 1930 schools—still structurally sound, but being left behind by advances in educational philosophy" (Graves, 1968, p. 65). Buildings are being ignored and neglected in the hope that a capital improvement plan will replace them soon. Then, by chance, the capital plan is deferred, temporarily postponed, stalled, or forgotten. However, due to the unceasing passage of time and the perpetual growth of our nation's population, these schoolhouses, neglected, remain and continue to deteriorate year after year. Graves's descriptions of conditions in America's 15 largest cities could be used, word for word, to describe the circumstances of New Jersey's 31 low-wealth school districts 30 years later in 1997, between the *Abbott IV* and *Abbott V* decisions.

Addressing educational administrators, Leu (1965) observed that American school districts were constantly facing a problem of modernizing, abandoning, or replacing their buildings as they become obsolete. He observed that obsolescence is a subjective question of degree. However, objectively and relatively with every succeeding

year, there is an absolute increase in the degree of obsolescence within a given group of school buildings.

Relative to other costs (capital and operational), the maintenance of neat and attractive landscaping (trees, shrubs, and grass) around a school building is minimal. A report issued by the Association of School Administrators (Hansen, 1992) quoted from a 1988 report of the Carnegie Foundation in describing the impact of a school's leaking roof, crumbling ceilings, and walls on students.

Hansen (1992) wrote of the tacit message of physical indignities clearly being sent to inner-city students in many urban schools. It is a message of neglect and apathy, where the uncaring environment inside the school is simply an extension of the deteriorated neighborhood outside its walls. Neglect, as an operative policy, is tolerated. Neglect is reflected in the landscaping outside and the school's bathrooms inside. The students and parents interpret the inaction of the "system," the "government," the "public schools system," as if the government does not care about them or their fate. The school building is in poor repair and the students receive the "message" from the system. This generates low expectations of the neighborhood and anticipates poor performance, beginning with the custodians, passing through the teaching staff, and culminating with the students.

### **Review of the Academic Literature**

The building of schools is at the juncture of several professions: education, architecture, engineering, and construction. Its success depends on cooperation by two groups who are not familiar with each other's backgrounds, tempos, and careers. These differences drive to the essence of the persons who become educators and the persons

who become construction managers and architects. O'Brien (2007), in a dissertation for a College of Management and Technology, observed that a recurring theme "is echoed across school construction projects: Educational leaders' expertise is in education, not in construction, and without proper guidance, construction can lead to serious and costly problems" (p. 2). This notion is reinforced in this literature review, which shows that few researchers are willing to address a topic that bridges several disciplines.

Tanner (2010) addressed the field of school building from the perspective of educational administration, observing that few universities offer courses in educational facilities planning or design. The process of designing and building a school is ignored in the formal education of school administrators; therefore, this aspect of education is dominated by architects and construction managers. Tanner observed that, by default, those professionals who know the least about education drive the process of building schools in the United States.

This study approaches the large school district and large construction program conundrum from the literature of construction management rather than from the literature of educational administration. The administration of a program of building any building is a study of construction. The ultimate function (education, retail, or residential) of the finished building is the outcome of the process of design and construction. To understand and manage the process of designing, building, and delivering multiples urban schools at the district level, one must understand large-scale infrastructure projects.

Three academic studies were identified that touched on school construction programs. Of the three, only *Schoolhousing* (Ortiz, 1994), a deep and highly descriptive study of California's program, is directly relevant to this topic. Examining the process of

building schools in California in the early 1990s, Ortiz provided a useful frame for understanding designing and constructing schools within a governmental context. She wrote that construction of the school building is the largest financial and most complex expenditure that a school district will encounter. However, the professional background of educational administrators barely touches on the subject of building school buildings. Therefore, all school districts require dedicated staff, or specialized consultants and technical support, to execute such projects (Carey, 2010).

Reviewing the California school construction program of the mid-1990s, Ortiz (1994) addressed the school building and its symbolic role in American communities. She described that some are built as an enduring symbol of a community's faith in the leadership of educators and policy makers—a “temple” filled with artifacts of their time. Other schools are “utility buildings,” housing classroom operations; their design is frequently driven by rapid enrollment increases or new cost-saving building technologies.

Ortiz (1994) examined several significant questions: As an educational function, how does a school district organize to initiate a construction project in its relationship with state authorities? How are relationships cultivated between funding agencies at the state level and receiving agencies at the district level? Who leads the design and construction of a new educational facility or the renovation of an existing one to assure the best outcomes?

Ortiz (1994) probed the depths of the intergovernmental relationships between school districts and state officials, as well as architects working for the district and architects working for the state, focusing primarily on California's rapidly suburbanizing rural areas. Examining the regulatory framework and financial relationships, Ortiz

produced one of the most substantial works in the field; she is the only author who examined the *process* of designing and building schools. In the introduction to the book she observed that, for this task, school district administrators are in unfamiliar waters and are untrained. “For school districts, the most complex, comprehensive, visible and enduring project they undertake is the planning and designing of school facilities. This activity occurs periodically; sometimes as infrequently as every two decades” (p. 3). Her observations come from research into the workings of school districts, specifically their administrative offices. She examined how California brought local schools under control during the Progressive Era and up to the Second World War (1890s to 1940s), with County Superintendents of School wielding both financial power and organizational tools to create a modern educational system in rural areas of the state (Ortiz & Hendrick, 1986).

Ortiz (1994) is the only researcher identified for this literature survey who discussed the role of state agencies in school construction projects. She dedicated a chapter, “The District’s Relationship to State Agencies,” to describing and detailing the relationships among the administrators, regulators, school district officials, architects, and contractors.

Fredrick Withum III (2006), a middle school principal, examined the process of designing school buildings in several school districts in western Pennsylvania in the greatest of detail. His systems model represents a theoretical construct for professionals and educators to understand the complex cause-effect relationships that occur when educational facilities are designed and constructed. Withum proposed that his Systems Model for Planning of Educational Facilities has three primary goals: (a) Identify and

describe complicated social, cultural, political, and economic mechanisms at work when public schools are designed and constructed in a pluralistic democratic society; (b) probe the relationships between those mechanisms and educational facility planning; and (c) understand the linkages between social, cultural, political, and economic mechanisms, educational facility planning, and educational facilities.

Kraft (2009), in his examination of a facilities planning process, studied the practice of designing one school in one school district in Missouri. Although his work is similar to that by Withum, Kraft did not build a model; he examined the process and developed an understanding of the roles of the superintendent in the facilities design and construction of a new school. Kraft noted the importance of leadership in guiding stakeholders through the social and political dimensions of the entire process of planning for a school, beginning with the initial vision. Kraft's dissertation, based on interviews and data analysis, highlighted three major themes, all involving the key role of the superintendent or the school principal. Kraft wrote, "First, the leader engaged key stakeholders to create a collaborative and meaningful planning process. Second, the effective actions of the leader contributed to a meaningful planning process. Third, the leader successfully shaped the context of the planning process" (p. x).

### **New Jersey's School Program as a "Mega-Project"**

To fully understand many of the problems found in the New Jersey program, the actions, behaviors, and motivations of engineers and public servants must be examined. The theme of how government would manage this large volume of school building projects was of concern to the politicians who were crafting the legislation and eventually to the students, their parents, and taxpayers in general. These initial concerns were well

founded as New Jersey's school construction program unfolded, evolved, accelerated, and then halted.

The size, geographic extent, complexity, and timeline of New Jersey's program places it in the global realm of "mega-projects." These are the largest civil engineering projects in the world, valued in excess of one billion dollars and requiring public financing and government involvement, such as new airports, mass transport lines, and nuclear power plants. Managing projects in the public sector is difficult; managing a large number of them in New Jersey's 30 low-wealth districts proved to be exceedingly difficult.

Definition, scale, and quantities are important factors in this discussion. Nearly all "mega-projects" are so large, complex, and interwoven that they cannot be divided into pieces. New Jersey's school building program is, by definition, large, complex, and composed of so many pieces (each one a complex school building requiring tens of millions of dollars) that the challenges of managing its components place it in the league of mega-projects. Unlike the typical mega-project, the school program can be easily broken into smaller "bites" when faced with financial challenges, which is precisely what happened to the school building program.

A leading contemporary researcher in the field of public works, Bent Flyvbjerg,<sup>7</sup> identified underlying issues and motivations that repeatedly undercut successful execution of mega-projects in both the public and private sectors. He developed a list of characteristics common to mega-projects worldwide. He focused on understanding the

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<sup>7</sup> Flyvbjerg has been a Professor at the Said Business School, University of Oxford, United Kingdom, since April 2009; previously, he was a Professor at Denmark's University of Aalborg.

largest programs, their organizations, and the problems of implementation that accompany them (Flyvbjerg, 2011). Although Flyvbjerg's origins are European, his field of research is global.

The implication of Flyvbjerg's analyses for New Jersey's program is that the program might never have been started if its true costs had been known at conception.

Quoting another researcher in the field, Flyvbjerg wrote,

On the dark side, project managers and planners “lie with numbers” (Wachs, 1989). They are busy, not with getting accurate forecasts, but with getting their project funded and built. Indeed, accurate forecasts may be counterproductive, whereas biased forecasts may be effective in competing for funds and securing the go-ahead for a project. (p. 336)

Overall, the performance of the public sector in delivering large infrastructure projects is not very positive (Altshuler & Luberoff, 2002; Flyvbjerg et al., 2003; Flyvbjerg et al., 2009; Merrow, 1988; O'Brien, 2007). Examples abound from large-scale public work projects both in North America and across the globe, featuring repeated project delays and cost overruns. This is reinforced by accounts of floundering school construction programs across the United States. In Great Britain, the recently cancelled<sup>8</sup> Building Schools for the Future school construction program (Department of Education United Kingdom, 2011; James, 2011) provides an example that reinforces nearly all of Flyvbjerg's concepts (Flyvbjerg, 2005; Flyvbjerg et al., 2002; Flyvbjerg et al., 2003).

Flyvbjerg (2011) observed that, despite professional attempts to forecast accurately and to prepare detailed cost estimates, it would be better to shrink the gap between expectations and performance on public infrastructure projects. He proposed that

<sup>8</sup> The program's cancellation followed the change in the government's leadership in 2010. Gordon Brown of the Labour Party lost the election to David Cameron of the Conservative Party who created a governing coalition.

it would be better to downplay expectations. He explained why costs and schedules for large complicated projects are systematically, almost consistently, overoptimistic. Why are the estimated costs almost always lower than needed (creating a cost overrun) and why is the schedule almost always found to be too tight (creating a delay)?

New Jersey's multiyear, multibillion-dollar program spanning 31 school districts falls within the global definition of a mega-project. Hence, several characteristics from Flyvbjerg's work are relevant to this study of New Jersey's school construction program:

Such projects are inherently risky due to long planning horizons and complex interfaces.

Decision-making, planning and management are typically multi-actor processes with conflicting interests.

Due to the large sums of money involved, principal-agent problems are common.

The project scope or ambition level will typically change significantly over time [such as shifts in Gubernatorial policies following elections].

Statistical evidence shows that such complexity and unplanned events are often unaccounted for, leaving budget and time contingencies sorely inadequate.

As a consequence, misinformation about costs, schedules, benefits, and risks is the norm throughout project development and decision-making.

The result is cost overruns and benefit shortfalls that undermine project viability during project implementation. (Flyvbjerg, 2011, p. 322)

Flyvbjerg (2011) wrote that the constant failure of major projects holds consequences for three groups: taxpayers, investors, and beneficiaries. The beneficiaries to be served by the project examined in this study are the students of the 31 *Abbott* districts. The constant and perceived threat of failure and subsequent reluctance of politicians and citizens to support the construction of large engineering and construction projects place those disadvantaged persons (students who remain in inadequate and aging school buildings after the program has begun and then failed to meet its goals) at an even

greater disadvantage. First, projects are not started; second, when they are implemented, they frequently fail to deliver the promised outcomes.

Concerns about cost and schedule are at the core of many of the nation's past, current, and future school infrastructure programs. These programs, as they cross the \$1 billion mark, become mega-projects. Flyvbjerg (2011) theorized that forecasting errors associated with mega-projects fall into any of three categories: delusions or honest mistakes, deceptions or strategic manipulation of information or processes, or bad luck. PMs may ascribe the increased cost or time to "bad luck"; however, a thorough analysis of the project and its circumstances will show that the term "bad luck" is used as a smoke screen for fundamentally flawed estimates and project controls.

Relevant to the New Jersey school construction program, Flyvbjerg's research distinguished between "causes" and "root causes" in its analyses of cost overruns, benefits, shortfalls, and delays. He fashioned the term *underperformance* to signify that project planners and engineers have a strong tendency to "systematically underestimate or even ignore risks of complexity, scope changes etc. during project development" (Flyvbjerg, 2011, p. 323). In his analysis, ignorance and underestimation of risk can be labeled optimism and a project's complexity, scope, and design are issues about which a planner is optimistic.

Building on his earlier works, Flyvbjerg (2011) found that underperformance has three causes: (a) bad luck or error, (b) optimism bias, and (c) strategic misrepresentation. His analysis of these causes is important as it brings insight to an examination of New Jersey's school construction program. Citing others, Flyvbjerg wrote that "bad luck" is the explanation given by managers for a poor outcome. However, his analysis of data on

project performance shows that “bad luck” or “error” cannot be statistically correct. He pointed out that this is a misconception based solely on anecdotal information exchange, a lack of empirical research and a small  $N$  sample. He maintained that if, bad luck or error were really the source of underperformance, there would be an overall improvement in project outcomes over time because of professional learning processes. Not satisfied, his research led him to search for more substantive causes. He proposed that bad luck and error do not explain poor outcomes. He proposed that the project planners and managers, perhaps deliberately, perhaps subconsciously, systematically underestimate the risk of scope changes, the high complexity of the project, and unknown geologic conditions of project sites.

Flyvbjerg (2011) recognized that it is impossible to predict for any specific project which scope change, geologic problem, or other issue will materialize to trigger a cost increase. However, based on his experience in analyzing data for a large number of projects, he proposed that a problem of some sort will occur on a project and increase its costs. To ignore this risk trend is to ignore the face of reality.

Flyvbjerg (2011) proposed a concept he called *optimism bias*, which is linked to strategic misrepresentation and flawed decision making. However, optimism bias is properly defined as a flaw when managers fall victim to a planning fallacy and make decisions based on delusional optimism. Exploring this subject further, Flyvbjerg explained several natural, intuitive tendencies among PMs and planners. These all echo within the New Jersey program.

According to Flyvbjerg (2011), managers overestimate benefits and underestimate costs and time durations. Second, they involuntarily spin scenarios of success and

overlook the potential for mistakes and miscalculations. Therefore, many projects are over budget and off schedule. Flyvbjerg noted that this tendency is well established through empirical studies in the field of psychology. Third, decision makers tend to consider their problems as unique. They take an inside view and focus tightly on the case at hand and the obstacles to its completion. Fourth, the inside, insular approach leads to what is termed *anchoring*, in which the first number or cost estimate becomes the mark or the “anchor.” Flyvbjerg cited researchers who found that, no matter how high or low that anchor (stake) is placed, it is difficult to move off that mark once it is placed. Again, these phenomena were all present within the preparation of the materials responding to *Abbott IV* and then as the program came under political and legislative pressure to meet the great expectations that it had fostered.

Flyvbjerg’s findings are not limited to academic research but are strongly rooted in the real world of audits, business, mergers, start-ups, and acquisitions in a wide range of businesses where over-optimism is a strong tendency. Supporting this, he presented two analyses: one from the World Bank and another from the Rand Corporation. Rand examined the design and construction of 44 chemical pioneer process plants owned by 3M, DuPont, and Texaco, among others, and found that their actual construction costs were twice as large as initial estimates (Flyvbjerg, 2011).

The World Bank report that Flyvbjerg cited proposed that most major projects are planned according to the “EGAP” principle—Everything Goes According to Plan. Within the EGAP paradigm, executives anticipate that a controllable, limited number of events will develop beyond the plan and therefore they include a contingency fund to cover unforeseen costs. In this EGAP approach the contingency is calculated in size

proportional to the project in accordance with a standard contingency rate. However, Flyvbjerg's research shows that, "when compared with actual cost overruns, such adjustments are clearly and significantly inadequate. Furthermore the initial estimate serves as an anchor for later stage estimates, which therefore insufficiently adjusts to the reality of the project's performance" (2011, p. 326).

Of great importance to this analysis of the behavior of New Jersey's legislators and the Whitman Administration in 1999-2000, Flyvbjerg expanded his thesis into a second explanatory model for project underperformance: strategic misrepresentation. This explanation focuses on political and organizational pressures that cause politicians, planners, and project advocates to "deliberately and strategically overestimate benefits and underestimate costs in order to increase the likelihood that their projects and not their competition's, gain approval and funding" (2011, p. 328).

In this model, actors and promoters, purposely spin scenarios of success and ignore the possibility of failure. Broadening his analysis, Flyvbjerg (2011) found a strange environment in which only projects with underestimated costs, overestimated benefits, and understated pitfalls make it into the pool of projects moving into construction. Therefore, he suggested that the mega-project population may in fact be largely populated through a process by which the unfittest projects survive in a form of reverse Darwinism. Therefore, he warned public sector managers that the system is geared to propel forward only those projects that are "spun" or marketed best—while the reality may be far from this, which he termed "strategic misrepresentation" (p. 329).

Concluding this review of Flyvbjerg's theory, it is reasonable to surmise that the leadership of the New Jersey program at several points in time deliberately skewed

estimates in order to get the entire program started and then at various points in time to get individual projects started. A proverbial “moving target,” cost estimates for alternative programs circulated through the legislature and news media, sowing confusion as to what the program included and what it would cost.

### **Review of the Trade Literature**

The trade or commercial literature is concerned with how to design, build, and maintain schools. This section of the literature survey recognizes authors who have provided advice to school builders about school house design and construction. One group of books on the subject of building schools stands out sharply: “how-to-do-it” handbooks and textbooks. Addressed to educational administrators and school board members, they cover the entire process of building schools from beginning to end.

The organizational scheme of this section is historical, as the texts themselves reflect the eras of their publication. Although this study focuses on New Jersey’s contemporary, 21st-century program, today’s problems are rooted in the past. Potential solutions can often be found in descriptions of the efforts of preceding generations of school builders.

*School Buildings and Equipment* (Ayres & Ayres, 1916) describes school building efforts in Cleveland, Ohio. One of the earliest handbooks, it begins with a detailed history of Cleveland’s school buildings, beginning in the 1850s and culminating in the modern buildings of 1900 to 1916. The book includes a discussion of all components of the school building: ornamentation of its grounds, classroom sizes, lighting, blackboards, furnishings, provisions for community centers, fire protection, and heating. A section on estimated costs and comparisons with other cities is provided.

Contemporaneous with Ayres and Ayres is Cubberly's<sup>9</sup> *Public School Administration* (1916). Cubberly's 479-page book covers the entire scope of the administration of public schools. As wide and exhaustive as this text is, the 23rd chapter, "The School-Properties Department," provides valuable modern insight into the approach of the early 20th-century school administrator of school buildings. The book addresses school building design, capital construction, and the obligation to maintain the school plant with adequate custodial staffing. It is unfortunate that excerpts from these chapters written nearly 100 years ago are not circulated among 21st-century peers, as there is much relevance in their writing.

Regarding the role of the school superintendent in the design and construction of schools, Cubberly and Cubberly (1916) emphasized the importance of having professionals engaged in the design of school buildings. Apparently, the field of school design must have already been problematic because they opened by referring to thousands of errors. Cubberly pointed out,

The thousands of constructional blunders which are in use as school buildings today in our cities and towns show the need of more attention to scientific details of school house planning than has been given to the work by our superintendents in the past. To direct properly the efforts of those who are doing the work requires that the superintendent of schools, as well as the person drawing the plans, should be familiar with good hygienic standards, with the best practices in schoolhouse construction elsewhere, and also be somewhat familiar with tendencies and probable future needs in public education. (p. 386)

Among the challenges in building a public school building is designing a durable, structure on the one hand while maintaining budgetary control on the other hand.

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<sup>9</sup> Elwood Paterson Cubberly was the first Dean of the Stanford University School of Education. A Professor at the university, he had been a teacher and then superintendent of the San Diego schools.

Frequently, boards of education, superintendents and architects engage in arguments over the quality of materials to use in school buildings. Another architect, Donovan, observed years later,

Economy in building means the avoidance of waste in the design of the construction; the selection of materials which will withstand the ravages of time and appropriately express the architectural design . . . and the employment of the highest grade of workmanship, fabricating the materials so that after the building is completed the minimum of maintenance charges will follow. On the other hand, cheapness in building implies the use of materials and workmanship of little value, and means that for the time building, the building will have only the appearance of substantiality. Cheapness also means low cost of construction and high cost of maintenance. Cheaply constructed buildings are perpetual liabilities, and after a short time are worse than worthless because of the cost of maintenance. (Donovan, 1921, pp. 29-31)

An excellent discussion of the various approaches to construction management, as distinguished from the delivery of construction projects, was presented in a booklet prepared jointly by the leading associations of architects and contractors in the United States. The booklet thoroughly described the defining characteristics of design-bid-build, design-build, and construction management at risk, all of which enter into the realm of possible procurement methods for constructing schools (American Institute of Architects [AIA] and Associated General Contractors of America, 2004). The *project manager* (or *program manager*; PM) plays a key role in implementing a project. The PM is the owner's representative and runs the complete project on the owner's behalf.

Stewart (1996), a professor of educational administration, analyzed the field of construction management in the context of building schools and found that most school boards would be better off financially if they handled the project management work in house. Stewart observed that most school boards managed all their projects with internal staffing during the Baby Boom years (1950s and 1960s). He acknowledged that the buildings of the 1990s are more sophisticated (due to building automation systems and

higher heating/ventilating/air conditioning [HVAC] standards) than those of the 1950s and 1960s but asserted that the source of the trend to construction management is outside the field of building schools.

A trade magazine article aimed at school facilities managers also emphasized the limitations of project management (Griffin, 1998). Griffin emphasized that the most compelling reason for engaging a third party PM is that many school districts build so infrequently. An experienced and skilled PM can save the district significant money by looking out for its interests during construction. However, Griffin warned, the PM should not leap into the architect's shoes and alter designs. The PM should not interfere with the contractor's means and methods for implementing the work.

Ortiz (1994), in her review of school construction programs in California in the early 1990s, pointed out,

The data for this report indicate that the few school districts that did hire construction managers did not fare any better than those who did not, and in one case, the school built under the construction manager had been a "horrendous experience" for the superintendent and the school district. (p. 117)

Stewart (1996) observed that construction management firms have been so highly successful in advertising, providing good service, and personal contact that they have become fully accepted partners in school district capital construction programs. Citing the substantial work by Earthman, who wrote in 1994, Stewart noted,

Construction management is much more costly than employing a competent person on the school staff to do the same job. Even with the fringe benefits and supporting staff for the supervisor, the school system employee is less expensive than a construction management firm for supervising construction. (Earthman 1994, p. 109, as cited in Stewart, 1996, p. 53)

The problems that involved managing projects through construction managers that were faced by the NJSCC in 2005 were not unique in place or time. Evaluating the

poor performance of their PMs in the District of Columbia, the district's auditor observed that program execution and the ability to manage a construction project depend on the capable follow through on myriad details that are involved in constructing a building. When several schools are being designed and constructed, the complexity of administering and controlling these tasks increases rapidly. The importance of basic organizational structures being set in place as a program moves forward was discussed by the auditor in reviewing poor performance by the PMs and internal staff in the District of Columbia school program in 2007–2009 (Office of the District of Columbia Auditor, 2011).

The literature about the manner in which New York City administered its large-scale school building program was a rich source of material on this topic. *School Buildings of Today and Tomorrow* (Harrison & Dobbin, 1931) was the first such work. Written by W. K. Harrison of Corbett, Harrison, & MacMurray Architects and C. E. Dobbin, Deputy Superintendent of School Buildings, New York City, this book is a delight to read as it is filled with visions of the future from the perspective of the late 1920s. Although published in 1931, as the “Great Depression” was beginning, its message resonates as strongly today as it did in its time. In its 233 richly illustrated pages the authors discussed the architecture of New York City’s school construction program, the architecture of its new buildings, the design of classrooms, and how the city was accommodating changing education programs just as the impact of the economic slowdown was being felt. It contains extensive detail on the New York City effort to standardize schools and describes how design efforts were based on dimensional modules.

In the historic perspective, the definition of what is contemporary, modern, and up to date shifts over time. R. W. Sexton, in his introduction to Harrison & Dobbin's book, wrote about how what is "modern" at one point in time becomes outdated within 10 to 20 years. Sexton observed,

In these rapidly changing times, a building that is thoroughly up to date and modern today in its construction and in its equipment may be considered antiquated and even unsanitary five or ten years from now. The life of a building in this country is considered to be approximately twenty-five years. The school architect, therefore, must look ahead. The schools he designs must conform to the most modern standards in educational methods, in building construction and in architectural design, in order that it may not be necessary to educate our children in school buildings that are antiquated, unsanitary and inadequate. School plans must be revised as we develop new mechanisms or our high standards in educational systems will count for naught. (Harrison & Dobbin, 1931, foreword)

Sexton emphasized the need to build uncomplicated school buildings with enough space for the anticipated students and teachers. He wrote,

We need modern schools. Schools that are modern in plan, in construction, in design and in equipment. Spaciousness should be the basis of the plan of the modern school. Simplicity should be the keynote of its construction, and its exterior design should express in plain and definite terms its interior use. Needless ornament should be eliminated. The school of today, perhaps more than any other type of building, should be the interpretation of our highest ideals in architecture (Harrison & Dobbin, 1931, foreword)

Reviewing the performance by New York City's Architectural Bureau before beginning another series of school designs was a Board of Education Commission report issued in 1938. The report is unusual as it provides insights into the role of architects in government agencies and the ability of government agencies to take on the design of buildings. It addressed the competencies of staff in a frank and straightforward manner, which is generally not found. The Commission Report suggested,

The primary function of architecture is . . . to combine the utilitarian requirements . . . with appropriate external form and architectural treatment into a harmonious scheme. . . . The successful achievement of that function requires . . . skill, training, experience . . . devotion to the ideals of the profession of architecture. Unfor-

tunate as it may be, it is nevertheless true, that men possessed of those qualities are rarely attracted to architectural bureaus operated by government agencies and even though the head of such a bureau may be possessed of all these qualities it is inconceivable that, where a great number of building plans are to be produced simultaneously in one office, he could give his personal attention to the solution of the problems of each project. Consequently, the all important division of the service, planning and designing of buildings, must be delegated to assistants, most of whom do not possess the necessary qualifications mentioned above.

This unfortunate condition can not [sic] be charged to inability or incompetence on the part of the executive officer of such bureaus but to the system that dictates the personnel of his staff and in whose selection he has no voice. (New York City Board of Education Architectural Commission, 1938, pp. 35-36)

The members of this 1938 commission (apparently all architects in private practice and apparently not conflicted by the obvious conflict of interest inherent in their positions) were harsh in their criticism of the attempts by governmental departments to design entire buildings. They straightforwardly recommended that governmental bureaus restrict their activities to managing the work and entrust the design of school buildings to recognized, experienced architects from the private sector.

### **Literature on Acquiring Land for Schools**

The challenge of acquiring land for new schools is recognized in several textbooks on educational facilities, each written during the waves of increased building activity that washed across America, first in the 1920s and then after World War II (Strayer & Engelhardt, 1927; Strevell & Burke, 1959). However, this section of the literature survey begins in New York City, America's largest city, with its program for building schools.

Examining site selection procedures and outcomes in New York City's school construction program in 1937 and recognizing the high cost of land in New York City, the Board of Education's Architectural Commission emphasized that the selection of a suitable site was fundamental to proper planning and design (New York City Board of

Education Architectural Commission, 1938). Locating land for a school facility, which should include ample or adequate recreation areas for students, is problematic in a congested city; therefore, the Commission found that satisfactory sites had been acquired only in undeveloped neighborhoods in outlying sections.

Already in the mid-1930s, New York City's Board of Education was required to recommend at least two sites for any proposed new school building. The Commission reported: "As it is difficult to find two sites of equal merit, expediency has too often determined the final selection and the financial aspect has received undue consideration" (1938, p. 9). The Commission noted that recreational facilities in most of New York's schools were inadequate for two reasons. First, they were so small that it was impossible to orchestrate meaningful physical education activities. Second, the footprint of the sites was so restricted that accommodating the large student populations could be accomplished only by "shoe-horning" buildings, which overwhelmed their sites. These buildings violated the basic principles of both city and school planning, such as set-backs from the street and adjacent properties, minimal number of floors, and maximum open space on the site (New York City Board of Education Architectural Commission, 1938).

The Commission's observations bear repeating and emphasis, as this dilemma was faced by the New Jersey program at so many of its new school sites. Specifically, it is difficult to find two sites of equal merit in an urban area, and the financial aspect also seems to be the determining factor: which site can be bought for less money.

An early discussion of a school district's legal relationship as a creation of the state and its need to use eminent domain powers in order to create school sites is found in a text published in the mid 1920s by Teachers College (Henzlik, 1924). The need to

acquire sites in the quickly industrializing and increasingly crowded urban centers through legal mechanisms required school districts to become familiar with the tool, which could force property owners to provide the lands needed for public schools.

The New York City Board of Education Architectural Commission (1938) report placed an objective of 30 square feet per student as an absolute minimum for outdoor recreation area. The authors noted that this guideline was dramatically lower than the 253 square feet per child recommended by the National Recreation Association but observed that none of America's cities had sufficient open space to reach that goal. The Commission advocated for larger sites to accommodate more students in lower buildings. It preferred school buildings to be two stories high, but no more than three stories, recommended that schools be set back from the streets to allow for some sort of landscaping, and be large enough for all classrooms to receive daylight. The Commission discussed the importance of purchasing sites well in advance of the annual building program, concluding that haste in buying land frequently resulted in unwise purchases. They also advocated that the entire site be purchased at one time, including land for expansion. They foresaw that improvement of adjacent property by new construction (probably homes) would dramatically increase the cost of acquiring currently vacant land at a future date. The Commission recognized the importance of fully understanding site conditions for proposed school sites. Therefore, among the many recommendations it made to the Board was that engineers investigate soil conditions before a site is acquired and prepare a report on the comparative costs of foundations required for each parcel under consideration. This knowledge foreshadowed what would become of seminal importance to the New Jersey program many years later.

School administrators in the early 1900s were advised through several handbooks (“The Architect and His Commission,” 1913; Ayres & Ayres, 1916; Burgess, 1920; Department of Public Instruction, 1922; Donovan, 1921; Fenwick, 1916) to try to place new schools distant from adjacent structures because many of the existing schools (built in the late 1800s) were surrounded by other structures in close proximity. This was before the advent of zoning and set-backs, which also evolved in the Progressive Era with the early city planning at the beginning of the 1900s.

Citing the writings of John J. Donovan in *School Architecture Principles and Practice* (1921), the New York City Board of Education Architectural Commission (1938) included Donovan’s insights into the land acquisition process. Donovan found that many communities begin the process of searching for school sites only when their existing schools are overcrowded and their city is congested. As a result of this recommendation, New York City’s Board of Education was planning land purchases for new schools in the undeveloped outer sections of Brooklyn and Queens. The Commission’s reported included the following:

The procrastinating and haphazard custom, so common to nearly all communities, of waiting until congestion forces action for enlarging or extending the existing plant, works to the disadvantage, because, when steps are taken, they must of necessity be hasty and often ill-advised. The consequence is that the cost of grounds is greater than it need be if sites were obtained with definite regularity according to a carefully prepared plan that has flexibility as one of its chief assets. (Donovan, 1921, as cited in New York City Board of Education Architectural Commission, 1938, p. 234)

MacConnell (1957) in *Planning for School Buildings*, written for school district administrators, dedicated the fourth chapter to site selection. In a salient observation, highly relevant to the NJSCC’s experience 50 years later, MacConnell wrote,

Property values become inflated when school districts indicate an interest in purchasing land for school sites purposes. The lack of master planning as well as

the inability of school districts to anticipate community growth trends has resulted in excessive expenditures for school sites. (p. 122)

Leu (1965) cautioned in his book on school facilities about creating school sites that are too small: “This distressing situation commonly continues for 50 years or more during the building’s usable life. School site selection must not be a policy of ‘too little and too late’” (pp. 53–54). Leu advised that school sites be purchased far in advance of actual need, especially in developing areas. He recognized that schools in older congested cities would have to be multistory and creatively use whatever land that could be acquired.

The silence regarding square footage of outdoor space per student in urban schools is a phenomenon that continues to this day. An issue brief published by the leading American group on school facility design and construction provided a nationwide summary of state guidelines for school site sizes (Weihs, 2003). The state guidelines are silent or misleading in discussing minimal site sizes in cities.

### **New Jersey’s School Facility Program in the Literature**

An understanding of the foundations on which New Jersey’s EFCFA emerged is provided in the book *Other People’s Children* (Yaffe, 2007). Through the biographies of actual *Abbott* plaintiffs, Yaffe framed the narrative of New Jersey’s multidecade process of narrowing disparities between urban and suburban educational outcomes. Yaffe described the critical roles of key players in the creation of New Jersey’s program, primarily the NJDOE, the ELC, and the state’s Supreme Court. Appendix A presents a timeline of major legal, legislative, and political milestones, courtesy of Yaffe’s website.

Both Sepinwall (2005) and Mazzei (2007) explored the history of the “thorough and efficient” education amendment to New Jersey’s constitution in 1875. “The

Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the state between the ages of five and eighteen" (New Jersey Department of State, 1910, Article IV, §6, p. 14). These words, *thorough and efficient*, were to carry great significance for the advocates of educational advocacy nearly 100 years later, in the early 1970s and 1980s.

The concept that the state was ultimately responsible for a "thorough" system and an "efficient" system of school finance across all school districts, irrespective of a local school district's tax base, came to the fore in the battle for improved school buildings in the state's low-wealth school districts. Sepinwall detailed the educational patterns prevalent in New Jersey in the late 1800s as the industrial revolution surged forward. She analyzed the sequence of drafts of the amendment as they advanced through the legislature to the final and approved form. She described how public education advocates, in 1868, overcame private interests and received a portion of the funds that the state was receiving from the sale of its tidelands. These coastal tidelands, through the present day, remain a minor source of capital funding for schools by backing up the Fund for Support of Free Public Schools and the School Bond Reserve Fund. Mazzei's<sup>10</sup> 2007 article adds to Sepinwall's earlier work by analyzing the recent "transcription and indexing of the complete text of the proceedings of the 1873 Constitutional Commission" (p. 1089). This material allowed Mazzei to trace the exact changes in the language of the *thorough and efficient* amendment as it was debated and discussed in the Legislature. This change to the Constitution was pressed by advocates of the public schooling movement. They

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<sup>10</sup> Mazzei is Manager of Library and Information Services in the New Jersey Office of Legislative Services (as of July 2013).

sought its expansion across the state into every rural district, on a regular annual calendar, and within the specified age range of 5 to 18 years.

*From Cashbox to Classroom* (Firestone, Goertz, & Natriello, 1997) provides insight into the *Abbott v. Burke* process before approval of the EFCFA. Completed in December 1996 and published in 1997, the book reports the process through *Abbott III*, although its preface refers to the court ruling of May 1997 (*Abbott IV*). Firestone et al. provided an excellent overview of New Jersey's 25 years (at the time of publication in 1997) of efforts to reform school finance through the mid-1990s. This book, coauthored by Goertz, who later became one of the primary researchers in this field, covers substantial ground and examines the recently enacted Quality of Education Act of 1990. Known by its acronym QEA, the act was a major step forward in the reform of New Jersey school finance and was the legislative response to the *Abbott II* decision (which had found the state's school funding law unconstitutional specifically regarding the state's 28 lowest-wealth/highest-poverty school districts). The book's final chapter, "Deferred Maintenance, Deferred Dreams," is of particular relevance to the topic of the current study.

Linda Darling-Hammond (2010), in *The Flat World: Educational Inequality and America's Future*, presented an excellent synopsis of the pertinent history, from the *Robinson v. Cahill* decision by the New Jersey Supreme Court in 1973 through *Abbott v. Burke*, filings for which began in 1981 and continue to the time of the current study. She focused on these cases' positive influence on educational outcomes in New Jersey as a national example of the important role of finance in education. There is little discussion of facilities in the text, as the topic is marginal to her overall thesis.

One of the most useful articles written on the subject of the current study is that by Erlichson (2001) in the *Journal of Education Finance* entitled *New Schools for a New Millennium: Court-Mandated School Facilities Construction in New Jersey*. Focusing on facilities, Erlichson began with *Robinson v. Cahill*, tracing the issue of school buildings through the *Abbott VII* decision, in which the New Jersey Supreme Court affirmed the State of New Jersey's 100% responsibility for facilities funding to State Assembly Speaker Collins. Erlichson's 2001 article forecasted several unresolved issues. She identified the gap in early childhood facilities, an even larger statewide need for facilities funding among the non-*Abbots*, and the absence of experienced staff to handle this program at both the state and school district levels.

An excellent article about implementing the *Abbott* decisions is found in the *Yale Law and Policy Review*. Alexandra Greif (2004) provided an excellent overview of the political struggles involved in taking the judicial mandate entitled *Abbott V* (issued May 21, 1998) and tracing its political, legislative, and then logistical evolution. Greif addressed subjects of education, facilities, policy implementation, and politics in a highly detailed manner and included interviews with many of the key persons involved in the process. The article was written while the facilities portion of the program was going full throttle under Governor James McGreevey.

Focusing on school facilities are two reports written by a researcher working with the ELC: *School Facilities* (Ponessa & Nichols, 1997) and *Breaking Ground* (Ponessa,

2004).<sup>11</sup> Both provide unparalleled insights into the depth and breadth of the school facilities effort in New Jersey.

Two excellent resources are found on the websites of the two organizations involved in the school construction program. The ELC website contains a section that focuses on the school facilities program, containing extensive information about the program's foundations, operations, and status. Other sections of the website ([www.edlawcenter.org](http://www.edlawcenter.org)) provide an archive of the *Abbott* decisions from 1985. The NJSDA website ([www.njsda.gov](http://www.njsda.gov)) concisely summarizes the program's objectives and origins.

Other major contributions include powerful and influential articles by reporters for the *Star Ledger*, Dunstan McNichol and Steve Chambers (McNichol, 2005d). A report issued by the New Jersey IG (Cooper, M. J., 2005a) contains important information, although it and those of the *Star Ledger* both emerge from their critical perspectives.

Writing about the Camden, New Jersey, school system, an Assistant Superintendent of Schools compiled a rich and comprehensive history (Reiss, 2005). His narrative covers the evolution of Camden's public school system from the setting up of the first publicly funded schools through the end of World War II. Although the report is accompanied by footnotes and detailed references, this is not a scholarly work. It is a strict narrative, a recitation of local events: Principals are appointed, others retire; schools open and other schools close; minutes and minutiae in school district newsletters and Board of Education minutes are presented without meaningful effort to address the broader social and historical or national and regional context. There is no explanation of

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<sup>11</sup> Ponessa is a member of the committee reviewing this dissertation.

the significance of Camden and its decline. In that sense, the book is quite similar to Wnek's (1988) dissertation about Chicago's school construction program from 1953 to 1966, in which the author seems more enamored with Superintendent of Schools Benjamin Willis than with the subject of school construction.

Howard (2006) provided an analysis of *Abbott v. Burke* from the perspective of school finance reform. Her dissertation provides a thorough summary of taxation policy and the judicial approach through *Abbott X* and the McGreevey period. She located former Education Commissioner Dr. Fred G. Burke in his retirement and held an extended interview with him in Milford, Pennsylvania on December 1, 2003.

### **Audits: A Lens on School Construction Programs**

For a researcher who is searching for information on publicly administered programs, it is important to search for reliable information beyond newspaper accounts. From an historical perspective, among the most frequent sources of information to be found are reports issued by governmental investigators and auditors. These reports are the best detailed reports of program performance that remain available for historical analysis.

After the daily materials of a bureaucracy (memoranda, files, contracts, invoices, and e-mails) have been lost, destroyed, or placed in storage, what remains are the major reports that are placed in libraries or, in the early 21st century, stored digitally, online, and in accounts from newspapers. Articles from newspapers are of varying reliability, are sporadic and piecemeal, and rarely attempt to capture the scope of an entire program. Therefore, approaching large school programs and performing literature searches, the first items that frequently surfaced were audit reports, reports by Inspectors General, and summaries of investigations.

Unpacking the subject further requires access to and analysis of the minutes of the boards of directors of the institutions involved. Although this provides a great deal of insight into the ongoing activities of the organizations, there is a tendency that all issues of consequence are discussed in closed committee meetings held before a formal, open board of directors meeting. Discussions are generally not held at board meetings, as resolutions are formulated and consensus reached before anything is brought to the full board for a vote (Strunsky, 2010).

Examples of programs described through their audits and investigations include 157 pages on Los Angeles (Mullinax, 2000), 81 pages on Great Britain's nationwide program (Comptroller and Auditor General, 2009), 198 pages on Palm Beach County, Florida (Florida Office of the District Auditor, The School District of Palm Beach County, 2011), 90 pages on Washington, DC (Office of the District of Columbia Auditor, 2011), and several landmark reports by New Jersey's Inspector General (IG; Cooper, M. J., 2005a, 2005b, 2006, 2010). The New Jersey reports are discussed in chronological sequence. The long and tortuous history of the Belmont Learning Complex in Los Angeles, which when finally completed was renamed the Robert F. Kennedy Community Schools, was also documented through the lens of an audit (LAUSD Joint Legislative Audit Committee, 1998).

The collapse of the Detroit, Michigan, school program is described in a series of 11 articles in the *Detroit News* reporting the outcome of a 7-month investigation of the school district's construction program. Approval of another \$1.5 billion of bonding authority in 1994 was linked to an audit of the 1986 bond program. The Detroit auditors found chaos. They were confused by the material and apparently misled by the district's

staff. Even after three separate partial audits of the 1986 bond program, it is unclear how much the district misspent (Claxton & Hurt, 1999a).

Basic data—for example, the number of employees at the NJSCC and then the NJSDA—is found buried within the reports of the corporate or authority’s auditor, appended to the organization’s annual reports. These auditor reports provide a stable, recurring snapshot of the program’s activity over a long period of time (NJSDA, 2010a, 2011a). Although the audits were probably ongoing, they became a feature of the annual report only with the tenure of Governor Christie in 2010.

### **Chapter Summary**

The construction of new school buildings in the nation’s cities is not a simple task. It requires successful integration by experts from multiple disciplines. Working in an environment of harmony, persistence, and professionalism, the goal of narrowing the gap between the quality and quantity of suburban and urban school buildings can be reached.

A thorough review of all of this material leads to several conclusions. First, what was written in the 1920s and 1930s is as true today as it was then (discounting materials and technologies). Second, the “how to” books of preceding generations seem to have been ignored. Third, the tendency of history to repeat itself is clear, as school district after school district or state after state makes the same errors when beginning a major school building program.

This literature survey indicates that little has been written about the ingredients for a successful massive school reconstruction program. This study is an attempt to begin

to bridge that gap by focusing on New Jersey's 10-year experience. Withum's observation is salient:

The absence of comprehensive research-based resources and materials on educational facilities planning may evidence the complexity of the environments in which United States public schools are planned. The fact that public schools in the United States are being planned and constructed in a pluralistic, democratic society makes the process of facilities planning difficult to measure and evaluate. (Withum, 2006, p. 11)

## CHAPTER 3

### **Building Schools in New Jersey Before *Abbott V***

Although New Jersey's economy was surging and America was prospering in the late 1990s, its low-wealth urban centers and their school districts were continuing to decline. Children of color, minorities, and immigrants were attending school in antiquated, inadequate school buildings while other people's children were receiving a better education in modern structures. On this background, the long battle of *Robinson v. Cahill*, followed by *Abbott v. Burke*, continued its journey through the New Jersey Supreme Court. This chapter sets the stage by describing the pressures leading to the *Abbott V* decision of May 21, 1998. The legislation, the program, and these organizations are both a response to and a reflection of New Jersey's history. The chapter addresses the political, educational, financial, and administrative issues that influenced the New Jersey program.

The genesis of New Jersey's school facilities problems occurred more than 100 years ago. The problems stemmed from expansion of public education, urbanization, and industrialization of New Jersey in the late 1800s and the turn of the previous century. The landmark *Abbott* court decision and its implementation during the 10 years between 2000 and 2010 can be understood only by learning the background from which the facilities legislation and the organizations to implement it emerged. The problem of implementing *Abbott V* cannot be explained without exploring the history of building public school buildings in New Jersey.

A fundamental concept within the *Abbott V* decision and this study is that of *adequacy*. There have been repeated questions in the past or present about whether a

specific school building provides enough properly furnished spaces for delivery of an educational program: science, English, physical education, and so forth. A reading of the history of building schools shows a consistent, underlying theme of seeking adequacy. The ELC reported that, through *Abbott*, the Justices of the New Jersey Supreme Court visualized and comprehended the differences between buildings in suburban and urban school districts more than they discerned other educational qualities. Therefore, the ELC, along with its other arguments, focused on disparities in physical conditions afforded to students and the adequacy of these facilities, irrespective of age or provenance, as one of the centers of their arguments about adequacy.

School buildings that have served the previous generation are never as good as today's buildings. An historical analysis of school building programs, written in the United Kingdom and surveying North America and Northern Europe, stated, "The idea of inadequate schools is generally linked to age and so can be expected to be a perennial problem as each wave of schools gets older" (Woolner et al., 2005, p. 13).

Older buildings become outdated as society, technology, and pedagogy inevitably change. Lagging are the public's will and ability to invest in state-of-the-art public schoolhouses. This is a global phenomenon, not restricted to North America and Europe. Several British researchers analyzed the question of defining what is adequate, appropriate, and finally what is "too old." They found that many administrators rely on the argument that an old school is *too old* when it is no longer appropriate for modern needs (Woolner et al., 2005). As society progresses and time passes, static school facilities age in place. At what point "oldness" becomes an educational issue is a question

of educational administration and policy. However, this is the heart of the problem in New Jersey, throughout the United States, and around the world.

Obsolescence can be structural, mechanical, or educational. There are several ways to gauge obsolescence; however, the age of any structure is the best proxy for an array of subjective variables. Leu (1965), in *Planning Educational Facilities*, presented an insightful analysis of a large city with school buildings ranging in age from 1 to 87 years. At the time of analysis, 45% (126 buildings) were 40 or more years old, with an average age of 56 years. The city began replacing 19 of these 126 buildings at a cost of \$90 million (\$502,000,000 in 2010 dollars<sup>12</sup>). By the time the \$90 million program is complete and the 19 new schools are open, another 54 buildings will have joined the ranks of the 40-years-or-older category. Therefore, statistically, the effect of the construction of the 19 schools is to slow somewhat the average increase in the age of school buildings. After the \$90 million investment, the rate of obsolescence has slowed.

Leu's analysis in 1965 is echoed by an analysis undertaken by the government of Scotland more than 40 years later. The Scottish Government addressed the widening gap between the ceaseless aging of school facilities and the need to finance more construction by seeking an achievable, measurable goal. It made the following proposal: "a £5 billion of investment in order to overtake the legacy of underinvestment and attain a state of equilibrium where the rate of improvement of the school estate matches the rate of

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<sup>12</sup> The GDP deflator is an index that represents the "average price" of all the goods and services produced in the economy. It is a weighted number that is based on what is paid for the entirety of gross domestic product, from a gallon of milk to an Army helicopter. Changes in the deflator are a broad measure of inflation. The GDP deflator is calculated by dividing Nominal GDP by Real GDP (Measuring Worth, 2013).

deterioration” (Scottish Government, 2009, p. 51). The Scottish objective, after its analysis, is to reach stasis in its school facilities at a reasonable average age.

This insight, formulated by the Scottish Government in 2009, is highly salient to understanding the dilemma facing the leadership of any school facility program, including New Jersey’s in 2000. Is the sole objective of a massive construction program only to *attain a state of equilibrium in which the rate of improvement matches the rate of deterioration?* Is a program’s first objective to overcome disinvestment and then to make sure that the situation does not begin to deteriorate again? Will a program’s primary goal be to make sure that the average age of its school buildings remains constant? The Scottish approach and Leu’s analysis from 1965 provide an historic and financial perspective that this problem does not lend itself to a one-shot, short-term solution. Although realistic, this also does not sound like an objective that would inspire political support by a legislature or in the ballot box.

In a most prescient observation on technological obsolescence and the difficulty of equipping school buildings with the latest vocational and technical equipment, Donovan, an educator from Oakland, California, observed in 1921:

Probably any discussion as to the exact equipment and accommodation for an industrial type junior high school would be out of date before it could be printed and circulated. Such rapid changes and improvements have been taking place that almost any building erected contains important new features. (Donovan, 1921, p. 111)

Therefore the notion of adequacy, age, and the need to replace a building is subjective. For each generation, viewing a previous generation’s school buildings as out of date is simplistic, unaffordable, unsustainable, and unachievable. On the other hand, disparities in the conditions afforded to students and the adequacy of these facilities, irrespective of age or provenance, are the nexus of the adequacy argument.

### **Industrial Revolution, Immigrants, and New Jersey's Cities**

Legislation that influenced the labor market (banning child labor) and increased the mandatory age of education combined to increase school enrollments dramatically in the late 1800s and the opening years of the 20th century. These relatively sharp and sudden increases in enrollment and the ability of New Jersey's school buildings to absorb them are important today, as those same buildings remain in use 100 years later.

In New Jersey the Free School Law of 1871 focused on developing a free system of elementary schools for all persons from 5 to 18 years old (Campbell, 1963). The law made enrollment in all public schools free, and all real and personal property in the state was taxed to support these schools. The new law immediately caused a surge in enrollments and a shortage of school buildings throughout the state. The law did not explicitly require establishment of high schools nor require every child to attend school.

Three years after the free school law of 1871, the New Jersey state legislature amended the New Jersey Constitution to include the following statement: "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all children in the state between the ages of five and eighteen" (New Jersey Department of State, 1910, Article IV, §6, p. 14).

Although this change to New Jersey's Constitution held dramatic importance for the *Abbott v. Burke* decisions of the New Jersey Supreme Court more than 100 years later (in the 1980s and 1990s), it had immediate significance as it expanded the age range of school attendance upward and downward.

At the same time, increasing growth in America's and New Jersey's urban populations, compounded by waves of immigration from overseas and legislative

mandates, led to overcrowding in New Jersey's public schools. Newark, New Brunswick, and Jersey City were simply unable to accommodate their school-age populations.

According to Sepinwall (1986), Newark established a policy in 1874 to discourage absences and maximize utilization of capacity: A pupil who was absent for 2 weeks lost his seat in the classroom. Jersey City could accommodate only 31% of its school-age students. Classrooms with 92, 110, or 160 pupils were noted in official reports by the state in 1875.

The Compulsory Attendance Law of 1874 followed the free school law of 1871 (An Act to Make Free the Public Schools of the State) and required all children ages 8 to 13 years to attend school. Kindergartens and high schools were movements for the future. It is important to note how the economic trends impacting public school attendance, immigration from overseas, industrialization, internal migration, and the closing and opening of parochial and private schools all increased the demand for public school facilities during this period. Turp (1966) reported that in New Jersey in 1874, legislation was adopted requiring every child to attend school for a minimum of 12 weeks each year while he or she was 8 to 13 years old, a step that dramatically increased the school-age population.

The 1875 New Jersey Constitution, which included the "thorough and efficient" clause, also mandated education for children ages 5 through 18 (New Jersey Department of State, 1910; Sepinwall, 2005). This was followed by a 1903 labor statute that banned employment of children younger than 14 years old. The immediate consequence of this was the shift of 200 children under the age of 14 from Newark's night schools to the day

schools. In 1908, legislation requiring attendance in school through age 16 years was adopted.

Before the state legislature required that all students attend school, the Newark Board of Education was turning away school children due to the lack of space. Turp (1966) reported,

[The board] . . . had the policy of turning away from school all children who applied after the class was filled. The child denied entrance had to await an opening. This was dependent upon death, removal from district, suspension, or demotion of a pupil. Should none of these conditions occur, the child awaited a new term. In 1898 . . . the press reported "Lack of room in many schools compelled the principals to turn away hundreds of children." (p. 56)

The first significant wave of New Jersey and American public school construction responded to massive immigration from Eastern and Southern Europe before and after World War I. With the ideology of progressive good governance driving the legislators, along with eugenics and other notions of the era, these waves of immigration were slowed in the 1920s, which was echoed by a decline in school-age populations in the 1930s and 1940s. Two main acts of legislation were promulgated to slow the pace of immigration: (a) in 1921 the Emergency Quota Law (an act to limit immigration of aliens into the United States), and (b) in 1924 the Immigration Act of 1924 (Johnson-Reed Act; Cornelius, Tsuda, Martin, & Hollifield, 2004; King, D., 2000).

These acts had two consequences for the demographics of New Jersey's school districts and their facilities. First was a reduction in pressure from the continuous arrival of Southern and Eastern European immigrants. Second, in place of immigration, was internal migration: a steady stream of Blacks from America's South. The improvement in efficiency of agricultural machinery in the South on the one hand and the vacant factory jobs in the North on the other hand caused a migration of southern Blacks into the

northern states in general (Clapper, 2006; Lemann, 1991). The suppression of immigration and the forces of internal migration markedly altered the racial, ethnic, and residential character of the larger cities of New Jersey. In the historic perspective that spans a century of shifts in employment, technology, and demographics, a school district's buildings, once erected, remained basically without change.

The increasing enrollments during the first decades of the 20th century were followed by a decline in students throughout the 1930s and 1940s (Turp, 1966). This was noted not only in Newark, with 95,290 students in 1929, 55,138 in 1946, 43,609 in 1999, and 33,279 in 2010 (NJDOE, 2010a), but also in nearby New York City. Enrollments declined during the 1920s and 1930s due to lower birth rates, families moving toward the suburbs, and the numbers of high school students who were easily able to find work in industries starved for workers because of restrictions on immigration (Turp, 1966).

Both Woolner (Woolner et al., 2005) and Maclure (1984) proposed that the major driver of student population growth, and therefore in the need for school buildings, always emerges from policy shifts, primarily expanding the ages of schooling upward to include more years in high school or downward to begin early childhood education earlier. An example of Woolner and Maclure's thesis is found in Elizabeth, New Jersey. Elizabeth's first high school was established with the assistance of wealthy industrialist Joseph Battin to accommodate older students who were being forced out of the city's overcrowded elementary schools (Bole & Johnson, 1964).

Bole and Johnson (1964) reported that before 1870 only four cities in New Jersey had high schools. During the 1870s, 16 more were established, as well as another 18 during the 1880s. The pace of high school development accelerated during the early

1890s, with 24 beginning to operate between 1890 and 1895. New Jersey's State Superintendent of Schools, Poland, in his final address as Superintendent in 1895, boasted that he had created a high school system in New Jersey's larger towns and all of its big cities.

Although New Jersey's constitution had been amended in 1874-1875 to provide a thorough and efficient education for all children ages 5 through 18, by 1902, many of its school districts were failing to meet their obligation to high school students. State Superintendent of Schools Baxter issued a circular reminding all superintendents of their constitutional obligation to educate students through age 18. Baxter cited the "thorough and efficient" clause from the 1874-1875 amendment to the state's constitution. School districts would not be allowed to end their educational programs at the eighth grade; the Superintendent ordered all elementary school districts to make a high school education available to older students. If the district was not able to accomplish this within its own district, it could send its students to a nearby district, paying for their transportation and tuition. This order, and the threat to withhold whatever state aid was being given at the time, was enough to spur immediate construction of new high schools in Atlantic City, West Orange, Newark, Perth Amboy, Long Branch, Plainfield, Trenton, Paterson, Camden, Jersey City, Orange, and Bayonne.

Campbell (1963), in a history of public school building finance during this period, noted the rapid pace of the high school movement in New Jersey. He observed that in 1903 there were 59 approved high schools, 10 years later there were 121, and by 1928 there were 155 high schools. In parallel, and as a response to the decision to expand the age of schooling to include high school, New Jersey's larger cities took the next step. The

state's first "junior" high schools were established in Trenton, Elizabeth, Summit, Newark, and Montclair.

During the 1920s New Jersey implemented what appears to be the first and perhaps last in a series of comprehensive statewide facility surveys to be executed in a comprehensive and professional manner (New Jersey Department of Public Instruction, 1922, 1928). Unfortunately, after the depression in the 1930s and World War II, these surveys were not continued, which would significantly hamper efforts to estimate the cost of implementing improvements required by *Abbott IV* and *Abbott V* in the late 1990s.

### **Post World War II "Baby Boom": More School Building**

Shifting forward past two world wars, observations regarding the Baby Boom trend of the 1950s through the early 1960s are found in Bole and Johnson's (1964) book *The New Jersey High School: A History*. They described the soaring enrollments in New Jersey's schools from 1950-51 to 1958-59. To address the surge of enrollment, many of New Jersey's school administrators found a solution in the junior high school model, first set up in Trenton, Elizabeth, and a few other districts.

The NJDOE carries executive responsibility for education at the state level. The department did not exist until after World War II, when it was created in 1948 as part of the major reorganization of New Jersey's state government (Campbell, 1963; Prabhu, 1992). The changes to the state's constitution in 1947 consolidated more than 70 agencies into 14 departments, one of them the NJDOE.

The shifting populations in New Jersey were affecting not only the state's school buildings but also its legislature. Reock (2003) reported that the state's legislature was dominated until 1962 by rural and agricultural counties. The Senate was composed of 21

members, one from each of the 21 counties. Therefore, a majority of the Senate could be composed of representatives from only 19% of New Jersey's population. The Assembly consisted of 60 Assemblymen, with at least one seat per county, regardless of population. In 1966, a compromise was reached within the framework of a state constitutional convention: establishing a 40-member Senate and an 80-member Assembly. The size of the Senate was increased to make it geographically reflective of each district's population while respecting county boundaries. Even the smallest rural county had at least one senator, urban and suburban Essex had six senators, Bergen had five, and rural Atlantic combined with Cape May and Gloucester had two. This greatly increased the power of New Jersey's suburbs and cities in the legislature and set the stage for the eventual changes in the state's role in financing capital construction through the EFCFA.

During the peak of school construction (the Baby Boom), the NJDOE had stable leadership for 15 years, from 1952 through 1967. This stands in strong contrast to the current high frequency of change in the Commissioner's office. Education Commissioner Fredrick Raubinger, appointed by Republican Governor Alfred Driscoll in 1952, was reappointed by Democratic Governor Robert Meyner in 1957 and Richard Hughes in 1962. Salmore and Salmore (2008) highlighted this as an example of "how state education commissioners, in symbiotic relationships with interest groups, could dominate educational policy making. . . . Raubinger established himself as a separate entity in state government" (p. 310).

Raubinger departed in 1967, to be succeeded by Carl Marburger as Commissioner of Education. Marburger's 5 years as Commissioner, relative to Raubinger's 15 years, was short in time but was long in comparison to the contemporary Commissioners of

Education. Over the course of the implementation of the school construction program, the 10 years July 2000 to July 2010, there were five Commissioners: Hespe, Gagliardi, Librera, Davy, and Schundler. This frequent change in Commissioners undoubtedly left an imprint on the higher-level administrators within the NJDOE, who most probably became reluctant to make decisions during frequent periods of transition.

In the late 1980s, the NJDOE began to take an active role in daily management of New Jersey school districts. Based on findings of mismanagement, poor educational outcomes, and corruption, it took over three urban school districts within 7 years. In May 1988, under Governor Tom Kean, Education Commissioner Cooperman began proceedings to take over the Jersey City School District. By October 1989 the State of New Jersey was running the Jersey City School District. Paterson's schools were taken over by the state in 1991 and Newark's in 1995 (Salmore & Salmore, 2008). None, as of the writing of this dissertation in fall 2013, has been returned to local rule.

However, as the Department was taking on more responsibilities by running three local school districts, it was cutting its staff. The actual reduction in staffing of the Department was described by Commissioner of Education John Ellis in his testimony to the State Assembly Appropriations Committee in 1992. "In the past 18 months, we have eliminated 275 positions, about 22 percent of all staff. . . . Since 1982, the DOE has undergone a 28 percent net reduction in full-time staff, the largest decrease of any department in New Jersey state government" (New Jersey State Assembly, 1992, p. 9). Nonetheless, Ellis testified to the State Assembly that his staff had eliminated the backlog of facilities projects awaiting approval. "Districts used to wait a year or more to receive approval. Now that occurs in 30 days" (p. 10).

Immediately after World War II and during the wave of construction that followed the Baby Boom surge in enrollment, the NJDOE played a much stronger and more active role in the development of New Jersey's school facilities. The decline in staff and the robustness of its publications and guidance are indicative of a steady decline in its role (NJDOE, 1952, 1955, 1961, 1967). Whereas as late as the 1960s the NJDOE regularly published a *Guide for Schoolhouse Planning and Construction*, this apparently ended in 1969 or 1972 (the last editions found in the New Jersey State Library; NJDOE, 1969, 1972). In 1976 the NJDOE published a guide for facilities evaluation that detailed in the highest specificity what was acceptable as "good" and what was not (NJDOE, 1976).

The 1967 guide for schoolhouse planning in New Jersey (NJDOE, 1967) includes pages describing the state's role as guiding its school districts in the design and construction of school facilities.

A.1 – The object of the *Guide for Schoolhouse Planning and Construction* is to further the interests of the public schools of New Jersey by making the school buildings of the State healthful and safe while at the same time preventing extravagance or wastefulness in their construction. (p. 24)

Earlier in the guide it is stated,

In New Jersey's decentralized system of schools, the State often serves its function by establishing the *minimum* [italics in original] below which no district may go. Districts must consider such standards as minimum in nature. The sight-lifting suggesting and recommendations contained herein are, in our opinion, of greater importance and significance . . . than are the mandatory *minimum* requirements. (p. iii)

This 1967 guide provides a full description of the role of the NJDOE in school facilities at that time. All final construction plans had to be in compliance with the rules and regulations in the guide. Plans were to be submitted to the NJDOE for preliminary

and final review. If the plans were deemed by the Department's staff to be compliant, they were recommended to the state Board of Education for approval.

A shift in regulatory supervision of school construction went into effect on April 17, 1984 (Chapter 496, P.L. 1983 [S-1934]), according to a researcher of school construction in New Jersey (Mulhorn, 1988). Until that point, the NJDOE was reviewing all school construction plans for local school buildings. With the 1984 change, the review of educational adequacy remained with the NJDOE but code compliance and construction supervision shifted to local construction officials.

Dennis Giordano, President of the New Jersey Education Association (NJEA), testifying before the Assembly Education Committee on April 18, 1989, spoke about NJDOE activities in the field of school facilities at that time. He urged "that the Legislature and Governor create an office in the State Department of Education to plan for the capital needs of education throughout the state and implement programs to meet those needs" (New Jersey State Assembly and State Senate, 1989, p. 29).

Giordano described the NJDOE monitoring system that revealed inadequacies in several school districts' school buildings, serious enough to keep those school districts from being approved in the facilities element of the monitoring process. He provided specific examples from Camden that showed the impossible position of the school district. On the one hand, the NJDOE was assessing a school that was built in 1907, had never been significantly renovated, and operated at 157% capacity without a library, gym, cafeteria, or art room. He emphasized that this was clearly an inadequate building, yet the NJDOE did not provide the Camden School District with resources to improve any of its buildings.

Shifting to the sphere of school facility maintenance, the NJDOE plays a policy role in determining the minimum effort that a school district must dedicate to regular maintenance activities. In a study of school facilities maintenance in New Jersey, researchers from the New Jersey Institute of Technology emphasized the important role played by the state (Stuebing, Elliott, & Ehrenkrantz, 1990). With a firm understanding of the issues, the authors went beyond simply advocating for additional resources. They noted that, while other states prepare guidebooks and handbooks for local school districts, New Jersey prepares virtually none. They observed that several states had some sort of facilities inventory system but New Jersey had none. Among their findings was that the NJDOE did not monitor activities of districts for compliance and had no field staff to observe or examine conditions in school buildings. Technical assistance by NJDOE to school districts was nonexistent in 1990 and does not exist 23 years later in 2013.

The NJDOE once played a much stronger role in guiding the design and construction of facilities throughout the state. It would be called on in 1998, as the state was forced to respond to the *Abbott IV* decision, to carry out its most significant role in many years: collecting information on facility needs and plans for the 28 SNDs.<sup>13</sup>

Responding to *Abbott IV* and the need to place the upcoming planning effort on as sound a platform as possible, guidelines for preparing these Facilities Management Plans (FMP) were issued by the NJDOE on September 22, 1998 (ELC, 2005a; Hillier Group, 1999; Vitetta Group, 1998). The guidelines identified information needed to determine

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<sup>13</sup> The 29th and 30th Special Needs Districts, Plainfield and Neptune, were added to the program in 1999.

program space deficiencies, information to be included in each district's plan, and software<sup>14</sup> to be used to prepare the plans.

David Sciarra, the CEO of the ELC,<sup>15</sup> in his testimony in November 1999 expressed concern regarding the NJDOE's ability to review school districts' FMPs, which had already been submitted as part of the *Abbott* process (New Jersey State Senate, 1999). He noted that this criticism could not be "glossed over" as the State Treasurer had done when he said, "We're going to contract all of this out."

The 1980s were also characterized by declining enrollments, which in 1986 seemed to be permanent. As a result of these declines, many school districts consolidated operations by vacating school buildings. Wood and Worner (1986) projected that "the number of high school graduates which reached nearly 3 million in the late 1970s will decline by approximately 25 percent by the end of the 1980s with no indication of an upturn" (p. 597).

By contrast with Wood and Worner's projections of decline from 1986, subsequent enrollment figures for fall 1990 showed 41,216,683 K–12 students in the United States, including 1,089,646 in New Jersey.<sup>16</sup> By fall 2000, 10 years later, New

<sup>14</sup> It is not clear to precisely which software Hillier and Vitetta were referring in 1998 and 1999. The NJDOE's efforts to computerize the incoming demographic and facilities data began slowly. Managed poorly, it is reported to have never provided meaningful data as of the writing of this dissertation. This researcher's experience with the database was that its basic information was significantly corrupted and garbled.

<sup>15</sup> David Sciarra played a highly important role in the *Abbott IV* and *Abbott V* decisions as the CEO of the ELC. Biographic information about Sciarra and his arrival at and impact on the ELC can be found in Deborah Yaffee's book *Other People's Children* (2007).

<sup>16</sup> New Jersey's K–12 public school enrollment in fall 1981 was 1,199,643, which, contrasted with 1,089,646, indicates a modest decline in the number of students (National Center for Education Statistics, 1990, p. 50).

Jersey's K–12 enrollment was 1,313,405, an increase of 20% (National Center for Education Statistics, 2011a). High school graduates in 2000 were about 2,600,000 for the 2000-2001 school year, not far from the Wood and Worner predictions for the end of the 1980s (National Center for Education Statistics, 2002). Overall population trends play a major role in school demography, but changes in public policy are repeatedly the cause for the sharpest shifts.

Examples of public policy directly influencing the size of school-age population include changes in the age range for compulsory education. Thus, the demand for school buildings and changes in the age range for compulsory education are inextricably linked. Historically, the most dramatic surges in school-age populations were due to policy changes, not demographic changes. Therefore, the pressure for additional school buildings logically followed extension of education to include, for example, full-day kindergarten and half-day preschool for ages 3 to 4 (*Abbott V*, 1998) or requiring high school through age 18.

In the United States, high school enrollment soared between 1880 and 1940. In 1920 it was 2.2 million, then doubled to 4.4 million by 1930, and reached 6.6 million by 1940 (Ravitch, 2000). Ravitch reported that youngsters and their parents realized that a changing economy required more knowledge and that the basic skills taught in the elementary schools were no longer sufficient. Many students remained in school because the Depression had pushed them out of the job market, which correspondingly increased the demand for teachers to be hired and school buildings to be built.

For the low-wealth *Abbott* districts, their Baby Boom-era structures, with all their faults (flat roofs, poor insulation, and large expanses of glass), are the most modern in

their inventory of school buildings. The difficulty in keeping up with the ceaseless pace of aging buildings is found in the introductory pages of Newark's 2006 LRFP (Hillier Architecture, 2006). As this study was completed in 2013, the number 8 must be added to the ages of school buildings reported. The average age of a Newark public school in 2006 was approximately 83 years ( $+8 = 91$ ). The average age of a Newark public school addition was 73 years ( $+8 = 81$ ). In testimony to the legislature's Joint Committee on the Public Schools on October 3, 2005, Raymond Lindgren, Executive Assistant to the Newark Public Schools Superintendent, discussed the ages of several of the district's buildings (as of October 2005).

Twenty five of our school buildings were built before 1900. Eight of our school buildings were built before Thomas Edison invented the electric light bulb. One of our schools opened 12 years before Abraham Lincoln was elected President. And while there have been some additions to that building, the newest in 1904, the 1848 section of that building is still very much in use. (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 129)

Reinforcing Lindgren's remarks was Joseph Della Fave of Newark's Ironbound Community Corporation, who informed the Joint Committee that all six of the existing schools in the Ironbound district were built between 1848 and 1887. "You did not mishear us; 1887 is our newest school," Della Fave stated (p. 137). This collection of buildings, with the newest among them crossing the 50-year mark, must be cared for. This day-to-day task is executed by facilities administrators of the school district.

### **School Districts Are Responsible for Their Buildings**

Year after year and day after day, the school buildings of New Jersey are cared for by the school districts. This section examines the school facility from the perspective of the school district as a function of its central office and the perspective of the other issues facing New Jersey's lowest-wealth school districts. The section includes the "big-picture"

concepts of long-term capital investments in school buildings to details of a school district's craftsman and his repair ticket tending to a leaking faucet. The section encompasses considerations of managing men, material, soap, paper towels, patronage, criminal activity, deferred maintenance, Progressivism, and school business officials. These elements conflated into the deteriorating school buildings found by the Supreme Court justices as they made their all-important *Abbott IV* and *Abbott V* decisions, discussed in Chapter 4.

From a historical perspective, today's conception of the school district, along with a Board of Education and a Superintendent of Schools, finds its roots in the progressive reform movement of the early 1900s. The creation of a strong central office and rules and regulations governing the procurement of goods and services and hiring of staff were all responses to the pervasive graft, political patronage, cronyism, and ward systems found in America's cities in the late 1800s and early 1900s.<sup>17</sup>

In parallel with the professionalization of teaching and the emergence of the Progressive Movement at the end of the 19th century, a few of the early reformers of education began to examine the buildings where instruction of students was taking place. During the same time, city charters were changing and school districts were being taken out of the control of corrupt mayors and placed in the hands of responsible and "progressive" boards of education.

The image and the actual ability, the "civic capacity" or managerial aptitude of New Jersey's largest urban school districts to handle their affairs properly had a

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<sup>17</sup> Ravitch (2000, p. 53) pointed out in her text on the history of school reform in the United States that the Progressive Movement also had a significant impact on pedagogy itself through several waves of influential changes.

significant impact on the state legislature's decision to steer the new school building program away from these school districts and into the embrace of the state's administrators at the NJEDA on West State Street in Trenton.

The Commissioner of Education, as part of his responsibilities to provide a "thorough and efficient" education, is empowered to direct a Comprehensive Compliance Investigation (CCI) of a problematic school district. In May 1993 the Commissioner ordered a CCI of the Newark School District. The CCI's relevance to this study is twofold. First, it contains findings about the condition of the three districts' school facilities. Second, it sets the stage for the legislature's skepticism about these districts' ability to manage anything, much less a major capital construction project.

Serious managerial and operational problems in New Jersey's largest school districts were thoroughly detailed in a series of NJDOE investigations of Paterson, Jersey City, and Newark that culminated in issuance of reports (NJDOE, 1988, 1991, 1994). The investigation of the Newark School District resulted in a five-volume report with more than 1,700 pages. The report was prepared as part of an audit because the Newark School District had failed to correct deficiencies in 1984, 1992, and 1993. The NJDOE staff reported the following regarding 33 of 51 schools visited in Newark:

Generally, the schools were dirty, particularly lavatories, which in almost every instance observed also lacked soap and paper towels. . . . Schools had peeling paint on walls and ceilings; missing floor tiles; inoperable water fountains and public address systems; chained emergency exits; missing light bulbs . . . blocked classroom exits; roach infestations; reported rodent problems; and paint chips with lead content exceeding state standards (NJDOE, 1994, p. 38)

Charles Payne, author of several books and former Chief Education Officer of Chicago's Public Schools, opened his book *So Much Reform, So Little Change* with a vivid description of one small facet of school facility maintenance as a metaphor for the

larger problems facing America's urban school districts (Payne, 2008). Using the inability of a school's custodians and the school district's central office to overcome the seemingly simple task of keeping a classroom's clocks operational and synchronized, Payne shared the story of a new teacher with a Master's degree from Columbia University at a school in the South Bronx of New York City. Payne wrote,

Kingon finally goes to the custodian to ask about those darned clocks. He explains to her that every time he asks for something to be fixed, he fills out a blue request form and puts a copy on the wall. When the request is taken care of he takes the blue form down. He asks her how many different colors of paper she sees on the wall. Three, she says: blue, pink and white. "Wrong," he says. "They're all blue. First, the blue fades to pink and the pink fades to white. That white one is about the clocks." (p. 20)

To understand a school district's importance in a typical declining American city, it is important to have a sense of its economic significance. The school district is the largest employer in many of these cities, for example, Jersey City (Jersey City Public Schools, 2008, 2009, 2011). The local school district is the employer with the most accessible jobs and the widest variety of positions that present opportunities to a large set of occupations and skill sets. These are jobs with security and benefits that are relatively high paying. A school district is also most probably the largest landlord in any declining city because of the extent and size of its school buildings and their land. It manages more properties and more square footage of built space, maintains more roofs, buys more electricity, consumes more paper towels and, for example, is the largest purchaser of fuel oil for heating.

Operationally, while focusing on preventative maintenance, no other organization in a waning city is responsible for keeping more toilets flushing, air conditioners operating, grass trimmed, trash collected, windows opening and closing, or doors locking

properly than the local school district. These are the largest operations in the city in terms of cash, personnel, geography, and variety of tasks.

The business officials of the school districts are in effect running multimillion-dollar “public” corporations within a tightly constrained web of rules governing budget, staff, procurement, and operations. These officials deal with highly detailed regulations on the one hand and the daily demands of welcoming, sheltering, and feeding thousands of students and teachers on the other hand.

Reports and images of deteriorated school buildings were in the minds of New Jersey’s legislators as they determined the location of the new program’s administration, preferring the proximity of Trenton over the distribution of funds to the central offices of 31 *Abbott* districts. They probably remembered the publication of reports less than 9 years earlier, when the Bureau of Facility Planning Services in the NJDOE performed a thorough analysis of 12 of the Paterson school district’s 33 school buildings in November 1990 (NJDOE, 1991). Amid the findings, in terms of the Facilities Code, the evaluators found that most of the school buildings lacked space for libraries, storage, or nurses’ quarters. Chalkboards and bulletin boards were in disrepair or missing from classrooms. Regarding fire safety, the review reported a systemic lack of annual and monthly inspection of fire extinguishers. The annual contract was to have been prepared by the Business Administrator’s office but apparently was never issued. The report noted that the maintenance supervisor “reported that he was told by the acting business administrator that he may not do that” (p. 91; i.e., obtain a vendor for fire extinguisher inspection) as the supervisor does not have that authority. Subsequently, the fire extinguishers were found to be without inspection (NJDOE, 1991).

The office of the School Business Official and the even more distant realm of the Department of School Facility Maintenance and Design and Construction are of marginal interest to most educational administrators. However, in this discussion of the conditions in New Jersey leading to the *Abbott V* decision in May 1998, these functions, these subsections of the Central Office, are front and center because they are responsible for maintaining a school district's existing school buildings.

In New Jersey's and most of America's school districts, the very essence of educational administration and the role of the School Business Administrator is the orchestration of multiple functions. Very much like a musical orchestra, a description of these pieces does not lend itself to an easy flow among its components. Their common thread is support and administration of the core activity: educating students. The School Business Administrator deals with the administration of school facility policy: its implementation on a day-to-day and highly detailed if not literally "nuts-and-bolts" level. All of these dissimilar functions, departments within a school district, find their home with the Business Administrator in the central office: Food Services, Transportation, Building and Grounds, Security, Insurance, Payroll, and so on.

Within the organization of a typical American school district, the responsibility for the school buildings falls within the purview of the School Business Official (or Administrator). Subordinate to the school district's Superintendent, a School Business Administrator in New Jersey is given several defined roles and responsibilities that support the organization's primary task of educating students. In New Jersey these are defined in the New Jersey Administrative Code (NJAC; New Jersey Office of Administrative Law, 2007) within a section dedicated to Fiscal Accountability,

Efficiency and Budgeting Procedures, which defines, among other things, the role and responsibilities of the School Business Administrator (NJAC 6A:23A).

The resultant composite of regulations governs school district management in the first decade of the 21st century. On the one hand, it prohibits graft, nepotism, and cronyism but on the other hand it encumbers the school district's daily operations with many complicated laws and policies. Payne's description of a school district's central office is important because the facilities and buildings departments are placed in the deeper recesses of a central office's organization chart. He noted,

The most dysfunctional districts, the "puzzle palaces," have some important lessons to teach us that go beyond the incessant power struggles, the shameless corruption, the normalization of incompetence (so that competent people get questioned all the time), the institutional impotence when it comes to doing anything for children. Their very starkness makes it easier to see that pathological bureaucracies encourage the degradation of civic discourse and erode the capacity for collective critical thinking; at the same time, they may also literally erode the moral faculties of decision makers so that good and decent people either do or allow the unconscionable. (Payne, 2008, p. 146)

The place of the central office and the logistical functions of the school districts are among the research foci of Ouchi's work (Ouchi & Segal, 2003). One statistic that benchmarks a school district's efficiency is the percent of its budget that is spent on the wages of classroom teachers. Ouchi and Segal presented statistics that highlighted the variability: Los Angeles (LAUSD) at 35.4% of its budget, Houston 48.5%, Edmonton 55.8%, New York City 53.4% and Seattle 58%. New Jersey, according to the NJDOE's "Classroom Salaries and Benefits: % of Budgetary Cost per Pupil (2008-09)," is roughly in the mid-range: Newark 46.2%, Jersey City 55.5%, and Union City 47.9% (NJDOE, 2011). These numbers are measures of how much money stays within the central office and how much reaches the classroom level. Ouchi and Segal explained that, conceptually,

from a budgetary perspective, the cost of the central office is an “overhead” cost spread over every student and school.

Ouchi and Segal (2003) maintained that there are direct correlations among the size of the central office staff, the degree of centralization, and measures of waste, fraud, and corruption. They highlighted the paradox of control:

The districts that have the most centralization and the largest central staffs also have the most, not the fewest, problems with incompetence and dishonesty. . . . To most school administrators this is a paradox. When something goes wrong, the public demands that the superintendent get better control over things. The superintendent typically responds by tightening up on central control and builds the central staff with more people to watch each other. The result, though, is not more control—it’s less. Why? Because the bigger the central office, the more difficult it is to know who is responsible for anything. In addition, it’s easy to steal a million dollars or hire a relative who does nothing at central, because hundreds of millions or even billions are flowing through the system there. (p. 117)

A line can be drawn linking the CCI of Paterson, Jersey City, and Newark by the NJDOE (NJDOE, 1988, 1991, 1994), the legislature’s placement of the *Abbott* facilities funds in the hands of the NJEDA in 2000, and Ouchi and Segal’s observations in 2003.

Payne, referring to work by Hess and Rogers in *110 Livingston Street*, proposed that the middle and lower levels of any central office have interests that may run contrary to those of the Superintendent. Because the facilities departments are subordinate units, these observations are important to this discussion. Hess observed that lower- to mid-level functionaries “value order, predictability and the security of their positions, which tends to make them much less entrepreneurial about reforms in general but especially so about reforms that may threaten their own power in some way” (Payne, 2008, p. 130).

Payne referred to Rogers’s descriptions of the New York City Board of Education at *110 Livingston*. This was a world of “checkmated power. So much so that it wasn’t clear who,

if anyone, had the power to get things done, and an organization subverted by its internal contradictions” (p. 46).

Building on the discussion of the place of the facilities staff in a district’s central office is a discussion of the functional roles of a facilities department. The leaders of these departments have to deal with problems from the past and present, all confronting them at unpredictable times. A boiler breaks at one school or a beehive is found in another school’s attic. Or no one paid the water bill and the utility is threatening a shut off the supply, and a fire alarm is malfunctioning due to a short circuit caused by a chronically leaking roof. With limited resources of time, staff, and funding, officials have no choice but to deal with these problems in a triage or “fire-fighting” style. Carey (2010), noted that facilities directors have a full-time job with “primary responsibility for keeping the schools running, safe, and in good shape” (p. 46). Therefore, planning takes a back seat relative to pressing demands of today’s urgent problems of buildings to be heated, sidewalks to be cleared of snow, and bursting water pipes. Carey emphasized that facilities directors should not be expected to have the foresight, time, energy, or ability to be totally engaged in comprehensive planning when they are faced with other pressing day-to-day responsibilities.

Of ultimate importance, every public school district should have the ability and budget to complete emergency repairs and minor improvements to its inventory of school buildings. A failure to have this basic capacity is significant, as it can lead to major health and safety problems and relocation of classes and entire schools during the school year. Earthman (1986) detailed this maintenance function in a chapter on facilities in a handbook for school business officials. Although each school is staffed with one or more

custodians who perform daily cleaning tasks, the district employs staff members execute routine and emergency repairs, carry out preventative maintenance, and implement minor renovations, for example, installing chalkboards, shelving, and water faucets.

Although Earthman's (1986) text detailed an optimal, theoretical structure, the reality, as described in the opening pages of Charles Payne's book *So Much Reform, So Little Change* is very different (Payne, 2008). What Payne described and what was found in the CCI reports in New Jersey's largest *Abbott* districts in the late 1980s and early 1990s detailed underfunded, failed, and dysfunctional school facility operations.

Earthman (1986) noted that the maintenance force is managed from a school district's central office, where requests are received from each school principal. Repair requests are placed on forms or entered into a computerized work order system. The central office reviews, prioritizes, and delegates the tasks to a staff of craftsmen from various trades. The size of the staff and the skills of the craftsmen vary with the size of the school district and the experience of its craftsmen. Many school districts have found it advantageous to employ a limited number of in-house maintenance staff and contract for larger, more technical, or complex repairs (Jarvis, Gentry, & Stephens, 1967).

Cyclical inspections of specific building elements are initiated by a school district's central maintenance staff on a districtwide basis. For example, they check all boilers, all roofs, or all fire extinguishers in every building throughout the district in one sweep. As a result of these annual or bi-annual inspections, deficiencies are found and repairs are scheduled. The issues identified by these inspections fall into two categories: (a) small items that can be addressed by the district's in-house craftsmen, and (b) larger items that need outside expertise and require an external contractor with additional

manpower and equipment. If these inspections are not done, or are done partially, sloppily, or casually, the systems will fail during the course of the school year, exacerbating the need for large capital projects.

On the subject of facilities and maintenance, Ouchi and Segal (2003) explained that maintenance services, provided as a central office function, are perceived by the school principals as free and limitless in an economic sense. A school principal is not given a budget for repairs and maintenance; that is handled by the central office function. Therefore, if something must be repaired or repainted, the principal puts in a request to the central office and hopes that it will get fixed. There is no constraint on the number of requests for repairs or maintenance. On the other hand, one principal will be given an antiquated building in good condition and another will receive a relatively new one in poor shape. Or an incoming principal views the conditions that the previous principal tolerated and immediately tries to improve them.

In summary, managing the maintenance of a collection of aging, deteriorating, school buildings is a challenging task in the best of circumstances. However, with limited staff, technical resources, and money for repairs; it can be overwhelming. Yet some school districts manage this better than others.

Therefore, it is logical to ask, why do some school districts manage their facilities more successfully than others? Why did some *Abbott* districts succeed in getting relatively many buildings built and others so few? Why did Neptune School District complete its program in 2010, before any other district (NJSDA, 2010b)?

Dennis Giordano, President of the NJEA, noticed a difference as early as 1989, when he stated,

Wealthier school districts with more administrative time applied for grants, while poorer districts with less time for administrative work did not, were not able to. The alternative to this process would be to have the Commissioner assess needs and make awards without applications. We do not want poor districts or small districts penalized because they did not have the time or the personnel to fill out the appropriate forms. (New Jersey State Assembly and State Senate, 1989, p. 31)

The salience of Giordano's observation cannot be understated. As shown by subsequent analyses by Ponessa at the ELC during the execution of the EFCFA between 2000 and 2010, the absence of qualified and motivated staff in the state's poor and small districts perpetuated the initial disparities acknowledged in *Abbott IV*.

The concept of having school projects ready to move forward into construction is described in a 1959 textbook on school facility programs by Strevell and Burke (1959). Chapter 10, "Program Formulation and Program Sequence," contains helpful hints for educational administrators, emphasizing strategies of preparedness. The importance of readiness and nimbleness was also emphasized in an analysis of several New Jersey districts in the early 1990s, which showed that those that had plans for new schools in hand were able to take immediate advantage of state funding when it finally became available (Firestone et al., 1997). This notion is reinforced within the context of this examination of the implementation of the EFCFA, which witnessed a very small number of *Abbott* school districts that were able to nearly build out their entire planned program of schools. This is contrasted with other, larger school districts, which completely failed to gain momentum and built only a small fraction of the planned schools.

Firestone et al. (1997) highlighted the activities of one district that showed the advantages of being prepared to advance an infrastructure program upgrade. The story of a district that managed to turn defeat into success at its December 1991 bond referendum into a robust facility improvement program is an important one because it shows the

importance of strategic readiness. This district, upon approval of the QEA legislation on July 23, 1990, immediately prepared plans for facility renovations and construction valued at approximately \$9.3 million (roughly \$14.6 million in 2011<sup>18</sup>). This proposal was defeated in the December 1990 referendum. In response, the school district trimmed the proposed plan to a \$3.6 million “maintenance only” plan and brought this to another referendum vote, which was approved by voters. When the “New Jersey Works” (New Jersey Office of the Governor, 1993) grants and loans became available in 1993, this was one of the only districts that had plans readily available. It garnered nearly \$8 million in grants and loans from the new statewide program to subsidize school facility renovation and construction. With an understanding that some school districts are able to prepare themselves to take advantage of potential state funding, there are also differences in how school districts operate on a day-to-day basis.

This section focuses on the pre-*Abbott V* school buildings in New Jersey, posing the primary question, Why is it so difficult for urban, or low wealth, school districts to maintain their buildings? Describing the inventory of aging facilities in New Jersey, one team of researchers (Firestone et al., 1997) observed that center city school buildings are especially difficult to maintain because their students test the physical strength and durability of a building’s components and assembly. The building’s age makes it even more susceptible to damage by students. Evolving and increasingly sophisticated building codes make renovation more complex and expensive, as all improvements generally must comply with current code (Associated Press [AP], 1998b; Burney, 1995). As a building’s systems age and deteriorate, the cost of maintaining and replacing them increases.

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<sup>18</sup> See Footnote 12 about the GDP deflator in the economy.

Electrical, plumbing, brickwork, and roofing all have life cycles and require maintenance, especially in an environment of heavy usage (American Federation of Teachers, 2006; Burns, 1989; Lewis, 1989; New Jersey Quality Education Commission, 1992b). Therefore, the center-city school districts with older buildings require more resources for intensive maintenance.

Similarities in post-World War II school building design and material selection in Great Britain, the United States, and New Jersey link Maclure's (1984) observations about school building in Great Britain in the 1950s to the United States. Maclure reasoned, "There were strong suspicions about the maintenance requirements of modern school buildings in general. . . . It was widely assumed that poor quality fittings and finishes probably meant wastefully high repair bills later on" (1984, p. 114).

There is a significant conceptualization linking the qualities of construction, expenditures on construction, and investment in maintenance. These three issues conflate in the day-to-day challenges to a school district's facilities department. Maclure (1984), in the United Kingdom, reported that several inconclusive government inquiries were initiated by the early 1960s into the issue of projected maintenance costs of their post-World War II schools. One published in 1972, entitled *Cost Study Bulletin*, was issued by the U.K. Department of Education and Science. It stated, "It is unwise to jump to any hasty conclusions . . . about the complex relationship between initial costs and maintenance costs and what is the right strategy for the designer" (as cited in Maclure, 1984, p. 115).

Maclure (1984) elaborated, providing insight that was as relevant to North America as it was to Great Britain in the discussions on maintenance, which can easily

shift to the “economics of maintenance,” where estimates of future maintenance costs can be calculated against current capital cost: “net present value.” Maclure observed that one consequence of these studies, all based in the field of economics and accounting, is that any finding calling for more durable, longlasting, and therefore expensive schools would mean that fewer schools would be built. In recognition of this dilemma, the enthusiasm for this type of analysis receded, in Maclure’s words, and eventually nothing concrete emerged from these inquiries. Although Maclure was writing in Britain about British schools, the same analysis, logic and outcome are applicable to America’s school districts in general and New Jersey’s specifically. He contended,

Attempts to reach firm conclusions about the most economical combination of capital and recurrent expenditure are likely to continue to be frustrated by the magnitude of the unknowns in the equation—unknowns relating to the rate of inflation, the future of interest rates, and the actual level of maintenance which will be provided. The fact remains that the main reason why schools get shabby is because local authorities cut spending on repairs and renewals when money is tight. Historic experience of maintenance costs may be highly misleading if the gap between actual and optimum maintenance levels widens. (p. 116)

Examining the same issues as Maclure but from a local and more prescriptive approach is a 1990 report with the ambitious title *Approaches to School Maintenance: Assuring the Future Life of School Buildings in New Jersey* (Stuebing et al., 1990). Prepared by the NJIT Department of Architecture and Building Science for the State of New Jersey, this report provided clear definitions of preventative and corrective maintenance.

Preventative maintenance is the improvement, replacement, or repair that prolongs a building’s or a system’s life expectancy, reduces operating costs, or prevents existing systems from breaking down. Preventative maintenance projects may include energy conservation measures, repointing of brick, replacement of flooring with a more

durable material, or general equipment overhaul. Typically, preventative maintenance is considered an operating expense. In contrast, corrective maintenance is the replacement or repair of systems that are deficient or are not operating to full capacity. It may also involve bringing aspects of the building up to current code standards. Corrective maintenance projects include boiler replacement, roof repair or replacement, asbestos removal, and emergency repair. Corrective maintenance is generally considered a capital expense.

All of these factors, discussed by Maclure (1984) and by the NJIT team (Stuebing et al., 1990)—cheap construction, inadequate funding of maintenance, poorly motivated leadership and staff—have led to severe deterioration of many of New Jersey's school buildings, especially in the SNDs: the *Abbott* districts.

From a management perspective, it is important to distinguish between custodial and housekeeping services and maintenance services, which include repair, replacement and renovation. When these begin to lapse, collapse, or fail to operate due to nepotism, cronyism, opportunism, or laziness, the school building suffers. Jarvis, in a text for business administrators (Jarvis et al., 1967), observed that the educational requirements for school custodial staff are increasing, along with the type of equipment that is deployed.

As equipment and supplies are becoming increasingly sophisticated and expensive, the ability of the custodian to read and understand instructions and to prepare simple written reports is a required portion of his or her job. Correspondingly, the shortage of jobs in New Jersey's inner cities has increased competition for the security and wages of maintenance positions. It has become difficult for these school districts,

with their ties to the local community, to select new hires based on qualifications alone. In addition, civil service regulations and financial constraints hamper New Jersey school administrators' ability to recruit highly qualified and motivated school maintenance staff who are necessary to maintain sophisticated systems. These regulations and community relationships make it exceedingly difficult for school business administrators to remove poorly performing or unmotivated custodial or maintenance personnel.

These issues have only intensified in the years since Jarvis et al. (1967) wrote their text, especially with the contemporary (first decade of the 21st century) introduction of computerized building maintenance and management systems featuring direct digital control of electromechanical components placed throughout a new school building. Jarvis explained that training programs are important to acquaint personnel with newly introduced equipment, supplies, and procedures. These are necessary on a regular basis as the need arises and due to the continual turnover in staff and the rotation of personnel between schools with significant differences in equipment. The failure by several of the state's *Abbott* districts to train staff in proper system operation invites mechanical failure and invalidation of manufacturers' warranties and service contracts. This has happened in many of the *Abbott* district buildings and continues the cycle of deterioration.

The constant, daily presence and proactive awareness and engagement of the school's custodian (who by definition is primarily responsible for cleaning) are essential, as that person is aware of early signs of developing problems. Scheduling and executing preventative maintenance is another important responsibility of the district's maintenance staff. Regularly scheduled maintenance (for example, keeping roof drains clean and flowing; Mcneil, 2011) is key to maintaining the life of the school district's buildings and

mechanical equipment. Maintaining, inspecting, and cleaning equipment on a regular basis detects problems before they can damage and shut down equipment. These cyclical inspections have been shown to prolong the life of buildings and systems, save money on future repairs, and prevent minor problems from becoming major capital repair projects. Many of these were not being done in New Jersey's *Abbott* districts due to lack of institutional authority, apathy, culture, and funding, as detailed in the CCIs described previously (NJDOE, 1988, 1991, 1994). So many of these same school districts in major cities could be characterized as overwhelmed, understaffed, underfunded, and barely functional (Payne, 2008).

Although there are models for proper maintenance that are alternatives to the "fix-it-as-it-breaks" approach—corrective maintenance, preventative maintenance, and contract maintenance, many urban school districts tend to slip into the "fix-it-as-it-breaks" pattern. This is discussed in hushed tones among facilities professionals as one of the "moral hazards" of a state-funded capital improvement program. Routine maintenance is deferred in order to shift repairs from the locally financed operating budget to the state-supported capital budget. This behavior is barely mentioned in the academic or professional literature but appeared to be a suspect pattern in New Jersey, leading to the Legislature's concern when crafting the EFCFA. Despite repeated analyses that preventative maintenance is the most cost-effective method to preserve capital investment in facilities, constant budget constraints place school maintenance low on most school districts' priority list (Dejong, 2010, 2011; Erickson, 2011). Quite frequently, school districts fall back to the "fix-it-when-it-fails-only-when-we-have-to" approach for lack of any other alternative.

Carey (2004), writing in the *American School Board Journal*, observed that many school district maintenance staffs are simply unable to catch up with maintenance. Carey found that many school maintenance budgets were not being increased to keep pace with inflation and the accelerating age of their buildings. Therefore, the ability of the staff to maintain their structures adequately and to execute any form of preventative maintenance was seriously handicapped. The message from Jarvis et al from 1967, NJIT's message from 1990, and Carey's message from 2004 dramatically describe New Jersey's deteriorated school buildings.

The following paragraph, from 1967, one of the few written in an official State of New Jersey document about schoolhouse maintenance, fused decreased budgets, urban poverty, aging buildings, and the progression of the *Abbott* case through the 1990s. An official guide prepared for local school districts by the NJDOE described the need to improve school buildings throughout the state in the mid- to late 1960s:

Many school buildings of necessity have been continued in use, even after they have approached obsolescence. Because boards of education have desired not to spend too much money on such old buildings, repairs and maintenance costs have been pared to the minimum. In many instances safety conditions have grown increasingly worse. . . . In such buildings it is not uncommon to find ancient toilet installations located in the basement; heating plants operating ineffectively on borrowed time; improper and inadequate lighting reduced to its lowest possible factor by dingy walls, somber ceilings, and dark woodwork. (NJDOE, 1967, p. 19)

In the larger sense, New Jersey's 31 *Abbott* districts are a reflection of the nation's largest cities, with their concentrations of the urban poor, which have the oldest and most poorly maintained school buildings in the nation. Among the many problems that all of these school districts face, which is directly linked to their inventory of inadequate and aged buildings, is the deteriorated—in fact, dangerous—state of their clean water plumbing. These administrative issues are exacerbated by the need to deliver

clean water to students and staff (and remove filthy water) in an aging school building. The test of maintaining functioning drinking water fountains, and bathrooms with working faucets, flushing toilets, adequate hot and cold water, and paper towels taxes the organizational and logistical capabilities of many school district facility organizations. This is compounded by the presence of excessive levels of lead in fresh-water supply systems because many of the schools in today's urban centers were built in the pre-World War II period when lead was the material of choice for plumbing and soldering components (AP, 2009; Berliner, 2006; Brown, 2008; Bryant, 2004; Burke, 2009; Chen, L., 2008; Damron, 2008; Division of Environmental and Occupational Disease Control, 1998; Guyaux, 1990; Haack, 2008; Lam & Tanner-White, 2010; Murphy, 1993; New Jersey Department of Health and Senior Services, Division of Environmental and Occupational Health Services, 1997; Richardson, 2005; Rothman, Lourie, & Gaughan, 2002; Stapleton, 1994).

Whatever potential moral hazard exists to encourage deferred maintenance is exacerbated by reduced local school maintenance budgets. It should be emphasized that maintenance policies in general and in school buildings specifically are a topic of secondary or tertiary interest, probably because their interdisciplinary subject lacks glamour and is of little academic interest. However, in this dissertation, these policies and their absence are placed "front and center." A scholarly examination of school facility maintenance would begin with finance (or lack of) and reach into architecture, educational administration, and engineering. Subsequently it is a subject without either an academic home or a political voice in New Jersey or in the United States.

The concept of deferred maintenance of school buildings is discussed in the broader context of public buildings in a 1990 report distributed by the American Public Works Association (National Research Council, Building Research Board, 1990-1991). The authors described underfunding as a widespread and persistent problem that undermines maintenance and repair. They defined an appropriate budget allocation for maintenance as 2% to 4% of the current aggregate replacement values of the subject facilities. Their report emphasized that periodic conditions assessments are essential for effective facilities management, as this is the only gauge of the adequacy of maintenance efforts, current conditions, and any developing backlog. The APWA noted that minor alterations and improvements must be distinguished from maintenance and repair, as they divert resources from legitimate maintenance functions. The APWA report emphasized that public buildings, among them schools, are public assets that have been built and paid for with public tax dollars over many years. Facilities managers are the contemporary stewards of these assets. Decisions to defer maintenance or not deciding to perform necessary maintenance and repairs have consequences in a foreseeable future. The cumulative effects of wear and tear on a facility show only eventually and are barely of interest to politicians, public administrators, or school district officials. Political expediency trumps necessity and in many public agencies there is a de facto policy of deferred maintenance. The 1991 report concluded that, if there are institutional incentives to underfund maintenance activities, the subsequent deferral of maintenance will certainly evolve into serious large-scale repair projects.

Among New Jersey's state legislators, concerns are expressed periodically about the importance of routine maintenance as a way to prevent repeated deterioration of a

school district's building stock. New Jersey State Senator Palaia, at a hearing on the pending school construction legislation in late November 1999 (New Jersey State Senate, 1999) asked a most important question: "How did we get to this point?" He responded that, looking back at school budgets over the years, the "first thing that gets cut is maintenance—every single time" (p. 22). Palaia insisted that either this bill or an edict from the Commissioner of Education must require a percentage to be set aside for maintenance. Palaia stated, "This will make sure that in 30–40–50 years from now new faces aren't sitting in this same room going over this same topic, saying we need new buildings, we need new buildings" (p. 22). Assistant Commissioner of Education Mike Azzara responded that the new bill contained a requirement that over a 10-year period a district invest at least 2% of the building's replacement cost in its maintenance. If the district fails to invest the necessary 2%, state aid would be reduced accordingly.<sup>19</sup>

Therefore, there is relevance to the notion of a possible "moral hazard" or whether the availability of capital grants for construction actually discourages routine, efficient, and effective maintenance. Discussions of this relationship are found in the context of federal support for local mass transportation equipment (rolling stock, e.g., trains and buses) and infrastructure where researchers have found this sort of linkage (Cromwell, 1991). Cromwell found that state and federal grants to local transit agencies led them to

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<sup>19</sup> The EFCFA legislation, as approved in July 2000, addressed this in the form of agreements and commitments by the school districts to maintain the new schools: statutes NJSAC 18A:7G-13C (district enters into an agreement with the NJSDA to effectuate the project) and 13D (district enters into an agreement to provide for the maintenance of the project) and subsequent administrative regulations NJAC 6A:26A. However, these seem to be commitments without any financial resources or accountability that each district set aside funds from existing resources.

substitute new investments for maintenance of existing capital equipment, structures, and systems.

### **Taxation, School Districts, and School Buildings**

After the extensive discussion of the link between school district finance and school district organization and a district's will or capacity to maintain its buildings, the study focuses on the overall subject of finance, taxation, and budgets. Until enactment of the EFCFA in July 2000, almost all school construction was financed through resources of each local school district. Sporadically, there would be limited supplemental funding available from the state, but the most reliable source was bond financing by each school district.

The collective financial decline of New Jersey's major cities in common with other cities across the United States is reflected in the deterioration of their school buildings. Although this decline is a nationwide trend, it may have been exacerbated by the balkanized structure of New Jersey's school districts, which decreases their size, increases their numbers, and sharpens their segregation and disparities with neighboring communities.

Both court cases, *Robinson v. Cahill* and *Abbott v. Burke*, are attempts to shrink these disparities between school districts that follow municipal boundaries and their respective tax revenues. New Jersey is a "home rule" state; the Constitution states, "The Legislature shall not pass any private, special or local laws: . . . 13) regulating the internal affairs of municipalities formed for local government and counties, except as otherwise in this Constitution provided" (N.J. Const. Art. IV, § 9, ¶ 2). Subsequent discussions of merging school districts in order to solve financial problems, eliminate inefficiencies, or

remove racial inequalities are nonstarters. As a result, this section contains a discussion of the municipal finance issues that contribute to the financial troubles of New Jersey's 31 *Abbott* districts because they will not be finding any solution by merging with wealthier, Whiter, nearby suburban districts.

As the need for a large-scale statewide school building program became increasingly apparent in the 1990s, the requests for "ball-park" estimates increased. Several cautions are necessary in reading this section. Many of the "ball-park" estimates cited herein are statewide and address all school buildings of every district, both wealthy and nonwealthy. As the *Abbott IV* and then *Abbott V* cases progressed through New Jersey's Supreme Court, the scope of the facilities solution changed; thus, tracking the cost estimates to precise bundles of school projects is difficult.

The *Abbott V* decision and EFCFA legislation focused initially on 28 low-wealth districts; by 2004, there were 31 districts in the program. Those numbers have not been recalculated to their present value; therefore, a proposed \$1 billion in 1990 is significantly greater than \$1 billion in 2000 or in 2013 (23 years later). Finally, as discussed in other chapters and in the literature review, these rough estimates are prepared without a detailed analysis of the buildings to be renovated or the actual costs of the work. In addition, as proposed by Flyvbjerg, they may have been deliberately scaled back to be politically acceptable, per the testimony of Dennis Giordano in 1989.

In 1990, an analysis prepared by NJIT indicated that the outstanding statewide school facility need was \$1.8 billion in new construction and capital improvements (Stuebing et al., 1990). This calculation was based on a 1987 aggregation of all 5-year facility master plans in the state. The 1990 study mentioned that, because the state did not

have a school facility inventory mechanism, this number might not be accurate. The authors of the 1990 study also emphasized that the taxpayers had an interest in the proper maintenance of these school buildings as they represented a substantial investment of taxpayer resources. For example, between 1979-1980 and 1988-1989, the state and local school districts spent more than \$4.8 billion in debt service, capital outlay, and school construction.

The difficulty in calculating the cost of repairing some of New Jersey's schools began much earlier than the Vitetta study (*Abbott V*), which was presented by the NJDOE to Remand Judge Michael Patrick King in 1998 (NJDOE, 1997). In testimony to the Assembly Education Committee 9 years earlier (in 1989), Dennis Giordano had observed that \$4 billion had been estimated in 1981 but revised downward to between \$1.5 and \$2 billion. This is the first example of what Flyvbjerg's theories would later<sup>20</sup> describe as the politics of deliberate deception.

The problem of inadequate school facilities has been studied by the NJDOE for some time. The NJDOE estimated about 8 years earlier (1981) that up to \$4 billion was needed to bring all of the state's school buildings up to health and safety standards. The department later revised that figure to \$1.5 billion to \$2 billion, although it was never made clear how the problem became feasible at one half the price tag (New Jersey State Assembly and State Senate, 1989).

It is also important to understand the testimony of Dr. Vincent Doyle, School Business Administrator of the Teaneck School District, on behalf of the New Jersey Association of School Business Officials, to the Assembly Education Committee in 1989

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<sup>20</sup> See discussion in Chapter 5 of New Jersey's program as a mega-project.

in light of the history of the estimated cost of upgrading New Jersey's school buildings.

Basing his observations on the needs of Teaneck alone, he expressed skepticism regarding the current cost estimates. Doyle remarked,

I would hope that if we [Teaneck] are any indication of what the need is statewide, that there could dispel any doubt that the number of \$2 billion is at least real and probably a substantial understatement. To borrow the phrase from former budget director, David Stockman, "Sometimes the numbers are so large that none of us really understands them." (p. 58)

He commented that it was easy to bog down in details and fail to address the larger, real issue of providing quality buildings for the next generations of school children. Doyle continued,

That's true. We could sit here and detail how many lineal feet of cove molding I need and what the price per unit is because that stuff is in here—paid to find out. But I don't know if that's what we're talking about. I think the real issue is a concept issue. We can either short-change our grandchildren or children, or else we can provide them the facilities they need to properly house the educational opportunities that we want to offer them. (New Jersey State Assembly and State Senate, 1989, p. 58)

### **Conclusion**

This chapter concludes by returning to its opening: "Other people's children"—children of color, minorities, and immigrants—were attending school in antiquated, inadequate school buildings while the children of the suburbs were receiving a better education in modern structures. On this background, the long battle of *Abbott v. Burke* was reaching its crescendo at New Jersey's Supreme Court. The seminal *Abbott V* decision of May 21, 1998 placed responsibility for upgrading school facilities in the state's lowest-wealth districts on the shoulders of the State of New Jersey.

The school building legislation (EFCFA), which would be signed by Whitman in July 2000, can be traced to the earliest days of the public school movement in New Jersey

and the industrialization, suburbanization, segregation, and de-industrialization of New Jersey's suburbs and cities over the past 100 years.

The story of educational facilities is a mirror of the society around them. Their fate is linked with the ups and downs of New Jersey's cities and the cultural and demographic changes that they have experienced since the last quarter of the 19th century. The construction and subsequent deterioration of these school buildings directly corresponded (albeit with a lag of a few years) with the arrival of immigrants, the expansion of education to include more age groups, national economic trends, and the changing demography of New Jersey's urban centers.

The deterioration of New Jersey's cities after the World War II hardened earlier trends of segregation based on class, income, and race. After the streetcar suburbs of its larger cities had broken away and become independent (each with its own school district), New Jersey's larger cities were left with concentrations of immigrants from Southern and Eastern Europe, as well as American-born migrants from the South and their problems. Newark, Camden, Paterson, and Trenton (among New Jersey's largest cities) became deep concentrations of immigrants and persons of color and low wealth.

Municipal boundaries became ever more tightly locked, with the inner-city school districts freezing in place patterns of residential segregation in crumbling, underfinanced school systems. Where in one century Protestants feared Catholics and set up political boundaries to protect themselves, these same boundaries were later used by New Jersey's Whites to distance themselves from New Jersey's Black and Hispanic populations.

This is the context for considering the state's existing school facilities. These buildings could not move but, over the life cycle of buildings, their initial sponsors,

builders, and advocates would eventually retire from public life and disappear. In the historical sense, the custodianship and responsibility for every new building must eventually shift from the generation of its builders to the generation of those who enjoy the fruits of their predecessors.

Again in an historic perspective, the circumstances of New Jersey's cities and towns rise and fall as their economies evolve: some succeed and others fail. The robust financial capacity of the generation of school builders of one era may not be the same as the reduced circumstances of their descendants, especially in the face of deindustrialization and globalization. The inheritors and beneficiaries of preceding generations of extravagant school building efforts may be left with grand school buildings but without the tax base to maintain and repair them.

A school district's buildings can be properly maintained, improved, or neglected. In most of New Jersey's low-wealth cities, these once proudly erected edifices to public education deteriorated, reflecting the fate of their surroundings. Although they had been well-built, fully equipped, state-of-the-art school buildings, many would begin an unintentional and irreversible process of deterioration.

Stark disparities, primarily the distribution of wealth among New Jersey's communities, were directly reflected in the conditions of their school systems and their buildings, as substantiated by the findings in *Abbott v. Burke*. Suburban school districts, with their robust tax base, had well-maintained, modern, school buildings. Urban districts, with their disappearing industries, shrinking tax bases, and vanishing middle class, had poorly maintained and declining school buildings. This highly balkanized

pattern of race, class, and social segregation that characterized much of New Jersey was the stage upon which two cases were litigated: *Robinson v. Cahill* and *Abbott v. Burke*.

Corruption was perceived to be deeply rooted in the state's largest school districts. This was reflected in the state's decision to takeover school districts in Jersey in 1989, Paterson in 1991, and Newark in 1995. These determinations were based on highly detailed reports analyzing school district expenditures. The reports carried shocking detail, highlighted in the press, about school district officials lavishing large amounts of money on expensive luncheons and dinners and attending conferences in exotic locations. Taxpayer money was being spent by the highest-level officials in these districts on unnecessary patronage and perquisites while classrooms were starved of basic equipment and textbooks. This atmosphere set the stage for legislators and the Governor to place the new program at the state level, not the local level.

Another difficulty faced by the program's leadership was New Jersey's perpetual inability, perhaps refusal, to perform any statewide facility surveys. This led to a dearth of data when they were most needed to prepare an estimate of the cost of repairing and rebuilding schools in the 28 SNDs (*Abbott*) in 1997-1998. Facility surveys if done in a systematic, cyclical, routine manner, facility surveys can be affordable and manageable. As discussed in this chapter, detailed statewide facility surveys were performed in the 1920s but nothing of that magnitude had been undertaken since then.

Therefore, all of the statewide cost estimates in the late 1990s (in response to *Abbott IV*) were based on information collected from school districts that were marked by varying reliability and use of highly subjective and often quite different forms of measurement and comparison. Lacking a baseline of the current situation in hundreds of

buildings across the state, it would be impossible for NJDOE officials to prepare cost estimates to respond to the Supreme Court's request to review the facilities needs of the 28 SNDs in *Abbott IV* on May 14, 1997.

## CHAPTER 4

### *Abbott V*

Observing the drawn-out battles over school financing that began in 1973 with *Robinson v. Cahill* and continued with *Abbott v. Burke* in the 1980s, Linda Darling-Hammond<sup>21</sup> (2010) recalled that she wondered in the 1980s and 1990s “whether the state [New Jersey] would ever decide to take care of Black and Brown children in its urban schools” (p. 122). Darling-Hammond began her career by student teaching in Camden in 1973, the year of the *Robinson v. Cahill* decision, in the most resource-poor school that she had ever seen. The battles over equity continued while Darling-Hammond worked for the ELC in New Jersey and then wrote her dissertation on school finance in New Jersey while studying at Temple University in Philadelphia. Later, as Professor of Education at Teachers College, Columbia University, she observed the lawsuits and changes in legislation, school finance policy, and taxation. In 2010 she wrote, “As the Education Law Center returned to court again and again, the state did an extended ‘rope-a-dope,’ just waiting for the lawsuits to stop. Over these years, the cities of New Jersey deteriorated nearly beyond the point of no return” (p. 122).

The New Jersey Supreme Court’s *Abbott V* decision is so central to the current study that this chapter is focused on it. Published May 21, 1998, it was such a strong decision that it forced the hands of both Governor and the Legislature. This decision catalyzed enactment of legislation and within several years the expenditure of several billions of dollars on new and upgraded school buildings throughout the state. Therefore, a brief summary of the legal and political struggles that began with the *Robinson v. Cahill*

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<sup>21</sup> Currently Professor in Stanford University’s Graduate School of Education.

ruling by the New Jersey Supreme Court in 1973<sup>22</sup> is important at this point. The material presented in Appendix B was initially constructed to assist this researcher in understanding the interrelationship of events. This detailed timeline of the school construction builds on Yaffe's timeline (Appendix A). Appendix B provides the chronological linkage among the seemingly separate streams of activity: political, legal, educational, construction, and financial. Creation of this table was critical to writing this history and making the connections between events in one sphere and the corresponding actions in the other sphere.

In 1973 the New Jersey Supreme Court, in *Robinson v. Cahill*, found that New Jersey's system of financing public schools discriminated against students living in low-wealth school districts, which were unable to generate enough property taxes to support their local public schools properly.

In 1973 the Court was probably influenced by two recent cases. First was California's *Serrano v. Priest* ruling in 1971, which linked the wealth of a child's parents and a school district's tax base to claims regarding systems of educational finance. The second was *San Antonio Independent School District v. Rodriguez*, in which the U.S. Supreme Court ruled on March 21, 1973, that federal courts should not be receptive to school finance cases because education is not a fundamental Constitutional right. The Court emphasized the importance of local control and rejected the notion of poor students or a poor school district as a suspect class.

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<sup>22</sup> See the literature survey in Chapter 2 for treatment and discussion of resources regarding the history of school finance and educational adequacy in New Jersey.

Possibly responding to the U.S. Supreme Court's decision in March 1973, the New Jersey Supreme Court ruled in April 3, 1973, that these discriminations and disparities violated the Education Clause of the state's constitution, which obligated the State of New Jersey to provide maintenance and support of a "thorough and efficient" system of schools. The Court made clear that it did not accept the unequal distribution of expenditure per pupil that resulted from the state's reliance on local school districts to provide for education of children throughout the state. The Court noted that, perhaps in the distant agrarian past, there might have been parity between an area's educational expenses and its ability to raise money. However, in 1973 the Court found no correlation between the local tax base and the number of children to be educated, especially in the state's largest cities. Reluctant to prescribe specific remedies, the Court encouraged the Legislature to adopt an alternative plan that levied and distributed monies for education, both operating and capital, in a uniform manner.

Setting the ground for the future *Abbott V* decision regarding facilities, the justices in *Robinson* also reviewed school district capital expenditures, stating, "We have discussed the existing scene in terms of the current operating expenses. The State's obligation includes as well the capital expenditures without which the required educational opportunity could not be provided" (*Robinson v. Cahill*, 1973, p. 16). Nevertheless, both the Governor and Legislature ignored the Court's discussion of the state's "obligation," possibly leading to the highly prescriptive remedy issued in 1998.

Distressed by the continued disparities between the state's wealthier school districts and the poorer urban school districts, the first *Abbott v. Burke* case was filed in 1981 on behalf of public school students in several of New Jersey's poor urban school

districts. Raymond Abbott was one of the student plaintiffs (first alphabetically) and Fred Burke was New Jersey's Education Commissioner at the time (see Howard, 2006, for an interview with the retired Commissioner).

Possibly realizing how little had changed since their 1973 *Robinson v. Cahill* decision, the Court took a more activist position when it issued *Abbott II* in 1990. It should be noted that all of the *Abbott* decisions contain a wide range of findings and holdings; this study focuses on those that relate to facilities that house the schools where children come to learn.

Echoing *Robinson*, the Court in *Abbott II* (June 5, 1990) found the latest iteration of New Jersey's education financing formulae to be in violation of the Constitution's "thorough and efficient clause. We find that under the present system the evidence compels but one conclusion: the poorer the district and the greater the need, the less the money available, and the worse the education" (p. 363).

Assisted by an Administrative Law Judge, Steven Lefelt, the Court developed, through a rigorous fact-finding process, a deep understanding of the complex issues that had been at its doorstep since 1973. One outcome of this process is a vivid and penetrating description of the inadequate state of school facilities in those "special needs" school districts, a group that was given legal status through the QEA in 1990, approved within 2 months of the *Abbott II* decision (Quality Education Act<sup>23</sup> of 1990, 1990).

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<sup>23</sup> The Quality Education Act was the State Legislature's response to the Supreme Court's *Abbott II* decision. It contained a small increase for the "foundation aid" levels for the *Abbott* districts. The Act itself established formulas with foundation amounts for pupils in elementary, middle, and high schools. These amounts represent the cost per pupil of providing a quality education. Another formula within the Act established a "fair standard for determining the amount of money each district can raise through property taxes." If a district decides to tax at a lower level, its

This “special needs” designation (SND) was incorporated in the *Abbott II* Court vocabulary (119 N.J. 287, 1990), which limited court-ordered remedies to a select group of 28 school districts. These were the state’s lowest-wealth school districts, with the lowest District Factor Group rating of socioeconomic status and other parameters. The *Abbott II* decision also identified several specific factors that characterized the *Abbott* SND class in addition to the District Factor Group. They included having a large number of poor students who needed “an education beyond the norm,” a municipality with an excessive tax burden, and the presence of a large percentage of students of color (ELC, 2009).

Facilities provided the Court an easily understood and highly visible indicator, or proxy, for the depth of disparity between New Jersey’s low- and high-wealth districts. The Court clearly struggled to understand how to determine whether a child was being given a quality education (*Abbott II*, 1990, pp. 41–43). Through this fact-finding process, the Commissioner of Education presented the Court a series of parameters for measuring educational quality. Inputs and outputs were detailed, as well as ways to measure the state’s compliance with the constitutional mandate of “thorough and efficient.” In the end, it seems that the penetrating descriptions of deteriorated facilities won the “hearts and minds” of the Justices as they plowed through the statistics and reports prepared by both sides.

It appears that the Court was not impressed by the state’s presentations. The Court simply contrasted the conditions, the opportunities that are presented to students in poor

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foundation aid is reduced. Additional information is contained in the official statements attached to the QEA Act.

districts, with those in wealthier districts. For example, the Court's decision included the following: "While Princeton has one computer per eight children, East Orange has one computer per forty-three children and Camden has one per fifty-eight children. . . . In Jersey City, computer classes are being taught in storage closets" (*Abbott II*, 1990, p. 41).

Regarding science programs, the Court noted,

Many poorer urban districts offer science classes in labs built in the 1920's and 1930's, where sinks do not work, equipment such as microscopes is not available. . . . In East Orange middle schools, teachers wheel a science cart into a three-foot by six-foot science area for instruction. The area contains a sink, but no water, gas, or electrical lines. (*Abbott II*, 1990, p. 41)

These descriptions continue for three pages of the court's decision and are summarized in the statement:

In contrast most schools in richer suburban districts are newer, cleaner, and safer. . . . While it is possible that the richest of educations can be conferred in the rudest of surroundings, the record in this case demonstrates that deficient facilities are conducive to a deficient education. (*Abbott II*, 1990, p. 43)

Addressing New Jersey's Public School Education Act of 1975, with its associated newly enacted state income tax (1976),<sup>24</sup> the *Abbott II* decision determined that the 1975 act had to be amended to provide poor urban school districts with funding "equal to that of property-rich districts" (p. 58). Again, apparently laying the foundations for the future decision regarding school facilities to be contained in *Abbott V*, the justice's noted in *Abbott II*:

All we have before us are . . . general agreement on the desperate condition of school facilities, gross estimates of the cost of correction, and concurrence on the urgent need. It is obviously a matter best suited for legislative treatment, but if squarely presented to us with an adequate record of need and legislative failure,

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<sup>24</sup> Both the Act and the new income tax were the state's responses to *Robinson v. Cahill*. For more extensive discussion, see Firestone, Goertz, and Natriello, as well as Yaffe.

we would be obliged under the Constitution to consider the matter. (*Abbott II*, 1990, p. 61)

The *New York Times* portrayed New Jersey's school facility situation in a 1992 article responding to a report prepared by the NJDOE. In the historical context, New Jersey again appeared to be systematically examining its statewide facility problem (King, W., 1992). A draft report was prepared but it is not clear whether it was ever formally issued (NJDOE, 1992). Interviewing NJDOE Assistant Commissioner Robert Swissler, the *Times* reporter King noted,

The estimated cost of improving all of New Jersey's school facilities is \$6 billion.

The state has 2,252 school buildings.

1,000 school buildings are more than 50 years old.

41 of these 1,000 school buildings are over 100 years old. (King, W., 1992, p. B1)

King's article highlighted the Burnet Street School in Newark, which was so old that Abraham Lincoln, on his way to the District of Columbia to be inaugurated as President, stopped off at the school to give a speech. One of the oldest schools in the state, Burnet is still in service (as a charter school) in 2013 (Newark Public Schools, 2012).

Describing the schools built during the state's Baby Boom, Assistant Commissioner Swissler stated the following:

A lot of these school buildings that were built for the Baby Boom were built in a hurry and not built to last. They were meant to last 25, 30 years and we have over a thousand of them, post-World War II buildings that were built between 1945 and 1960 in the suburbs. Many of these schools, Mr. Swissler continued, are of what is called "egg-crate design"—one story with a flat roof—and have energy inefficiencies such as huge windows and acre sized roofs that the sun beats down on. There are also environmental problems that were ignored or unrecognized when the schools were built. Some buildings, for example, still contain asbestos that has to be removed. Some have lead in the water, inadequate sewage treatment and radon levels that are still being tested. (King, W., 1992, p. B4)

On May 21, 1998, the *Abbott V* decision signaled the direction for the future facilities program. The decision included the following: "Following conduct of fact-finding hearings by the Superior Court, Chancery Division, King J . . . the Supreme Court, Handler, J. held that . . .

....

(9) school districts would be required by January 1999 to complete enrollment projections and five-year facilities management plans for state's use in ascertaining its construction needs;

(10) square footage requirements for educational areas in elementary schools contained in the state's proposed educational adequacy standards (EAS) satisfied constitutional obligations;

(11) specialized instructional rooms for art, music and science were not universally required at elementary school level;

(12) state's proposal to empower Educational Finance Administration (EFA) to issue bonds and serve as construction manager effectively addressed need for adequate facilities and capital improvements inherent in reform plan . . . .

Remedial relief ordered. (*Abbott v. Burke*, 710 A.2d 450, N.J. 1998)

Regarding facilities, the Court's *Abbott V* decision began by detailing that in *Abbott IV* it had ordered the NJDOE to assess the facilities needs of the 28 *Abbott* districts. The Court wrote the following:

It is undisputed that the school buildings in *Abbott* districts are crumbling and obsolescent and that this grave state of disrepair not only prevents children from receiving a thorough and efficient education, but also threatens their health and safety. Windows, cracked and off their runners, do not open; broken lighting fixtures dangle precipitously from the ceilings; fire alarms and fire detection systems fail to meet even minimum safety code standards. (p. 470)

Among the Court's findings in *Abbott V* was that districts, for lack of facilities, were holding classes with 40 students or assigning three teachers and their classes to one room at the same time. Already in *Abbott IV* and repeated on p. 516 of *Abbott V*, the

Court highlighted that “many school buildings in SNDs are crumbling and obsolescent” and that 64% of the buildings were more than 50 years old.

There are two fundamental legal constructs behind the *Abbott V* decisions regarding school facilities. Herein they are reduced to the most basic conceptual terms before continuing to an analysis of the decision and its implications.

1. *Responsibility for financing and delivering* the education of children living in New Jersey is an obligation of the State of New Jersey. Although much of the money that finances education is collected at the local level (through property taxes) and education is delivered through legal constructs created by the state through local boards of education, the ultimate responsibility lies with the State of New Jersey. Thus, the first concept is the overall responsibility of the state.

2. Providing a *thorough and efficient system* as stated within the Education Clause of the state’s Constitution: “The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the state between the ages of five and eighteen years” (Article IV, § 6). This concept represents the constitutional obligation of the State of New Jersey to provide a thorough and efficient system for all children in the state. The New Jersey Supreme Court, in *Robinson v. Cahill*, found that a system featuring the disparities described above could not possibly be thorough or efficient. In *Abbott V* the Court instructed the executive and legislative arms of the state government to remedy the disparities between the buildings in low- and high-wealth school districts.

One of the best analyses of the concepts at the foundation of the Court’s intervention was provided by David Sciarra, CEO of ELC, in his testimony to the Senate

Education Committee (New Jersey State Senate, 1999b, pp. 28-30). His analysis, 7 months after the *Abbott V* decision, recognized that the majority of New Jersey's legislators were focused on how the proposed school construction bill would address suburban and rural school districts. Sciarra's testimony focused on the *Abbott* districts. He distilled *Abbott V* to three core pillars for school facilities: (a) Schools must be safe, in good repair and comply with fire, health, and safety codes; (b) classroom instruction must take place in appropriately sized classrooms that are not overcrowded (the Court accepted the Education Commissioner's proposed class sizes); and (c) schools must contain all spaces needed to provide the curriculum content standards that are part of the Core Curriculum Standards: art, science, music, health, physical education and reading.

According to Sciarra, the implementation of the first two elements is direct and straightforward. The implementation of the third element—educational adequacy—would be achieved only after each school district prepared its own 5-year FMPs (due March 15, 1999). He emphasized that the *Abbott* decision empowered local educational officials to determine what facilities are needed to provide educational adequacy for their students. He emphasized that the nexus of decision making about the type and size of the facilities had been moved from the state to local educators in the *Abbott V* decision.

After describing the decision, it is now necessary to shift back prior to May 1998 to explain how the decision was prepared, as this clarifies several of its other features. The amounts of information and testimony involved in the entire *Abbott* process required the delegation of much of the work to a Remand Judge from the Superior Court's Chancery Division, whose role was defined by the Supreme Court in *Abbott IV*: “to determine what judicial relief was necessary in order to address the need for

supplemental programs and facilities improvements in *Abbott* districts. *Id.* at 224-226, 693 A.2d 417" (710 A.2d 450, N.J. 1998, p. 456).

Remand Judge Michael Patrick King was faced with unusual tasks, one of which was to evaluate the estimates of the cost of the proposed school building program. To frame these tasks, the Judge included another formal discussion of the remand order itself within the *Abbott V* decision in Section III of Appendix I. A careful reading of Remand Judge King's statement to the full Court reflects his best efforts to make sense of the proposed remedy for a problem that was largely undefined.

The Remand Judge, approaching his work from a legal perspective, and tasked with analyzing the testimony, tried to emerge with a response that would reflect a solution to a deep educational problem. Judge King's inability to delineate the problem inextricably led to his inability to outline a prescriptive solution leading to a program and a suggested budgetary level. A Justice, a legal expert, out of place in the world of educational policy, public administration, and public works, King was the proverbial "fish out of water." His recommendations contained a delicate balance of definition and ambivalence that set up the land mines that met the program as it proceeded into implementation. On the one hand, the recommendations were very directed and restrictive; on the other hand, they were so flexible and open ended that they allowed the program's costs to soar beyond the imaginations of the attorneys, legislators, and judges who had written and read the *Abbott V* decision in May 1998.

The NJDOE, responding to the schedule of the *Abbott V* hearings, had to prepare an expeditious evaluation of the facilities in the state's 28 poorest school districts. With the help of the architectural firm Vitetta, the NJDOE mobilized to survey the existing

buildings. These data are summarized in a report prepared by the Department (NJDOE, 1997). The report was covered in the news media (AP, 1998b; O'Neill, 1997) and apparently was influential in the judicial decision that emerged in *Abbott V.*

The Court, in its *Abbott V* decision issued on May 21, 1998, recognized the NJDOE's and the Remand Judge's difficulty in estimating the projected cost of the program that they would be requiring (*Abbott v. Burke*, 710 A.2d 450, N.J. 1998). In May 1998, based on the State of New Jersey's earlier declarations to the Court, the Court's decision directed master planning to be completed by January 1999 and architectural plans to be completed by fall 1999.

It is quite probable that the state's architectural and engineering consultants, Vitetta Group, specifically engaged for the task of assisting the NJDOE with preparing material for the *Abbott V* case, did not recognize the long-term significance of their work product (NJDOE, 1997). In time, their cost data, assumptions, analyses, and projections would take on a life of their own and near sacred quality as they were incorporated into the State's submission to the fact finding hearings held by Remand Judge King (Docket No. A-155-97 Report and Decision January 22, 1998, p. 474). However, once Vitetta's material was printed and submitted to the Judge and subsequently embraced by the Court, the following events ensued.

Appendix I to the *Abbott V* (1998) decision detailed the precise method of calculation and assumptions used by the Vitetta Group. They used standard unit cost data published by R. S. Means Company and increased all of these by 5% to 10% to reflect the increased cost of doing business in New Jersey. All square footage allocations were increased by a "grossing factor" of 1.33. In the words of the report, this was "to account

for walls, ventilation and other necessary components which occupy classroom space. . . .

The cost for new construction was estimated at \$125 square foot, consisting of \$122 for actual construction costs and \$3 for site development" (*Abbott V*, 1998). These estimates were obtained from Vitetta's existing database and compared with New Jersey construction costs published by F. W. Dodge. This \$125 figure would later be cited and manipulated in a deceptive manner to advance the program advocate's interests, as the Flyvbjerg theory posits. Sometimes it would be used as an all-inclusive figure; at other times it would be used as meant by the Vitetta study. In this manner, the audience could not quickly comprehend the validity of the estimates that were presented.

Details of the Vitetta Group's survey were included as part of Appendix I as prepared for the NJDOE (*Abbott v. Burke*, 710 A.2d 450, N.J. 1998). Appendix I described a "detailed survey instrument which was completed by district personnel or consulting architects and engineers appointed by the district" (p. 45). In 1997-1998 (153 NJ 480, 517 (1998): Enrollment in the 30 *Abbott* districts was 261,738; facilities totaled 35.6 million square feet or 135.15 square feet per student; the average school building date was 1941, with additions built on average in 1964; districts required additional capacity for 49,558 students or 3,137 classrooms, primarily at the elementary school level; and there were 420 to 429 school buildings in the *Abbott* districts.

It is important to note that in late 1997 (when the State's material was submitted to Remand Judge King), Vitetta's cost estimate of \$1.8 billion deliberately excluded the following: general conditions of construction contracts, which

may range from 5% to 20 [sic] of total construction costs, but typically approximate 5% to 8%; soft costs of design, engineering, and legal and administrative costs, which can be 25 [sic] of construction costs; special project requirements such as site acquisition, historic preservation, and hazardous materials cleanup.

(conversely, available sites may be scarce or contaminated from previous industrial use and require remediation”; inflation of 4% per year; and contingencies of 15 % to 20%. (*Abbott v. Burke*, 710 A.2d 450, N.J. 1998, Appendix I, p. 519, *Atlantic Reporter*)

Appendix I clarified that, to account for all of these exclusions, Stephen Carlide, Director of the Educational Facilities Program for Vitetta, testified that he would add 35% to the \$1.8 billion estimate. That would increase the program’s estimated cost to \$2.4 billion. Concluding its discussion of the program’s estimated cost, it was stated in Appendix I that “The Vitetta Group survey alone is not a sufficient basis for estimating the cost of facilities improvements in the *Abbott* districts” (p. 521).

The importance of these points within the Vitetta Group submission to the NJDOE and subsequently incorporated in Appendix I of the *Abbott V* decision cannot be overemphasized. The deliberate omission of these important exclusions would have grave importance to the program’s future and its ability to complete the school facilities for New Jersey’s children of low wealth and minorities. Subsequently, 20% to 30% of the actual costs of building the schools were omitted from the cost of the program in the basic proposals. Once again, the cost estimate to reconstruct schools was manipulated downward, as was argued by Giordano of the NJEA in 1989 before the State Assembly Education Committee.

Carlide, the lead principal from Vitetta, testified that a full study could never have been completed in the time or budget allocated. He estimated that a full study would have cost \$3.5 million, and Vitetta was given \$248,000 and 2 months to survey the schools and issue the report (NJDOE, 1997).

Appendix I to the *Abbott V* decision ends with Section VIII, Analysis of Facilities Aspect. In this section Remand Judge King summarized the testimony that he had received and reached several conclusions. The Judge recorded,

The total estimated cost to expand the capacity of the *Abbott* district schools to comply with the State's proposal and to repair or replace existing facilities comes to about \$2.4 billion when all relevant costs are projected. This cost related *only* to classrooms. Costs for other "core" components such as gymnasiums, media centers, offices and small group instruction centers were not included. (710 A.2d 450, N.J. 1998, p. 525; italics in the original)

It is important to note these exclusions, as they carry great significance for the program's financial prospects. Continuing and in closing, the Remand Judge wrote in Appendix I,

The cost of the proposed improvements, renovations and additions likely will climb to the \$2.7 to \$2.8 billion range. This does not include any necessary construction of new buildings. Nor does this estimate allow credit for already authorized capital funding. Any more precision is not possible at this time and on this record. (710 A.2d 450, N.J. 1998, p. 526)

Reflecting the Remand Judge's difficulties, the Supreme Court added the eighth footnote to its decision:

Similarly, given that projected cost estimates are speculative at best at this time, *see App. I at 620-624, 710 A.2d at 519-521* (outlining how construction costs were both under and overestimated by both parties), we decline to impose dollar restrictions. (710 A.2d 450, N.J. 1998, Appendix I (mark V-B), p. 471)

In conclusion, the Remand Judge, and subsequently the full Court, stated that the best information available indicated that the costs of improvements were above \$2.7 billion without the cost of constructing any new school buildings. Therefore, the Court refused to place any dollar restrictions and returned the problem for solution and execution to the Legislative and Executive branches of New Jersey's government.

Alexandra Greif's article "Politics, Practicalities, and Priorities: New Jersey's Experience Implementing the *Abbott V* Mandate" (Greif, 2004) demonstrated both the promises and limitations of school finance litigation. Darling-Hammond (2010) discussed

measures of success in litigating for adequacy, observing that success is a relative concept. She explained that many states, including New Jersey, have had to return repeatedly to the courts over the decades, even after receiving remarkably favorable decisions from the courts. Darling-Hammond highlighted the difficult for any court to fashion a useful remedy, as analyzed in this study, and noted that a court has little authority to ensure implementation.

This chapter concludes as it opened, returning to Darling-Hammond (2010), as she related the earliest post-war attempts to litigate the lack of educational opportunity in November 1949 in *Briggs v. Elliot*. This case was subsequently consolidated into the landmark *Brown v. Board of Education*. It is interesting that, like *Abbott v. Burke*, the 1949 case involved the school facilities being provided for Black children in School District #22 in Clarendon County, South Carolina. The original petition noted,

The facilities, physical conditions, sanitation and protection from the elements in . . . the only three schools which Negro pupils are permitted to attend, are inadequate and unhealthy, the buildings and schools are old and over-crowded and in a dilapidated condition . . . [with] no appropriate and necessary central heating system, running water or adequate lights...and [with] an insufficient number of teachers and insufficient class room space. (as cited in Darling-Hammond, 2010, p. 112)

By contrast, the original 1949 petition highlighted that the White schools were “modern, safe, sanitary, well equipped, . . . uncrowded and maintained in first class condition” (Darling-Hammond, 2010, p. 112). Darling-Hammond emphasized that, 50 years later, in 1999, after decades of failed litigation, South Carolina remanded a case to trial to resolve facility issues in the same Clarendon County. These schools, now serving the grandchildren of the original plaintiffs, were still segregated. The 1949 plaintiffs’ grandchildren were still enduring the poorest school facilities in South Carolina. The current litigation, known as *Abbeville v. South Carolina*, described that 75% of the school

buildings were rated unsatisfactory by the State of South Carolina in these plaintiff school districts, which served an enrollment comprised of 88% minority students (Darling-Hammond, 2010).

Darling-Hammond (2010) wrote that the 1999 testimony was “eerily similar to that heard in the same courthouse a half-century earlier, with plaintiffs describing crumbling and overcrowded facilities, lack of equipment” (p. 112). A film about conditions in the 1999 plaintiff districts, *Corridor of Shame*, described the conditions found in South Carolina’s Dillon School District’s J. V. Martin High School as the filming began. The film’s producer reported that it was 18 degrees outside and nearly as cold inside. The building, dating from 1896, contained inadequately equipped classrooms, science labs, and libraries. Other nearby schools had suffered ceiling collapses; raw sewage was backing up in hallways on rainy days, and poisonous snakes had entered from a nearby swamp had recently entered a cafeteria.

Intuitively, legislators are reluctant to raise taxes and revise school funding formulas, even if a court orders them to do so. The New Jersey experience shows and the analysis in this study details, that even when a school funding scheme is found unconstitutional by a state’s highest court, a remedy that involves a major shift in resources will take years, if not decades. New Jersey’s experience with improving school facility in its 31 *Abbott* districts reinforces Darling-Hammond’s point.

## CHAPTER 5

### **Creating a Legislative Solution (1998–2000)**

In May 1998 the New Jersey Supreme Court propelled the responsibility for structuring this school facilities program to the State's executive and legislative branches, along with a timetable for action to begin construction by spring 2000.

Woolner, analyzing school improvement programs in the United Kingdom in the second half of the 20th century, provided an excellent approach to examining the creation of New Jersey's school program. In a seminally simple statement Woolner wrote that legislation does not appear from nowhere, signifying how an area's culture, economy, and political regime influence and propel school construction (Woolner et al., 2005). In another salient observation Woolner added that, once the legislation and organization are in place, they can be throttled on and off by their political sponsors.

Her analysis serves as a reminder that New Jersey's school construction program is a reflection of the state of New Jersey—its people, politicians, and culture. The EFCFA legislation responded to both the *Abbott v. Burke* court case and the pressing statewide need to finance capital facility improvements in suburban, rural, and urban areas. This legislation is a reflection of New Jersey's political landscape in the last decade of the 20th century. The political ideologies and dynamics of the Democratic and Republican parties and their approach to the *Abbott v. Burke* process are quite clear. How New Jersey's EFCFA legislation blended the *Abbott V* decision with the realities of getting enough votes to pass a substantial construction program is discussed in this chapter. It shows legislative compromise and the pressures of rural, urban, and suburban politicians

as they responded to a mandate of the state's Supreme Court to reconstruct the buildings of the 30 school districts with the lowest wealth in the state.

Chapter 3 provided the background for the *Abbott V* decision. Chapter 4 detailed the *Abbott IV* and *Abbott V* decisions and discussed the limitations of judicial intervention. Chapter 5 reports on the 26 months May 1998 to July 2000 as the Court mandate to improve school facilities evolved into a fully financed school program. This chapter also describes the forces that shaped the legislation: the state's labor unions, architects, engineers, school districts, teacher unions, and organized crime.

B. S. Cooper and Nisonoff (2009) described New Jersey as the "prime example," perhaps leader, among the 50 states where the state plays an increasingly central role in educating its children, in place of local school districts. Linking *Robinson v. Cahill* (1973) through *Abbott v. Burke* (1983-2009<sup>25</sup>) with New Jersey's takeovers of the Jersey City (1989), Paterson (1991), and Newark (1995) school districts (all three *Abbott* districts), they proposed that at each stage of this slowly evolving process the State of New Jersey has taken on more responsibilities and powers. There is a paradox: State takeover of the school districts characterized by low wealth and concentrations of poverty was in contrast to "home rule" for the large majority of the state's school districts. This process has culminated, in the case of this research, in the State assuming responsibility to construct all school projects valued at over \$500,000 in 31 SNDs.

B. S. Cooper and Nisonoff (2009) proposed that, with every iteration in the courts and each decision to increase spending in the poorest districts, the State has correspondingly increased its control and deepened its engagement in the day-to-day

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<sup>25</sup> The State of New Jersey's control has extended through the conclusion of this study, fall 2013.

operations of these districts. They noted one set of rules for New Jersey's affluent school districts and another set of rules for the high-poverty school districts under the school construction financing legislation (EFCFA): "Whereas the more affluent districts submitted requests for grants from the building fund that were met immediately, the *Abbott* districts were so bound up in paperwork and controls that three years passed before any building construction was begun" (p. 54).

A central question in this study analyzed in this chapter is how a court decision is translated into a government program. Within 26 months of the Court's decision in May 1998, the EFCFA emerged as signed legislation, with a budget of \$8.6 billion. In course, this approved law would require an ever more detailed administrative code to become a program. Once the *Abbott V* decision was issued by the Court, the "ball" was firmly "tossed into the court" of the State's executive and legislative branches. Therefore, the focus of this chapter is on the Judiciary and its limited ability to influence the other two branches of government.

One question, asked time and again within public policy circles, is, Why is there so great a distance between policy and its implementation? Pressman and Wildavsky (1984) and McLaughlin (2005) described how government staff responds to policies in completely unanticipated ways. Sometimes the responses are counterproductive, at other times they are idiosyncratic. Is this what happened to *Abbott V* since May 1998 in the hands of the NJEDA, NJSCC, and NJSDA? New Jersey's EFCFA, the remedy, was prepared within the highly prescriptive outline detailed by the Supreme Court's decision issued in May 1998 in response to years of the Court's frustration with the executive and legislative branches.

The battle over how to finance school construction and meet the deadlines set by in the *Abbott V* decision in May 1998 occurs within the arena of New Jersey state politics. Salmore and Salmore (2008), in *New Jersey Politics and Government*, described New Jersey's strong tradition of "home rule" as being a reflection of the "dark side" of New Jersey's "tribal politics." That stated that, "once a hostile rivalry between Protestant suburbs and Catholic cities, the rivalry by the 1970s was largely between White suburbs, mostly middle class or wealthy, and largely minority urban areas, mostly poorer" (p. 314).

Greif (2004), in her analysis of *Abbott V*, suggested that judicial opinions alone are insufficient to sustain or even initiate substantial educational reform or set a program in motion. The highly prescriptive remedies included in court orders, subsequently embraced in state laws and codes, minimize the role of state governors and legislators (Greif, 2004). However, Greif's examination has found that, regardless of the court's specificity, there is always a degree of interpretation. Greif's analysis can be extended to the subject of school facilities, which is only one facet of the several mandated remedies included in the highly specific *Abbott V* decision issued in May 1998. The Court outlined the solution, the Legislature created the vehicle for implementing the remedy, and it was up to the Executive—the Governor and her or his authorities—to execute and implement the program and construct schools for New Jersey's school children.

Between 1998 and 2002 the Republican administrations of Governors Whitman and DiFrancesco interpreted the Court's directives in a manner that led to sluggish progress on facility implementation, even after approval of the EFCFA. Directly relevant to the implementation of *Abbott V*, Howard (2006) reinforced Greif's analysis, citing

Reed (2001), reasoned that, “because courts lack the institutional tools to undertake major social restructuring the success of their agendas depends on other branches of government and popular support” (as cited in Greif, 2004, p. 70).

At the political level, there is constant volatility inherent in a democratic system where leadership changes. This was especially true in New Jersey, where during the 10-year period of this program (July 18, 2000, through July 18, 2010), the state had six elected and interim Governors: (a) four elected Governors: Whitman, McGreevey, Corzine, and Christie; and (b) two acting Governors: DiFrancesco and Codey. The Democrats, with a constituency in New Jersey’s cities and labor unions, were pressing for the urban focus of the school program. The Republicans, if not completely indifferent to the need for a facilities program, advocated widening its scope to include the entire state, without consideration of need.

### **How to Get Enough Votes for an Urban School Program**

It was quite evident to those responsible for counting the votes in New Jersey’s Legislature that the key to gaining approval for any Court-mandated improvement of schools in the *Abbott* SNDs was support by New Jersey’s rural and suburban legislators. The importance of this suburban constituency was emphasized by Crampton, Thompson, and Vesely (2004), whose nationwide analysis showed how to hold votes necessary to finance urban school improvements.

Howard (2006) explained that New Jersey’s cities hold fewer than one quarter of the seats in Legislature. Blacks and Hispanics constitute close to 25% of the state’s public school population. According to analysis by McNichol (2000c), reinforcing Crampton’s point, only 21 of the state’s 40 Senate districts contain *Abbott* districts “but the basis of

their political power, [the State Senators], in general, lies in the suburbs outside the primarily urban communities” (p. 6).

In New Jersey in 2000 the compromise that led to approval of the EFCFA was achieved by legislators and Governor Whitman by broadening the scope of the proposed school construction program. What began as a Court-imposed mandate to address the urgent facility needs in 30 low-wealth *Abbott* districts evolved within 24 months into a statewide facility upgrade program for all of New Jersey’s students (Erlichson, 2001).

As noted above, an analysis of the basic challenge facing any large-scale state-funded school building improvement program is found in an article written by one of the primary contemporary researchers in the field of school construction finance, Crampton of the University of Wisconsin. She provided five major reasons why state legislatures are not especially successful in providing robust statewide capital funding programs for new school buildings or improvements to existing schools (Crampton et al., 2004):

(a) Funding for school buildings competes with state funding for other state-funded capital programs, among them hospitals, roads, universities, housing, and prisons; (b) the link between school building quality and educational outcomes is not empirically proven or clearly established in the academic literature; (c) legislators are motivated by self-interest; (d) infrastructure needs are not usually balanced with electoral power; and (e) urbanized areas, which need more money, probably lack power in the legislature.

Solutions such as equalized grants help everyone but do not help those who are most in need: the districts with the worst facilities.

Beyond the legislative imbalance of suburban-rural-urban control and need, there is the issue of “volume.” The large amounts of funding that are necessary can be

overwhelming to state policy makers. Therefore, there is a strong tendency to shy from the issue, slice it into smaller tranches, or reduce the estimated cost, as discussed extensively by Flyvbjerg (2002, 2003, 2005, 2009) regarding mega-projects. There is the tension between the traditional “local” role of municipalities and school districts being responsible for funding their own construction programs. Crampton observed that state involvement in supporting school construction programs always lags a state’s partial funding of school operations; at best, it is spotty, hesitant, and partial (Crampton et al., 2004). In summary, state legislatures, historically, have been reluctant to engage in what is for the most part perceived as a local, municipal responsibility: the construction of schools. When states have become involved, it is primarily because they were forced by a court order or they are the exception rather than the rule.

Several forces clearly influenced New Jersey’s legislators more than others. First among them were its Supreme Court and the *Abbott V* decision. Other drivers were the state’s labor unions, which viewed the Court mandate to improve school buildings as a source of employment for union members, the school districts, and the teachers union.

Shaping the future of the school program is the manner of the Supreme Court’s decision in *Abbott V* largely endorsing the recommendations of its Remand Judge. King basically accepted the entire facilities program proposal as presented by the NJDOE, as required by *Abbott IV*.

In retrospect, it is doubtful; that it was ever the intent of the NJDOE that the details in its response to *Abbott IV* would be so completely embraced by the Court and effectively become benchmark standards, or the policy for New Jersey’s future school facilities. The Court’s *Abbott V* decision in May 1998 also immediately propelled the

SNDs into a massive wave of planning for new schools. The decision asserted that they were “required, by January 1999, to complete enrollment projections and 5-year facilities management plans, for state’s use in determining how to utilize existing space and in ordering all new construction” (710 A.2d 450, N.J. 1998, § 20, p. 453).

In a May 1998 article discussing the *Abbott V* ruling, the annual debt service for the facilities program was estimated at \$150 to \$200 million each year for 20 years (Aseltine, 1998). This projection was based on the Court’s endorsement of the \$1.8 billion school construction plan proposed by Governor Whitman in the NJDOE’s submissions to Remand Judge King. Aseltine’s article notes that Judge King had estimated the cost at \$2.7 billion, higher than the State’s \$1.8 billion. The Court also included Education Commissioner Klagholz’s proposal to use the New Jersey Educational Facilities Authority (NJEFA) to monitor and secure the funding. The article mentioned that the NJEFA currently oversaw college building projects and described the State’s plans to complete the construction program by 2005 at a cost of \$1.8 billion. Reporter Aseltine spoke with State Senate President Donald DiFrancesco,<sup>26</sup> who stated to *The Times* that the Court’s recent decision on facilities must be viewed as a portion of a larger statewide problem extending beyond the SNDs. The chairman of the Senate Education Committee, Robert Martin, a Republican from Morris Plains<sup>27</sup>, agreed with DiFrancesco, noting that suburban school districts are also faced with obsolete schools and growing enrollments.

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<sup>26</sup> Republican from Westfield who within 19 months would become Acting Governor after Whitman left Trenton for a post with the Bush Administration in Washington.

<sup>27</sup> Martin served in the State Assembly from 1985 to 1993 and in the State Senate from 1993 to 2008. He is currently (2013) a Professor of Law at Seton Hall University School of Law.

Governor Whitman's strategy was to guarantee passage of the school construction bill by leveraging the Court's focus on the 28 SNDs<sup>28</sup> into a program providing capital support to every school district in the state. The Court decision cited \$1.8 billion for low-wealth districts; the Whitman Administration gave what the Court wanted and added \$3 billion for the rest of the state.

On January 21, 1999, at a legislative hearing, a representative of the State Treasurer was asked about the Governor's schedule for submitting a bill to the legislature, a question posed by the Chairman of the Senate Education Committee (New Jersey State Senate, 1999b). The representative responded that there was hope to submit a bill by early February 1999.<sup>29</sup> Referring to the deadline that required work to begin by spring 2000, the representative also mentioned that districts were currently preparing facilities assessments to be submitted by March 15, 1999, to the Commissioner of Education.

Although the Court's decision had been handed down in May 1998, the administration's delay in presenting draft program legislation concerned the program's advocates. Those who understood the process of designing and building schools understood that construction would not begin in the spring of 2000 if the legislation was not introduced forthwith. Driving the action of the Legislature was the continually quoted statement at the time, "Construction will begin by spring 2000," which is found in the Court's decision.

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<sup>28</sup> The 29th and 30th SNDs were added by the Legislature in May 1999.

<sup>29</sup> The bill was submitted by the Governor on May 11, 1999 and introduced in the Legislature by the Education Committee as Senate Bill No. 15 on November 15, 1999 (New Jersey State Legislature, 1999a).

It is important to understand that the Court included this statement based on the schedule that it received from the State itself. This sentence should be read along with those that preceded it in section V-B of the Court's 21 May 1998 decision: "According to the timeframe the State has submitted, the Plans and enrollment projections will be completed by January 1999, and architectural blueprints will be completed by the fall of that year. Construction will begin by the spring of 2000" (710 A.2d 450, N.J. 1998, p. 471).

This was a time frame that the State had submitted to the Court. Therefore, the Court's formal decision directed the work to proceed immediately but "declines now to impose additional or unrealistic time constraints" (§ V-B, p. 471). The Court then added its eighth footnote regarding the overall cost of the program: "Similarly, given that projected cost estimates are speculative at best at this time, *see App. I at 620-624, 710 A.2d at 519-521* (outlining how construction costs were both under and overestimated by both parties), we decline to impose dollar restrictions" (710 A.2d 450, N.J. 1998, Appendix 1).

At a hearing held on 18 February 1999, the Senate Education Committee received testimony from the non-*Abbott* school districts (New Jersey State Senate, 1999c). Strickland of the Garden State Coalition of Schools, the Superintendents from Summit City, Montgomery Township and Matawan-Aberdeen Regional Public Schools made the case for facilities aid to be widened to include the suburbs and the middle-class areas of the state.

On March 29, 1999, the State Assembly passed a bill (A1494) by a vote of 71-5 that added two districts to those classified as "special needs": Plainfield and Neptune.

The law (P.L. 1999, Chapter 110), signed by Governor Whitman on May 17, 1999, extended the *Abbott* umbrella of remedies to “any other district classified as a special needs district under the Quality Education Act of 1990, P.L. 1990, c.52” (New Jersey State Legislature, 1999a, p. 1).

McNichol, who a year later analyzed the reasons for the ballooning costs of the program, traced an additional \$300 million in school construction needs specifically to this act (McNichol, 2000c). Of note, the “Legislative Fiscal Estimate” (New Jersey Office of Legislative Services, 1998) that accompanies each bill through the Legislature addressed only the cost impact of this proposed bill on existing legislation and did not (could not) calculate its impact on the parallel EFCFA legislation that was winding its way through the legislative process.

In April 1999, as the introduction of the school construction legislation by the Whitman administration drew closer, hints about its form were appearing in New Jersey newspapers. It would be a \$5.3 billion program containing \$2.6 billion for 28 special need districts and \$2.7 billion for others (Parello, 1999b).

When the Whitman administration submitted its bill to the Legislature in May 1999, it proposed \$6 billion for school construction over the next 5 to 10 years (Parello, 1999a). Parello wrote, “But Whitman said she wouldn’t pay for school construction in the poor districts without also helping the wealthier ones.” Parello described how Whitman and the state’s lawmakers were trying to determine how to set up a fair school construction program for hundreds of school districts struggling with old and overcrowded schools. At that point, the program included \$2.7 billion for the suburban

districts and would initially provide a \$200 million loan fund that could be used immediately.

According to McNichol (1999d), on May 25, 1999, the 80-page draft legislation that had finally been given to lawmakers 2 weeks earlier included Whitman's proposal for adding \$3 billion for the state's other 594 school districts. McNichol reported that "legislators are taking a 'hard look' at Whitman's plan to have the New Jersey Building Authority (NJBA), a branch of the State Treasury, oversee the financing and construction" (p. 25). He observed that legislators were doubtful that the legislation would be completed by the end of June 1999, before the Legislature's summer recess.

The AP also reported that Governor Whitman's proposed \$6 billion school construction bill would build and repair schools throughout New Jersey (AP, 1999b). Whitman's bill, the AP reported, required districts receiving more than 50% of their financing from the State to use the NJBA to build their schools. Other school districts could use the Authority or use a low-interest loan fund. Governor Whitman's plan included several incentives for districts to use the NJBA. The Administration thought that, by coordinating labor, resources, and economies of scale, the Authority would reduce construction costs by 25%.

The bill, according to the AP, allowed construction of elementary schools up to 125 square feet per pupil, middle schools up to 131 square feet, and high schools up to 151 square feet. According to the article, these all had been increased in response to complaints that they had initially been set too low. This 80-page bill as presented by Governor Whitman in May 1999 was finally introduced to the Legislature as Senate Bill

No. S15 on November 15. However, it was not passed until the 208th legislative session in 1998-1999.<sup>30</sup>

One of New Jersey's major annual education policy events is the October convention of the New Jersey School Boards Association, which meets in Atlantic City every year.<sup>31</sup> The subject of much discussion at the 1999 convention was the school construction legislation. Senator Robert Martin, Chairman of the Senate Education Committee, told a crowd of hundreds in Atlantic City, "This is not manna directly from heaven. It has strings. If you get money, you get more oversight from the state" (as cited in Alaya, 1999, p. 25). Leonard Lance, Republican Assemblyman from rural Hunterdon County,<sup>32</sup> was cited as being opposed to the bonds being issued by a State agency rather than being voted on by the public.

The legislation, initially advanced to the Legislature on November 15, 1999, set the level of state aid to districts other than the *Abbott* districts at "not less than 10% of the final eligible costs"; thus, EFCFA's cost increased fourfold from what the Court had suggested for the SNDs in May 1998 (New Jersey State Legislature, 1999b).

In Trenton, at a hearing of the State Senate Education Committee, Governor Whitman's Education Commissioner, David Hespe, delivered testimony reviewing the school construction legislation in November 1999. Hespe described how messages of low expectations and neglect are transmitted to New Jersey's low-income students.

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<sup>30</sup> It was reintroduced in the 2000-2001 session as Senate Bill No. S200 on February 17, 2000.

<sup>31</sup> In 2010, under pressure from Republican Governor Christie, the convention was shortened and moved out of Atlantic City for the first time.

<sup>32</sup> Later he became a State Senator and then Congressman from New Jersey.

We send a very clear message to our children when we send them to school in school buildings and in classrooms which are substandard. We send a message regarding our expectations from them. We send a message regarding what we think of their well-being and what we think of them. (New Jersey State Senate, 1999a, p. 3)

The issue of deferred maintenance and its toll on the state's investment in school buildings was of concern to legislators, as manifested by discussions and its emergence in the draft EFCFA legislation in November 1999 (New Jersey State Legislature, 1999b). Determined to ensure that their new investment in urban school buildings would not deteriorate quickly for want of maintenance, the legislators included sections in the bill that mandated that the school districts prepare maintenance plans and establish a maintenance reserve fund. In the larger picture, maintenance was a subordinate concern.

Governor Whitman would need more votes in the Legislature than the representatives from the low-wealth SNDs (*Abbott* districts) alone could provide. She solved this political problem by heeding the comments of DiFrancesco and Collins from May 1998 and expanded the benefits and the size of the new program. She would create a program that would benefit all school districts in the state. By making the "pie larger," everyone could "partake." The 30 SNDs would receive their "slice of the pie" and the state's middle-class, rural, suburban, and even wealthiest districts would also receive their "pieces of the pie." The Supreme Court mandated a program and Whitman, triggered by the Court and enabled by the Legislature, created a program three times as large.

McNichol (2000c) pointed to the Assembly Education Committee meeting held on March 9, 2000, as the significant meeting that added millions in benefits for the state's non-*Abbott* districts (McNichol, 2000c). Included within the Education Committee's 23 amendments to Assembly bill A2041 were several that widened the EFCFA's umbrella to

include all school districts (those to which the State of New Jersey provided less than 50% support). Second among 23 amendments, summarized in a statement issued on March 16, was this proposal: “provide that for non-*Abbott* districts, State support for eligible costs [capital construction] will be calculated using the district’s aid percentage plus five percent points or the product of the district aid percentage and 1.15, whichever is greater” (New Jersey State Assembly Appropriations Committee, 2000, p. 7).

This subtle, laconic, understated clause in the legislative report of the Assembly Education Committee carried twofold significance. First, it accomplished statewide buy-in to the judicially mandated program; second, it increased the financial scope of the program far beyond the initial conceptions of the judicial, legislative, and executive branches of government.

An article in the central New Jersey paper the *Home News Tribune* in early April 2000 described that one of the most significant obstructions in the legislation was the disagreement over the balance between funding *Abbott* districts and the state’s other districts (Yaffe, 2000a). Assembly Speaker Jack Collins (Republican) of Salem, in southern New Jersey, had consistently argued that it was unfair for the *Abbott* districts to get 100% funding for their facilities while school districts that were virtually as poor as the 30 *Abbott* districts would be treated as if they were among the states wealthiest.

Speaker Collins, whose district included Salem City<sup>33</sup> had an understandable claim that was joined by the appeals from 16 rural school districts to the state’s Supreme Court (*Rosalie Bacon et al. v. New Jersey Department of Education*, 2006). The reporter confirmed that, despite this background of disagreement, Assembly Speaker Collins and

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<sup>33</sup> Salem became the 31st *Abbott* district in 2004 (New Jersey State Legislature, 2004).

Senate President DiFrancesco were predicting in early April 2000 that the bill would pass by late June 2000 when the legislature recessed for the summer, perhaps by June 18.

According to the lead editorial in the *Philadelphia Inquirer* on April 12, 2000, Assembly Speaker Collins was one of the major impediments to the process of advancing the EFCFA bill through the Legislature (“Education’s Foundation,” 2000). The editorial explained that Collins, a Republican whose rural district included Salem City, which was quite poor but had not met the SND criterion, was advocating a program that would require low-wealth urban districts to pay a percentage of their capital costs. At the same time, he was advocating expansion of the definition of low wealth to include school districts of the same socioeconomic status as Salem City.

The *Philadelphia Inquirer* editorial observed that perhaps Hoboken should not be on the list of poor districts but districts such as Trenton, Camden, and Gloucester City would not be able to finance any local participation. The editorial noted with pleasure that Assembly Speaker Collins had announced on the previous day that the Assembly would vote on the EFCFA after the Senate, following its lead. The editorial board endorsed Collins’s quest for *Abbott*-level assistance for Salem City and similar districts that were on the cusp of eligibility for *Abbott* designation.

The Senate Budget and Appropriations Committee reported back to the full Senate with its conclusions on May 11, 2000. Among them, of cardinal importance to creating the coalition that resulted in approval to the urban program was aid to suburban districts. It seems that the most dramatic and significant policy breakthroughs were sublimated or downplayed, buried within the legislation. Within the Committee report,

this breakthrough is found on the fourth page under the laconic heading of “Districts with a State Aid Percentage of Less than 60%” (underscore in the original):

A district which has a State support ratio of less than 60% has the option of constructing the project on its own or using the services of the New Jersey Economic Development Authority. . . . These districts can either receive a one-time grant for state aid or annual debt service aid on the final eligible costs of the project. . . .again however, even districts which do not qualify for core curriculum standards aid will be aided at a minimum of 40% of approved costs. (New Jersey State Senate Budget and Appropriations Committee, 2000, p. 4)

McNichol, in a series of articles (McNichol, 2000c, 2000g), captured the atmosphere as the program’s legislation moved through the final weeks of the 209th Legislative session of 2000-2001. The tension between the lawmakers trying to justify their support for the bill was captured by McNichol:

Jon Shure, who was a spokesman for Governor Jim Florio, has seen this play out before. Legislators say: “If you want me to support this, how am I going to go back to my constituents and tell them, ‘I just approved a bill that sends \$7 billion to the cities, and you didn’t get anything?’ said Shure, now President of New Jersey Perspective.<sup>34</sup> (McNichol, 2000c, p. 6)

Greif (2004) analyzed the legislative process that followed *Abbott V*. She found the influence of suburban voters in 1999 to be as strong as it had been in the 1970s after *Robinson v. Cahill* and in the 1980s during the earlier *Abbott* decisions. Legislators from New Jersey’s wealthy school districts were insistent that money also be found for their school construction needs at the same time that the poor districts were being helped. State Senate President Donald DiFrancesco said, “It would be ‘virtually impossible’ to secure enough votes for legislation that served only lower income areas” (as cited in Greif, 2004, p. 640).

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<sup>34</sup> Shure was President of New Jersey Policy Perspective until 2009, when he shifted to the Washington, DC-based Center on Budget and Policy Priorities.

State Senator Joseph Palaia, whose district included three *Abbott* districts, explained, “You’re talking about thirty Abbott districts as opposed to [616] school districts in the State of New Jersey, so you know that others aren’t going to be thrilled that the biggest pot of all is going to the thirty districts” (as cited in Greif, 2004, pp. 640-641). Senator Palaia<sup>35</sup> explained that, despite having three *Abbott* districts in his constituency, he still had to take care of the residents of 22 towns in his district. Other legislators, Palaia explained to Greif, did not have *Abbott* districts in their boundaries and “to be truthful, some of them could care less. They want to protect what their particular districts are looking for. And that’s what you are supposed to do as a legislator—protect your districts” (as cited in Greif, 2004, p. 641).

Erlichson, in her prescient article (Erlichson, 2001), underscored the symbiotic suburban-urban relationship that facilitated passage of the EFCFA in 2000. However, she forecasted that the needs for school building improvements throughout the state would fast outpace the 40% minimum share funded in the 2000 legislation. Her article explained how the \$2.6 billion to non-*Abbott* districts would be shared among the other 533 districts. Citing several newspapers, she wrote that by March 2001 \$1.1 billion had already been promised to approximately 300 districts. Of the \$1.1 billion, \$838 million was destined to pay for projects approved before the act was signed into law; which was one of the compromises necessary to gain votes for approval (McNichol, 2000b, 2000d). The remaining \$305 million would cover the 40% minimum share for projects approved by voters between approval of the EFCFA in July 2000 and December 2000. Erlichson

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<sup>35</sup> Palaia was New Jersey State Senator from the 11th legislative district until 2008. The district included parts of Monmouth County that included the *Abbott* districts of Neptune, Long Branch, and Asbury Park (New Jersey State Legislature, 2011).

predicted that this left very little money for non-*Abbott* districts that were only beginning to plan their school improvements after approval of the EFCFA.

According to McNichol (2000a), providing background in spring 2000, Whitman's initial plan, as proposed in October 1998, carried a price tag of \$5.3 billion. Although the estimated cost of the work on the *Abbott* district schools was \$2.8 billion, Whitman's proposal trimmed it to \$2.6 billion. However, her initial plan proceeded to add \$2.7 billion in repairs for 352 middle income communities—a step necessary to gain approval of the bill in the Legislature.

Suburban legislators, as McNichol (2000c) explained, found Whitman's plan lacking because it included nothing for school facilities in the state's 238 wealthiest school districts. The State Treasurer initially responded with a proposal that the State would fund 10% of the cost of new schools in the wealthiest areas. The Whitman Administration's gesture would, according to McNichol, make, for example, Mendham Township ("the state's ninth wealthiest community") qualified for up to \$2.7 million under the school aid plan. McNichol described how the 10% became a 40% minimum, quoting State Senator Norm Robertson, a Republican representing Passaic county: "If we're going to make history, we shouldn't leave anybody behind. . . . It's good social policy to minimize the situation of a real divide between our urban and suburban areas" (as cited in McNichol, 2000c, p. 6).

Legislators were not pleased with the Governor's proposal to cover 10% of school construction costs in the state's wealthiest communities. Robertson said, "Ten percent was not enough . . . It too much resembled go-away money. It had to go up to 30 or 40

percent before these communities would know they were really involved" (as cited in McNichol, 2000c, p. 6).

A press release issued by the New Jersey Senate Republicans stated compromises that were made as the EFCFA legislation moved toward approval. Senator William Gormley, one of the leading Republicans in the Senate,<sup>36</sup> sponsored an amendment to the EFCFA (based on the report of the Senate Budget and Appropriations Committee of May 11, May 2000 [New Jersey State Senate Budget and Appropriations Committee, 2000]) that increased the minimum level of state support for school facilities throughout the state from 10% to 40%.

This measure meets the mandates of the Supreme Court and goes another step beyond the Court's requirements, ensuring that the families in the non-Abbott districts receive sufficient, direct relief from the tax burdens that come from building school facilities. Simply stated, all of New Jersey's students will benefit. (Senate Republican News, 2000, p. 1)

The Senator emphasized that districts that currently received less than 40% support from the State would now receive an up-front, direct grant equal to a minimum of 40% of their approved costs. When this legislation passed, there were 400 school districts receiving less than 40%. Gormley's amendment removed the need for any revolving loan fund, which had been part of the initial drafts of the EFCFA.

The *Star Ledger*, in an editorial written on the eve of the approval of the EFCFA in early May 2000, observed that a state construction fund should have been set up many years ago ("Don't Go Overboard," 2000). The editors wrote that the current attempt began only because the Court had ordered the State to fully fund the capital needs of its

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<sup>36</sup> William L. Gormley of Atlantic County served as an Assemblyman from 1978 to 1982 and as a State Senator from 1982 to 2007. He was Chair of the Senate Judiciary Committee and member of the Senate Education Committee and was reputed to wield substantial power in the Legislature.

poorest school districts (*Abbott V*). State legislators, according to the *Star Ledger*, objected to a plan that would provide new schools only for poor areas while their constituents in middle- and low-income districts were destined to continue to send their children to overcrowded and aging school buildings. The editorial warned the legislators that there was a need to achieve balance, as the overall cost of the program was increasing week by week.

After the Assembly passed the EFCFA on July 13, 2000 by a vote of 66 to 8, the *Philadelphia Inquirer* reported on the relief expressed by the nearby suburban school districts of Cherry Hill and Haddon (Cannon, 2000a). Cannon quoted the Superintendent of Schools of Haddon Township:

The school construction money comes as a welcome relief to suburban South Jersey towns such as Haddon Township. While not what is considered a needy district, the Township has some buildings that are more than 70 years old. We need the help. Our buildings as old as they are, are as much in need of work as many of the schools in the *Abbott* districts. (p. B13)

Gaining the votes of rural and suburban legislators was instrumental to the passage of the EFCFA. The actions by the Legislature that brought this process to a conclusion in a special session held on July 13, 2000, included yet another decision by New Jersey's Supreme Court, entitled *Abbott VII*.

Yaffee, writing in the *Home News Tribune* on April 6, 2000, reported plans to push the construction bill to approval by the end of the current legislative session in June (Yaffee, 2000a). Spokesmen for Assembly Speaker Collins and Senate President DiFrancesco were predicting that the bill would pass by late June 2000 before the legislature recessed for the summer, perhaps by June 18. Education Commissioner Hespe stated to Yaffee that there were hopes but no assurances for an earlier passage. Hespe explained that, unless the bill was signed into law by May 1, 2000, he would be unable to

start construction in spring 2000, as required in the *Abbott V* decision. He could already project, on April 5, based on the Legislature's schedule, that a vote would not be held until after May 1—too late.

As early as April 16, 2000, State Senate President DiFrancesco had set May 18 as the date for the Senate's vote on the construction legislation. Assembly Speaker Jack Collins stated that he arranged an Assembly voting session for 1 week later, following the Senate vote. Collins, attending the New Jersey School Board Association's annual legislative conference, reported that only a few significant issues remained without conclusion: the percentage of construction costs that the state would cover in the poorest 30 districts, the amount of loans to be set aside for wealthier districts, and which agency would administer the program (Schuppe, 2000).

Speaker Collins informed Schuppe of his intention to petition the New Jersey Supreme Court later that week to clarify exactly how much special needs spending it envisioned in the *Abbott* ruling. Collins was trying to cap this assistance at 90%, with the district's taxpayers paying the remainder (Schuppe, 2000).

State Assemblyman Garcia was one of the few writers who succinctly identified the main issues and actors behind the nearly 26-month process from the *Abbott V* decision in May 1998 to the approval of the EFCFA in July 2000 (Garcia, 2001). Being a member of the Legislature provided an advantage, as he pointed to a singular major difference between the Senate and Assembly bills. Bill A-2014 in the Assembly (208th Legislature, 2nd Session NJ 2000) provided for 90% funding in the 30 *Abbott* districts, while S-200 provided 100%. Passage of the Assembly's bill would have meant that each

of the *Abbott* districts would have to pay for 10% of their future school building programs.

Assembly Speaker Collins was “completely resistant,” in Garcia’s words (Garcia, 2001) to increasing the funding for the *Abbott* districts to the Court-mandated 100%. Garcia stated that the Speaker’s conduct was widely opposed by lobbyists supporting the program, who argued that *Abbott V* was sufficiently clear on this point. Nonetheless, in spring 2000 the Speaker brought the case back to the Court, seeking clarification regarding the 100% funding. In *Abbott VII*, issued May 25, 2000, the Court reaffirmed its commitment to fully funding construction in the *Abbott* districts: “The State is required to fund all of the costs of necessary facilities remediation and construction in the Abbott districts” (*Abbott VII*, 2000, pp. 5–6).

Greif (2004) described the Legislature as deeply resentful of the Court’s mandates and directives. According to Grief, Assembly Speaker Collins threatened to change the state’s Constitution in order to eliminate the requirement for a “thorough and efficient” education, and another Senator introduced legislation that would require the state Supreme Court justices to run for reelection.

The Assembly Speaker was incensed at the Court and upset that his own low-wealth rural constituencies were being left without funding for school building improvements. Greif (2004) quoted Randy Diamond of the *Bergen Record* (May 26, 2000), who quoted Collins: “The Court had violated the New Jersey Constitution by telling the legislature how to spend the taxpayer’s money. . . . They want to sit and tell us what they would do if they were legislators” (p. 642).

The state's leading newspaper, the *Star Ledger*, in an editorial published May 7, 2000, underscored the atmosphere of suspicion and hesitancy about urban school districts' ability to handle these large capital projects responsibly. The editorial was written in the context of proposals to extend state aid to districts retroactively, which had encumbered \$1.2 billion in debt between 1998 and 2000.

Assuming that any portion of that debt would make taxpayers statewide liable for past local projects, whether the construction was handled well or foolishly or treated as a gift to someone's cousin the contractor. Last year, the State Commission of Investigation uncovered enough conflicts of interests, cost overruns and irregularities in school roofing contracts to make us wonder what happens when districts build from the ground up. ("Don't Go Overboard," 2000, p. 2)<sup>37</sup>

The potential of this emerging bill to "reach back in time" and retroactively finance the construction of recently constructed schools was the subject of much concern as the legislation entered its final weeks of consideration. As late as May 7, 2000, the estimated cost of the program cited in a *Star Ledger* editorial was \$13.2 billion ("Don't Go Overboard," 2000). This figure subsequently shrank as the legislation was finalized. Reporting on activities in the Senate Education Committee, McNichol described how Governor Whitman and State Treasurer Roland Machold spoke forcefully against the notion of extending coverage (McNichol, 2000b).

The Education Committee approved a version of the bill in which the State would assume at least 40% of the cost of every school project financed after September 1998. Machold was quoted by McNichol: "We intend to build new classrooms, not reimburse districts for old ones. Lately a plan to extend the retroactive application of this bill has

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<sup>37</sup>The State Commission of Investigation inquiry referred to by the editors of the *Star Ledger* consisted of hearings held December 8 and 15, 1999, followed by a report issued in September 2000 (Commission of Investigation, 2000).

become more generous and may threaten our ability to appropriate necessary funds for new projects" (McNichol, 2000b, p. 21).

Speaking on behalf of his constituency, Senator Joseph Kyrillos (Republican, Monmouth County) emphasized the importance of the State assuming at least some of the costs of Middletown's \$78 million building program that had been approved in December 1996. "There really is a fairness aspect here. Sometimes you have to be a little more creative . . . than just drawing a line in the sand with an arbitrary date" (McNichol, 2000b, p. 21).

Governor Whitman herself was quoted by McNichol (2000b) as having stated at a Trenton news conference, "What I am starting to hear is a piling on of projects that I don't think is fair to ask the taxpayer to pay for, and could be a burden on the budget. We have to draw some limits. That money supply is not endless" (p. 21).

A series of articles appeared in newspapers around the state in May, June, and July 2000 highlighting the deteriorating situation of the state's school buildings. Perhaps these articles were following the action in the Legislature, or they were being encouraged by advocates who were pressing for approval of the EFCFA. One example is found in the *Burlington County Times* on Sunday, May 14, 2000 (Cannon, 2000b). This article was published a few days after the legislation had emerged from the Senate Education Committee on May 4 with significant changes that included funding at least 40% of the cost of suburban schools (New Jersey State Senate Education Committee, 2000; News from the Senate Democrats, 2000; Senate Republican News, 2000) and the Senate Budget and Appropriations Committee on May 11 (New Jersey State Senate Budget and Appropriations Committee, 2000).

Cannon (2000b) reported that a Senate bill was scheduled for final vote on May 18 that would cover 100% of the costs of constructing schools in the SNDs. The article linked the situation in Irvington (a school district in the north) with Oakland Main School in nearby Vineland in the south (Cumberland County). Cannon reported that the 90-year-old Vineland school had no cafeteria, no gymnasium, and no multipurpose room. All of its bathrooms were down a narrow flight of stairs in the basement. Cannon interviewed Vineland Superintendent of Schools Gerald Kohn, who expressed his frustration with the Legislature and the NJDOE for procrastinating over the financial solution and nitpicking interim stopgap measures to help schools.

In the midst of this, on June 5, 2000, Governor Whitman visited the Cold Springs Elementary School in Gloucester City, one of the 30 SNDs (McNichol, 2000f). Cold Springs was an overcrowded, modern, 5-year-old elementary school. McNichol wrote that Gloucester City's school board president, superintendent, and parents were anxiously waiting funding that would provide for the \$4 million preschool wing with four classrooms. Governor Whitman pledged to move as quickly as possible but responsibly.

Another example of pressure on the Legislature is the *Star Ledger*'s front-page lead feature article, accompanied by a large color photograph of sad-faced Black school children, spanning three columns on Sunday, July 2, 2000. The photo's caption:

Two weeks ago, before the end of the school year, second- and third-graders at Miller Street School in Newark react to the news that they can't play outside because of the debris in the playground. A tree sapling had taken root in the school's masonry 30 feet above and is now surrounded by scaffolding placed in the playground. (Mooney, 2000, p. 1)

In this article the *Star Ledger* reporter, John Mooney (2000), provided details about the conditions in several of Newark's crumbling school buildings. Written after the EFCFA bill (S200) had passed the Senate but before it had been reconciled with the

Assembly's bill and proceeded to receive the Governor's signature in July, the article stated that it was too late to save Ms. Teal's third-grade classroom in Newark's Hawthorne Avenue School. The ceiling of Ms. Teal's classroom, along with six others in the original section of the school built in 1895, collapsed in January 2000. The school was scheduled for replacement under the Court's mandate (Mooney, 2000).

Mooney reported that the last of the school's four boilers at Peshine Avenue School in Newark died in the 2 years between the Court's ruling in 1998, *Abbott V*, and the legislation's current stage. The school was currently being heated by a large temporary unit "known as the 'green monster'" that piped heat from the outside so long as the wind did not blow fumes into neighboring homes. Peshine was due for replacement, according to the school district's plans (Mooney, 2000).

Mooney (2000) noted that, as the current legislative session came to a conclusion, the Court, in May 1998, had set a deadline that construction should begin by spring 2000 but that no construction had begun as of early July 2000 because the legislation was not complete. Mooney interviewed State Senator Robert Martin (Republican, Morris), who was deeply involved in crafting the legislation as Chair of the Senate Education Committee. Martin expressed to Mooney, in an apparent moment of candor, that, as a law professor at Newark's Seton Hall Law School and a resident of Morris Plains, he often drove by several of Newark's deteriorating school buildings.

There was a feeling among some that even if the Abbott districts have to wait a little longer, our problems [in suburban schools] over enrollments are at least as pressing as theirs. We didn't have to live it on a daily basis. Maybe that was why we weren't as focused as we should have been as we go back home to a different world. (as cited in Mooney, 2000, p. 6)

Reporter Deborah Yaffe, later to write a book on the subject of *Abbott v. Burke* (Yaffe, 2007), interviewed Assemblyman Joseph Malone in late June 2000. She

summarized the interview in her opening sentence: “Assemblyman Joseph R. Malone is worried.” The article’s headline was “School-Building Bill’s No Cure-All” (Yaffe, 2000c). She reported that the Assemblyman envisioned a nightmare of shoddy workmanship and wasteful cost overruns if the program was not well run. Yaffe’s article emphasized that, after the EFCFA’s long legislative odyssey through two legislative sessions, major questions remained about how the program would function. The questions that Yaffe mentioned ranged from the macro—how to ensure that funds were spent honestly and efficiently—to the micro—whether the State would provide air conditioning for all new classrooms.

As noted earlier, two versions of the bill were running on parallel legislative tracks. The Assembly’s version did not correspond with that approved by the Senate. The version of the EFCFA advancing in the Assembly in early May 2000, supported by Speaker Jack Collins, proposed full funding only for emergency repairs and to relieve overcrowding (Cannon, 2000b). In the Assembly bill, “extras” such as cafeterias and media rooms would be provided on a sliding scale depending on a school district’s ability to pay.

Senate Bill S200, approved by the Senate on May 18, 2000, was transmitted to the Governor. The Assembly had not yet acted on its legislation. On June 29, Governor Whitman sent her Conditional Veto (actually detailed and specific recommendations for reconsideration) to the Senate and Assembly (Whitman, 2000a). By the close of the session at 8:30 p.m. on June 29, the Senate had approved the EFCFA before adjourning for its summer break. Action by the Assembly was delayed until a special session after the July 4 holiday (New Jersey State Legislature, 2000).

On July 5 Governor Whitman's Communications Office issued an Event Memorandum in anticipation of the bill signing being planned for Tuesday, July 18, 2000, between 2:30 and 3:15 p.m. (Boice, 2000). The memorandum described how the Senate had passed S-200 on June 29, 2000, and the Assembly was scheduled to vote on the bill in a special session to be held on July 13.

The *Philadelphia Inquirer* reported on the school construction bill the day after it passed the Assembly by a vote of 66 to 8 on July 13, 2000 (Cannon, 2000a). The bill, as approved, provided \$6 billion for the 30 SNDs and \$2.6 billion for all other districts. Cannon wrote, "Counting interest, the program is expected to cost \$15 billion" (p. B1).

A *New York Times* reporter wrote that the legislative process came to "a surprisingly swift climax to a long-running battle over how to rebuild New Jersey's crumbling and overcrowded schools" on July 14, 2000 (Halbfinger, 2000, p. B1). The Legislature interrupted its summer recess on July 13 to vote on the revisions made by Governor Whitman on both the school construction bill and a bill to refinance the state's transportation trust fund. The *New York Times* reported that, after the Assembly's vote, the next act would be the Governor's signature. The newspaper observed that the vote in the "Assembly, 66 to 8 with one abstention, was not nearly as close as had been expected" (p. B5). Quoted on the day the EFCFA was approved by the Assembly, July 13, 2000, ELC Executive Director David Sciarra stated to Halbfinger of the *New York Times*,

That was the easy part. Now the hard work begins. The state is about to undertake a program that it has no capacity to implement and no track record for. And we have a lot of concerns about whether the state agencies involved—the Department of Education, Treasury, and the E.D.A.—can come together and develop an infrastructure and expertise that will lead to construction projects in the urban communities that actually meet the needs of the children there. (p. B5)

Assemblyman Joseph Malone of Burlington, reflecting on the 66-8 vote in the Assembly approving the EFCFA and sending it to the Governor for signature, referred to a childhood Dr. Seuss story. “If there was a story to describe the kinds of changes this bill has been through, it would be *Horton Hatches an Egg*” (as cited in Perkiss, 2000, p. A1). (In that story Horton, an elephant, sits on a bird’s egg and produces an elephant with wings.) Malone continued, “We have seen many changes to this bill, but we have come up with a bill that meets the mandate of the state Supreme Court and will help the lives of all of New Jersey’s schoolchildren” (as cited in Perkiss, 2000, p. A1).

Assemblyman Leonard Lance (Republican, Flemington) was one of the eight Assemblymen who voted against the bill. He explained that it was unconstitutional to increase the state’s debt from \$14 to \$22 billion without public approval. “I am concerned that what we are doing, while well-intentioned, is bad public policy” (as cited in Perkiss, 2000, p. A1).

The timing and location of Governor Whitman’s signing of the EFCFA were politically significant and symbolic. She signed the bill in the morning of July 18 in a middle-class suburban non-*Abbott* school district. Perhaps mirroring the scars of the past 2 years of legislative negotiations, the Governor signed the bill that provided \$6 billion to the *Abbott* districts at Cranford’s high school. Reflecting the balance that was achieved and the statewide facility needs, she stated,

Crumbling buildings are no place to send our students. That’s certainly true in the 30 Abbott districts, which will receive full State funding for all necessary facility improvements. But we know that many more schools are showing their age and need attention. The bill answers the Court’s *Abbott* mandate responsively and responsibly. What’s more, through the teamwork of the Legislature and my administration, our program will enable every district in New Jersey—urban, suburban, and rural—to give our children safe and secure classrooms. In the

process, it will relieve pressure on the property tax for these projects. (New Jersey Office of the Governor, 2000, p. 1)

Later that afternoon she traveled to Burlington City, an *Abbott* district, not far from the State capitol in Trenton. There, in a press conference held at the Wilbur Watts School, she announced that she had signed the EFCFA legislature earlier that morning.

This bill answers the Court's *Abbott* mandate responsively and responsibly. What's more, through the teamwork of the Legislature and my administration, our program will enable every district in New Jersey—urban, suburban, and rural—to give our children safe and secure classrooms. In the process, it will relieve pressure on the property tax for these projects. (Whitman, 2000b, p. 1; underscore in the original)

### **Land for School Buildings**

Literally beneath the foundation for any new school building is land. The question of which land will be acquired for new schools or enlarged school sites in the 30<sup>38</sup> *Abbott* school districts was both political and financial because it is located at the intersection of conflicting streams of social and environmental justice. Finding sites for new schools in congested cities to implement the Court-mandated program required mediation of these considerations, which are frequently at odds. Among them is the choice of vacating residents from their homes versus vacating commercial or manufacturing enterprises from blighted buildings. The second consideration is the attempt to find school sites that are “clean,” with minimal environmental issues, versus sites that are readily available but may be contaminated brownfields.

Before any new schoolhouse can be built, land must be found. School facilities are among a city's oldest structures, many standing for a century, and the school sites

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<sup>38</sup> At the time of the approval of EFCFA, there were 30 *Abbott* districts. The 31st, Salem City, was approved in 2004.

themselves the nuclei for one or more generations of succeeding school buildings (Craig, 2006; Green, 2011).

Land is literally the “foundation” for the school building. The geometric configuration of the site’s boundaries directly affects not only the school building to be designed on the site but also the alignment, quantity, quality, and shape of the physical education spaces. The site constrains the structure on it and the spaces around it. The process of finding a site for a new school in an urban area is barely addressed in contemporary academic and trade literature (Fishbach, 2006; Hersh, 2007; Lowrie, 2008; McDonald, 2010; Siegel, L., 2006; Siegel, L., & Hersh, 2006; Siegel, L., & Strauss, 2007). However, it concerned several authors during earlier, major waves of school building (Ayres & Ayres, 1916; Donovan, 1921; Dresslar, 1911; Harrison & Dobbin, 1931; National Education Association of the United States, Committee on School House Planning, 1925; NJDOE, 1952; New Jersey White House Conferences on Education, 1955; New York City Board of Education Architectural Commission, 1938; Stoneman, Broady, & Brainard, 1949; Strevell & Burke, 1959).

Examining California’s school construction program, Robert Hersh observed, Many school districts, particularly those in urban and fast-growing areas, have been forced to confront the hard realities of the real estate market in deciding where to locate new schools. The cost of land in many cities is escalating, and in densely populated areas there are few large, vacant, uncontaminated properties with “for sale” signs on them. (2005, p. 1581)

In his forceful analysis Hersh explained why in some communities there may be no alternative to so-called “brownfield” sites. “The dynamics of urban real estate markets, thus, explain in part why urban school districts have built or are intending to build schools on contaminated properties” (p. 1581).

Intuitively, municipal leaders recognized state-financed school construction as an opportunity to achieve local objectives. The first objective, as detailed in the EFCFA legislation, was to construct educationally adequate, modern school facilities. The second and subordinate goal, advanced by several opportunistic leaders at the municipal level, was to remove blighted buildings from their communities.

Suzanne Mack's testimony to the Senate Education Committee on November 29, 1999 (New Jersey State Senate, 1999a) regarding the proposed EFCFA legislation is one example of the political pressures related to use of vacant land in urban areas. Mack, a Board of Education member and city planner, emphasized the need to keep proposed school projects away from redevelopment agencies and planning boards. She cited the situation faced by her Board of Education with the proposed site for Public School No. 3.<sup>39</sup> The redevelopment agency told the school board that the proposed site was too valuable for a school.

The arguments over land for schools versus alternative forms of redevelopment are reflections of what is termed in academic literature *civic capacity*, which is reviewed in the next section. Mack's testimony reflects one of the many conflicts encountered by the school program.

Redevelopment and improvement of residential neighborhoods in the “urban crust” (Gale, 2006) of northern New Jersey is influenced by several factors. One factor is the scattered presence of former industrial and commercial properties in residential neighborhoods. Although not recognized as “brownfields,” as they are still occupied by

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<sup>39</sup> PS 3, the Frank R. Conwell School, at 111 Bright Street, along with the Frank R. Conwell Middle School, MS 4, at 107 Bright Street, were opened in January 2006.

commercial or industrial uses, these properties are old, deteriorated, and detrimental to their neighborhoods. The purchase and redevelopment of these properties by the private sector is slow due to the perception of possible negative environmental factors resulting from industrial and commercial practices since the Industrial Revolution. This is especially problematic in large areas of New Jersey's cities that are burdened with a rich historical, chemical legacy from previous waves of industrialization, including textiles, incandescent lamps, and radio tubes. New Jersey state law defines *brownfields* as "any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant" (New Jersey Department of Environmental Protection [NJDEP], 2006, p. 1).

Although New Jersey law provides liability protection for persons acquiring contaminated property, most real estate developers choose less complicated sites. Municipal officials in New Jersey's "urban crust" all face their local inventory of deteriorating buildings, primarily former industrial and commercial properties. In addition, gasoline stations constructed in the 1940s to 1960s in overoptimistic numbers have been converted to ugly used-car lots. When faced with the choice of greenfield versus brownfield or most probably clean versus likely contaminated, the developer's preference is obvious. Thus, many of the municipalities in New Jersey's "urban crust" are left with several possibly abandoned, marginal, underutilized, and ugly properties. For example, an area west of Orange Township is described: "At one time, the neighborhood was the center of a booming hat-making industry. Today, many of the former factories

are vacant and contaminated, placing a burden on the neighborhood and the municipalities that maintain it" (New Jersey Future, 2008, p. 4).

Describing the school site selection process in New York City in the late 1960s, a consultant to the Mayor and a doctoral candidate delivered her observations. They seem to have been written about the New Jersey program between 2000 and 2010.

First, site location and other decisions are often made on the basis of irrelevant, incomplete, and often incorrect statistical data—omitting valuable factors that should be fed into any decision matrix, such as the incidence of aid to dependent children, juvenile delinquency index, reading scores, pupil-teacher ratio. Second, school staff bureaucrats control the system and the goals of participants—students, teachers, parents, and taxpayers—are almost never considered. (Marker-Feld, 1969, p. 281)

The forces at play in the acquisition of land for the New Jersey school construction program are fully described in the upcoming chapters. However, once more, the seeds for the poor outcome were planted in the program's legislation that placed the burden of purchasing and remediating the land for new schools completely on the state. The result was an abundantly financed but poorly planned and undermanaged process to buy land. The program could be seen as set up to fail, set on a trajectory to purchase the wrong type of land in the wrong places at the worst time (the peak of the real estate market) for schools that might not be built for many years. Within 2 years the Chief Executive Officer (CEO) of the NJEDA testified to legislators about investigating more than 103 potential sites for schools owned or occupied by more than 1,000 property owners (New Jersey State Assembly, 2002).

### **School Districts and Municipalities: Civic Capacity**

From a strictly formal, legal perspective, municipalities and school districts are both granted their powers by the State of New Jersey. At the most basic level, it is important that the school district and municipal leadership be in a harmonious

relationship, especially when there is an opportunity to create sites for new and expanded schools. The Mayor of Trenton testified on this subject.

At this point, what is important is that we recognize the importance of working as a team on this monumental task. . . . Today the Superintendent of the Trenton Public Schools and I are testifying together to emphasize the importance of mayors, superintendents, and their respective governing bodies working together to improve the quality of education for all of our children. (New Jersey State Senate, 1999a, p. 99)

Mayor Douglas Palmer of Trenton and Superintendent James Lytle appeared jointly before the Senate Education Committee on November 29. Mayor Palmer described a meeting that he had organized in February 1999 that was attended by mayors, superintendents, and school board members from all of the *Abbott* districts to discuss issues of concern to their cities and school districts.

Specific to Trenton, the Mayor expressed his strong endorsement of the school district's detailed facilities plan. In a back-and-forth with State Senator Martin (Morris County, Republican), Mayor Palmer (Democrat) responded affirmatively to a series of questions about his ability to get Trenton City Planning Board approval for school district projects within 90 days. He answered twice to the questions of Senator Martin that education would be a top priority for his city. Palmer's optimism and team approach were affirmed by the testimony of Superintendent of Schools Lytle.

The failures by several *Abbott* districts to achieve a similar positive relationship with their respective municipalities most probably led to poor outcomes in several districts. This is discussed in detail in the chapters to follow.

### **School Facilities: Educational Policy and Standards**

The title of New Jersey's school construction legislation begins with the word *educational*. All four of the findings and declarations in the introduction to the law,

§ 18:7G-2, speak to the subject of education and the need for school buildings. This section describes how several educational elements of *Abbott V* became legislation and their implications for the school program that followed.

In its elementary form, the Legislature enacts laws and the Governor, through the Executive branch, administers or executes the will of the Legislature. Therefore, officials of the NJDOE are acting on the Governor's behalf as they implement laws enacted and approved by the Legislature. Upon promulgation of the EFCFA, there was an assumption of responsibility immediately upon its approval by the legislature in June 2000 and after Governor Whitman signed the final version of Chapter 72 of the Public Law of 2000. Once the Act went into effect, the executive task of implementation shifted to the NJDOE and to the NJEDA. Each group was assigned executive roles in accordance with the newly approved law.

Once the Supreme Court had issued its *Abbott V* decision in May 1998 requiring that the State fund building in the 28 poorest districts, the battle shifted to standards for constructing and renovating schools. Would the new schools be built to minimum standards or to something better? Would school districts be able to include art, science, and music rooms?

An article published in the *Trenton Times* in early June 1998 explained that the Court order required that the SNDs demonstrate a need for additional specialized spaces and directed the Education Commissioner to seek money to pay for them (Fitzgerald, 1998). Education Commissioner Klagholz expressed a cautious understanding of the need to make exceptions beyond minimal standards. Fitzgerald noted a generalized concern that, if all *Abbott* districts in New Jersey were allowed to request facilities above the

minimal level, at the State's expense, the cost of the entire program would skyrocket.

Citing the *Abbott V* decision, the reporter informed that in June 1998 the cost of the work in the SNDs was estimated at \$1.8 billion.

Legislators, in their draft legislation of November 1999, envisioned a key role for the NJDOE in controlling the program and monitoring the work of the NJBA, which would be building the schools (New Jersey State Legislature, 1999b). The Commissioner of Education would monitor and regulate the outflow of funds under the EFCFA. Any district that wanted to undertake a school project was to apply to the Commissioner. The Commissioner was to review the project's consistency with the district's LRFP (previously known as the FMP) and the state's Facility Efficiency Standards (FES; New Jersey State Senate Budget and Appropriations Committee, 2000).

Erlichson (2001) analyzed how the EFCFA assigned two preliminary roles to the NJDOE. One was the determination of which facilities were necessary for districts to implement the Core Curriculum Standards. These would become the new FES. These core standards had been adopted by the state Board of Education in 1996 and included in the Comprehensive Educational Improvement and Financing Act (CEIFA) later that year, but they had never been translated to square feet (Yaffe, 2007). The second task was to evaluate the LRFPs being rapidly prepared and submitted by school districts that were mobilizing to take advantage of the EFCFA funds. The LRFPs, once approved, became the basis for individual project proposals, which again would return to the NJDOE. At a later stage, the NJDOE reviewed the final plans and prepared a detailed "preliminary project report" (an authorization) to allow the project (the buildings) to be built.

Educational policy, determined by the NJDOE, drove decisions on allowable classroom types and their respective sizes, which had direct financial consequences in construction costs and therefore in cost per seat and the number of schools to be built with a given budget. The minimal square footage of all spaces within a school building is detailed within the FES (NJDOE, 2005b). The standards for classrooms types and their dimensions vary by grade level; therefore, the composition of the FES carries educational implications. By 2005 the FES had become seven pages of tables defining the capacity of classrooms, as well as their functions and sizes. The net square footage and corresponding gross square footage were calculated based on a statewide ratio. For example, a Pre-Kindergarten–8 school would be planned to accommodate 690 students, with a theoretical utilization factor of 90%. The school would contain 12 general classrooms for Grades 1–3, with a capacity of 21 students per room. At 850 net square feet per room, these 12 classrooms would require 10,200 net square feet. These rows and columns would continue in detail for every room for every type of school, creating a framework for guiding the design of new schools, as well as additions and renovations.

Recognizing the existing, fundamental, pedagogical, and financial disagreement regarding the need to provide specialized instructional rooms for art, music, and science at the elementary school level, *Abbott V* decision sidestepped the issue. The Court decided that, if a district wants these rooms, they must justify the request through their Five-Year FMP (which would soon be relabeled LRFP). They must include the rooms in the plan and make the case that these rooms are educationally necessary for their district's particularized need and educational program. The Court wrote,

The DOE should review that request and determination. The determination of the local education authorities should be reviewed with deference and with under-

standing that the local educators are in the best position to know the particularized needs of their own students. (710 A.2d 450, N.J. 1998, §V-C, p. 471)

By contrast, perhaps contradicting or misunderstanding the intent of the Court, the Whitman administration envisioned a program in which the school districts were constrained to projects that followed basic approved state models. This conceptual approach was captured in an article prepared by a lobbyist of the New Jersey School Boards Association after an administration briefing in late 1998 (Bohi, 1999). However this became a paradox as the Court's decision and subsequently the legislation and the regulations that followed all placed the determination of "local need" (for an extra facility feature, for example, an auditorium or a special music room) in the hands of the local school district.

Among the tasks facing the NJDOE after *Abbott V* was to develop standards for the facilities that would be built in the SNDs. In a hearing before the Senate Education Committee in January 1999, Assistant Education Commissioner Azzara detailed a process that had taken place several years earlier when three national experts<sup>40</sup> on education were brought to New Jersey to meet with senior staff of the NJDOE (New Jersey State Senate, 1999b, pp. 41–42). The experts reviewed each of the standards to determine the appropriate spaces for various levels of education.

These standards for square footage per student and minimal square feet per classroom have evolved over the years, as can be found in the planning guide prepared by

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<sup>40</sup> Appendix I of the *Abbott V* decision provided details of the NJDOE meeting on October 22, 1997, with Dr. Emily Feistritzer, President of the National Center for Educational Information; Dr. Bruno Manno, senior fellow of the Hudson Institute; and Alton Hlavin, Assistant Superintendent for Facilities and Operations of the Arlington, Virginia Public Schools (710 A.2d 450, N.J. 1998, (Appendix I, p. 521).

the NJDOE in 1978 and in its 1997-1998 presentations to the Remand Judge (NJDOE, 1978). This 1978 NJDOE guide contained instructions for school districts, planners, and architects to use in calculating the “functional capacity” of school buildings. *Functional capacity* was defined in this handbook as the number of students who could be accommodated in a school without overcrowding. The concept of “pupil station” was used to capture the notion of square feet or space to be allocated per student.

If the number of students in the school was not to be reduced or the educational program of the school was not to be diluted, then the best approach to reducing costs was allocate the appropriate program spaces according the number of students. Each room should be properly designed for its designated purpose without excess unused space. Educators were expected to know precisely what pedagogical functions were needed so the architect could design the most efficient school. The educational planner should know the standard room dimensions necessary to house the specific school’s planned educational functional spaces before the architect begins to assemble a three-dimensional array of the cubic components of the educational program.

The establishment of a statewide standard of classroom sizes and permissible functions was most certainly needed to address the school building’s larger spaces. From an educational facility perspective, these are areas that have no pupil capacity. They are spaces where students are not seated in classrooms, for example, cafeterias, gymnasiums, and auditoriums. New Jersey’s 1978 booklet *School Capacity* proposed the minimum acceptable square footage per pupil as follows:

Pre-kindergarten for 3 to 4 years old between 57 to 80 square feet per pupil.

Kindergarten, 36 sq. ft per pupil, for a 900 sq. ft. classroom with 25 pupils in two sessions (morning and afternoon).

Grades 1-3, 32 sq. ft. per pupil, for a 800 sq. ft. classroom with 25 pupils.

Grades 4-8, 28 sq. ft. per pupil, for a 700 sq. ft. classroom with 25 pupils.

Outdoor space of 40 sq. ft. per pupil station.

Cafeteria. Luncheon seating for 1/3 of the maximum enrollment at 12 sq. ft. per student.

Gymnasium 3,500 sq. ft.

Middle School, 28 sq. ft. per student, 700 sq. ft. classrooms with 25 students.

High School, 26 sq. ft. per student, 650 sq. ft. classrooms with 25 pupils.  
(NJDOE, 1978, pp. 5-13)

It is interesting to contrast the FES used by the EFCFA in 2005 with those that were presented as *minimums* and *desirables* in the NJDOE's 1967 guide (NJDOE, 1967).

In 1967 the NJDOE's *minimum* recommendation for a kindergarten was 700 square feet and *desirable* was 1,000 square feet or more; in 2005 it was 950 (net) square feet housing 21 students (NJDOE, 2005a). In 1967 the NJDOE's *minimum* recommendation for first through third grades was 650 square feet and *desirable* was 950 square feet or more; in 2005, with the EFCFA in place, the *minimum* was 850 square feet serving 21 students. In 1967 a regular classroom (Grades 4 and 5) *minimum* size was 600 square feet and *desirable* was 800 or more; in 2005 the *minimum* was 800 square feet to accommodate 23 students.

The 1967 guide made no mention of the number of pupils to be placed in the classroom, possibly making the facility standard itself meaningless unless student-teacher ratios were determined in another section of the state's regulations. The importance of this discussion of square footage, students per square foot, and students per classroom is that these figures are all concrete manifestations of the current educational planning concept. They drive design standards and program costs.

The quantity of space (square foot per student) that the new program would provide was in flux from the late 1990s through 2000 until the legislation was approved. Former Education Commissioner Klagholz was quoted in April 1999 as proposing 115 square feet per student in elementary schools, 111 in middle schools, and 142 in high schools (Parelo, 1999b). For example, the Assembly Education Committee, when reporting to the full Legislature with the emerging EFCFA legislation in March 2000 proposed increasing the square foot allowance for a middle school from 131 to 136. The committee also asked that the FES that would be in effect for the next few years be published annually in the *New Jersey Register*.

The contours of battle lines over the classroom type and size standards that were to be included in the emerging school construction legislation were found in newspaper articles and editorials from the days immediately following the issuance of the *Abbott V* decision in May 1998 (AP, 1998a; McNichol, 1999b; Parelo, 1999b; "School Double-Talk," 1998). Among the issues discussed at that time was whether elementary schools would receive separate art, music, and science rooms.

The state's proposed "school facility models" did not include any of these rooms for elementary schools but included science rooms only for middle schools and all of these rooms for high schools. School districts were allowed to add these rooms if they wished, but at their own expense. According to one article in early June 1998, the NJDOE's perspective was that elementary school students could receive an education that met "world-class standards" with art carts, science kits, and music lessons, all provided in regular classrooms.

Lynne Strickland, testifying on behalf of the state's suburban school districts at a hearing on February 18, 1999, expressed her coalition's deepest concerns about the NJDOE's facilities models, which excluded art and music rooms and science laboratories from future middle schools (New Jersey State Senate, 1999). Dr. Eugene Keyek of the New Jersey School Business Administrators detailed the importance of a district being granted the prerogative to establish how it would use its square footage. They wanted the flexibility to decide how the space would be utilized: for a science lab, storage, general classrooms, music, or art. This discussion continued in April 1999 as the lobbyists for school districts continued to request addition of art, music, and science rooms but the NJDOE did not waver (Parello, 1999b).

The arguments over the FES proceeded on two levels. The first argument concerned the process that would lead to determining the minimum acceptable square footage. The second argument was about the outcome: the actual square footage that would be the basis of the future program. Debra Bradley, on behalf of the School Facilities Coalition, asked on November 29, 1999, that the new legislation clarify the notion of functional capacity and the process for developing and adopting the FES (New Jersey State Senate, 1999). The Coalition asked for public input into these standards through public hearings in which the NJDOE would adopt these standards subject to the provisions of the Administrative Procedures Act.

Education Commissioner David Hespe, preceding Bradley at the hearing in November 1999, addressed the state's proposed per-pupil area allowances, claiming that New Jersey was in the upper tier of area allowances in the nation. At the elementary school level, New Jersey set the level at 125 square feet, compared with Kentucky at 123,

Maryland at 100, Massachusetts at 115, and Virginia at 90. At the middle school level, New Jersey's standard was 131 square feet, Kentucky's was 127, Maryland's was 115, Massachusetts's was 135, and West Virginia's was 130.

State Senator Turner questioned Commissioner Hespe's square footage standards for middle schools and high schools. Citing other statistics, she stated that the national median was 142 and 178 square feet, respectively. Turner asked, if the average for the states of New Jersey, Pennsylvania, and New York was 138 and 187 square feet and whether New Jersey standards were to be set at 131 and 151 square feet, how could this be considered adequate? New Jersey appeared to be allocating fewer square feet per student than the national median and the nearby states.

Responding to Senator Turner at the November 29 hearing, Hespe distinguished between standards and what actually gets built, the importance of designing functional spaces, and the line between necessary spaces that are purely functional and those that are discretionary. Hespe emphasized that New Jersey was seeking educational adequacy standards and to focus on building what was educationally necessary. Senator Turner answered by asking whether Commissioner Hespe was suggesting that Pennsylvania and New York were building schools containing discretionary and unnecessary space.

Senator Martin grilled Hespe about the Commissioner's ability to give a school district additional specialized program spaces for music, art, library, and physical education. Martin understood that a section of the proposed Act allowed a district to receive additional square footage if it demonstrated to the Commissioner that this space was needed *to provide a thorough and efficient education.*

Later in the hearing, Bradley, representing the School Facilities Coalition, asked the Legislature to increase the minimum area allowances per student in middle school from 131 square feet to 149 square feet. Bradley discussed why the instructional practices at the middle school level required this larger space. Sciarra of the ELC addressed the requirements for square foot per student from a constitutional perspective. He emphasized that the FES was a minimum value, as the *Abbott* decision clearly stated how the districts were to determine facility requirements.

Discussion of space requirement guidelines in the context of the evolving EFCFA bill that was making its way through the Legislature can be found in the *Philadelphia Inquirer* published in early January 2000 (Avril, 2000). The program's overall cost, directly related to the square footage per student, was a source for debate as it affected the overall dollar value of the proposed program. The state's proposal for square footage per child was lower than what school board officials were asking for, as well as lower than recognized national benchmarks. Observing that wealthier districts could build more space on their own, with their additional resources, critics noted that the state's poorer districts would automatically get schools built to the minimum standards and sizes.

The Senate Budget and Appropriations Committee, in its review of Senate Bill No. 200 (the EFCFA) on May 11, 2000, sidestepped the controversy of the FES (New Jersey State Senate Budget and Appropriations Committee, 2000) by requiring the Commissioner to approve area allowances that were larger than the efficiency standards if a board of education demonstrated that its required programs could not be addressed within the State's standard square footage allowances.

The Commissioner is required to approve area allowances in excess of those derived from the facilities efficiency standards if the board of education demon-

strates that required programs cannot be addressed within the standards and that all other proposed spaces are consistent with those standards. (p. 2)

In this manner the standards were accepted and a mechanism for allowing exceptions was created. Compromise was found and the seeds for the program's unconstrained growth were planted.

By reviewing all plans and programs and periodically approving larger area allowances, the school construction program was controlled by the Commissioner of Education. The legislative statutes (NJSA) and then the regulatory codes (NJAC) set up a series of steps wherein the Commissioner or an official of the NJDOE acting on his behalf must issue a decision regarding the project.

First, the "Commissioner" (actually NJDOE facilities staff) would prepare a preliminary project report for every proposed school building. This would include the location of the project, the total square footage of the project with a breakdown of total square footage by functional component, preliminary eligible costs (PEC), the project's priority ranking, and any other factors of importance to the NJBA.

Once the project had been found consistent, the NJDOE would calculate the PEC. These are the costs that the State would finance because they were deemed eligible from an educational perspective. The EFCFA legislation (2000) allowed the State to support the "soft costs," including site acquisition, site development, legal fees, and professional service fees. If a school's design contained spaces beyond the allowable areas, that square footage was not included in the PEC.

A system for addressing a project that exceeded its PEC was included in the EFCFA legislation. Once the project's design was complete, the building authority (NJEDA, NJSCC, or NJSDA) would prepare an estimate of the school project's cost,

which was presented to the Commissioner. If the project could be completed within the PEC, it could proceed to the next step, a formal calculation of the final eligible costs (FEC). If there was a difference as a consequence of the school's design being larger, more elaborate, or containing extra spaces, the building authority would evaluate the cause.

If the additional costs of construction were due to issues outside of the control of the school district and necessary to meet the FES, the NJEDA could recommend to the Education Commissioner that the FEC be increased. If these costs (for example, the desire to include an especially large auditorium) were within the control of the school district, the school district was to absorb the cost. However, the EFCFA gave the Commissioner the executive discretion to add such costs if they were necessary to meet the educational needs of the school district.

### **Physical Considerations for School Buildings**

New school buildings are designed based on an “educational program” (educational specifications or “ed specs”) of spaces and their functions. In theory, or based on the prototype standardization concept, all schools of a certain type and size should be identical. They should contain the same rooms and house the same functions. Again in theory, an auditorium for 400 students in southern New Jersey should be the same size and shape as one in the north. Again in theory, if a middle school of a specific size warrants a kitchen equipped for cooking fresh meals, all middle schools of that size throughout the state should receive that same kitchen.

This is a question at the junction of education, architecture, program management, and public administration. In a sense, the sole comparable experience is found only in

American commercial real estate development, where national business chains reproduce restaurants, hotels, banks, and stores across the American landscape.

Establishing standards is a proverbial “double-edged sword.” On the one hand, a standard brings stability, consistency, and structure to a design and construction program. On the other hand, standards hamper innovation, create rigidity, and stifle creativity in design. The consequences of standards on the two recent waves of American school building construction in the late 1920s (Harrison & Dobbin, 1931) and in the late 1950s (Strevell & Burke, 1959) bring significance at this juncture in the program’s formation.

The issue of prototypes emerged immediately as the New Jersey program took shape in 1999 but traces of this notion can be found as early as the report issued by the Quality Education Commission during Governor Florio’s term in 1992 (New Jersey Quality Education Commission, 1992b). The 1992 report, discussing the need to upgrade school buildings around the state, suggested that prototypes and standardization of designs be explored to save money. As the program’s legislation was being developed in 1999, this notion arose again from several state legislators. The Whitman Administration’s initial proposals were to force the school districts to choose from a limited selection of school designs in order to save money.

As discussed in other contexts, early details of the Whitman Administration’s proposed school construction program were provided to readers of *School Leader* in an article published in early 1999 that discussed the state’s ideas (Bohi, 1999). A limited number of styles and designs for schools would be available. The notion of not “reinventing the wheel” through the use of a “prototype” or a “model” drove this conception. The author of the article observed that the determination of how this would

be implemented and how the prototypes would be wielded as a design, administrative, and financial tool was as much a question as the quality of each design. Bohi asked, how many models would be needed to address the unique site conditions of the possible permutations of proposed school sites? What is the process for adapting a model or revising it slightly to better fit a site? According to Bohi, many architects contended that as much effort would be spent in working on manipulating the design to follow the model as would be spent on designing an entirely new school (Bohi, 1999).

The Whitman Administration also envisioned that contractors would be hired to build model schools in bulk. The State expected that a centralized program would eliminate duplication of fees for architectural and engineering design of common school features and achieve cost efficiencies through centralized state purchasing of standard building materials and components. Bohi contrasted this with some architects who saw the bidding process as highly efficient, “fiercely competitive and resulting in prices for materials at or below cost” (Bohi, 1999, p. 32).

The vision of standardization was discussed at the January 21, 1999, hearing of the Senate Education Committee, where State Treasurer representative Lohbauer highlighted its virtues (New Jersey State Senate, 1999b). Responding to questioning about projected “soft costs,” the Treasurer’s representative described the possible cost reductions to be achieved by standardizing building components. Large-scale purchasing of standard building materials would reduce overall costs, as would having fewer contractors performing larger amounts of construction. The Treasurer’s representative expressed the notion that school districts would want to use the NJBA (the proposed lead agency in 1999 to draft EFCFA legislation) because it would offer a variety of pre-

approved, ready-to-build school designs that would enable speedy design and construction. After hearing this from the Treasurer's representative Senator Gormley of Atlantic City expressed his doubts:

Now let me—and, by the way, you've been very forthcoming, but in another area of concern, we have—and by the way, you're far more competent than what they've thrown out—the State Planning people—same type—here's the theory, here's the way it will work, and whatever. It doesn't work in, what politicians refer to around October as, the real world. . . . It causes concern for me because we're going to say this—we're going to break ground next year, and here it is, and we're going to save this level of money. I have a real concern that we would be creating or using a system that really doesn't interact well with the community and doesn't really have an understanding. And this isn't to cast aspersions on the Building Authority. (New Jersey State Senate, 1999, p. 12)

Responding to Gormley, Lohbauer (on behalf of the State Treasurer) emphasized that the Treasury had received the message that this was a local concern that the State would come in and build cookie cutter schools. Education Committee Chairman Martin interjected that he found those concerns to be quite justifiable after reading the proposed legislation, which to him gave the distinct impression that some sort of cookie cutter regime was being encouraged. According to David Sciarra, the CEO of the ELC, testifying later at the January 21 hearing, model school prototypes had been proposed by the Commissioner of Education in February 1998 as the standard of educational adequacy in the *Abbott* districts.

McNichol (1999c) reported that the Whitman Administration had abandoned its plan to restrict school districts receiving financial help to adopt a menu of standard model plans. He quoted Interim Education Commissioner David Hespe, who stated that the notion of requiring districts to select from six or seven standard models had been dropped. Instead, districts would design to a target gross square footage. The *Philadelphia Inquirer* confirmed McNichol's report that this notion of prototype schools

was abandoned in April 1999, before the school construction legislation was introduced (Parello, 1999b). State Treasurer Roland Machold stated at a hearing on November 29, 1999,

We have no intention to build cookie cutter schools. We do not intend to standardize—we do intend to standardize components and systems of construction but not restrict the overall design efforts. . . . The standardization comes in the form of some common components like windows and doors, roofing and flooring systems, and alike, not the overall design of the facility. (New Jersey State Senate, 1999a, p. 12)

Representatives of the New Jersey Chapter of the AIA appeared at two hearings of the Senate Education Committee, first in January and again in November 1999. Ms. Jeanne Perantoni expounded in January why standardized plans would increase costs:

What I want to touch upon is that the primary reason for standardized plans is to reduce cost. What was found in the field was that in many cases cost actually increased. . . . It happens because [of] the process of design in architecture. Architecture is not a straightforward, linear process. It's multifaceted and very complex. You have forces on the inside shaping the design, and you have forces from the outside shaping design. The inside can be summarized as the forces that are being brought to bear by the administrators, the educators, the parents and the students. It's the plan. It's the layout of the school. It's the adjacency relationship of spaces and the size of spaces and how you get to those spaces. . . . The forces from the outside are really the site conditions. You have soil which is established as barium pressure, you have seismic conditions, you have where the utilities are onto a site. All those aspects make every single school building and every single site unique. As soon as you start with the model, you have an endless number of variations and permutations in order to fit on the site. Once you start with the model, the time spent in renovating and changing the model equals what it would have been if you customized the design from the start. (New Jersey State Senate, 1999b, p. 74)

Responding to Perantoni in January 1999, Treasury representative Lohbauer again emphasized that the State was not proposing a cookie cutter school design but the Treasury wanted a selection of flooring, roofing and other major systems.

Toward the end of 1999, the architects followed the testimony of State Treasurer Machold at the November 29 hearing on the evolving school construction legislation

(New Jersey State Senate, 1999a). Applauding the proposed program, the architects expressed concern over the ownership rights to the construction documents that they would prepare for these new school buildings. They explained that the proposed legislation contained language that would give the NJBA the ability to reuse their designs on other projects without their involvement. The architects' representatives stated that this could be very dangerous and would create a major liability problem.

The issue of liability was reinforced in later testimony provided by Richard Hartman, who specialized in professional liability insurance and risk management, for engineers and architects in New Jersey. Hartman, neither an architect nor an engineer but an insurance specialist, expressed the importance of the original design professionals' continued engagement during construction. He emphasized that so much information is transmitted after the original specifications and drawings are prepared—submittal reviews, requests for information, construction administration and site visits—that the bond cannot be broken between design and implementation. The transfer of design ownership would be problematic because it would expose both the creator and the user of the drawing to potential liability. The representative of the AIA expressed doubts that professional liability insurance would be provided in this situation. They also noted that the transfer of ownership and the reuse of design drawings created by others would probably be in violation of regulations of the New Jersey State Board of Architects.

Looking back at the compromises made during the enactment of the EFCFA, Assemblyman Joseph Malone responded to a report in 2011 about the desire for standardized designs. The idea of standardization

got pushed aside because of the tremendous pressure put on legislators by engineering firms. Everyone wanted to be able to build a castle for themselves.

That led to some of the Taj Mahal schools that we have today, the ones that are like corporate world headquarters. (O'Connor, 2011b, p. 4)

The pressure by the architects and engineers on the Legislators was evidently strong enough to prevent the construction program from saving money on design costs, again resulting in less square footage actually being built for students.

Education of children is the objective of a program of building schools. The major focus of this study was activity within the program, the administration of the organization. However, it is apparent that the source of the problems that unfolded in the NJEDA, NJSCC, and NJSDA is found in the program's conception and its first days.

### **Who Would Be Running This Program?**

In the process of enacting the EFCFA, one of the legislative provisions to be resolved was the operational "home" of the proposed program. This determination—the assignment of the program to an agency inexperienced in managing construction projects—held political, financial, and operational consequences for the program as its future unfolded. It foreshadowed the sluggish start that drove the hyper-acceleration that followed (discussed extensively in the chapters to follow).

Early details of the Whitman Administration's proposed school construction program are provided in the New Jersey School Board Association magazine in early 1999 describing the state's plans (Bohi, 1999). In one of the few articles found that analyzed the proposed administrative location of the new program, Bohi, a lobbyist at the time for the Association, described the agency that was initially proposed to receive the program: the NJBA.

The NJBA was formed in 1981 to construct state office buildings. In 1997 it completed the South Woods Prison project in Bridgeton, Cumberland County (New

Jersey Department of Corrections, 2011), which apparently was a driving reason behind its being recommended to spearhead the new schools program. However it, had never built schools; and the political palatability of drawing on the experience of building prisons to build schools in low-wealth districts would possibly draw criticism. Bohi (1999) reported that the *Star Ledger*, on October 18, 1998, had reviewed the NJSBA's records and found that nearly half of its projects had been late, some by as much as 2 years.

As the State of New Jersey made its presentations for *Abbott V* to Remand Judge King (710 A.2d 450, N.J. 1998, Appendix I, p. 524), there did not appear to be any doubt about how the State would be managing this construction program. Rafael Perez, Executive Director of the NJEFA, described how the State would issue bonds on behalf of the *Abbott* districts.

As described to the Court in 1997-1998, the *Abbott* districts would be issuing the bonds with the assistance of the NJEFA. The assistance would be limited to the amount approved by the NJDOE. Perez explained several aspects of the State's approach in his testimony, among them how the NJEFA would be the best vehicle for financing construction in the property-poor *Abbott* districts. Absent ratable properties, these school districts would be able to issue bonds only with a substandard rating carrying a high interest rate. In addition, Perez told Remand Judge King that the NJEFA had "expertise in accessing financial markets, unlike individual school districts which may access the market only once every ten to fifteen years or more" (710 A.2d 450, N.J., 1998, Appendix I, p. 525).

Continuing to describe the Whitman Administration's initial vision for the program, Perez informed Judge King that the bond proceeds would be held in trust for the districts and funds "disbursed to districts upon submission of certificates of completion and confirmation by [NJ]EFA personnel that funds have been spent appropriately. . . . Any cost overruns would be absorbed by the [NJ]EFA" (710 A.2d 450, N.J., 1998, Appendix I, p. 525). He admitted that currently (1998), the NJEFA did not provide construction management but had done so in the past and could do this for the *Abbott* districts, if given additional staff. Therefore, it is completely understandable that Remand Judge King, and subsequently the Supreme Court, received the impression from the State's representatives, among them Perez, that this was to be a centrally managed program, run by the EFA. This would change as the legislation advanced.

The State Treasurer's representative, in testimony to the Senate Education Committee in January 1999, informed Committee members that using the NJBA would achieve savings on the entire program's soft costs (New Jersey State Senate, 1999b). The Treasury was responding to Senator Gormley's<sup>41</sup> concerns over the 33% projection of soft cost variability in program costs due to site conditions. The Treasury representative, Lohbauer, assured the Senator that a centralized authority would achieve savings. Gormley asked whether "George Orwell" will be the head of the Authority.

Education Committee Chairman Martin was under the impression that the *Abbott V* decision had referred specifically to the NJEDA. Lohbauer corrected him, saying that it was the NJEFA, and described how a central authority with centralized purchasing would

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<sup>41</sup> Gormley was a highly respected and very powerful Senator for Atlantic County; he had been in the Senate since 1982.

reduce program costs. Gormley expressed doubts that the NJBA in its current setup was designed to handle a project as complex as the proposed school program. Fearing the addition of another governmental authority and lacking confidence in the existing authorities to take on this task, the committee's discussion turned to a comparison of three possibilities: the NJBA, the NJEFA, and the NJEDA. The Treasury's conclusion, as expressed by Lohbauer at the January 21 hearing, was that the NJBA would be the best suited of all of the State's current organizations.

David Sciarra, also appearing at this hearing, pointed out that the entire notion of a centralized state construction program surfaced in the State's testimony to Judge King (New Jersey State Senate, 1999, p. 31). The court deferred to the determination of the State Commissioner of Education regarding the management mechanism for the future program and included this in its May 1998 *Abbott V* decision. "In short the EFA would ensure efficient and satisfactory construction. We determine that the State's proposal to provide and administer the funding for capital improvements would effectively address the need for adequate facilities improvements" (710 A.2d 450, N.J. 1998, p. 472, *Atlantic Reporter* §D.[23]).

McNichol (1999c) wrote that Governor Whitman had announced a plan in fall 1998 "to use the State Building Authority, a tiny agency that has built a state prison and state office buildings to finance and manage that work" (p. 1). Interim Education Commissioner Hespe confirmed to McNichol that indeed the NJBA was the agency that would run the program and that state officials would hire architects for the school projects and handle all contracts for financing, engineering, and constructing the new schools.

In late May 1999, 2 weeks after the administration's 80-page proposed legislation was introduced, one reporter observed that the "Legislators are taking a 'hard look' at Whitman's plan to have the State Building Authority, a branch of the State Treasury, oversee the financing and construction" (McNichol, 1999d, p. 13).

State Treasurer Roland Machold, in the November 1999 hearing before the Senate Education Committee, expressed the concept of a statewide program being more efficient than each district managing its own construction. In retrospect, as shown in succeeding chapters of this dissertation, it is doubtful that this concept would be shown to be correct.

One of the most important components of this bill is the cost savings. We project that by utilizing the state for the construction of a local school facility, a district could achieve savings of up to 25 percent over traditional financing. A district could achieve savings in design and construction as well. The state would bring the advantages of bundling of multiple projects and the efficiencies of economy and scale. (New Jersey State Senate, 1999a, p. 11)

At this point, the State Treasurer informed the committee that the NJBA, which currently managed \$350 to \$400 million in construction projects annually, would serve as the manager of the proposed school construction program. The concept of centralization, cost savings, and efficiency was a large part of the administration's argument to the state school board association (Bohi, 1999).

The EFCFA legislation brought before the Senate, introduced on November 15, 1999, placed the program in the hands of two existing agencies. Section 5 of the proposed bill tapped the NJEFA for financing and the NJBA for building the new schools (New Jersey State Legislature, 1999b). At that point (November 1999), the NJEDA, subsequently to be given the entire program 8 months later, was not mentioned.

Whitman administration officials presumed that money would be saved by the NJBA negotiating larger and multiple contracts with engineers and architects with the

State rather than each school district negotiating smaller contracts with architects independently. The legislation proposed on November 15, 1999, navigated the difficult issue of how the NJBA would deal with architects who were currently working on school projects. A proposed subsection "r" would allow the school districts to continue to work with their current architects:

In the event that a district has engaged architectural services to prepare detailed designs of a school facilities project prior to the effective date of P.L. \_\_\_\_ .c. (now pending before the Legislature as this bill), the district shall, if permitted by the terms of the district's contract for architectural services and at the option of the building authority, assign the contract for architectural services to the building authority if the building authority determines that the assignment would be in the best interests of the school facilities project. (New Jersey State Legislature, 1999b, p. 17)

State Assemblyman Garcia's article reflects how strongly this vision of efficiency was held by the Whitman Administration (Garcia, 2001). It was so important to Whitman and her leadership that they increased the volume of construction to be built directly by the State agency by lowering the threshold (from 60% to 55%), which mandated the use of the NJEDA to build school projects in the non-*Abbott* districts. Whereas the legislature's versions of proposed bill required only school districts receiving more than 60% state aid to use the state agency, Governor Whitman changed this to 55%, keeping more projects in Trenton at the NJEDA. This was done through her conditional veto of Senate Committee Substitute for S-200 (June 29, 2000). "Lowering this percentage will promote economies of scale by allowing the NJEDA to achieve greater cost efficiencies by financing and managing the construction of a larger universe of projects" (Whitman, as cited in Garcia, 2001, p. 97).

The power of the engineers, architects, and attorneys in trying to position the contract award function at the municipal or school district level was discussed in a

prescient speech by State Attorney General John Farmer at a forum held at Seton Hall Law School in October 1999, where he touched on the evolving school construction legislation. Farmer had a sense of the pressures involved in awarding the work among the competing firms and the interests of the school districts in continuing long-established relationships.

It is going to be very difficult to get through [the emerging EFCFA legislation] because there are significant differences of opinion as to who should control the money. As much as we like to say that it does not come down to money, it always comes down to money. There are various interest groups, who would greatly benefit from local control of the money. All the local architects, engineers, and law firms that would be consultants are lined up on one side of this, and the administration, which wants to make sure that we do not squander the money is lined up on the other. (Farmer, 2001, p. 8)

As the school construction legislation was working its way through the state legislature, one of its required steps was the Assembly Education Committee. The school construction bill emerged from the Education Committee on March 16, 2000, as Assembly Bill A2041 with a favorable recommendation and a few amendments. A2041 envisioned the program as being operated through the coordinated efforts of the NJDOE, the NJBA, and the NJEFA. The NJBA was to be in charge of construction and the NJEFA was to finance the projects. The program not only would address the facilities needs of the *Abbott* Districts but would provide a mechanism for funding and construction of school buildings in districts throughout the state. The NJBA would provide construction management and project oversight (New Jersey State Assembly Education Committee, 2000).

Clearly the Administration's vision on this subject changed as Governor Whitman in her Conditional Veto<sup>42</sup> sent to the Senate on June 29, 2000; she recommended that one state agency be responsible for both financing and construction of school facilities projects. It was only on June 29, through this document, that the Governor's intentions to place the program in the hands of the NJEDA became clear.

Second, we must insure that the program operation and implementation are both efficient and effective. It must be administered effectively to provide the maximum benefit to its ultimate beneficiaries—our children. Therefore, I recommend that the New Jersey Economic Development Authority be designated as the entity responsible for the financing and construction of the school facilities projects to be completed by the State. . . . Centralizing the financing and construction functions in one authority will help ensure efficient implementation of this program. The New Jersey Economic Development Authority has significant experience in financing and constructing major capital projects in the State, and is the agency best suited to undertake the financing and construction of school facilities projects envisioned in this bill. (Whitman, 2000a, p. 3)

There were two competing concepts for the operational home for the program as the EFCFA legislation was being finalized in May and June 2000. The Senate Education Committee, in its report dated May 4, 2000 (New Jersey State Senate Education Committee, 2000) reported to the full Senate on a program to be operated by the NJBA and the NJEA. McNichol's reports on that May 4 Education Committee meeting observed that the subject of which state agency would manage the program had not been resolved (McNichol, 2000b). He wrote that the legislature and the administration were at odds over which agency would run the program.

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<sup>42</sup> Through the instrument of the Conditional Veto, a New Jersey Governor can lay out detailed recommendations for changes in the proposed legislation.

By contrast, the Senate's Budget and Appropriations Committee reported on a program to be operated by the NJEDA in its report to the Senate on May 11, 2000 (New Jersey State Senate Budget and Appropriations Committee, 2000).

The New Jersey Economic Development Authority will issue its bonds to finance the construction program and will provide construction management and project oversight services for school districts which are required under the bill to utilize the authority to construct their projects. (p. 1)

As late as June 1, 2000, the Assembly Appropriations Committee, echoing the Senate Education Committee but at odds with the Senate Budget and Appropriations Committee, recommended that the new program's financing should be handled by the NJEFA and the projects constructed by the NJBA (New Jersey State Assembly Appropriations Committee, 2000). The Assembly Appropriation Committee's report of June 1 was in response to Assembly Bill A2041. Page 7 of the committee report amended A2041 by replacing the NJEDA with the NJBA and the NJEFA.

Reflecting on the bill's approval in the Assembly, therein completing its legislative process on July 13, 2000, Speaker Collins expressed his concerns about New Jersey's ability to manage the massive program. "We don't know how this is going to play out but this is now in the hands of the administration and not the legislature" (as cited in Perkiss, 2000, p. A1).

Sciarra of the ELC, in a prescient comment, echoing Collins, stated to the same reporter,

I have grave doubts about the state's ability to handle this program and build schools that will serve the needs of students in the Abbott districts. The agencies being assigned the task do not have any experience with this and the state's track record on large projects is not good. (as cited in Perkiss, 2000, p. A1)

As noted earlier, July 18, 2000, was marked by two press events in which Governor Whitman demonstrated her approval of the school construction legislation. The

press release issued in the morning, for the event held at Cranford High School, included a statement that emphasized how the decision to place the program in the hands of the NJEDA was made through a deliberate veto by the Governor. Governor Whitman had previously vetoed the bill to provide that the construction program be operated by the NJEDA, which had a strong record in financing and building major capital projects, according to the Governor (New Jersey Office of the Governor, 2000). In Whitman's remarks at the Wilbur Watts School in Burlington City that afternoon, she discussed her decision to place the school construction program at the NJEDA.

Eight-point-six billion dollars is a huge sum of money. We must make sure we get the most for our investment. We will accomplish that by placing construction projects that the State will complete in the hands of the New Jersey Economic Development Authority. The EDA has a strong record in financing and building major capital projects and is more than up to the task. (Whitman, 2000b, p. 1)

Garcia (2001) was sharply critical of the balance of decision-making power, observing that the *Abbott* districts were captive clients of a state authority and virtually powerless to influence their projects. Garcia pointed out that the NJEDA held the balance of power in choosing the architects, engineers, and contractors used in designing and executing the project.

The NJEDA accepted district input but made the final decisions. Financing 100% of the project's cost, the state had 100% of the decision-making power. By contrast, the non-*Abbott* districts, receiving at least 40% of their project's cost from the state, were able to make their own decisions. Garcia, whose constituency included four *Abbott* districts, termed this approach paternalistic and countering New Jersey's tradition of home rule. Garcia found this frustrating because the school facility function had been removed from local responsibility and accountability. Whereas there was some level of accountability when a local school board had to stand for re-election, the NJEDA staff at

the distant state agency was “simultaneously accountable to everyone and no one” (Garcia, 2001, p. 95).

Garcia (2001) also addressed the arguments that had been advanced to justify mandating the *Abbott* districts to use the NJEDA for capital construction: first, efficiency and the avoidance of corruption, and second, to minimize waste. The administration’s proposals described the economies of scale that would be reaped by so many districts using the NJEDA. This included a vision of consolidated purchasing, prototypes, and model schools that would save money as a large number of schools were to be built.

Another facet of the question of where to place the center of the program’s responsibility was the argument concerning whether the program would be a centralized (state) or decentralized (school district) operation. Segal’s *Battling Corruption in America’s Public Schools* explained why New Jersey’s legislators were determined to run the multibillion dollar program at the state level rather than to grant funds to each school district and why the EFCFA included a role for the Attorney General (through an IG).

Segal (2004) provided several examples from investigations of the NJDOE in the early 1990s (NJDOE, 1991; Paterson) regarding Jersey City (NJDOE, 1988):

Investigation documented pervasive political patronage, cronyism, union pressure, and theft, along with soaring dropout rates, low attendance, and failing academic performance. City hall dominated school personnel decisions ranging from who got tenure and raises to who got to be a substitute. A former mayor laid off dozens of teachers who did not support his political campaign. School board members, controlled by city hall, funneled lucrative contracts to favored contractors. The school board did not oversee the superintendent or upper-echelon administrators, the superintendent did not oversee the deputies and the deputies did not hold their subordinates accountable—and so down the school hierarchy. The district’s problems finally triggered a state takeover in 1989. (Segal, 2004, p. 29)

In Newark, the NJDOE (1994) found two separate worlds, the central school headquarters contrasted with the schools where the children were being taught. The world of central school headquarters with its exotic retreats, new cars, free meals, and abundant supplies for school board members and administrators; the

other, the world of chronically failing students, low attendance rates, empty school libraries, meager supplies, and decrepit buildings. Profit, power, and patronage took precedence over children at practically every turn. The state report, more than one thousand pages, portrays the nine-member Newark school board as more interested in exotic vacations, cars, restaurants and getting jobs for friends and family than in fixing schools. (Segal, 2004, p. 30)

State Senator Ronald Rice, speaking before the Assembly Education Committee in summer 2002, reflected on the legislature's fear of corruption penetrating the construction program. He emphasized that the focus on corruption and organized crime had created a process that was based on layers of reviews and approvals.

We indicated, and rightfully so, that his [Attorney General] concern was that there's going to be major corruption possibilities with this kind of money and unscrupulous contractors who can't do a job or want too much for it and needs checks and balances. . . . I believe part of the problem is that there has to be too many approvals, whether they're verbal sign-offs on some of this processing. Now, coming from a security background and law enforcement, I really believe that reasonable people today could put enough checks and balances on protecting the process against "organized" family influence as indicated by the Attorney General and/or unscrupulous contractors without frustrating people. I believe that Caren Franzini, from my perspective, and the people I've talked to as an individual is doing a good job. Her problem is that her decision has to be made around other people and this whole process and the administration. We've accepted and faced those realities and run interference on it. (New Jersey State Assembly, 2002, p. 70)

Clearly, neither the Governor nor the state legislators were going to place the program and its large contracts and cash in the hands of the school districts. They would keep the program in Trenton and hire program and construction managers through private firms that could be controlled through contracts. The Whitman Administration also anticipated saving money by using PMs on a regional basis to manage a cluster of projects (Bohi, 1999).

For the majority of America's 13,777 school districts (National Center for Education Statistics, 2011b) and their administrators (local education agencies), constructing a school is a once-in-a-generation, once-in-a-career experience (Ortiz,

1994). Therefore, collective institutional knowledge and training are usually limited. Because so little school building had been occurring in New Jersey over the past generation, very few districts had experienced staff.

The Director of the School Planning Laboratory at Stanford University, writing in 1957, is among the authors who emphasized that school administrators must rely on outside specialists for constructing new schools.

Because most communities have too little school construction to employ the services of a full-time specialist, they frequently depend on outside consultants to assist their own staff members with the technical phases of planning for and planning the school plant. (MacConnell, 1957, p. 4)

If a district is constructing multiple school facility projects or a program of projects, then it sometimes engages a PM. This was the track that the State chose as it unrolled the implementation of the EFCFA in 2000-2001. When a school district or a state organization begins a serious large-scale facility reconstruction program after a 40-to 50-year hiatus, it lacks the experience and human capital to lead and implement such a program. This is compounded by the nature of a school district. The primary concern of a school district is educating children, not construction management.

This leads to the question of how the largest construction programs would be managed and how New Jersey's program would be structured. The primary concern of the NJEDA had always been economic development. Its experience was selling bonds, making loans, giving grants, and sometimes supervising construction of projects that would lead to the state's economic development. The direct construction of buildings in general or school buildings specifically was not among the NJEDA's portfolio of experiences. Therefore, the NJEDA would need to acquire this expertise, and quickly.

The “*program*” or “*project*” manager can either be an internal or an external staff member of the construction agency, known in the design and construction trade as “*the owner*.” Depending on the scope of services, the size of the project, and the availability of existing staff skill sets within the owner’s organization, an individual PM can either be a direct hire or be contracted by the agency through a *project management* firm.

Managing the construction of a new school building valued at tens of millions of dollars is frequently delegated to an experienced PM. For the purpose of the present study, a PM or *construction manager* is either a person or a company working for the construction authority or a school district. This manager is responsible for planning, organizing, directing, monitoring, and controlling the school building project (Drummey Rosane Anderson Inc., Macaluso, Lewek, & Murphy, 2004).

Discussions surrounding the staffing of these positions and whether this would be done through external or internal hires can be found in the testimony by State Treasurer Machold to the Senate Education Committee in November 1999 (New Jersey State Senate, 1999a). Machold explained to the committee that the State of New Jersey would not be growing a permanent bureaucracy to implement this program. Rather, the state would retain private construction managers who would in turn fill professional positions of architects and engineers as consultants. As they would not be employees of the State, the program’s workforce could expand and contract as necessary to meet its needs.<sup>43</sup>

Eugene Keyek of the New Jersey Association of School Business Officials expressed to a reporter his concerns regarding political influences and the hiring of

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<sup>43</sup> This model was subsequently abandoned during the Corzine Administration, which came to the conclusion that external consultants were too expensive and that it would be more effective to perform this work “in house” with additional staff at the NJSDA.

construction managers. He asked whether the program would become another “Parsons fiasco,” referring to the private contractor who ran New Jersey’s troubled auto emissions inspection program (Yaffe, 2000c).

### **How Would They Be Running This Program?**

What was to become one of the more difficult aspects of New Jersey’s program would be the challenge of meshing the capital programming and cost tracking with what was essentially a loose group of vaguely defined projects contained in FMPs. One of the fundamental challenges facing any program, including New Jersey’s, is the notion of differentiating between long-range planning and capital program (infrastructure) budgeting. In retrospect, the failure of the legislators to incorporate planning and financial controls into the school building program contributed to its subsequent failure.

The New York City school construction program, through its subsequent investigations and reports, provides a rich source of information and insights into the problems of managing a large-scale school facility program in any American city. In New York City, the problems reached a peak at the end of the 20th century and are reflected in great detail in a report prepared by a commission created by the Governor (Moreland Act Commission on New York City Schools, 2000).

The authors of this report on New York City’s school construction program could not emphasize deeply enough how poor planning undermines everything that follows. They observed that, without a solid foundation of “project scoping,” absent a reliable early estimate of cost and time, it is impossible to ensure that any plan will achieve its goals on time and within budget. “Simply put, if the plan is inadequate in identifying needs, setting priorities, estimating costs and time frames, and monitoring the progress of

projects, the rest of the process, no matter how well executed, will fail” (Moreland Act Commission on New York City Schools, 2000, p. 6).

Conceptual confusion and chaos about the role of a facility plan in contrast to the role of a “capital plan” appears to have been part of the problem in the New York City program. The investigators in the Moreland Commission, interviewing the leadership of the City’s school construction program, learned that the Board of Education had deliberately included many more projects in its 5-year plan than could ever have actually been accomplished. From a senior director they learned that these extra projects were included in order to be quickly substituted for other projects that might have to be dropped from the plan. A Vice President of the School Construction Authority (SCA) is reported to have stated that the 5-year capital plan was a “financial document, not an execution plan as typically perceived. [The capital plan] contains five years worth of projects, but just three and a half years’ worth of funding” (pp. 23–24).

Reflecting on Flyvbjerg’s analysis and the Moreland Commission’s description of New York City’s experiences, it is not surprising that the NJEDA-NJSCC-NJSDA encountered strong turbulence. The challenges of meeting goals and objectives within New Jersey’s multiyear mega-project are no different and may have been even greater due to the scheduled shifts in gubernatorial leadership every 4 years. The cyclical basis of state government brings an inherent internal and external instability to the school construction administration and its staff.

Perhaps foreshadowing Flyvbjerg’s theoretical framework (which was written 2 years later; Flyvbjerg et al., 2002), the Moreland Commission observed in 2000 that accurate estimation of project costs and completion schedules is essential for any

meaningful planning and project management process (Moreland Act Commission on New York City Schools, 2000). Absent realistic cost estimates, all prioritization efforts eventually go off track. If projects are all running over budget as a result of underbudgeting (or a “loose” design process that leads to change orders; Gunhan, Ardit, & Doyle, 2007; Petho, 2006), other projects will have to be deferred or scaled back to fund the added costs of the projects already underway. Therefore, these observations made in 2000 about New York City’s school program are prescient regarding the New Jersey’s program’s fate less than 5 years later.

If time estimates for design, site acquisition, remediation, and construction are weak, driven by political necessity or wishful thinking, then there will be financial consequences as these projects advance into construction. In the New York City school program there was a 52% difference in school project cost estimates. Again, this is strongly supportive of Flyvbjerg’s theory regarding systematic deception in public works projects.

The Moreland Commission, interviewing the leadership of parallel capital construction agencies (transit) in New York City, learned of the importance of professionally “scoping” the entire project as an integral part of the capital program generation process (Moreland Act Commission on New York City Schools, 2000). In order to wrestle with the basic questions of cost and time, each project must go through the earliest stages of feasibility, alternative analysis, and preliminary design and cost estimating. Without this “homework,” the estimates of time and cost are, at best, “guess-timates.”

The Commission used the term *program erosion* to label the consequences of a failure to plan, prioritize, advance, and implement a group of projects (Moreland Act Commission on New York City Schools, 2000). False starts, retreats, and overreach resulted in many fewer projects being completed than planned and many projects being halted midstream. The associated diminished expectations along with the poor public relations again and again lead to downward spirals and retrenchment.

The New Jersey program would need a great deal of capital planning. This type of planning consists of several fundamental elements, including identifying needs, prioritizing projects, preparing realistic cost estimates for each project, and preparing construction schedules. In order for the capital plan to be as realistic as possible, the cost and schedules should reflect the stage of project feasibility (“scoping”), as well as land acquisition, design, and intergovernmental approval procedures.

Whereas the New Jersey program’s LRFP was not supposed to be fiscally constrained, a “capital plan” would be needed to provide both a financial constraint and a reality check. Therefore, the LRFP was the “grand vision,” the long-term plan. The program as assembled under the EFCFA to be executed by the NJEDA under the supervision of the NJDOE did not include a mandatory capital planning component to match the LRFP. (This component would be introduced under Governor Corzine in 2006-2007).

The Moreland Commission emphasized that there should always be a back-and-forth loop between long range planning and the capital planning to make sure that monies are not wasted on projects that are in a lower priority level or could possibly be deferred (Moreland Act Commission on New York City Schools, 2000). If there is a growing

disconnect between the pressing realities of current needs and the projects funded in the capital plan, the political system eventually finds a way to intervene, either by providing additional funds or by halting the entire enterprise.

Optimally, the capital plan should include only the most important projects that are fully funded and completely implementable within the given time frame of the plan. Illusions or delusions in either cost estimates or scheduling have been shown to lead to loss of credibility (Flyvbjerg, 2005; Flyvbjerg et al., 2002; Flyvbjerg et al., 2003; Flyvbjerg et al., 2009).

Potentially everyone and anyone involved—the authors of the plan, the leadership of the program, or the politicians (advocates) who determined the fate and direction of the program—will feel negative “fallout” from deception. All of this was experienced by the New Jersey program after Governor McGreevey’s departure in late 2004. However, the seeds had been planted in the cost estimates of the late 1990s. The financial implications and the gaps in cost estimates are reviewed next.

### **How Would This Program Be Paid For?**

Although the first word of the EFCFA’s title was *educational* and the fourth word was *financing*, the program’s finances played a prominent role in how the construction of school facilities would occur in the years to follow. This section addresses the basic financial questions at the foundation of this program. How much would it cost, how would it be paid for, and who would control the money?

Erlichson (2001) identified one of the key weak points in the program’s cost estimates. Describing this as an unresolved intersection of two of the Court’s mandates of *Abbott V*, she highlighted the two dynamics. First, the Court mandated the expansion of

the population to be housed. Second, the Court mandated that all school children be housed in adequate and improved school facilities. In summary, *Abbott V* required the State to accommodate more students in more and better buildings. Achieving these two goals simultaneously was challenging in and of itself and, as the program evolved, proved to be impossible. The initial cost estimates prepared by Vitetta in 1997 did not include expansion of classroom space to house an increased student population, as was later recommended by Judge King. The phenomenon of governmental mandates that expanded school populations at its upper or lower ages was discussed in its historical and European context by researchers from Great Britain (Woolner et al., 2005). In New Jersey it was all happening simultaneously, along with the requirement to upgrade the quality of the school buildings.

Therefore, the question of how much it would cost to implement the *Abbott V* decision became a serious one after May 21, 1998. Aseltine (1998), in an article published 3 days after the *Abbott V* decision, reported estimates of the annual cost of the program between \$150 and \$200 million. These figures were based on the Court's embracing of the \$1.8 billion school construction plan proposed by Governor Whitman. The article noted that Judge King had estimated the cost at \$2.7 billion. Fitzgerald (1998), in the *Trenton Times* on June 4, 1998, also wrote that the cost of the work in the SNDs was estimated at \$1.8 billion but she did not cite the source of her estimate.

In January 1999 early details of the Whitman Administration's proposed school construction program were provided to readers of the New Jersey School Board Association magazine (Bohi, 1999). Bohi provided information based on a Whitman Administration briefing held in late 1998. She pointed out that the price per square foot of

\$125 that was being discussed in Trenton was very low compared to current construction. From what Bohi had learned from the Treasury Department, the \$125 figure had been based on 11 new schools built in central New Jersey. It did not account for renovation, which was projected to be a large part of the program.

The seeds for future arguments over money, size, grandeur, scale, and control of the Court-mandated school construction program first appeared at a hearing held by the State Senate Education Committee on January 21, 1999. The source of discontent, the root of what would subsequently lead to the unraveling of the program, was planted deep in the wording of the *Abbott V* Court decision issued May 21, 1998. Legislators, as they attempted to translate the Court decision's language into legislation that would be the foundation of a massive school construction program, began to understand the outlines of the emerging disagreement.

The *Abbott V* decision, the EFCFA legislation, and then the ensuing regulations all gave the school districts what appeared to be limitless resources. School buildings could be as large as they wished, the only constraint being their ability to persuade NJDOE officials in Trenton that there was an educational justification for making their classroom 200 square feet larger than the average classroom in all of the other *Abbott* districts.

Thompson (1990) observed that the disadvantages of full state support (i.e., no local participation, the *Abbott V* model) were higher state costs, loss of local control, and lowered local incentive. These disadvantages all played strongly in fundamental problems for the New Jersey program over time. Thompson's research included several salient insights regarding the standard of providing full funding for school construction

projects. This 100% funding, which is the rule for New Jersey's 31 *Abbott* districts, and Thompson's messages resonate strongly in the execution of the EFCFA from 2000 to 2010. This manifested in a lack of local self-restraint or fiscal responsibility when school program spaces and design qualities were determined.

One consequence of this race after a seemingly limitless pool of state resources was the State's inability to gauge the estimated cost of the EFCFA program. Because each school district could stake an ever-higher claim on financial resources, claiming a need for more square footage or more elaborate facilities, the final cost of the program could not then, now, or possibly ever be determined. In the subjective realm of persuasion of educational adequacy of square footage, why would school district "Q" need a full auditorium (because it offers theater arts?) in a K–8 school while other districts do not need an auditorium (because they did not offer theater arts at that time)? If money is no constraint, then every school district will want the largest and most fully equipped building available.

At the Senate Education Committee hearing in January 1999, David Sciarra, representing the ELC, argued that using any model school prototype would be a violation of *Abbott*'s provisions (New Jersey State Senate, 1999b). He stated that the prototypes did not reflect educational adequacy nor did they meet the needs of students in school districts as defined for an *Abbott* district. He reminded the Legislature that adequacy and student need was defined by the district, not by the State. The State's proposed prototype, for the elementary level, allowed only 115 square feet per student.<sup>44</sup> Pleasantville's

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<sup>44</sup> Adding to the confusion on this issue, Commissioner of Education Hespe mentioned discussed 125 square feet per student at a hearing of the State Legislature held on November 29, 1999.

Middle School, recently visited by Governor Whitman (McNichol, 1998) in September 1998, had 168 square feet per student, contrasted with the State's proposed prototype of 111 square feet for a middle school, according to Sciarra. The national median for middle schools was 146 square feet, and the regional median for New York, Pennsylvania, and New Jersey was about 160 square feet. Therefore, the State was proposing to systematically shrink the space per student in its prototype program.

Sciarra was dealing with the proverbial "double-edged sword" in this argument and mixing two conversations that would be essential to the program's future. He could not be faulted because the State's officials were not being completely straightforward, either. First was the conversation about whether there should be standardization within the program. Second was the argument about the square footage per student in these new buildings. These are two separate arguments that may have been deliberately confused or mixed by one of the parties to achieve an objective. Perhaps, in retrospect, the ELC could have received a more effective school building program if they had embraced standardization. Perhaps the State of New Jersey would have saved money if it had reached out to the ELC and the school districts with a more generous provision of square footage per student based on an agreement that all districts had identical educational programs and needs. However, this was not the path chosen by either part in the closing years of the 20th century; subsequently both contributed to the program's collapse.

Sciarra, at the January 1999 hearing, provided the example of Jersey City's planned downtown Elementary School No. 3 and Middle School. Local officials in Jersey City, which was and still is a state-operated school district, asked for 151 square feet per student for the elementary school and 188 per student for the new middle school (this

compared with the State's prototypes at 115 and 111 square feet, respectively).

Recognizing the trend, Chairman Martin responded to Sciarra and Gormley.

I'm not sure that you're going to convince the Department to increase the square footage or add—quite match this. This is interesting, though, and I think your point is an interesting one that in some of the districts including state takeover districts, they are, what seems to be, building larger and providing more than what the Department has come forward with. What minimal—Is it your intent that the funding is to be minimal adequacy? (New Jersey State Senate, 1999, p. 40)

Assistant Education Commissioner Azzara responded on behalf of the Department, "Not necessarily, minimal, but general adequate, general standards of adequacy would most likely work in all cases" (p. 40).

Both Senators Martin and Gormley warned the Assistant Commissioner of Education of the need to find a real school, an example, where these model spaces had been shown to work. They expressed their lack of confidence in a minimum guarantee of square feet per student. They questioned whether it was workable and would endure beyond the theoretical stage.

Chairman Martin questioned the basic assumptions behind the program's initial cost projections, which were based on a construction cost of \$125 per square foot. This value was to be uniformly applied across the state, although it was already known in 1999 that there were variations, for example, between north and south New Jersey and construction costs in Camden and Union City. He expressed deep concern about the validity of this figure, which was being used as the basis for calculating the entire program's budget. Lohbauer, responding on behalf of the Treasurer at the January 21, 1999 hearing before the Senate Education Committee, admitted a weakness in using the \$125 figure on a statewide basis but pointed out that this was currently the best information available. It is not clear whether Lohbauer, representing the State at this

important hearing, had read Vitetta Group's 1997 report, including its detailed caveats regarding the \$125 number, and was making a misrepresentation or whether this was part of the Whitman Administration's overall efforts to move the program forward.

Barbara Bohi, representing the New Jersey School Boards Association, was also skeptical about this figure. She informed the hearing that the Association's estimates per square foot ranged from \$135 to \$165 on average. (At this point, it is worth referring to Flyvbjerg's concept of strategic misrepresentation and the phenomenon of "anchoring" specifically on that \$125 per square foot estimate prepared by Vitetta.)

In the testimony by Dr. Eugene Keyek of the New Jersey Association of School Business Officials there is a sense that the cost of the program was truly the proverbial "moving target." As the session of testimony was drawing to a close on January 21, 1999, the banter between the legislators and the speakers increased. Dr. Keyek mentioned that he was not sure that \$4.5 billion "is the correct figure." A legislator asked, "Where did you get \$4.5 billion? I never heard that one. I was at \$5.5 billion." Dr. Keyek insisted that he had heard \$4.5 billion from the Whitman Administration. Azzara of the NJDOE added that he would happily take the \$4.5 billion. This banter proceeded with State Senator Gormley pronouncing, "You know we will hit \$10 billion . . . this number is going to come back beyond, beyond. It will be \$10 billion. . . . The Treasurer will be on an IV when he hears that number" (New Jersey State Senate, 1999b, p. 86).

Senate Education Committee Chairman Robert Martin asked the State Treasurer's representative Lohbauer, at a hearing on February 18, 1999, about the construction program's proposed costs, which he had heard ranged from \$1.8 to \$2.8 billion (New Jersey State Senate, 1999c). Lohbauer responded that the Treasurer had publicly provided

numbers that projected \$2.6 billion of construction in *Abbott* districts and \$2.7 billion in non-*Abbott* districts over 5 years. He detailed that the \$2.6 billion estimate had been developed by the Vitetta Group as part of the Supreme Court case. When Chairman Martin questioned the Treasurer about the repeatedly cited \$1.8 billion figure, Assistant Commissioner of Education Azzara clarified that \$1.8 billion was the actual construction costs, without soft costs. Azzara continued, “Then when we got into the court, we testified that that the soft cost would add another \$600 million, up to \$2.4 billion. And then, when they amended our plan for early childhood to include 3-year-olds, it got up a little more, so ultimately, it grew to \$2.8 billion” (p. 15).

State Senate Gormley interrupted Azzara, taking issue with the NJDOE adding 33% to the cost of the school construction estimates for “soft costs.” Azzara’s definition of soft costs included site development issues and, according to the state’s experts, could range from 15% to 30%. To be on the safe side, the State took the higher number. Despite this discussion, the official figure remained at \$125 and the program moved forward through the legislature with a manipulation at its core. The depth of this error would immediately become apparent in late winter 2000 and spring 2001 as the school districts began to submit more substantiated plans to the NJDOE.

The discussions over the adequacy of the \$125 per square foot figure were already in full bloom in April 1999, as reported by McNichol (1999c):

Local officials, lawmakers and Whitman administration officials are still wrangling over just how spacious the school buildings should be and whether the State will back off its original plan to base state aid on the standard cost of \$125 per square foot. (p. 1)

The EFCFA bill, as introduced on 15 November 1999, included an “area cost allowance” of \$131 per square foot for the 1999-2000 school year, to be adjusted annually through an appropriate cost index (New Jersey State Legislature, 1999b).

Two articles anticipating the release of the Whitman administration’s school construction legislation described how the estimated costs for schools in the SNDs were already significantly greater than the administration’s initial projections. So far, four school districts had submitted plans to the state for review and these called for \$674.5 million in construction, while the administration had called for \$240.8 million. The reporters, quoting Bob Dean, an administrator at the East Orange School District, explained that part of the cost disparity was apparently due to the change in NJDOE guidance. Mike Azzara, the NJDOE Assistant Commissioner of Finance, clarified that, if repair costs reached 85% of replacement cost, it was better to replace a facility. This was not in the initial guidance. Azzara conceded to the reporter that this could be one reason why the proposals were coming in higher than anticipated (Parello, 1999b).

Dustan McNichol, in a Sunday feature article that laid out the program’s evolution, calculated the apparent cost of program in mid-May 2000. “In late August [1999] the original 28 districts covered by the court’s order in the *Abbott vs. Burke* case finished tallying the actual costs of their school building needs: \$7.3 billion, not the \$2.8 billion cited in the court’s 1998 order” (McNichol, 2000c, p. 6).

By November 1999 the notion that this legislation would be a program for all of New Jersey’s students, not just those living in low-wealth, defined *Abbott* districts was deeply rooted among the legislators. The testimony by State Treasurer Roland Machold

to the Senate Education Committee regarding the proposed legislation reinforces this idea.

Therefore, a program that had its genesis in a Supreme Court mandate to improve the conditions of the schoolhouses in its poorest cities, for children of color and low income, became the Whitman Administration's opportunity to improve schools for all children in the state. This was a significant turning point, as it marked the beginning of the compromise that made the program possible.

On the one hand, it bound the fate of the facilities of the minority children of the low-wealth districts to those of the rest of the state. On the other hand, it increased the volume of spending for the entire program by orders of magnitude beyond the expectations of the State's leadership in the closing years of the 20th century. Machold, the State Treasurer, spoke about the proposed compromise:

I believe that we now have legislation, which still requires discussion on some elements but will ultimately allow us to provide a safe, comfortable, and effective learning environment *for all of New Jersey's children*. . . . We have to rectify a serious problem that has teachers trying to teach and children trying to learn in schools that have improper lighting, inadequate heat, or crumbling walls. The school construction bill is the answer to this problem, not only for the Abbott districts but for every district in the state. Old and inadequate school facilities, while rampant in our urban districts, *are by no means limited to those districts, as you know. This bill offers assistance to each and every school district in the state.* (New Jersey State Senate, 1999a, p. 7; emphasis added)

An article reporting on the Senate hearing held on November 29, 1999 (McNichol, 1999b) quoted State Treasurer Roland Machold that the program could cost as much as \$11.5 billion, twice what Governor Whitman had initially projected. State Senator William Gormley (Republican, Atlantic County) wanted the state to plan to spend \$750 million a year on school construction. Here again is substantiation of the disconnect between the cost projections regarding the scope (number of buildings) and

cost of completing this ambitious program, reinforcing Flyvbjerg's thesis about the politics of deception in public works.

In 1999 the legislators accounted for how the debt service would be covered by a combination of lottery and cigarette taxes (\$112 million), with the balance covered by "state tax revenue growth." McNichol (1999b) emphasized that the 1998 *Abbott V* court decision had mandated that New Jersey spend at least \$2.8 billion. He observed that, since then the districts had proposed \$7 billion worth of projects, including 161 new schools and renovations.

At the hearing on November 29, State Senator Martin asked Education Commissioner David Hespe whether some school districts would choose to construct specialized classroom spaces when still faced with so many unhoused students (New Jersey State Senate, 1999). State Senators Martin and Turner, already in 1999, seemed to recognize that school districts might be caught "down the road" with unhoused students. They recognized that districts would be reluctant to set aside rooms for special programs (science, art, or music) or would eventually be forced to convert them to regular classrooms. Hespe's response was that the districts were to build in accordance with their 5-year plans.

This testimony does not reflect whether Commissioner Hespe understood what the Senators were projecting and was deliberately giving the "official response" or believed that the program would really be able to build all that was planned. This is an interesting question, as both Martin and Turner appeared to be forecasting a shortfall long before the program was approved. Again, this is probably another reinforcement of

Flyvbjerg's concepts of how large projects are presented for approval in a deceptive form.

Debra Bradley, representing the School Facilities Coalition, in her testimony on November 29 cited a recent study by the NJDOE that estimated facility needs for the 28 *Abbott* districts at \$7.2 billion. She emphasized that this figure did not include Plainfield or Neptune nor did it include an assessment of early childhood facility needs. Bradley thanked the legislators for including Plainfield and Neptune and for increasing the area cost allowance to \$131 per square foot. She also thanked the legislators for including the soft costs of site acquisition, development, design professionals, and legal fees among those to be compensated under this legislation (New Jersey State Senate, 19991, pp. 29–30).

McNichol (2000d), writing that a \$5.8 billion plan had become a \$12 billion plan, described how one lawmaker was trying to extend the bill even further. Senator Kyrillos, a Republican from Monmouth County, “told State education officials yesterday that he won’t vote for a school construction bill unless it includes aid for a \$78 million school building program that Middletown approved almost four years ago” (p. 16). He asked whether it was fair to reach back only 3 years, why not 4 years? McNichol detailed that state records showed nearly \$1 billion in school construction between December 1996 and September 1998. Therefore, meeting Kyrilos’s demand would either expand the scope of the financing needed or reduce the number of new schools to be built. Kyrilos insisted that he could not ignore the needs of one third of his district.

The school construction bill (S200), as reported out of the Senate Budget and Appropriations Committee on May 11, 2000, included a provision to “grandfather in”

school facility projects that had already been begun by school districts. The committee proposed that any school project that had received approval of its educational specification from the NJDOE or building permits from the Department of Community Affairs (DCA) since September 1, 1998, and had issued debt could ask to be included in the program. This would require a review of the project's FEC and subsequently facilitate receipt of a grant of no less than 40% of construction cost or debt service aid on the project, which preceded approval of the EFCFA legislation.

As the legislation approached completion in May 2000, McNichol, the *Star Ledger* reporter who had followed this story for many years and had found the program's cost soaring to \$15 billion, wrote,

Over the past 24 months, the repair plan steadily has gained weight as each segment of society has piled more dressing on the plate. Some \$2.7 billion was added for middle-class schools; \$4.5 billion was tacked on when the poor schools compiled a more comprehensive list of their needs; \$1 billion was layered on to help wealthy districts build new schools too. A flurry of lobbying last week brought the total to \$15 billion. . . . The transformation of the Supreme Court order is a case study in how the state's suburban lawmakers can exact rewards for their communities before agreeing to fund city-focused initiatives. It is also the story of how big-money politics works in an economic boom time. (McNichol, 2000c, p. 1)

Senator William Gormley, who figured prominently as a sponsor of the bill and as an active member of the Senate Education Committee, was quoted by McNichol (McNichol, 2000f, p. 25): "I think it is an example of the very best New Jersey can do. It touches every district. It is an incentive for every district to upgrade their buildings."

Both Bohi of the New Jersey School Boards Association and Ponessa of the ELC were quoted by Yaffe of the *Asbury Park Press* in early July 2000 as continuing to be concerned about the estimated cost per square foot, \$125, included in the legislation

(Yaffe, 2000c). They thought that it might be too low both in the north and in areas where expensive land would have to be purchased to create sites for new schools.

On the day the Assembly passed the EFCFA (July 13, 2000) *The New York Times* quoted critics who observed, “The inclusion of even the wealthiest districts, which will be reimbursed for at least 40 percent . . . drew support for the bill from across the political and economic spectrum” (Halbfinger, 2000, p. B1). The critics warned that borrowing so much to rebuild schools would increase the state’s already soaring debt burden from \$14 billion to nearly \$23 billion in just a few years.

The State of New Jersey’s approach to the financial obligations of its subordinate jurisdictions was explained in testimony provided by Rafael Perez, Executive Director of the NJEFA, to the Remand Judge hearing testimony in the *Abbott V* hearings (710 A.2d 450, N.J. 1998).

Conceptually, the State of New Jersey is not obligated to legally provide debt service for bonds issued by the NJEFA. However, it is essentially obligated to provide this debt service, both financially and morally, because the State’s credit rating would suffer severely if the EFA defaulted on its obligations. (p. 524)

Again, early details of the Whitman Administration’s proposed school construction program were provided to readers of the New Jersey School Board Association magazine in an article published in January 1999 (Bohi, 1999). The article noted that administration officials were not answering the question of how the construction would be paid for. State Treasurer DiEleuterio stated that \$50 million in cigarette taxes would be allocated along with the current \$120 million that the State set aside each year to pay school debt. Bohi explained that the administration was claiming these revenues twice, which would eventually leave the general fund to pay the debt. On the other hand, the administration was only planning to borrow the money in order to

fund the projects as they were ready for construction. Bohi made it clear that the financing was vague on details. This perspective was echoed by others who testified before legislative committees.

An AP article in mid-April 1999 (AP, 1999a) mentioned that Governor Whitman had promised \$62 million in revenues from a new multistate lottery game that New Jersey would join in May 1999 would help to pay for the program. The article closed with the statement, “It’s sure to cost hundreds of millions by the end of five years” (p. A7).

Upon presenting the school construction bill on May 11, 1999, skeptics expressed concern about the state’s ability to pay for it (AP, 1999b). Whitman “identified two annual revenue streams: \$62 million from the new ‘Big Game’ lottery and \$50 million in cigarette tax revenues” (p. B5). The article contrasted these revenues with the annual costs, which would range to approximately \$400 million annually. The writer observed that, because the program would take a few years to set up, the current Governor would not be faced with paying the largest sums before her term expired at the end of 2002. The State Treasurer, James A. DiEleuterio, said that revenues from the State’s general fund might be needed to finance the plan.

The *Philadelphia Inquirer*, in an editorial published before Thanksgiving 1999, praised Governor Whitman for advancing the school construction program but expressed skepticism about how this would be paid for. The *Inquirer* observed that the program’s debt service could reach as high as \$664 million by 2010. Although the Whitman Administration had identified monies from a variety of sources, including the national tobacco settlement, the majority of the debt would be paid by future general revenues.

The *Inquirer* editors portrayed how Governor Whitman “in times of prosperity, hacked away at the progressive state income tax, while pawning a lot of debt off on future Governors” (p. A12).

Questions regarding the sources for repaying the bonds issued by the program were also brought up by League of Women Voters at the hearings held by the State Senate Education Committee on November 29, 1999 (New Jersey State Senate, 1999a, p. 113). Senator Martin, the Committee Chair, responded that much of the money would come from the General Treasury, as well as some from the lottery, the cigarette tax, and the Riparian Fund (money paid to the state for long-term leases of tidelands at docks, marinas, and so forth). The League representative responded that she was aware of sources for \$112 million per year that still left approximately \$400 million to be found. There was a discussion between Senators Gormley and Martin and the League’s representative about the wisdom of a dedicated income stream, to which apparently the League had objected on previous occasions.

Reporting on the same hearings in the *Trenton Times*, reporter Peter Aseltine (1999) quoted State Treasurer Roland Machold, who said that the annual cost of the program would reach \$500 to \$750 million within 7 to 10 years if interest rates increased. Machold expressed that the State should be able to maintain its AA+ bond rating despite its heavy debt load with \$2.8 billion in pension bonds and the need to replenish the Transportation Trust Fund.

Echoing her testimony at the hearing the day before, Sandra Matsen, President of the League of Women Voters, informed Aseltine that the proposed legislation continued a recent pattern. Programs are designed that require little funding in the initial year but

require significant increases later. She pointed out that borrowing would require tax increases or budget cuts by future Governors and legislators (Aseltine, 1999).

Deborah Yaffe, writing for the *Asbury Park Press*, examined the Governor's upcoming budget address in late January 2000. She noted the apparent intent to use \$100 of \$471 million from New Jersey's share of the national tobacco settlement to partially fund the new school construction program (Yaffe, 2000b).

The issue of how to pay for this construction program was again addressed by the Senate's Budget and Appropriations Committee on May 11, 2000, as the EFCFA was approaching approval. The analysis proposed a program of \$6 billion for *Abbott* districts and \$5.6 billion for non-*Abbott* districts, for a total of \$11.6 billion. The statement of fiscal impact that was part of the Committee's report indicated that 70% of the State's debt service cost would be attributable to the planned construction in the *Abbott* districts. This fiscal analysis, which accompanied all legislation, explained that the State currently (1999-2000) spent \$156 million on school facilities each year. Projections of debt service costs assumed that the money would be spent in equal amounts over 10 years. A peak of debt service cost would be realized in 2010 at approximately \$700 to \$800 million, remaining steady through 2021, when it would begin a decline. The calculations were based on 6.5% interest rates and 20-year bonds. The annual debt payments would be paid by \$100 million from the tobacco settlement fund, \$117 million from lottery proceeds, \$50 million from state tobacco tax dedication, and \$5 million from the Fund for Free Public Schools (riparian lands funds; New Jersey State Senate Budget and Appropriations Committee, 2000).

### **As the Legislators Toiled, School Buildings Continued to Age**

*Facilities* is the second word in the title of the EFCFA. Throughout the period leading to Governor Whitman's signature on the bill on July 18, 2000, New Jersey's school buildings were a passive yet slowly and steadily deteriorating backdrop. They were the subject of discussion and of concern but there was little construction or improvement.

First among the new program's priorities would be emergency repairs to resolve urgent life safety issues. Setting the stage for priorities within the *Abbott V* decision and the program's first wave of health and safety projects were incidents such as the one of January 1998 in Camden (Colimore, 1998). On January 15, 1998, fifteen classrooms were sealed off in the Bonsall Elementary School's older wing when the ceilings were found to be in immediate danger of falling. The seventh and eighth graders had to be quickly relocated to three other schools. The danger at Bonsall was preceded by actual ceiling collapses at Camden's Molina Elementary shortly before Christmas 1997 and another at Dudley Elementary. This prompted Camden School District officials to examine all 34 of the district's school buildings.

It is important that this discussion of the health and safety element of the New Jersey school construction program be viewed in its proper policy perspective. The project was never meant to create an educationally adequate environment in a school. These types of projects were by definition to be undertaken "in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff" (NJAC 6A:26-1.2 Definitions). Subsequently, any funds

expended on the health and safety or emergent portion of the program was money not spent on improving the educational adequacy of school facilities.

Within section V-A of the Supreme Court's *Abbott V* decision, buried within a paragraph discussing the engineering firm that was hired by the NJDOE to review every *Abbott* school, was a statement regarding prioritizing the repair of deficiencies. The Court observed that the engineers who had examined these school buildings had found problems that directly affected the health and safety of children and ruled that these defects must be the first to be remediated. Recognizing that the future program would have phases, they stated that this "should be one of the first the State addresses" (153 N.J. 480, 710 A.2d 450 [1998], Section V-A, p. 470, *Atlantic Reporter*). The Court embraced their recommendation.

Commissioner Hespe, on behalf of the NJDOE, announced in October 1999 that it had approved the start of design work on projects in about 100 school buildings, some of which were 100 years old (McNichol, 1999a). Called "spot" repairs, these included roofs, electric, heating, and cooling system repairs. Hespe outlined the initial health and safety program in a hearing before the Senate Education committee on the emerging EFCFA legislation, then known as Senate Bill No. 15, on November 29, 1999 (New Jersey State Senate, 1999a). By that time (November), the NJDOE had approved 375 health and safety projects at an estimated cost of \$347 million. These projects included fire alarms, electric and security systems, sprinkler and fire standpipe systems, windows, roofing, and boilers. The Commissioner informed the Committee that the NJDOE was preparing for immediate implementation of these projects upon approval of the legislation. State Treasurer Roland Machold in his testimony before the same committee on November 29

explained that contracts would be bundled within a school district. The State would gather projects with common elements into a series of groups. The creation of these groups of projects would achieve economies of scale, for example in the repair of doors in several schools, boilers in several buildings, and so forth.

Speaking during a State Board of Education meeting on April 5, 2000, Commissioner Hespe expressed frustration at the Legislature's pace on the school construction legislation. He responded to questions about the State's ability to meet the goal of construction to begin by spring 2000, which had been submitted to the Court by the State. The article detailed that Hespe had already used about \$100 million to begin design work on nearly \$400 million in health and safety improvements in the 30 *Abbott* districts (Yaffe, 2000a).

### **Conclusion: A Compromise Was Reached**

A compromise was reached on May 4, 2000, by New Jersey's Republicans and Governor Whitman as the EFCFA made its way through the Senate Budget and Appropriations Committee. The compromise would produce the suburban and rural votes needed for legislation that would bring \$6 billion in facilities improvements to New Jersey's primarily urban low-wealth 30 *Abbott* districts. The Senate Republican leadership took credit for altering the EFCFA to include a grant program for school districts throughout New Jersey. A subtle change in wording included a grant of at least 40% of FEC to convert a program initially targeted at the low-wealth school districts into a statewide school facilities program. This compromise enabled all school districts in the state to improve their schools upon approval by at least 21 of the 38 Senators and 41 of the 66 Assemblymen.

This process reflects the theories of deliberate deception and overoptimism sometimes used by proponents of public works projects, as proposed by Flyvbjerg. The disingenuous approach of legislators on the one side and the leadership of the executive branch on the other side led to a chronic budgetary fiction that was inherent in the program. The Governor, the Department of Treasury, and the NJDOE all had part in pressing forward a program that would be difficult if not impossible to execute. The budgetary problems would be exacerbated once the urban program became a statewide program, funding everyone's schools at a minimum rate of 40%.

The forces that shaped this legislation would have great influence on its future. The actions by the Governor, key legislators, program advocates, and lobbyists left an imprint on the program. Perhaps above all, there was a lack of preparedness in the executive branch. It was not clear until June 2000 that Governor Whitman had decided that the program would reside in the NJEDA. It is apparent that no work was being done anywhere within the state government to prepare for this program's implementation.

On the other hand, several seminal decisions had been made. The State Treasurer, for example, had determined that the program would largely be managed by external consulting firms. The flexibility of this solution came with the disadvantage of high costs per project, especially when the projects were moving slowly and without adequate control. To counter possible corruption, the Legislators inserted an IG, required prequalification and verification of contractors and consultants by the State Police, and required several layers of checks and balances to be implemented by the administrators of the program.

This chapter presented an explanation of how the compromises of a democracy—the soil of New Jersey politics—led to compromises and solutions. This program could not have been launched without enabling legislation and the legislative process demanded answers to questions: How would the program be financed? Which agency would run the program? What role would school districts play in the new program? Would there be standards and cost controls?

From the historical perspective, this account concluded on the afternoon of July 18, 2000, as Governor Whitman placed her signature on EFCFA, placing the program in the hands of Caren Franzini at the NJEDA. At that instant the momentum shifted from the legislative branch to the executive branch and from design to implementation.

## CHAPTER 6

### **Birth of a School Construction Program (2000–2003)**

Much like a young child in its first years of growth, there is much importance to a new institution’s initial steps. It is argued in this chapter that the patterns set during this construction program’s first 2 years of existence hold the keys to understanding its successes and failures. The account begins with the topic of *administration*, as this is the primary concern of a new government organization immediately after its birth.

The bureaucratic encumbrances that were added to the new program to check fears of fraud and misspending in urban school districts were so “successful” that fewer schools than envisioned were built in the low-wealth districts.<sup>45</sup> Simultaneously, the Court’s directive and the Legislature’s compromise unintentionally allowed a subsidized blossoming of speedy construction in the state’s middle- and upper-class school districts; thanks to an easy-to-receive grant of at least 40% of the approved construction costs.

Therefore, a child in one of New Jersey’s 31 low-wealth (*Abbott* or SND) districts would still, most probably, statistically, encounter an educationally inadequate facility, despite the progress by the ambitious New Jersey program. Thus, the message of Filardo’s (2006) report would ring true even in New Jersey: Despite a decade of improvement, a disparity remained between suburbs and inner cities.

Greif (2004) wrote that New Jersey’s experience “demonstrates both the promises and limitations of school finance litigation” (p. 656). Perhaps because school facilities were the more concrete expression of the *Abbott v. Burke* process, both literally and

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<sup>45</sup> Sixty-six new buildings and 59 rehabilitations/additions were realized over the 10-year period (NJSDA, 2012a).

visually, they became a lightening rod, attracting all and every criticism regarding government performance and spending.

With Governor Whitman's signature upon the EFCFA on July 18, 2000, the task of implementing the school construction program shifted to the state's executive branch. The bill placed the entire program within the NJEDA. The fundamental decisions had all been made by the Governor and legislators. This program would be centrally run from Trenton by the NJEDA, and the 30 SNDs would passively receive services and buildings. Administrators at the NJEDA would be responsible for setting up the new program within the boundaries of the new statute, Public Law 2000, Chapter 72.

Governor Whitman was quoted immediately after the Assembly had passed the EFCFA (Cannon, 2000a) on July 13, 2000, as stating that most groundbreakings would not begin until summer 2001 because too much of the current construction season had been lost. However, Whitman explained that work had begun in 14 SNDs to address health and safety concerns.

Noted in the NJEDA's first *Six-Month Progress Report*, the responsibility for this new program was not solely in the hands of the NJEDA.

The NJEDA shares responsibility for the School Construction Program with the DOE and the recently created Unit of Fiscal Integrity within the Office of the Attorney General ("Inspector General"). The DOE is responsible for reviewing and approving school district construction plans to ensure that they are in compliance with State building standards, referred to as FES and for conformity with educational requirements. (NJEDA, 2000, p. 3)

After receiving the program, the NJEDA began immediately to recognize the organizational implications of absorbing this new task. As mentioned earlier, the basic decision by the legislature had been that this was to be a centrally run, state-managed, program. Existing school districts would be in a subordinate role to a future, currently

nonexistent department within the NJEDA. One expression of the priority of the program within its new home, the NJEDA, was its placement on the 19th page of the NJEDA's *2001 Annual Report* (NJEDA, 2001a). This report would be the first reporting on a full year of activity of the school program; thus, perhaps, its location would reflect its importance in the overall sphere of NJEDA activity. The *Report* contained the following statement of objectives and principles:

Developing dynamic, safe and modern public schools throughout the State that encourage students to learn and grow is critical to the EDA's vision for New Jersey's future. The Authority is committed to managing a School Construction and Financing Program that promotes educational and economic opportunity, meets the needs of school districts, helps to rebuild communities and serves as a paradigm for the nation and a model for other states to emulate. . . . The EDA has organized its School Construction and Financing Program around three principles: moral integrity, fiscal integrity and open communications with school districts. (NJEDA, 2001a, p. 19)

Describing the nascent program to attendees of annual statewide school board convention in Atlantic City in October 2000, Educational Commissioner Hespe provided details on the program's first 90 days. He informed attendees that \$750 million had been allocated for emergency repairs in the 30 SNDs (McNichol, 2000a).

It is important to note that Caren Franzini, the NJEDA's CEO, was setting up the school construction department during a period of change in the state's leadership. The EFCFA was signed in July 2000 and Presidential elections were held in November 2000. George W. Bush, the Republican winner, invited Governor Whitman to be Administrator of the U.S. Environmental Protection Agency (EPA). Whitman accepted the offer and left Trenton on January 31, 2001, placing the leadership of the state and the new construction program in the hands of Acting Governor Donald DiFrancesco for nearly 12 months, until James McGreevey took office January 15, 2002.

Therefore, Whitman's influence on the new program extended over one half a year, while DiFrancesco, clearly a state caretaker, was in charge for nearly an entire year. Between its beginning on July 18, 2000, and Governor McGreevey's taking the reins of power on January 15, 2002, the school construction program's patterns of organizational behavior and structure, norms of operation, and organization were permanently embedded. These formative months occurred while the Governor, who deposited the program in the hands of the NJEDA, had departed for the nation's capitol, while the leadership of the NJEDA, albeit highly regarded, would feature this new \$6 billion program on the 19th page of its annual report.

CEO Franzini provided insight into the school program's departmental structure when she introduced her key staff to the Assembly Education Committee on July 31, 2002. She introduced a Director of Design and Construction, a person in charge of Policy and Communications, another in charge of work force issues and project labor agreements (PLA), a Chief Information Officer, and a head of Contract Administration and Procurement (New Jersey State Assembly, 2002, p. 77).

In August 2000 New Jersey's NJEDA staff found itself precisely in the same position as their colleagues in Florida's Miami Dade School District after approval of its \$1.6 billion bond referendum in 1988. Writing about the post-referendum period in Miami in a retrospective Sunday feature article in 2003, a reporter who subsequently received a Pulitzer Prize award observed the early setbacks.

With the new money pouring in, a skeleton crew of district staffers struggled to decide where to build, which companies to hire, what to tackle first. "We were so consumed with the political controversy in getting the bond referendum passed, we woke up the next morning after it had passed, and we had done nothing to prepare for it," said Octavio Visiedo, Superintendent from 1990 to 1996.

The School Board hired a construction management company to run the program. But after two years and almost \$18 million in payments, Visiedo persuaded the Board to run the program in-house even though the district had never before taken on a building challenge even remotely close in size. Bhagwan Gupta, with a background in business and personnel, not construction, was put in charge. The district had only a handful of PMs to oversee job sites. The management company had about 40 people. (Cenziper & Grotto, 2003b, p. 1A)

*Education Week*, after informing its readers about Whitman's signature on the EFCFA legislation on July 18, 2000 (Johnston, 2000), expressed skepticism about the program's operation and how long it would take to break ground on the first school. "Meanwhile, the state's economic development authority is sailing in uncharted waters as the newly named coordinator of the school construction projects. The agency plans to hire a consulting firm<sup>46</sup> to study its new organizational needs and eventually may add 40 or more new staff members" (p. 23). Responding to questions about the NJEDA's mobilization for implementing the EFCFA, the Authority's deputy director, Beth E. Sztuk, is quoted in August 2000:

The agency understands the task that lies ahead and is studying the experiences of other states that are involved in school construction. . . . The reason we were chosen is that we are not a start up. We have more than 100 people. We pride ourselves on being good at what we do. (p. 29)

As early as fall 2001, Erlichson joined other voices in expressing doubt regarding the organizational experience and capacity of those charged with executing the new program: "A lack of expertise as well as staff plagues school districts and the department of education [NJDOE]. A burgeoning caseload will undoubtedly swamp the economic development authority in the near future" (Erlichson, 2001, p. 682).

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<sup>46</sup> It hired Heery International in October 2000.

Pressures were added to this new organization when its workload immediately increased. Ponessa described to the Joint Committee on Public Schools how Hespe had pulled all of the health and safety projects out of all of the school districts' LRFPs (New Jersey State Assembly and State Senate, 2003). This meant that \$605 million worth of projects were immediately transferred to the NJEDA for completion by the end of 2002.<sup>47</sup> The pace of the NJEDA immediately faced criticism from the ELC and the state's SNDs, as much of the money was being immediately directed to wealthier communities that could take advantage of the new program quickly by offering at least 40% of the eligible cost of their capital construction (Bewley, 2000; McNichol, 2000e).

McNichol (2000h) reported that nine engineering firms had submitted bids to the NJEDA to design and manage the massive new program. Bids were received from Parsons Brinckerhoff, Fredrick R. Harris, and Hill International, among others. The NJEDA expected to select a firm by mid-October 2000 to be responsible for "drafting technical manuals, hiring consultants, setting up computer programs and performing a host of other tasks needed to get the largest construction program in state history off the ground" (p. 11). One bidder observed that this work "is the backbone, the structure, the heart and bones of the whole program. It's a lot of brainpower" (p. 11). The winning bidder would design a system of regional project management firms that would be directly responsible for the specific construction projects but also keep state officials

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<sup>47</sup>According to Ponessa, when Al McNeil joined the NJSCC in summer 2002, he immediately recognized that these projects could not be completed by the end of 2002 because many of them contained work that could not be performed in a school building occupied by students; he concluded that, realistically, they could be completed by the end of 2003.

apprised of progress. Among the tasks for the winning firm would be identification of cost-saving standardized elements for the many new schools to be built.

The NJEDA was in a very difficult position. The framework of state law and regulations governed the Authority's process for engaging consultants and architects, as well as hiring employees and purchasing school furniture. It was charged with staffing this new organization, hiring consultants, and executing long-awaited projects quickly, while conforming to law and regulations. Intuitively, it turned to the nation's private sector, with its large construction and project management firms.

In its report on its first 6 months of activity, the NJEDA described its approach to the successful selection of its first external PM: Heery International Inc. (Franzini & Staudt, 2001; NJEDA, 2000). As described earlier by McNichol, nine firms had responded to the RFP. The NJEDA's Board of Directors selected Heery on October 10, 2000, and its contract with the state program began on November 1, 2000.

With substantial experience in large multisite school construction programs (in Ohio), Heery was charged by the NJEDA to develop a strategic plan to organize, procure and implement services on school projects, and manage the program during an initial period. Heery's role was

assisting the Authority in creation of an organizational structure for the new Department [a department within the NJEDA], the design and implementation of an interactive communication network, the development of a strategic plan to organize, procure and implement the services required to undertake the school facilities projects and the management of the program. (NJEDA, 2000, p. 3)

Within the NJEDA, the school program was placed within a newly created Division of School Financing and Construction. The Division was subdivided into three functional units: Policy and Communications, Contract Procurement, and Design and Construction.

Once the School Construction Program was enacted into law the Authority moved quickly to create the structure, add the staff, and draft the policies and procedures that were necessary to get the program off to a quick start. The Authority created a Division of School Financing and Construction to set up the appropriate processes, procedures and systems and integrate its new responsibilities with the Authority's overall economic development function. (NJEDA, 2000, p. 3)

Franzini described the issuance of RFPs for health and safety design work to architects and engineers in “waves.” At the time of the hearing in late March 2001, the first wave, for an estimated \$10 million of construction work in six school districts, had already been released, and a second wave for \$35 million in 10 districts was being prepared. Heery was to be the PM supervising the field activities for the first wave. The NJEDA planned to issue RFPs for regional PMs across the state. Franzini noted that, because of their size, Jersey City and Newark might warrant their own PMs. She envisioned running this program entirely with external staff hired through RFPs, rather than an enlarged staff of the NJEDA (New Jersey State Assembly, 2001).

The Authority also had to procure the services of design consultants through scopes of work and the issuance of requests for proposals (RFPs). Where the school districts already had architects working on school designs, the NJEDA “assumed” their contracts from the districts. Where no design was under way on a school project, RFPs were issued and a formal procurement process began. Of note was the “balance of power” in the selection committees responsible for reviewing the proposals: The school districts had the majority vote.

The report of the NJEDA’s first 6 months of work described reaching a milestone in December 2000. This was the issuance of the first RFPs for design services and construction management services for 30 health and safety projects across the state, with an estimated value of \$13 million (NJEDA, 2000). An analysis of procurement data

(NJEDA, 2001d) shows that the first RFP for design of a school renovation in Asbury Park, HS-0001-A01,<sup>48</sup> was published December 22, 2000, with proposals due January 10, 2001.<sup>49</sup>

The first project management RFP was issued April 18, 2001, followed by a second wave on August 13, 2001, and a third and final wave on October 24, 2001. The first construction advertisement for that health and safety renovation in Asbury Park, HS-0001-C01, was issued May 11, 2001, less than 5 months after the proposals for designing this work had been accepted.

By December 2001, nearly 18 months after receiving the program from the Governor, the NJEDA was deeply engaged in accepting bids for health and safety work for several schools in Plainfield, Elizabeth, Newark, and other cities. In addition, it had issued RFPs for architecture and engineering services for health and safety work for groups of schools in Jersey City, Pleasantville, Orange and other cities (NJEDA, 2001b). The program was beginning to move forward.

As it mobilized for this work, the NJEDA gathered several schools in a school district into thematic clusters for construction. One contractor, for example, would replace heating boilers for five schools in the Jersey City school district. At the same time, another contractor would be repairing masonry and window at four other schools in Jersey City. It was not a coincidence, for example, that two of the five schools with boiler

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<sup>48</sup> The “HS” prefix in the contract number indicated health and safety projects. The suffix A indicated architectural design and the suffix C indicated construction.

<sup>49</sup> In the architecture and engineering profession, as in many others, this is not an auspicious time of year to request proposals, as so many persons have personal obligations or are on vacation. This timing was not viewed as a “best practice.”

replacements would have two contractors working on different systems within the same school building. One would be addressing the boiler and the second would be repairing the school's windows and walls. A third could be replacing the roof and a fourth the fire alarm system. These arrangements caused chaotic consequences for project design, construction, and management<sup>50</sup>, which quickly emerged at the various construction sites and undermined the NJEDA's credibility with school districts, construction firms, engineers, and architects.

A great deal of insight into the early days of the school program is found in the CEO's responses to legislators at the second of 2 days of hearing, on July 31, 2002. The hearings by the Assembly Education Committee in 2002, marking 24 months since Governor Whitman had signed the EFCFA legislation, were quite probably a response to the criticism over program delays. The hearings produced the best discussion on the program's first 2 years of work. It was a rare moment of candor as the program was to leave the hands of NJEDA CEO Franzini within days. Chairman Doria expressed that the past 24 months had been characterized by delays in health and safety work, especially in *Abbott* districts, which were completely dependent on the NJEDA for all activities. Clearly excited over the arrival of the NJEDA's CEO; Franzini was introduced with compliments and flattery. In contrast to Education Commissioner Librera, who had preceded her at this hearing, Franzini was provided with a warm introduction by Committee Chairman Joseph V. Doria, Jr.

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<sup>50</sup> As a result, several of these arrangements would remain unresolved ("open") for more than 10 years through the writing of this dissertation, with work uncompleted and statutory permits pending.

Caren has been with the EDA for many years. The EDA was one of those agencies, no matter which administration was in power, that seemingly always got the job done. I want to say that publicly, because I've had the experience of working with them. They did an excellent job in the areas that they were supposed to be working in, which was economic development and the creation of jobs and working with the communities of the state to do those things. They were obviously given this responsibility at the last minute, and I'm sure Assemblyman Malone could tell us the machinations that took place and describe to us how, eventually, EDA became the agency that was given this responsibility. I'm sure Caren was never truly consulted, nor was the . . . [interruption by Assemblyman Malone: "I'm not sure anybody was, Mr. Chairman."] Nor was the board and Mr. Coscia, who's the Chairman of the board, who's done an excellent job, also. I think they were surprised, not happily, when they were given this responsibility. They were not given immediately the staff nor the resources to do what had to be done. So we understand that. . . . But at the same time, our concern here, Caren, is that we tried to move forward and get the job done. Maybe you could express some of your frustrations. (New Jersey State Assembly, 2002, p. 59)

It is apparent that the decision to place the program at the NJEDA had been a surprise to legislators, as well as to the leadership of the NJEDA. It is possible that the Governor's office was so focused on getting the EFCFA through the Legislature before the end of the legislative session that actual implementation of the program was a detail to be worked out once the program had been approved.

An excerpt from within the NJEDA's *Six Month Progress Report* emphasizes the Authority's financial prowess and experience in construction oversight.

The financing and construction responsibilities under the program were assigned to the Authority as a result of the Authority's financial experience and its successful track record providing construction oversight services for both commercial and public projects. In its 26-year history, the Authority has generated over \$14 billion in financing for capital investment, growth and job creation for business and non-profit organizations in New Jersey. The Authority's track record includes the execution of a previous \$250 million school financing program. (NJEDA, 2000, p. 2)

State Senator Ronald Rice, Chairman of the Joint Committee on the Public Schools and a guest at the Assembly meeting on July 31, contributed his thoughts about why the NJEDA had been selected:

And let me, for the record, indicate one of the reasons EDA received this responsibility. And it's one of the reasons I'm going to be asking Caren to go further, as we go through these hearings, to make sure there's real accountability. She got it because when we look at—when we argued the case as to where it should go . . . What we can identify was the agency that had best track record, even though it's not the greatest, was EDA. We always felt that there was accountability there and there were efforts there. That's one of the reasons we went there. And now we've got to make sure they go beyond the call of duty. (New Jersey State Assembly, 2002, p. 60)

Franzini began by describing how the land acquisition element had become one of the program's largest challenges. She explained that the NJEDA was investigating 103 potential school sites involving more than 1,000 lots with 1,000 property owners. "That's just the beginning of the iceberg. There are many more coming after that" (p. 63). Franzini continued by noting that Governor McGreevey wanted the health and safety work at least 90% complete by the end of 2002.

Fourteen early childhood centers are currently [July 2002] in design and one early childhood center is under construction. Thirty five new schools are in design or their design is complete. The NJEDA's Board of Directors, in tomorrow's meeting, 1 August 2002, will approve the construction of two new middle schools. One middle school is in Union City and the other one is in West New York. (p. 64)

Although the legislators were very pleased to see Franzini and had greeted her warmly; the CEO was frank with the Committee about Governor McGreevey's dissatisfaction with the NJEDA's management of the construction program:

I must say that Governor McGreevey, who was very blunt with me, personally, and with our office about his dissatisfaction with the program. As you know, the Governor, two days ago, announced his concern—the program—and suggested changes that are being made as we speak. (p. 64)

Franzini described the progress that the NJEDA had made during the previous 24 months. She detailed the complexity woven into the EFCFA requiring prequalification of design professionals and general contractors. She informed the committee members about the project approval process in the NJDOE and reported that the prequalification for

every new vendor was being reviewed by the IG. She explained that, a year earlier (July 2001), 93% of the projects that went out to bid had to be re-bid because the contractors who were submitting bids had failed to be prequalified. They had not understood that their subcontractors also had to be prequalified in their specialty. All of this had caused the delays that prevented most of the work from starting in summer 2001.

Just two years ago, we didn't have any staff. We didn't have one form in place to do anything. Nothing. And so we started everything from scratch. It's like starting a new business. Someone gave you \$8.6 billion to start a new business and said, "Go" Franzini informed the Assembly Education committee on July 31<sup>st</sup>. "But there was none of the infrastructure in place. And the infrastructure that was formed was formed under the theories you heard earlier. There was total mistrust of the Abbott districts. It was formed with a lot of bureaucracy in process. And now, since January, we have taken an overall look at that to make it better. (p. 69)

Responding to Assemblyman Stanley of Newark, who had remarked during the previous day's hearings that the work should have begun in summer 2000, Franzini stated,

With all our various responsibility [sic] in every school district in this state, we have, so far, dispersed \$193 million against real commitments—contractual commitments and \$944 million. All this activity has happened in two years. It has been performed by a group of 68 people at the EDA. None of these 68 people worked at the EDA before. These people had to draft regulations, create contract forms, compose design manuals, develop policies, and implement procedures that didn't exist so that we might do business that the Legislature called us to do. We've been audited by the State Auditor and found to be in good financial and operational condition. I say again proudly that in these two years and nearly \$1 billion of activity, we've done all the things without a single lawsuit, accusation, or hint of scandal. (p. 75)

She also described how, among the NJEDA's recent accomplishments, was creation of a separate office building for the school building staff in Trenton. Housing them in renovated vacant office space in downtown Trenton was part of the NJEDA's economic development activities and organized the school program staff in one place. According to

a veteran staffer, the school group had been placed in vacant space at the far end of West State Street, adjacent to Calhoun Street (Daniel, 2012).

Franzini's testimony in July 2002, on the cusp of the transfer of the program out of her hands, affords insights into the program's first 2 years. The implications of the earliest decisions were already beginning to be felt. The Governor's decision on the program's location had been a fateful one. Sciarra elaborated on this in the context of school district facility staffing, asking the Assembly to discuss "what capacity, expertise and staffing is needed in Abbott district central offices to effectively handle appropriate implementation tasks in partnership with the State?" (New Jersey State Assembly, 2002, p. 21). Sciarra reminded Assemblyman Malone about earlier discussions about centralized management and the ability of some *Abbott* districts to undertake their own facilities projects. In retrospect, Sciarra was of the opinion that the EFCFA went too far in delegating power and responsibility to the NJEDA and the State.

Dr. Pablo Clausell, Superintendent of Schools, Perth Amboy School District, addressed the hearing by objecting to "the assumption by your State officials that Perth Amboy cannot manage its own construction program when in fact the district and the city have an exemplary record of implementing an \$80 million renovation building program prior to the enactment of the EFCFA" (New Jersey State Assembly, 2002, p. 45). Clausell suggested that, if the committee was looking for alternatives, one of them ought to be the school districts themselves. Many of them had been successful in addressing their facility needs over the years and had bought land, contracted for services, and delivered new buildings. He was frustrated that, prior to enactment of the EFCFA, his district had been

on target to build four new sites but were currently idle, with no progress made. He focused on the difficulty in understanding how the process actually works.

I've been looking for one for the past three years to realize who is responsible for whom, what forms I need to have so at least I know that if I am moving within six months. I need to do X, Y and Z. I can't have that. We sit down at meetings and we go from meeting to meeting learning what the next step may be, or what was the next step that had to go through the Attorney General's Office or was rejected. I had to go back to EDA to get a new report from the Department of Ed to come back to EDA, and meanwhile we are in between with a Board of Ed resolution and visiting somewhere else. Rough. Very, very hard. (New Jersey State Assembly, 2002, p. 47)

Following his Superintendent, Perth Amboy Business Administrator John Rodecker described to the hearing that the NJEDA was

an organization that really doesn't have experience in school construction. . . . It's basically an organization that is learning and putting policies together basically on the fly. . . . It's just difficult for a school district to deal with when, for the last three years, you can show no progress in the building plan that was adopted three years ago. (New Jersey State Assembly, 2002, p. 47)

Reinforcing Clausell's points, Rodecker explained his frustration to the legislators, emphasizing that Perth Amboy had executed \$80 million worth of construction over 10 years with strong momentum. Now his district's projects were halted midstream because the EFCFA had been approved in July 2000. Testifying 24 months later, in July 2002, he expressed his frustration with dealing with "an organization that really doesn't have experience in school construction now calling the shots" (p. 47).

The Irvington School District, at the same hearing, reinforced Perth Amboy's theme, describing how school districts had been doing this sort of work for years and noting that the NJEDA had no experience with building or repairing schools. Michael Bloom, an architect and the *Abbott* Project Consultant for the Irvington Board of Education, suggested that the NJEDA support the predevelopment activities of the

districts rather than perform these tasks directly. He explained that the NJEDA took 4 to 6 weeks to engage an engineer for a survey, whereas the district could receive proposals from qualified people in a week and have them on the job quickly. Victor Demming, an Assistant Superintendent for Finance from Irvington, explained to the legislators at the hearing that “the folks in Trenton underestimate the ability and quality of people that you have in your Abbott districts” (New Jersey State Assembly, 2002, p. 65).

Second thoughts about the relationship between the districts and the State did not dissipate with time. At a hearing on October 3, 2005, Peggy Nicholosi, Superintendent of Salem City Public Schools, testified to the Joint Committee on the Public Schools, noting that her district, Salem, was the latest district to join the group receiving the *Abbott* designation, becoming the 31st district in 2004.<sup>51</sup> Expressing frustration, she stated,

The Salem City School District possesses the expertise, as our annual audits reflect, to oversee facilities and construction projects without the senseless and needless red tape of the Schools Construction Corporation. For five years, we have had nine health and safety projects and the construction of two school projects. Three of these health and safety projects govern fire alarm systems and have been determined as emergent need. Are they done? No. This all basically translates into about a zero percent efficiency rate for the [NJ] SCC. (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 150)

In July 2002, Assistant Commissioner of Education Gordon A. MacInnes stated that many of the school districts were asking that the process be decentralized in order to gain control over the perceived paralysis in the state capital.

What it means is we've got to find out the Abbott districts that are both competent and honest to carry out the very detailed work—design involved and planning schools—site acquisition, the number of parcels that have to be examined to

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<sup>51</sup> The NJEDA was placed in charge of the school program in July 2000. In July 2002, via EO No. 24, Governor McGreevey created a corporation dedicated to school construction within the NJEDA. The Superintendent from Salem was expressing her frustration, in retrospect, at the overall inefficiency of both organizations.

assemble a site in a densely populated Abbott district, the review of the environmental history of those sites. All of those things that are involved are complicated, technical, detailed. It's best to put those actions in the hands of those with the greatest stake, who are closest to the scene, and want to see that project done.

I think you can do that under the terms of the existing statute. The working group thinks you could do that. The Governor included that as a directive in his executive order. I'm hoping that we can see some of this logjam dynamited out, and we can see the proposals for new school construction get to the point of groundbreaking sometime during our lifetime [laughter]. (New Jersey State Assembly, 2002, p. 10)

Assembly Education Committee Chairman Joseph V. Doria noted that the Whitman Administration had failed to prepare for the implementation of the school construction program:

I want to begin by saying both the Department of Education and EDA, when they were given this test [sic] were not, prepared because the previous administration did not provide the necessary wherewithal prior to the actual passage of the legislation or even get input from those Departments on how the program could be developed.

In fact, the EDA only found out at the last minute that they were going to be in charge of this. It had previously been planned that the entire construction program would be in another department and were only given this on a last minute basis. So, not to make excuses but to say that unfortunately—and the previous administration did not plan this well. And those people who were then stuck with the responsibility of implementing were then forced to deal with things on an ad hoc basis and to have to try to put together an entirely new structure. That is not an easy task. (New Jersey State Assembly, 2002, p. 2)

Doria explained that the Democratic legislators could not find the logic in the Whitman Administration's assignment of the program to the NJEDA. He acknowledged that the NJEDA had done an excellent job in economic development but was not set up to be a construction agency. Doria opined that the EDA was surprised that this task was assigned to them, given the alternative agencies in New Jersey state government.

So what we've had is an agency that's done a great job in one area being forced to take on a responsibility they were not prepared for, did not have the staff for, and then working with the Department of Education and the problems that occur, the glitches that occur in the bureaucracy between two departments working together

to try to deal with an issue of great importance, that of providing adequate facilities for students. The end result is that we've had for the past two years almost nothing happening, especially in the Abbott districts where the greatest need occurs.

Obviously, we've taken a big step forward yesterday. The governor did that, but creating a new corporation and hiring someone to run it doesn't necessarily guarantee that all of the bureaucratic snafus are going to be solved. Creating a new type of bureaucracy is not always the solution. Hopefully, it will be. Hopefully they will have the type of power and the type of ability to understand what must get done, and we can move forward and deal with the issues that are of importance. (New Jersey State Assembly, 2002, pp. 3-4)

Responding to Doria, Assemblyman Joseph Malone of Bordentown (Republican) remarked that he had been a strong advocate of having a different entity running the school construction program: "I fought to the very bitter end" (p. 13). Admitting that he had not seen Governor McGreevey's proposal to create a dedicated corporation for school construction, Malone agreed, after 24 months, that there was a need to implement things differently.

All of us, in a very non-partisan way, start pushing the bureaucracies, the Governor, and whatever other entities are necessary to get this moving, it will happen. But if we sit back and let it become mired in bureaucracy and politics, it will just be another boondoggle and cost us a lot of money and eventually not get a lot of things accomplished. (New Jersey State Assembly, 2002, p. 14)

At the same hearing David Sciarra of the ELC observed,

This is a very complicated program that we've never tried before in any area of state government. . . . Now it's obvious even to the casual observer that the implementation of the Abbott school construction under the prior administration produced virtually no results, even in the face of court specified deadlines. (p. 18)

Sciarra criticized the extremely slow pace of the program, 2 years after it had begun, highlighting that only one school (a preschool attached to an existing elementary school) in Burlington (an *Abbott* district 25 minutes from Trenton) was actually in construction. Sciarra summarized, "It is clear that overall progress in starting and

completing school construction projects in the Abbott Districts remains painfully and unacceptably slow" (p. 19).

The 2-year delay experienced as the NJEDA began operation meant the difference between being able to repair a malfunctioning boiler easily and now having two schools without boilers. The Irvington School District had to bring in two portable trailers with furnaces to pump heat into the schools, at a cost of \$100,000 per school. This was described by representatives of Irvington to the Assemblyman on July 30. Because of these delays in reaching the NJEDA's and the NJDOE's priority list, the district now had inefficient furnaces in trailers.

Karla Spivey, on behalf of the Coalition for Our Children's Schools, expressed her distress at the lack of progress. "Over the past two years, not a single, not one school has been constructed in the *Abbott* districts, and out of an estimated \$600 million of health and safety projects, only about 27 percent of those jobs have been awarded" (New Jersey State Assembly, 2002, p. 83).

Expressing deep frustration at the pace of the program R. Thomas Jannarone, a retired superintendent of schools, testified at that late July hearing of the Assembly Education Committee (New Jersey State Assembly, 2002). His testimony provided historical context as he reminded legislators that the current group of health and safety projects had been approved by the NJDOE in October 1998. In order to reach that point, they had to have been submitted several months, if not years, earlier. Therefore, these emergent health and safety projects had been problems for several years prior to 1998 and, as of the hearing in July 2002, still had not been completed. Jannarone reported that

the New Brunswick school district had cancelled summer school to allow emergency repair work to proceed, only to discover that the emergency work had been postponed.

Near the conclusion of this long day of hearings, the representative of the League of Women's Voters described a system that was based on mistrust and composed of layers of bureaucracy.

That scenario [how long to build a school] is now out to five years, because we built in multiple layers and overlapping layers in a bureaucratic nightmare. We haven't solved that problem at all, yet. First of all, we only thought there were two levels of bureaucracy. We thought it was going to be the Department of Education and EDA. It ended up that the Attorney General's Office ended up having a veto power that nobody anticipated that kicked in and stopped everything dead and sent it all back to square one again.

So it's very upsetting. We've failed . . . because . . . there was . . . continuing attitude by the administration of mistrust and distrust of the people in the school districts. By that, I mean the pay [sic] people, and obviously, also their boards of education. . . . They designed a system that did not accept, mistrusted what they said, ignored their experience, and left two competing organizations with none of the interaction that was necessary. (New Jersey State Assembly, 2002, pp. 147–148)

On behalf of the NJDOE, Bernard Piaia, the Director of School Facilities Financing, addressed several of these issues on July 31. He spoke frankly about the lack of preparation for the large program and mentioned, "we have a highly duplicative process" (p. 5).

We touch things not once but many times, and that in the simple analysis of any kind of operation, the more times we have to touch something, the more times you have to pass things back and forth, the more times you're going to have the potential for problems. If you put four or five government agencies in any process, that's a recipe for inaction. Now, in the final analysis, what we've got here is an enormous undertaking dealing with a very complicated process. There's too many duplicative steps, too many people involved in this, no clear accountability. What we need to do is streamline that to the degree that we can. (New Jersey State Assembly, 2002, pp. 5–6)

Responding to questioning from State Senator Ronald Rice about barriers to implementing school projects, Franzini agreed with Piaia of the NJDOE:

I think there's [sic] many groups working together. Part of the problem is that there are so many State agencies involved, and so, through the executive order [EO 24 on July 29], two things occurred. One is the creation of the Board. All of them are board members, Two is that we want to collocate some of the people at our offices that will be very much helpful. So you have someone from the Attorney General's Office sitting in EDA's office. Someone from the Department of Education has to approve it rather than waiting for E-mails and meetings and missed meetings and missed E-mails and telephone. They're sitting right there next to us. The Department of Community Affairs, which you'll hear from later—very critical part—to work closer with them. (pp. 96-97)

Chairman Doria asked Education Commissioner Librera how his department would assist the NJEDA and the new corporation to complete 90% of the health and safety projects by December 31. Doria reminded him that 30% were currently under way and that 60% remained to be started. He asked whether it was realistic, on July 31, to expect that the additional 60% would be completed by December. Commissioner Librera answered that he thought that it could be done (p. 11). Librera continued, "These projects were to commence in 1998, still not addressed in 2002, is something none of us could accept. The original guideline we had to see if we could get them all done by September. That wasn't realistic" (p. 11).

There are several observations on this testimony from 2002 and 2005. First is the deep dissatisfaction with the performance of the NJEDA. Some of this dissatisfaction may have stemmed from the objectively measured paucity of accomplishments; some probably stemmed from professional envy. The massive program, with its billions of dollars, bypassed several of the State's existing, experienced, school district facility departments and assigned responsibility to a completely inexperienced state authority. Therefore, the criticism at these hearings was flavored with jealousy, envy, and a sharp eye to the inexperience of the State's administrators, who clearly were stumbling.

### **Creating a School Construction Organization**

Initial organizational development at the NJEDA was occurring at the same time that the actual construction program was beginning. In the words of one of the initial staffers of the New Jersey program who was among the first to be re-assigned to the school construction department by the NJEDA, “Can you imagine? We were without a choice. It was as if we were building an airplane as we were flying it at increasingly higher speeds! We were ‘winging it’ without any alternative” (personal communication, Carol Petrosino, NJSDA, November 23, 2011).

New Jersey’s program, with the added burden of creating new sites for new schools in 31 low-wealth school districts, delegated these tasks to its external Program Management Firms (PMF). The program itself, the owner (NJEDA-NJSCC-NJSDA<sup>52</sup>), through these external PMs, was addressing the wide range of project development tasks: site feasibility, design phase management, budgeting, cost controls, value engineering, contract document creation, and site supervision. Several PMFs were running multiple school projects in several school districts simultaneously.

Specifically, within the New Jersey program, the scope of work for the PMFs was developed by the newly formed division of Design and Construction within the NJEDA with the assistance of the consulting firm Heery. Heery brought to New Jersey its tool kit of processes, manuals, handbooks, invoices, forms, templates, and procedures directly from its work, begun in 1997, on the Ohio School Facility program (Heery International, 2013). Among the initial tasks with which each PMF was charged was to evaluate its

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<sup>52</sup> The PMFs were functioning under all three organizations. They were procured under the NJEDA and terminated under the NJSDA.

respective school district's approved LRFP from the perspective of mobilizing toward implementation: designing the schools and then constructing them. This would be a scheme, a schedule for implementation, phases of design, swing spaces for students, and phases of construction. The architects and engineers in the PMFs were to take a close look at the buildings and the programs and begin to prepare the necessary scopes of work that would allow procurement of architectural design services.

The NJEDA, in its *2001 Annual Report*, issued in April or May 2002 (NJEDA, 2001a), detailed among its accomplishments the selection of five PMFs "to oversee the construction of schools in Camden, Elizabeth, Jersey, Newark and Paterson, maintain a daily presence over construction projects, and serve as an immediate contact point for school officials" (NJEDA, 2001a, p. 18).

PMFs, on behalf of the NJEDA, were also to engage the public in community meetings and begin the discussions about the specific school projects that would, of necessity, require acquisition of homes and business to create new and expanded school sites. PMFs, again on behalf of the owner (NJEDA), were to prepare all the material needed for the districts' and NJEDA's applications to the NJDOE for the new projects in accordance with the procedures that were being established.

A formalized process of "transmittal" of projects from one organization to another was established. The NJDOE was to "transmit" a project along with its educational "model" (educational specifications) to the NJEDA for construction. The NJEDA was not allowed to construct whatever project it wished because it was subordinate to the NJDOE, both formally and administratively. The NJDOE would approve each stage of the project: predevelopment, land acquisition, design, and then construction.

The process of receiving bids for construction work was always handled from within the owner's (NJEDA) central office in Trenton, while the bid packages and building permits were the responsibility of the PMFs. Once the contracts were awarded to architects and contractors, the PMFs were responsible for the daily supervision of the construction of the new schools and repairs (health and safety) on the existing buildings.

During its first year the NJEDA was clearly a work in progress as its organizational framework was being formulated. NJEDA staff, relying on Heery's experience, quickly embraced and published a thick manual of administrative processes (McNichol, 2000h; NJEDA, 2001c). The NJEDA's *Six Month Progress Report* explained:

A "Procedures Manual for Design Consultants" has been published to cover areas of special interest and concern to architects, engineers, construction managers, client school districts and government staff. . . . The manual is divided into eleven chapters, each providing details on the administrative processes associated with a typical project or the particular tasks of a specific phase of a project. (NJEDA, 2000, p. 7)

Franzini, in testimony (March 2001) to the Assembly (New Jersey State Assembly, 2001) described Heery's role as transitory, noting that the firm was helping the NJEDA for a short time (1 year) to set up the program. They reported that it might be needed for a bit longer to correct procedures that might not be working in the field. Responding to one legislator, Franzini noted that Heery was being monitored by NJEDA staff on a daily basis.

In the early 2000s New Jersey's program was encountering problems with finding appropriate and adequately trained staff. An auditor of the British school program noted the same situation at the same time. Analyzing staffing in Great Britain's school building program, an auditor observed difficulty in finding skilled staff in the public sector who

were capable of advancing the British program's goals (Comptroller and Auditor General, 2009). The Auditor suggested that the Partnership for Schools address the problem through three strategies: first, increase training; second, hire and train more junior staff; and third, place skilled persons in the local authorities. These same observations had emerged in New Jersey several years earlier.

Again, reminiscent of this researcher's experience in working with the NJSCC and at the NJSDA, O'Brien (2007) reported that Ohio School Facilities Commission (OSFC) experienced growing pains in creating operating processes and procedures as the Commission developed during its first years. Administrative decision making, policies and procedures, and organizational development had to be formalized, while accounting management and budgeting systems had to be created to keep up with the increased spending on design and constructing school buildings.

O'Brien (2007) reported that the administrative core of the OSFC grew rapidly, from fewer than 12 employees in 1998 to more than 50 employees by 2000. Simultaneously, policy memorandums were issued to guide program development among the school districts. In the Ohio program's fifth year (2003), memoranda were finally issued clarifying the responsibilities of the school district, architect, and construction manager in controlling project costs and progress. O'Brien concluded, "After typical growing pains, the OSFC, by 2002, appeared to have found a consistent set of practices, that would govern its projects moving forward" (p. 47). These issues were encountered by the author of this dissertation while working in the New Jersey program, even though the NJEDA had purchased the Ohio structure, experience, tools, and templates through the consultant Heery (personal communication, Paul Hamilton, Real Estate Director,

NJSDA, April 23, 2008; personal communication, Paul Hamilton and Ron Carper, NJSDA, April 23, 2008; personal communication, Carol Petrosino, NJSDA, June 2011; personal communication, Theresa Dunn Egan, NJSDA staff member, November 23, 2011).

Greif (2004) examined the roles of the two Governors, Whitman and McGreevey, and their differing approach to implementing the *Abbott* V decision. She acknowledged that Whitman's approach to the EFCFA was framed within her overall concern about alleged corruption and mismanagement in many of the state's urban school districts. Citing Farmer (2001), Greif (2004) "[Whitman] supported her facilities proposal [for state control] on the ground that local architects and engineering consultants would just 'squander the [state] money'" (p. 636).

It was Whitman's perception that "the New Jersey Building Authority, by contrast would provide state oversight and protect the government's large investment against corruption and waste" (Garcia, 2001, as cited in Greif, 2004, p. 636). Whitman appeared to believe that a state-run agency would achieve economies of scale and efficiencies that could never be found if each of the 30 *Abbott* districts built schools on its own. In Greif's opinion, Whitman's perspective was not unmerited, especially in light of the audits and investigations that unfolded in the early 1990s.

[The resultant] centralization of decision-making authority in the hands of a state-run agency proved disastrous for the *Abbott* districts. The Economic Development Authority (EDA)—the executive body eventually decided upon to oversee the facilities overhaul—lacked the experience and resources necessary to carry out its job. (Greif, 2004, p. 637)

Paradoxically, New Jersey's fear of corruption at the school district level was so deep that it buried the new school construction program in the bowels of an agency with no experience with schools or with construction. Indeed, this became a highly centralized

program operated from the state capitol. The proverbial purse strings were held so tightly by the administrators in Trenton to provide oversight and to prevent waste that they paralyzed the program.

Kelly (2001) opined that the State operation involved extensive “red tape” and “perhaps an overly rabid watchdog outlook” (p. A3). He observed that none of the low-wealth cities, especially Newark, could build even one classroom addition before submitting a 5-year construction plan. These plans were not being prepared or approved quickly. Nearly a year had already passed since Whitman had signed the EFCFA bill and 3 years had passed since the May 1998 decision, and Kelly contrasted how the needs of New Jersey’s most disadvantaged students were apparently a lower priority than building a new sports arena in downtown Newark.

Greif (2004) interviewed Gordon MacInness, an Assistant Commissioner for Education for Abbott Implementation, during Governor McGreevey’s term of office. MacInness explained to Greif on January 2, 2003, “The legislation turn[ed] to an agency with zero experience building anything and expected it to deal with 30 districts, 30 superintendents, 30 school boards, and to assemble property on the most densely built place on earth” (p. 637).

Caren Franzini, in her testimony to the Assembly, stated frankly that, until the law was signed on July 18, 2000, no one knew whether her agency, the NJEDA, or some other agency would be in charge of the program (New Jersey State Assembly, 2001). Recognizing that no one “entity in the US had ever been challenged with building \$8.6 billion worth of work over a 10-year period” (p. 12), the NJEDA issued the RFP for managing the program within 2 weeks. By the date of Franzini’s testimony on March 26,

2001, Heery was already at work setting up internal processes and procedures for selecting architects and engineers for design and prequalifying contractors for construction work, embedding Ohio's procedures in New Jersey's soil.

The NJEDA's PMFs were given a defined geographic scope (one or more school districts, depending on their size) and a wide range of tasks that required skill sets of multiple staff members. This aggregation of skills and experienced architects and engineers would be viable only if it was wielded on a range of projects that brought economies of scale to the entire program. The PMFs were to assist the owner (NJEDA-NJSCC) with site identification and feasibility studies; they managed the architect's contract and the construction contracts (Cooper, M. J., 2005b). As PMs, they performed cost estimates and code reviews, and supervised construction work on the project sites (New Jersey State Assembly and State Senate 88, 2005).

The bureaucracy that the NJEDA's centralized, highly controlled system required was the source of great criticism, which found its way into Greif's (2004) article. She wrote that this centralized system slowed implementation by forcing every district's project to weave through layers of bureaucracy before a construction project could get under way. Forms had to go to the NJDOE to the NJEDA, back to the NJDOE, to the school district and back again, creating what Joan Ponessa described to Greif as a "ping-pong effect."

In telephone interviews with Trenton School Superintendent Lytle and Attorney Richard Shapiro<sup>53</sup> Greif (2004) learned about the convoluted planning and approval

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<sup>53</sup> Shapiro was a specialist in education law who represented several *Abbott* districts in their disputes with the State of New Jersey.

processes that had become obstacles to facilities rehabilitation and improvement. Projects were going nowhere, even after approval of the LRFP by the NJDOE. The term *bureaucratic ineptness* was used to describe the state's inability to organize any bureaucratic structure that facilitated building schools.

This experience is not unique to New Jersey, as described by Ortiz (1994) in her insightful review of California's school facilities program. An interview with a California school district facilities planner provided the following, which is strikingly similar to the experience in the New Jersey program:

I have three new schools under consideration now, each one of these will require an excess of ninety-three different forms, the shortest being three pages and the average about twelve pages. That means roughly a thousand pages of documentation per project. Then you have the State Environmental Input forms and all the other agency forms. We don't build schools, we just fill out paperwork. The form 422B, which is the enrollment projection, drives the process of building new schools. It is from that form that you start filling out the five hundred forms which is a loading-type form. . . . The forms I have to deal with are very cumbersome. You have to ask a lot of questions because sometimes understanding the various forms is critical and interpretation can be difficult. I have not had many problems to deal with in the processing of forms, but sometimes just getting straight answers is a problem. (p. 141)

A *Star Ledger* editorial of August 21, 2005 ("A School Program Hiatus," 2005) describing the paradox of the promise of efficiency emerging from state control with the reality of a floundering program concisely summarized the legislator's initial vision in one sentence with parentheses. Referring to the issuance of the IG's report (Cooper, M. J., 2005a), the editors wrote, "The State Inspector General's report confirmed that the Schools Construction Corp. (created to protect the project from local waste and fraud) is beset with problems that make it prone to 'mismanagement, fiscal malfeasance, conflicts of interest and waste, fraud and abuse of taxpayer dollars'" (p. 2).

Cooper's report was one of the few that directly link the program's placement in the state run NJEDA and NJSCC with an implicit effort to keep it out of local control and its probable waste and fraud.

As a solution to the mismanagement of this program at the state level, voices are heard to return the responsibility for the program to the local school districts. Assemblyman Diegnan at a hearing held October 3, 2005, suggested that more responsibility should be shifted to the 31 *Abbott* districts as a possible solution to the convoluted process that had evolved over the past 5 years (New Jersey State Legislature, Joint Committee on the Public Schools, 2005). NJSCC Chairman Koeppe<sup>54</sup> responded that heightened "autonomy, responsibility and accountability at the district level" (p. 45) would possibly improve the process.

Later at this hearing, Dr. Charles Epps, Superintendent of Schools, Jersey City School District, expressed his district's dissatisfaction with NJSCC's performance over the past 5 years. (NJSCC had been in existence for only 3 years at that point; the program had been with the NJEDA for 2 years prior.) Epps asked the Legislature to give the school districts greater control over school construction from start to finish: design, scheduling, and payments. He provided the committee with several detailed and unfavorable examples from ongoing NJSCC projects in Jersey City. He requested that the law be altered to allow the *Abbott* districts to hire their own design consultants, engineers,

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<sup>54</sup> Koeppe, with a B.A. from Rutgers University, Newark, and a J.D. from Seton Hall University School of Law, began his career with New Jersey Bell in 1969, later becoming a trial attorney for the New Jersey Department of Public Defender and for AT&T in the U.S. Department of Justice antitrust case. In 1993 he became President and CEO of Bell Atlantic–New Jersey. In 2000 he became President and COO of PSE&G, the electric company serving northern New Jersey. He has served in many public roles and on commissions of the State of New Jersey. As of spring 2013, he had been CEO of the Newark Alliance for 10 years (Newark Alliance, 2013).

and architects directly. This would allow the districts to ensure that schools were designed to meet their educational needs within the NJSCC's cost constraints.

Although this was a state-managed and centrally executed construction program, it created its organizational skeleton around the existing, convenient, subordinate hierarchy of school districts, their superintendents, and senior staff. The educational basis of the future construction, the LRFP, was also prepared on a district-by-district basis. Therefore, it was a logical extension that the construction program was designed with the school district as its unifying factor of a group of buildings to be reconstructed rather than random projects scattered across the state, county, or city.

The following section provides a snapshot of how the program was managed in one school district, Union City, where the dissertation author was working in the PMF, Turner Construction, on behalf of the NJSCC from 2003 to 2007.

The State of New Jersey faced several challenges as it mobilized to build schools directly in these 31 *Abbott* SND districts. First, the ability to complete a school project on time (in the early summer) was measured by the adverse impact of its failure. O'Brien (2007), in his dissertation *Timely Completion of School Projects in Ohio*, explained how the failure to finish on time can have both an educational and a political impact. Delay can mean that classes scheduled to begin in a new school in September will either be deferred until the following January or will miss the entire school year cycle. Therefore, missing the September opening date by even a few days can mean delaying the opening of a new school by 6 or 12 months, to the following September. Nonperformance is public and highly visible to students, parents, constituents, and politicians. This calendar makes the K–12 education sector unique in the construction industry, as other scheduled

openings are not driven by the school year calendar. On the other hand, success (finishing a school project on time as projected) has a positive impact on how a construction program is perceived by the public.

Union City's school district and its municipality were among the original 28 *Abbott* districts that were intensively engaged in the statewide process of rebuilding their educationally inadequate school infrastructure, beginning in 2000. Turner Construction Company was assigned to work as a PMF in 2002 by the NJEDA for Union City's schools in its third round of program management regional procurements. Building on feedback from the two earlier rounds, the scope of work of the third round contained more real estate and environment-oriented tasks than those of the previous two groups.

As the PMF, Turner was given the task of assisting its district with the entire range of school construction, from initial concept to reality: programming, design, and construction. These efforts immediately focused on the need to find sites for the new schools based on the Union City School District's 1999/2000 LRFP. The estimated cost of the school construction program in Union City was \$157,000,000.<sup>55</sup> This included, at its ultimate build-out, as defined by the 1999/2000 LRFP, 11 new school buildings, one renovation/addition, and six renovations (ELC, 2008a). Union City was home to 10,462 students in 2000-2001 and 10,600 in 2010-2011. The population of Union City was 66,455 persons, according to the 2010 U.S. census.

Because many of the *Abbott* districts are filled with students above their "model capacity" [FES, or square feet per student], the Court's priority, after health and safety

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<sup>55</sup> Construction Cost Estimate (CCE) cited in Turner's Notice-to-Proceed from NJEDA, January 2003.

(*Abbott V*) was to construct additional space to provide space for “un-housed students.”

This was to be done either through the construction of entirely new schools on new sites or through the construction of additions to existing school buildings. A parallel thrust of the program was the fundamental upgrade and renovation of existing schools. As this would require the removal of students to alternate (temporary) schools, this was deferred until some of the new capacity was built.

The program’s objective, as defined by the Court’s decision, was to upgrade all the buildings in the *Abbott* districts to contemporary standards and increase their capacity to meet demand while increasing the square footage and equipment provided to the levels determined by the NJDOE. This was to provide Union City’s students conditions equivalent to those of the wealthier districts of New Jersey.

These new buildings were to add seats (capacity) to the entire district. The immediate impact of the first units of new capacity would allow the district to shift students out of its oldest buildings. Once these older buildings were vacant, necessary reconstruction and renovations could be implemented.

Upon completion of two new high schools and the elementary and new middle schools on new sites, the Union City School District’s vision included three primary objectives: first, upgrading and modernizing all existing elementary schools to the approved standards; second, rehabilitating the two former high school buildings into middle schools; and third, rehabilitating the former middle schools into elementary schools.

This vision was dashed when the State’s overambitious program faced the reality of what six billion dollars could build in 31 school districts. One source of the dissonance

between the dreams, plans, and the six-billion-dollar allocation was the shallow pool of experienced staff at both the state and local levels. Designing and building new school buildings was not a regular, daily function for Union City (discussed above), for most of America, or for New Jersey's 31 low-wealth school districts. Therefore, eventually, when the time comes, nearly every school district must add staff and consultants to assist in building its schools.

In the late 1800s and early 1900s, schools were designed in house by architectural bureaus within government departments. Rows of desks and drawing tables, in government office buildings, were staffed by architects and engineers, all directly employed by a Department of Buildings or Architecture of the city, state, or federal government. Beginning after World War I and then completely shifting after World War II, design projects were transferred to private architectural firms. Government departments could reduce their employees and obligations to pay salaries of architects if there were no school projects to design.

The same principles applied to New Jersey's six-billion-dollar school construction program. The design of new schools would not be done in house, it would all be done with outside architectural firms. In a manner resembling the engagement of the PMFs, the NJEDA had to procure the services of many architects and engineers rapidly to design the repairs, renovations, additions, and new buildings.

Because so much of the architect's work is based on experience, the NJEDA had to find professionals familiar with designing this specific building type. The nuances of designing a school building are not easily learned, for example, from designing office buildings, hospitals, or single family homes. Designing a school building is a specialty,

and architects learn the details, traditions, proximities, dimensions, and so on from practice. Some firms have established a “practice” of designing schools with a dedicated core team who repeatedly design school buildings. Other firms try to show a potential client (in this case, the NJEDA and the respective school district) how they can design a school. They highlight similar projects from their past or show that their team members have participated in other school projects while employed previously at other firms.

For the NJEDA, the importance of this subject was immediately underscored when it began work on the program in summer 2000. Franzini, in her testimony to the Assembly Education Committee on July 31, 2002, admitted how difficult this was in her response to Assemblyman Craig Stanley’s criticism about how slowly the program was moving:

I just ask you to consider that what happened was a lot of districts had architects in place and had things already going. All of a sudden, the bill was signed and then stopped. You can’t do anything. EDA has to do it all. So there’s been a learning curve of trying to figure out how to get them back doing it. And at the same time, having EDA oversight.

But in any new construction, that’s all you know. The difference is the districts can just select their architect. The law is very clear that we have to bid out architect work. And if you bid out architect work for new schools, you can’t just do RFPs, you really have to do requests for qualifications first, or else you’ll be having too many architects bid on everything.

You have a two-step process and do requests for qualifications and requests for proposals. Under any kind of public bidding, that’s in the law, you have to do both. And that’s going to take you 100 days. You get the proposals in, you reward it, and then it’s going to take six to nine months to design the new building. (New Jersey State Assembly, 2002, p. 70)

In its *2001 Annual Report: Building a Vision for New Jersey’s Future* (undated but issued in late spring 2002), Franzini’s NJEDA detailed the school program accomplishments. “Reviewed and approved the qualifications of . . . 486 design consultants to compete for EDA school related contracts. . . . Approved the assignment of

17 existing architectural and engineering contracts in 14 Abbott districts" (NJEDA, 2001a, p. 18).

This report highlights the approval or the assignment (or assumption) by the NJEDA of existing school district contracts. However, the significance of this statement is in the paucity of the accomplishment. This means that no "new" work had been generated by the statewide program in nearly 19 months after the EFCFA had been approved by Governor Whitman. All the Authority had accomplished, in a year and a half, was to transfer contracts from school districts to the State.

How the "owner," the NJEDA, would manage all of these architects and engineering firms that began to fill slots on school projects proved to be one of its serious challenges. These private practitioners were entrusted to bring nascent projects to maturity. In order to carry a school project from its initial "idea stage" through to completion properly, the owner, the NJEDA, must have had a compensatory framework that would carry forward for several years and adapt to changes in circumstance. These are not easy tasks for a government agency encumbered with rules and regulations.

Many of the established norms for managing architects immediately faced by the NJEDA in 2002 were already in place in the 1910s and 1920s. For example, as a school project was being designed, a Board of Education would request updated cost estimates from the architect at several prescribed milestones. These same patterns were followed by Heery in its Ohio program and then by the NJEDA in New Jersey. The NJEDA's *Procedures Manual for Design Consultants* (from Heery of Ohio) called for the architect to prepare an early specification for the project detailing the types of construction,

materials to be used, structural design, proposed heating and ventilating system, along with general descriptions of the electrical and plumbing systems (NJEDA, 2001c).

One of the fundamental concepts of managing architects as they design schools is the need to have a contractual framework that accommodates change. Changes can occur at the Authority's or the school district's initiative. These happen after a design scheme has been approved and the architect's staff has expended time on drawing and detailing. This change in direction requires additional, unanticipated design services by the architect and his staff.

Other situations requiring additional services from the architect arise when a contractor goes bankrupt, the project site is damaged by fire, or the school's budget decreases. Already in 1927, Strayer and Engelhardt recognized the importance of informing future educational administrators that "change happens," ownership of architectural firms evolves over the life of a project, and there is a need for arbitration.

The ability, manner, and process by which the NJEDA-NJSCC-NJSDA addressed changes in contracts proved to be yet another one of the problematic, provocative, and challenging aspects of this school program. However, much of this statutory framework was erected to prevent corruption.

For any school district, much less a state agency like the NJEDA, entering a construction project is fraught with several dangers. Among them are public relations and criminal, financial, safety, considerations, plus those inherent in construction. The probability of any project proceeding smoothly, on time, and on budget is small. The odds are "stacked against" an easily implemented public works project from the earliest stages of its procurement. Conflicts and litigation frequently accompany public works

projects, as detailed in newspaper reports, audits, and research in the field of construction and project management. Conflicts can be due to delays as the project is set up, for example, in land acquisition or unanticipated site conditions. There may be arguments between owners, designers, managers, and contractors about a variety of issues that are the cause of many of these delays.

Overall, public construction projects have a very poor track record for being on time and within budget (Altshuler & Luberoff, 2003; Flyvbjerg, 2005; Flyvbjerg et al., 2002; Flyvbjerg et al., 2003; Flyvbjerg et al., 2009; Merrow, 1988; O'Brien, 2007). One of the major reasons is that their contractual foundations are based on the “low-bid responsible bidder” model (Goldblatt & Wood, 1985; New York State Organized Crime Task Force, 1988, 1990; Rydeen, 2010). This is the sole method by which the NJEDA-NJSCC-NJSDA issued all contracts between July 2000 and July 2010.

Joan Ponessa, of the ELC, recalled a conversation with NJDOE Commissioner Hespe in which he expressed, in 1999 and 2000, fears of possible corruption and graft (Ponessa, 2010/2011). Commissioner Hespe was especially worried about the choices to be made about the sites for new schools and the monies to be paid for their acquisition as the program began in 2000-2001.

CEO Franzini addressed the issue of moral integrity in a 2001 meeting with the State Assembly (New Jersey State Assembly, 2001). She told the legislators that the new program’s IG presented her with a “red” book at their first meeting about the school program. The title of his gift was *Corruption in the New York City School Construction Authority*. The book to which Franzini was referring to was an interim report on corruption in the New York City construction industry published in 1988 (New York

State Organized Crime Task Force, 1988). The first part of the book includes a detailed catalog of fraudulent practices, including bribery, theft, deceitful billing, and false reports. The book's second part discusses how the public construction industry is especially susceptible to fraud.

Marking 2 months to the day after Governor Whitman's signature on the EFCFA legislation, an article appeared in the *Star Ledger* regarding staffing of the oversight function in the Attorney General's office (McNichol, 2000h). McNichol's article cited Edward M. Neafsey, the State's first IG:

Mobsters, con artists and unscrupulous contractors are probably licking their chops in anticipation of the most dollar-rich construction program New Jersey has ever attempted. . . . I hate to say it but it's a reality that affects everyone with regard to public construction projects. (p. 15)

Intensifying the atmosphere of corruption in the summer of 2000, former Newark Mayor Kenneth Gibson was indicted on charges that he had submitted false bills and had proposed bribing school officials in nearby Irvington in connection with a \$50-million school renovation project (Smothers, 2000). Compounding this in early September 2000, 38 people and 11 construction firms in nearby New York City were charged with bid rigging and wage violations. Several were alleged to have ties with organized crime.

According to New Jersey's new IG, Neafsey, 10 of those charged were from New Jersey (McNichol, 2000h). Neafsey, reacting to the charges in nearby New York City, observed that this situation emerged even though the New York program was monitored by no fewer than four levels of corruption oversight: the city's school construction IG, the New York Attorney General's Office, the Manhattan District Attorney's Office, and the U.S. Attorney for the Southern District of New York.

It is important to explore this subject in depth at this juncture, as the material from New York State provides much insight into New Jersey program's development. Public construction is governed by rules and regulations primarily generated over the years in response to legal and procedural challenges to the public procurement process (Klitgarrd, Maclean-Abaroa, & Parris, 2000; Theunynck, 2009). Other rules reflect public values or are an attempt to achieve social policy, political, or economic goals through capital program (public works) spending.

Subsequently, the construction of schools is performed within a framework of regulatory mandates that include opportunities for minorities, women-owned, or small businesses (MBE-WBE-SBE), promotion of organized labor (PLA), or promotion of products made in the United States, all of which appear in an expanding list of mandatory contract documents that are now part of the routine state government procurement process. As a consequence, for example, although the "responsible" low bidder wins the work, the winner must assure the State of New Jersey that it is sharing the awarded work with the appropriate mix of minority, women., or small business enterprises in compliance with the government's goals.

The New York State Organized Crime Task Force report (1988), which was given to Franzini by IG Neafsey, described how the laws and regulations that were meant to mandate that public construction be awarded through competitive low-bid procedures and to distribute work to a variety of subordinate small businesses, actually facilitate fraudulent behavior. Because a public contract must be awarded to the lowest qualified "responsible" bidder, a public agency can reject only a contractor who is not "responsible." The Task Force wrote, "Historically, public agencies have not been

aggressive in labeling corrupt contractors ‘irresponsible’” (New York State Organized Crime Task Force, 1988, p. 27). These concerns were echoed by New Jersey’s legislators as its program was shaped less than 10 years later, obviously in the shadow of New York’s investigations and reports.

In 1995, Thacher, of New York City’s school construction program, writes about the ability of companies to work around the prequalification system:

Construction firms are extraordinarily adept at operating like chameleons . . . disappearing one day only to reappear the next with different names, principals, addresses, etc. It is extremely important; although time consuming, to conduct an adequate background investigation, especially of those corrupt firms who have gone to great lengths to conceal their hidden owners and unethical past dealings. (Thacher, 1995, p. 11)

Thacher warned that the prequalification process is the only way for public agencies to make sure that bids are not received from corrupt and racketeer influenced companies. Correspondingly, this will also encourage reputable and honest firms to participate in the bidding. As described by Thacher, the process is designed to only allow companies which have a record of law abiding and ethical conduct to bid on projects. In New York, the IG scrutinizes each company’s financial history, the background of its owners, officers and affiliated companies. Firms which “had ties to organized crime or were alter egos of firms with prior legal or debarment problems” were not permitted to bid on New York’s school projects.

Another element of the IG approach is to place the burden of proof on corporate applicants. In this system, the applicant firms submit sworn certifications of their representations and their background. If these are subsequently proven to be fraudulent, the contracts are written to allow the state to recover all monies paid under the contract while retaining the physical benefit of the work.

As the NJEDA began to set itself up for the task of school construction in fall 2000, its Board of Directors approved an interim procedure for classification of contractors. The NJEDA, on September 12, 2000, embraced the State of New Jersey's existing prequalification process, classifications, and limits. The NJEDA invited all 3,000 contractors classified by the State to apply for the interim classification to be offered by the NJEDA, which would allow them to bid on school construction projects. In parallel, the Authority reported to its directors (NJEDA, 2000) that it had begun working with the IG in preventing vendor fraud.

New York City's task force report, *Corruption and Racketeering in the New York City Construction Industry* (New York State Organized Crime Task Force, 1988) illuminates the challenges faced by New Jersey's school program, describing construction supervision and how the essence of building schools does not lend itself to easy monitoring or auditing.

Subcontractors may have workers spread over many acres of a large construction site or on different floors of several buildings. How can one monitor the exact number of workers on a given day or the precise number of overtime hours worked? After a project is completed, who can say how much dirt was removed, how many tons of concrete poured, how much scaffolding used, or how many miles of wire or conduit installed? The inability to determine with precision how much labor and material, and the type (and quality) of each, that went into the project invites false invoicing and overcharging. (p. 62)

The Task Force described how public agencies are especially poorly equipped to monitor its contractors, their workers and its building projects. Once more, the words written in New York State in 1988 are highly relevant to New Jersey's program.

At almost every stage of the public construction process, it is easier to extract money from a public builder. On many public projects, government agency budgets regularly fail to provide adequately for experienced site PMs, engineers and supervisors, who are in any event expensive and hard to recruit. This means that there is essentially no check on whether contractors have performed the amount and quality of work they claim to have done. When confronted with

requests for contract change orders, public contracting agencies frequently have inadequate bases for determining whether the recommended change is necessary. (p. 64)

Continuing, they wrote that contractors were rarely caught by the supervising staff.

Furthermore, public works contractors who submit fraudulent bills for supplies and labor run only a minimal risk of being caught. Government entities lack the resources to audit billings adequately. Even if they did, without effective site supervision, they are not in a position to dispute bills involving “unknowables” such as the amount of concrete and other materials, number of workers, or hours of overtime actually worked. (p. 65)

The New York Organized Crime Task Force (1988) emphasized repeatedly that public agencies do not have sufficient numbers of trained, experienced, and adequately compensated personnel to directly supervise the on-site operations of large public construction projects. The environment of change orders, delay claims, and cost overruns creates rich opportunities for fraud. Summarizing, they wrote that the lack of on-site supervision and inspection invites overcharging and underperformance. Although none of New Jersey’s IGs wrote about these subjects, it would not be difficult to believe that these problems, found in New York, would not have been found in New Jersey’s school building program.

The Task Force issued a final report to New York State Governor Mario Cuomo in 1990 (New York State Organized Crime Task Force, 1990). Following the interim report by 2 years, this final version contained a chapter entitled “Fraud in Public Construction.” This chapter discussed the difficulty in drawing the line between criminal fraud and noncriminal waste and abuse, “especially in a business environment rich in puffery, corner cutting, contract violations and disputes” (p. 127).

Clear cases of fraud are also difficult to identify because unscrupulous contractors can often give at least a colorably plausible explanation for dubious costs and poor job performance. Often these explanations take the form of counterclaims against the City for alleged design errors, delays and or/explicit or tacit City

approvals. Therefore it is useful to think in terms of fraud, waste and abuse, rather than in terms of fraud alone. (New York State Organized Crime Task Force, 1990, pp. 127–128)

The report discusses waste, fraud, abuse, culpability, negligence, and incompetence in the context of contractors working for the government (p. 128). Reviewing the institutionalized imperative of awarding the work to the “low-bid” “responsible bidder,” the Task Force reported:

The singular importance of tendering the lowest bid encourages contractors to underbid, while counting on change orders and other “add ons” during construction to boost their compensation. In addition, the competitive bidding system provides incentives and rationalizations for contractors to cut costs and maximize profits not profitable at the bid price by cheating on specifications. (p. 136)

The weakness of the competitive bidding system is exposed when unscrupulous contractors submit low bids and subsequently boost costs with unjustified change orders and lawsuits. *Speculative* lawsuits have been encouraged by lawyers’ contingency fees in construction suits and by the willingness of judges to read exceptions into a law which explicitly disallows claims by contractors due to delay occasioned by the City. A conscientious contractor who is not interested in playing this game is not likely to bid on public contracts; if he does, he is not likely to submit a bid lower than the contractor who is an experienced and willing player in the game. (pp. 136–137)

The concept that the state’s control would protect New Jersey’s investment against corruption and waste was discussed by Garcia, who referred to the 1999 State Commission, which had found abuses in school roofing projects (Commission of Investigation, 2000; Garcia, 2001). Garcia noted the State’s takeover and operation of several large urban school districts in the early 1990s: Paterson, Jersey City, and Newark. He observed that these takeovers had not been a success and asked how the state could promise that it would run a state-wide school construction program. He challenged the preconceived notion that all *Abbott* districts were equally inefficient and corrupt. He expressed hope that the state would eventually take advantage of several school districts’ first-hand knowledge and experience.

Since the competitive bidding system with its automatic award to the “lowest responsible bidder” is the core of New Jersey’s school building program, it warrants additional discussion. The lowest responsible bidder concept is a fundamental article of faith among 20th- and 21st-century government procurement officers and construction executives at all levels: local, state, and federal. As the New Jersey program began to move into its implementation phase, it began to shift from concept to practice. In theory, although this is subject to much discussion in the professional literature, a government agency using the lowest responsible bidder system receives the lowest price and is preventing corruption and providing an equal opportunity to all contractors.

With this legacy and some of this knowledge, New Jersey’s legislators, administrators, and the Governor set up what most probably was the largest and most complex construction program in the state’s history.<sup>56</sup> However, the IG himself, in July 2001, spoke optimistically about the public contracting innovations included in the EFCFA that would have allowed the NJEDA to consider price plus other factors and prequalify contractors (NJSA 34:1B-5.7.C and 18A:7G-34). Legally, the new program could have broken free of the traditional constraints of the “lowest responsible bidder,” but chose not to do so. In retrospect, choosing to remain on the conventional path may have contributed to the pressures on the program to accelerate, while on the other hand keeping it free of corruption.

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<sup>56</sup> The New Jersey Turnpike, 118 miles from the Delaware Memorial Bridge to the George Washington Bridge, was built at a cost of \$230 million in 4 years between its authorization on October 27, 1948, and opening its mainline roadway on January 15, 1952 (Lapolla & Suszka, 2005). Current value is calculated at \$1.6 billion, using the “GDP deflator” described in an earlier footnote.

The existing approach persisted and IG Ettinger (Neafsey's successor) spoke about the process of determining the "lowest responsible bidder" being the central paradigm of public procurement for many years (Ettinger, 2001). In one of his presentation slides to a conference of New Jersey businessmen, he stated, "It is intended to assure taxpayers that they are getting the best possible value for their money" (p. 7). Ettinger's presentation slides also included statements about how contractors manipulate the "lowest responsible bidder" system to get more business and how projects procured in that manner take longer to build and subsequently suffer from poor quality workmanship. He cautioned about persistent violators of prevailing wage laws, who underbid honest contractors by paying their workers less than the permitted wage. Clearly, the IG must have been responding to some sort of emerging problem.

Several analysts have highlighted the distorted outcomes that emerge because the entire public contracting process, through its law and administration, function as if its paramount objective is to prevent corruption and even the appearance of corruption (Anechiarico & Jacobs, 1995). The collective obsession with this goal among procurement staff and its manipulation by those contractors and consultants who have learned how to "play the system" have led to layer upon layer of reforms being added to the public contracting process in order to immunize it from even the taint of corruption. In this search for purity of process, the basic goal of public purchasing—attaining quality goods and services—has been lost. The ultimate objective of efficiently building a durable, properly constructed school facility has been subordinated to the process of compliance with procurement statutes.

These larger forces—corruption on the one hand and purity of process on the other—have hampered the ability of New Jersey’s school construction administrators to build schools. Kelman noted that all government procurement has three elementary goals: equity, integrity, and economy and efficiency emerging from the traditional doctrines of public administration (Kelman, 1990). These goals all link to the vision of “full and open competition,” where all contenders are making bids and proposals on a “level playing field.” It is expected that equitable competition, with access to many firms, promotes competition, which lowers prices.

To contrast with the public sector’s approach, Kelman (1990) stated that private firms, motivated solely by profit, carefully nurture their relationships with their suppliers (architects and contractors). They develop long-term relationships based on past performance, future orders, and mutual dependency. Unlike in the public sector, the private sector vendor knows that he must supply a quality product in order to receive more work. Past and current performance is continually evaluated in the private sector in order to determine the worthiness of continuing a contractual engagement. A strong incentive exists for the supplier, vendor, or contractor to perform and support his reputation and generate repeat business.

This discussion is pertinent to New Jersey’s school construction program, where procurement regulations were designed to prevent long-term relationships from developing between the owner (NJEDA, NJSCC, NJSDA, or school district) and architectural firms, engineers, or contractors. This stands in stark contrast to the construction departments in the commercial and industrial sector of private and corporate

business, which work with a select group of familiar architects and contractors and never solicit price proposals from unfamiliar contractors.

Kelman (1990) described contractors who “buy in” and then use the “get well” approach to public sector bidding (Kelman, 1990). A contractor buys in to a contractual engagement by winning the work with a calculated low bid. He enters the contract, anticipating that he will “get well” from those early losses (due to his low bid) through attempts to inflate change order costs and the negotiations that will follow from foreseeable errors, omissions, loopholes, and ambiguities. At times, a contractor and/or subcontractors will simply slow the pace of construction in order to pressure construction managers to capitulate to financial demands.

Once the contract is signed, the vendor or contractor is in a very strong position, as government officials will find it very difficult to change to another vendor or contractor. Contractors will take advantage of the public sector’s sensitivity to bad press coverage and the pressure to get a school building ready for a September opening. Those who have researched this subject from an academic, legal, criminal, or public policy perspective have observed that procurement administrators are unable to remove those bidders who challenge or “play” the system, even if it appears to favor those who submit fraudulent low bids in order to win work (Anechiarico & Jacobs, 1995; Gunhan et al., 2007; Kelman, 1990; Moore & Tumin, 1996; New York State Organized Crime Task Force, 1988, 1990).

Kelman (1990), as well as Moore and Tumin (1996), emphasized that a system (such as the NJEDA in New Jersey), which was set up to be transparent and fair, is in practice a complete mockery of competitive bidding. Contractors submit low bids with

the intention of using change orders and post-construction lawsuits to ensure profitability. Contractors ignore costly contract specifications in order to reduce costs (which they had never intended to meet in their price proposal). Within a report prepared by the John F. Kennedy School of Government, Program in Criminal Justice Policy and Management, Thacher, the IG of the New York program, described the public construction marketplace:

Many clean contractors simply avoided public construction. Why? Because the playing field is almost never a level one. The low-bid system too often has government awarding contracts to the company who's prepared to cheat the best. Those who are prepared to cheat submit lowball bids and make up their profits later through underperformance and overbilling. Government has utterly failed to screen out these . . . companies from bidding. . . . In making up their loss later, they will have left a trail. But there's no institutional mechanism to examine that trail and to make them pay for their underperformance and overbilling. (Moore & Tumin, 1995, p. 10)

Thacher described the dilemma of the school construction administrator. Removal of a contractor from government work could be done realistically only if that contractor was not allowed to finish a job and was not paid fully for that work. That is difficult to achieve and time consuming for an overworked and underpaid civil servant.

Short of being prosecuted, they can come back to play the next time, bidding on the next contract. Even if someone's performance has been terrible, the government rarely debars them. Typically, because the contractor was fully paid on the last contract, allowed to finish the job, and wasn't defaulted, the evidence to support a debarment is just not there. As a result, the bad contractors again and again get the contracts. Good contractors don't want to compete because they know bad contractors are going to low ball their bids, underperform, and overcharge. (Moore & Tumin, 1996, p. 10)

Klitgarrd, with his international perspective, found that vendors and contractors around the world deliberately "low-ball" their initial bids in order to win a contract and then deliberately deliver lower-than-promised quality, expecting the inspectors not to notice. He also highlighted that numerous and large change orders that are beyond the

norm can be a signal of some sort of possibly corrupt or illicit activity in the procurement process (Klitgarrd et al., 2000).

One of the conclusions of these analyses and articles (Anechiarico & Jacobs, 1995; Cenziper & Grotto, 2003a, 2003b, 2003c; Kelman, 1990) is that, due to the red tape and the focus on process, some contractors have learned how to play the public procurement system to their advantage. Undoubtedly, there were several working with the New Jersey school program at various points in time. Because the public official has no discretion to choose a contractor or a vendor based on information from a colleague's past personal experiences (poor or superior), the entire procurement process becomes solely based on the contractor who can win the initial contract with the "lowest responsible bid." Once the contractor or vendor has its foot in the door by being the lowest bidder, the challenge of managing the project and ensuring that the contractor is building according to specifications and drawings begins. In the words of Anechiarico and Jacobs, the contractors choose themselves to perform the work by determining how low they are willing to bid. The government agency has little choice in the matter of who will perform the work. Not surprisingly, according to Anechiarico and Jacobs—and the evidence in New York and New Jersey supports this thesis—the quality of the goods, services, and the building suffers. The costs are not really controlled after the bid is awarded nor is the project's completion promoted.

Within New Jersey's "lowest responsible bidder" concept, contracts must be awarded to the prequalified bidder with the lowest bid, irrespective of that company's performance record. Therefore, a prequalified contractor with the poorest quality workmanship and sloppy scheduling practices will be awarded new work if the company

is the lowest bidder. This emerged as a very difficult issue for the school construction agency to overcome. Although this was not the Legislature's intent, it seems that nearly every contractor in New Jersey is prequalified absent prior criminal activity. Therefore, there is no linkage between quality contracting and prequalification of contractors. Only if a contractor is found to be "nonresponsible" or "nonresponsive" could the NJEDA-NJSCC-NJSDA award the work to the next lowest bidder. In this manner, much government construction work is awarded to prequalified contractors who know how to manipulate the system by bidding low and then piling on charges through highly questionable change orders, shoddy work, and dishonest practices.

In a most important observation, Anechiarico and Jacobs (1995) concluded that the competitive bidding process has reduced corruption at the bidding stage, only to shift fraud to the contract performance stage. During contract performance (i.e., the construction of the school) the fraud is more subtle and more difficult hard to detect, and may show its signs only a few months or years later as a building's defects develop.

Anechiarico and Jacobs (1995) noted that the fundamental dilemma facing those who try to remove corruption from government contracting is that these efforts simply increase "red tape." They postulated that these very efforts to remove corruption, which increase "red tape," have undermined government's capacity to carry out its essential goals and are ironically creating new opportunities for corruption and fraud. According to Moore and Tumin (1996), the focus for governmental officials is on completing the bidding process smoothly, rather than on finding the most appropriate vendor or contractor able to supply the product or build a school. It is evident that precisely this

behavior prevailed in New Jersey's school building program, although nothing has been written about it, unlike the situation in New York.

In New Jersey, the NJEDA, under Franzini, in its first 24 months was under very strong pressure from all sides. The focus was on the process rather than the outcome. This was reinforced by repeated political pressure from urban legislators to either get construction projects started or to complete them despite the severe administrative and personnel deficiencies that permeated segments of the public sector in general and the NJEDA specifically. Emphasizing this weakness are reports from researchers who have found that nearly 50% of all major public works projects end up in some sort of adjudication (O'Brien, 2007, p. 2).

### **The Influence of Governors**

This section deals with the sphere of politics and its influence on the school construction program in the period before McGreevey's term. Between July 2000 and January 2002 the school program was no longer the focus of much political activity. Two battles had been won: first, the battle before the New Jersey Supreme Court that resulted in the *Abbott V* decision, and second, the approval of the EFCFA legislation that provided funding and a framework for building schools.

In summer 2000 the curtain had been raised for the new school construction program. The statute and funds were in place and the executive body for implementation had been chosen. New Jersey's Governors have always influenced the ebb and flow of school construction projects. Some choose to engage and others to abstain or show little interest.

Governor Christie Whitman, who had succeeded in guiding the EFCFA legislation through the Legislature into approval by July 2000, left for the nation's capital in January 2001 to become Administrator of the EPA. Her departure left the state, including the "new-born" school construction program, in the hands of Acting Governor Donald DiFrancesco, the former Speaker of the Senate. DiFrancesco would be in charge for less than 12 months, many of which would be dominated by the next race for the Governorship.

If anything, DiFrancesco's year in charge of the school program was characterized by indifference. Assemblyman Joseph R. Malone (Republican, Bordentown), a member of the Legislature between 1993 and 2011, was one of the principal sponsors of this piece of legislation. At the Assembly Education Committee hearing on July 31, 2002, he expressed to Commissioner of Education Librera his frustration concerning the delays in implementing the program. "We knew, and I think that everybody that could walk and chew gum knew that this thing was going to be a difficult undertaking" (New Jersey State Assembly, 2002, p. 32). Malone referred to McGreevey's signing of Executive Order No. 24 and establishment of the NJSCC on July 29:

But with that comes now—And we can go back and say what previous administrations did. We had Governor Whitman for basically a half year, we had Governor DiFrancesco for a year, and now we've had the McGreevey administration for seven months. (pp. 32–33)

Expressing his pent-up frustration at the glacial pace of progress since the approval of the EFCFA, State Senator Ronald Rice also described his personal perspective at the same Assembly Education Committee hearing:

So I take all of this personally, primarily because I've been here for the last 16 years, and I've watched commissioners in departments and governors come and

go. And I suspect I would have similar fights into the future. But I also suspect I will watch commissioners and governors go. So I don't want to see people coming and going and the meanwhile, everything in my life is status quo as it relates to the taxpayers, the voters in our school districts. Make that very clear. (p. 41)

There are two ways to view this period. A disparager would see the NJEDA deliberately treading water. It was planning, organizing, hiring staff, and setting up procedures, with little perceptible output of improved or new school buildings. An optimist would see an organization “starting from zero,” preparing for the monumental tasks that lay ahead.

By contrast with his successor, McGreevey, school construction was not a program central to Acting Governor DiFrancesco’s interests. First, he unexpectedly inherited from Whitman the entirety of the state’s issues in January 2001. Within 3 months, by April 2001, he was already facing stinging criticism over accepting \$225,000 from New Jersey’s largest home builder in 1996 (Halbfinger, 2001a). On April 25 he “abruptly quit” the New Jersey governor’s race to take place in November 2001 (Halbfinger, 2001b). At that point in his role as a caretaker, he did not press the construction program to move forward. Left to the staff of the NJEDA and the NJDOE, the EFCFA program moved forward, albeit slowly.

However, although allowing a social program to slowly proceed or languish might have been a preferable option to the Governor in Trenton, the outcome of this sluggishness had an impact. The consequences of this slowly emerging program were school buildings that continued to deteriorate, boilers that collapsed and disintegrated from season to season, and children who suffered in overheated or drafty classrooms for yet another winter.

In this situation, DiFrancesco's apparent disinterest, indifference, or apathy concerning the program can be one explanation for the low level of its accomplishments. Another explanation can be the administrative inability of the NJEDA to move the program forward. Subsequently, the pressures for the promise of *Abbott V* and the implementation of EFCFA continued to build and build.

Citizens—lay people—hold the perception that, once money is approved for a school project, construction will begin soon. This perception is apparently especially strong in school districts where bond issues are brought to a vote and illustrations of the planned buildings are presented publicly.

In New Jersey, between the *Abbott V* decision in May 1998 and approval of the EFCFA in July 2000, expectations were growing in the state's 30 *Abbott* districts. Certainly, this was reinforced by the engineers who were coming and going, evaluating school buildings, and the work being done in the communities to prepare updated FMPs.

O'Brien (2007), in his analysis of the Ohio school program, noted how common is the public perception that construction will begin immediately upon approval of a school construction bond issue. He made clear that this is an impossible task because it takes at least 15 months to design, bid, and award construction contracts for even a small elementary school and 24-30 months for a complex high school renovation project. Therefore, the leaders of these bond referendum (school building) programs are immediately placed in a bind unless they have informed their electorate that it will be many months before designs are in hand and construction begins.

If anyone in New Jersey's state government was informing residents of its *Abbott* districts that some of these projects would take an extended amount of time to plan,

design, and build, those messages were not written or recorded or reflected in the media. It is entirely possible that state officials were still trying to meet the spirit, if not the timing, of “construction will begin in the spring of 2000” (Section V-B of the Court’s 21 May 1998 decision [*Abbott v. Burke*, 153 N.J. 408 (1998), 710 A.2d 450]). Therefore, no one would reveal that the NJEDA was beginning a long-term program and that some of these schools would not open for several years. There was strong pressure from the Supreme Court’s decision, the EFCFA legislation, the ELC, state legislators, and the school districts. This is yet another example of Flyvbjerg’s theory of deliberate deception within the advancement of public works projects. If the proponents of the EFCFA had boldly informed the political leadership, at any point in time, that implementation would be delayed, the program might never have been approved in spring 2000.

Another component of the political picture is the local level. Some municipalities and school districts have positive and constructive relationships known as “civic maturity”; others do not (Goggin, Bowman, Lester, & O’Toole, 1990; Stone et al., 2001; Stone & Sanders, 1987; Walker & Gutmore, 2002). Those who work together are able to develop a common agenda and lobby their state legislators and the NJEDA as a joint effort. Some municipalities and school districts are able to achieve the objective of harnessing the state’s intent and get school buildings built in their school districts. Those with a higher level of civic capacity are more successful than those that are handicapped by its absence. The success of their school construction program under EFCFA reflects this.

The Mayor of Trenton is among the few who touched on this issue as he testified to the Assembly Education Committee on July 30, 2002. He described how the Board of

Education and the City of Trenton had been working well together on school facilities since 1998. “Our Superintendent is fantastic. Our board works well. We have committees that work well. That’s the thing. People are really working together. When you work together, great things can happen” (New Jersey State Assembly, 2002, p. 43).

### **Education in the EFCFA**

Even the best of intentions of a Mayor and a Superintendent of Schools, for example in Trenton, New Jersey’s capital city, could not overcome the challenges of propelling the bureaucracy of this school construction program. Education, educators, and school districts were the key to the program’s success at the school district level.

After Governor Whitman signed the legislation on July 18, 2000, the task of implementing this massive program began. Each of the 30 *Abbott* school districts should have been able to refer to its existing plans and begin to move projects forward. A few districts had the staff and administrative capacity to press their projects ahead, others did not. Program implementation, in this program, was in the hands of the staff: those working in departments within a school district’s central office, such as Business Administrator and School Facilities. The skill sets, desire, drive, and capacity of this school district staff to advance their leader’s goals was critical to a specific district’s ability to prepare for and work with the newly approved program.

In addition, the Legislature’s decision to sideline the existing school district staff and place the primary responsibility for program execution in the hands of inexperienced, distant staffers managing outsourced PMs would have significant ramifications. The Legislature’s thrust toward centralization left the local school districts with a marginal role in the process of building the schools. From the school district’s perspective, they

had no choice but to watch from the outside as the program floundered due to these early decisions.

This section addresses the traditional, basic tasks that must be at the foundation of every facility improvement effort, whether an isolated rural school district or a large statewide program like New Jersey's. The section describes how one part of the *Abbott V* decision and then state law (P.L. 2000, chapter 72) translated an educational objective into an organizational structure and a process for designing and building new schools. For school districts, administrative regulation guides the master planning and capital program process that takes place at the district level (the "macro" level for educational facility planning).

The NJDOE was envisioned by the legislators as playing the guiding role in the construction program's implementation. The legislation granted executive authority to the Commissioner of Education, who was charged with reviewing and approving building projects. All projects to be built with EFCFA funds were to be reviewed in terms of two primary criteria: First, is the proposed project consistent with the school district's LRFP? Second, is its design consistent with the FES and area allowances per student in accordance with those standards?

Subsequently, the NJDOE's inability to perform these roles quickly and properly at the policy level surfaced in public hearings. One example is found in the testimony by the Association for the Children of New Jersey to the Joint Committee on Public Schools (New Jersey State Assembly and State Senate, 2003). Standards for new Early Childhood Centers were prepared by one Office within the Department, Early Childhood, only to disappear without any formal action when transferred to another office, Facilities.

Ponessa, on behalf of the ELC, in testimony to the same committee, criticized the Department's failure to supervise proactively and/or to assist school districts that were falling behind in implementing their *Abbott* construction programs. She stated that they needed technical assistance, guidelines, and guidance and were getting no support from the State. Her testimony touched on the differences that she was witnessing in the abilities of several districts to work with the NJEDA and the NJDOE. Her perspective brings to the fore the concept of *civic capacity* discussed previously as an explanation for these different outcomes.

As the LRFPs were being approved in March 2001, less than a year after Whitman's signature on the EFCFA, the disparity between the budget and the planned schools was growing (NJDOE, 2001). In Jersey City alone, 30 new school facilities were being planned at an estimated cost of nearly \$966 million. A press release quietly noted that, upon approving the LRFPs for 21 of 30 *Abbott* districts, the planned construction already exceeded \$6 billion. Clearly, someone within the NJDOE recognized, as early as March 2001, that the \$6 billion included in the EFCFA would not be enough money to provide adequate facilities in all 30 *Abbott* districts.

In an early legislative task force meeting, Assemblyman Wolfe asked Assistant Commissioner of Education Mortimer how decisions were made (New Jersey State Assembly, 2001). They asked, for example, what happens if it is more cost effective to renovate an existing building but a school district is insistent on constructing a new building? Who is the referee? Somewhat dodging Wolfe's question, Mortimer replied that the district should have initially submitted a feasibility study to the NJDOE, which should have carefully analyzed the question of renovation versus replacement. Although

the answer to the renovation versus replacement question should have been reached through an objective feasibility study, a school district could appeal this decision, first to the Assistant Commissioner and then to the Commissioner of Education. The final appeal would be to the courts. Mortimer concluded by noting that what was driving the decisions regarding any school project were the educational activities and the program spaces that the school district was requesting on behalf of its students.

At this same session, the Assistant Commissioner described to the legislators how the Department has already set up an electronic database for all the school districts to enter their LRFPs. Because this was a common database, there would not be duplication of data entry efforts and the state's officials would be able to view each school district's latest plans easily. Mortimer also mentioned that the Department had hired a consultant to assist it in reviewing all of the recently submitted LRFPs. He noted a need to manage the massive amounts of documentation and comply with the legislative timetable.

One of the ways the NJDOE controlled the construction program was through issuance of a series of "transmittals" and approvals at significant stages of project advancement. For example, a project could not even be recognized as a "school project" until a formal request had been made by the school district on a long electronic form and the Department had issued a "project number." Approvals were needed from the Department before the NJEDA could even begin the process of site feasibility or land acquisition. The advancement of design beyond "schematic" required the issuance of a "preliminary project report," and another review, approval, and transmittal was needed before construction (personal communication, Theresa Dunn Egan, NJSDA staff member, November 23, 2011).

These NJDOE controls began at the inception of every new project: the search for a new site or the proposal to add parcels in close proximity to an existing school building. This led to a more basic question that emerged as soon as the New Jersey program began to search for new sites for new school buildings in the 30 *Abbott* districts: How much land is necessary?

If the American vision of the ideal school is found in the expansive suburban model of a school surrounded by green lawns and spacious sports fields, then even the newest inner city school would fail to measure up to this standard. Simply based on the quantity of land available in cities, urban schools will never compare to their suburban peers. The amount of available land directly affects an architect's ability to develop a layout that includes a playground, sports field and possibly parking for teaching staff.

The American definition of "sufficient acreage" for a new school including outdoor physical education space could range from 20 to 140 square feet per student. This depends on the size of the playground, the size of the building, and how many classes are simultaneously sent to play. Thus "sufficiency" is subjective, especially when there is pressure to minimize land acquisition because of political or financial reasons.

Any attempt to achieve suburban scale acreage in an American inner city is virtually impossible. The guidelines issued by state departments of education and the Council of Educational Facility Planners International (CEFPI)<sup>57</sup> address new schools in suburban areas. In developing areas near cities, the school district or municipality can purchase (or demand from large real estate developers) large green-field parcels for new schools. CEFPI's guidelines recommend at least 10 acres of land plus one acre for every

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<sup>57</sup> This is the nationwide group concerned with school building design.

100 students for an elementary school (Weihs, 2003). Applying this standard for a 700-student elementary school in one of New Jersey's *Abbott* districts would call for the acquisition of a 17-acre site. Clearly, this is unrealistic.

A review of state guidelines for school design would find the highest level of specificity regarding the interior spaces and the ratio of capacity-generating spaces (seats for children in classrooms) to auxiliary spaces. These guidelines are silent on the subject of the minimum site for an urban school and minimum outdoor physical education space per student. The guidelines also are silent on the relationship between the school building's footprint, square footage for staff parking, and space for outdoor physical education.

Within the literature, little is found other than overall discussions of the need to provide some sort of minimal schoolyards for new schools that were being built in the denser areas of the inner city (George, 1972; Harrison & Dobbin, 1931; National Education Association of the United States, Committee on School House Planning, 1925; New York City Board of Education Architectural Commission, 1938). George, in his 1972 reference book for school business officials, described the impacts of changing neighborhoods and high property values and suggested placement of athletic fields on school rooftops as one of the challenges facing those who were responsible for designing new schools in cities (George, 1972).

The only exception to this lack of specificity is found in the New Jersey regulations regarding early childhood education (NJAC 6A:26-6.4(d)):

There shall be outdoor play space sufficient to support the achievement of the Early Childhood Education Program Expectations: Standards of Quality as defined in the Preschool Programs for Abbott districts under N.J.A.C 6A:10A and by the educational specifications under N.J.A.C. 6A:26-5, and evidenced by a

standard of sufficiency such as the following: 100 square feet per child of outdoor play space for each child using that space at one time. (New Jersey Board of Education, 2007, p. 87)

Most state's guidelines, including New Jersey's, are silent on specifics or silent altogether regarding acreage requirements for urban schools, which leads to considerable local discretion. The creative ambiguity contained within the term *sufficient acreage* can be interpreted as "make do with what is offered" or a "small, inferior, site is better than no site at all" in discussions between local governments and school districts. Or, as described by Seelig's analysis in Philadelphia, at least a site was found (Seelig, 1972).

### **Repairing and Replacing School Buildings**

There were two thrusts in New Jersey's school building program. One was the design and construction of entirely new school buildings to add to or replace existing capacity. Second was the renovation, repair, or expansion of existing school buildings, extending their usable life by several more years or decades.

As the program's leaders and staff began to undertake the task of improving the school buildings in the 30 poorest of New Jersey's school districts, they immediately encountered the basic question common to all school facility planners: Should an existing schoolhouse be renovated, expanded, or replaced? The answers to these questions had direct implications on the program's costs, impact on students, and requirements for new land acquisition.

Much of the New Jersey program's budget was expended on what were termed in the early 2000s as its 354 "Health and Safety" projects (NJSDA, 2011a). These were all renovations of building envelopes or building systems (electrical or mechanical) in existing and occupied school buildings. The experiences of other jurisdictions as

expressed in trade journals, handbooks, and other publications could have given the leadership of New Jersey's program a warning of the difficulties ahead.

The problems of "execution" faced by the New Jersey program's staff were expressed to the Assembly Education Committee in mid-summer 2002. Michael Steele, the School Business Administrator of Irvington, New Jersey, described the difficulty in doing renovation work in a functioning school.

Other items that will be started next month [August] and go into the school year are items that should be done in the summer as well. We're talking about new windows. We're talking about fire doors. We're talking about fire alarms. We're talking about intercom systems that are totally shot. These are fire safety situations. (New Jersey State Assembly, 2002, p. 68)

Steele explained that contractors need to coordinate their work with school principals on a daily or weekly basis and sometimes educational functions are sacrificed to the advancement of construction.

It means disruption in the classes. Each building principal has to work with me each day to give me up a class or two. Our windows we can put in in a day, each section, but classroom space has to be forfeited. So I have to have a meeting with my principals next month to say this is what is going to happen once the contracts are let out. And from September now to perhaps Thanksgiving, maybe Christmas, the next three or four months, nine of my schools have to work very strategically with me to make sure we get these jobs done. (p. 68)

An article in the *School Administrator* magazine warned school district officials of the hazards involved in renovations in schools because they engage many spectators, skeptics, and critics (Rosenberg, 2004). Delays become critical and directly affect children, families, and teachers. The author advised that some contractors specialize in schools and understand how to work around academic calendars. They understand how important it is to orchestrate a massive mobilization of men and equipment to work around a spring or winter school break. Rosenberg, writing from the perspective of a construction manager, recommended engaging a construction manager to facilitate the

work flow, improve the schedule, and resolve issues on behalf of the owner. He also emphasized the importance of communication among all parties to ensure peaceful relationships during the construction process.

From an educational, fiscal, and administrative perspective, working in an operating school building is especially burdensome and is a distraction from a school district's day-to-day activities of teaching and learning. Therefore, the following discussion is salient to the majority of the projects undertaken by the NJEDA in its first 2 years, when it focused on the long awaited "health and safety" work in the deteriorating schools of the 30 *Abbott* districts. It would become ever more relevant once the program imploded during McGreevey's term and nearly completely ceased between 2006 and 2010. The deferral of the planned schools would require even more repairs of each district's existing buildings.

First, when working within a building occupied by students and teachers, their safety and welfare are paramount (Castaldi, 1994; Decker, Malkin, & Kiefer, 1999; California Division of Environmental and Occupational Disease Control, 1998; Guyaux, 1990; New Jersey Department of Health and Senior Services, 1997; New Jersey Work Environmental Council, 2007; U.S. EPA, 2008).

Second, within old buildings, the likelihood of encountering unanticipated conditions is almost certain. For example, enclosed in a classroom's wall will be a roof drain scupper. The renovation contract's scope will have the contractor unclog that drain. As the unclogging proceeds, the workmen may find that it is so clogged that it has become corroded and collapsed beyond repair. As a window is removed to be replaced with a functioning, weatherproof, double-glazed unit, the contractor may find that the

lintel that supports the wall above the window is corroded and is need of removal and replacement. However, some experienced facilities staff would not be surprised or even consider these unknown, unanticipated, unexpected, or a discovery. The extent of these conditions can be verified only when repairs have begun. Conceivably, an architect could speculate that there will be corroded lintels at every window, or collapsed drains below every scupper, but this would increase project costs unnecessarily. Alternatively, the architect could ask for a few preconstruction, diagnostic probes of problem-prone areas to try to gauge the potential magnitude of these issues. However, execution of the probes themselves is not considered an architect's task and requires a contractor to execute because they are invasive and could damage the building's exterior, structure, and systems.

Third, because this renovation and repair work has to be done after school, in the late afternoons, at night, on weekends, or on school holidays, labor rates are higher. Therefore, overall cost will be greater. In addition, management, which works 9 to 5, is unable to exhibit any on-site presence after hours, when this work is taking place. As a result, the work crews are largely working independently with little supervision. In addition, there is a constant need to mobilize and remobilize workers and materials as each shift begins and ends, which reduces the effective time devoted to construction. The need to completely clean a workspace at the end of a shift also complicates tasks if the work areas cannot be cordoned off or isolated from students and staff. Construction workers must be kept away from students, separated by time and/or distance. Only a very limited list of tasks can be completed in an operating school during the day in an effort to

eliminate interference with educational activities or risk endangering the health and welfare of students. Noise, dust, and vibrations are the most tangible impacts.

School principals play a key role in mitigating the influence of renovations on a school's daily activities and its educational outcomes (Chan & Richardson, 2005).

Because they are the school district's administrative and educational field representative in a school being renovated or a newly opened school building, they are forced to deal with the unresolved "punch-list" and warranty issues that unfold in the initial weeks of operating a new building, as described in one researcher's dissertation who experienced this (Sims, 2005).

There are two basic approaches to managing the designs of school buildings in a large-scale program. To highlight the differences, they are presented as extremes. The first approach is that each architect (each school district) designs each school independently, with minimal central guidance. The second approach is the highly centralized, prototype, kit-of-parts, or prefabricated model, in which all school buildings are as similar as possible. Of course, there are variations on the two basic approaches, but each is rooted in its basic concept.

The New Jersey program attempted to introduce advanced building techniques at Passaic City's Martin Luther King Elementary School No. 6. Groundbreaking for this modular facility was marked in a ceremony held in early January 2003 (NJSCC, 2003). The three-story, 43,000-square-foot addition had been expected to open in September 2003 but actually opened in 2004. It is not clear whether the use of modular construction actually accelerated completion because no analysis of this project was ever published.

### **Land for Larger and New Schools**

Anticipating the construction of schools in 30 districts, the NJEDA's (and eventually the NJSCC's) real estate arm purchased parcels for approximately 89 school sites during the course of the program (Hamilton, 2011). The real estate branch of the NJEDA and later the corporation (NJSCC) was pressing ahead of its architects and engineers as it searched for and began to purchase land. The advancement of purchasing before design and without a sense of the overall cost of the project was yet another symptom where planning and management were not yet synchronized in the evolving organization. This was not an issue when the program was moving slowly; however, once it accelerated, this behavior led to some of the program's largest problems, where land was bought long before projects were ready for construction.

Competition for land for the new schools was quite intense in several of the *Abbott* districts. One example is seen in the situation surrounding Newark's Franklin Elementary and Gladys Hillman-Jones sites. These were two overcrowded schools with what appeared to available adjacent vacant land onto which the schools could easily be expanded. Despite the land's availability and the school district's intention, Newark's Mayor Sharpe James and its Planning Board approved a site plan in March 2000 for several two-family homes on this potential school expansion site (Carter, 2000). The developer's plans were eventually halted and these lands were subsequently acquired by the NJSCC, but planned school extensions were never built<sup>58</sup>--another example of the consequences of buying land without a financial plan.

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<sup>58</sup> As of the conclusion of this study in fall 2013, this project was frozen.

Four dynamics were at play in New Jersey, driving the need for new school sites. First, there were the prescriptive regulations of New Jersey's FES that required more and larger classrooms even if the number of students in a specific school remained unchanged.

Second was the priority, directed by the *Abbott V* decision, to expand public education to more of the state's early childhood population. This decision, alone, required the addition of 3,137 to 4,800 classrooms to the public schools (depending on whether the early childhood programs were to meet half or full day and encompass all 3- or 4-year-olds; *Abbott v. Burke*, 153 N.J. [1998], 710 A.2d 40, Appendix I, p. 526).

Third was the unceasing passage of time, making an increasing number of New Jersey's school buildings obsolescent. Not only was the program dealing with the antiquated schools of the early 20th century; the modern, flat-roofed, post-World War II schools built in the 1950s and 1960s were now more than 50 years old.

The fourth factor was the simple demographic trends of immigration, population growth, and the apparent resurgence of the American city as a popular place for families to live.

Of these four forces, the most recognizable were the court judgments that are the focus of this study: *Abbott v. Burke*. These decisions, along with the EFCFA statute and subsequent administrative code, required the state to plan and build schools designed for fewer students per teacher and more square footage per student. These parameters, in addition to the need to provide cafeterias, gymnasium, libraries, and rooms for the study of music and art, were generating the larger buildings to house smaller student populations. Thus, when replacing a school building built in 1911 or 1925, for example,

there was a need to include a range of rooms that did not exist 80 to 100 years earlier. Therefore, the new school would be larger but would accommodate fewer students.

Finding new sites for new schools in older cities is the foundation for a school building improvement program. When the New Jersey program was funded in 2000, it quickly floundered on the site selection process. Realistically, school projects could not advance into design until school sites were found. Without the real estate in place, the program stalled. Schools could not be designed without a site.

The school construction program also stumbled into the conflicts that emerged between school districts and municipalities, especially where “civic capacity” was absent. For school districts, the emphasis was on finding safe and appropriate sites to build schools to realize educational objectives for underserved children, while for municipalities the possibility of a new school became part of their economic development strategies. When these two entities of local government are in consensus about a site or several sites, school projects advance through the process and into construction. This is a decisive piece of the puzzle. When these parties did not become partners, “marching in step,” the school construction program did not succeed in those districts.

Compounding the need to resolve conflicts between local partners were the logistical difficulties encountered by the NJEDA and the NJDOE in coordinating and implementing the hundreds of projects requested by the *Abbott* districts. Greif (2004), who focused on the all of the issues of *Abbott V* implementation, observed that, despite an allocation of \$6 billion for facilities the state’s agencies made little headway.

One reason little headway was made, not anticipated by the new program’s promoters or authors of the EFCFA legislation, was the difficulty in finding and

assembling appropriate parcels of land for sites for new schools in the 30 low -wealth school districts. This problem quickly emerged as “the” program’s fundamental bottleneck and its “Achilles’ heel” as the NJEDA began its work.

The difficulties encountered by the NJEDA-NJSCC and the school districts in the process of selecting school sites occurred on two layers: informal and official (formal). The informal process was more important than the official process because everything depended on the informal back-and-forth process among municipal, state, and school district officials by which a site is found and consensus is built. This is followed by the formal procedures in which a series of sites are brought for consideration, among them the favored site. Public input is received and the formal steps are followed—all with the outcome a foregone conclusion. Decisions are formally delivered by a district’s Superintendent of Schools to his or her Board of Education in the form of a proposal, a recommended draft resolution. The draft resolution includes a list of detailed addresses (lots) that the district is requesting the NJEDA-NJSCC to evaluate as the first step toward acquisition. In parallel, this information is transmitted to the NJDOE, the NJEDA, the NJSCC, and the PMF.

The school building program’s efforts to purchase were an important facet of the relationships among the State of New Jersey, the 31 school districts included in this program, and their respective municipalities. School districts and local governments tend to balance local educational needs with the dynamics of real estate acquisition and large-scale urban redevelopment through an informal process of “filtering” and negotiation. In such negotiations, one plausible outcome is capitulation. School districts find themselves forced to sacrifice opportunities in order to reach a political compromise with long-term

pedagogical and operational consequences. Without a choice, they accept suboptimal sites that are awkwardly shaped and/or smaller than necessary, due to political expediency. As mentioned in the context of Philadelphia, a small awkward site is often considered to be better than no site at all (Seelig, 1972).

School boards and local governments have three possible approaches for expanding school facilities. They can opt to consume existing open space on school district property, build new facilities on adjacent properties, or find completely new sites. The fitting of a school project into a neighborhood's fabric emerges from a feasibility study and then begins the formal statutory process. In New Jersey the school site selection had to take into account the criteria found in the NJAC (NJAC 6A:26-7.1 and 7.2), which detailed several standards to be addressed by an applicant for site acquisition approval. These criteria ranged from the marginally unimportant to the highly significant. The 22 criteria were formalized in checklist form labeled DOE-150. The most important of these criteria were as follows: (a) a statement from an architect or an engineer that the land is suitable for the planned school and meets the requirements of the NJAC, specifically that the school site has sufficient acreage for placement of the school facility, expansion of the building to maximum potential enrollment, multipurpose physical education fields to support core curriculum standards, disabled accessible walkways, roadways and parking, public access and service roads, school bus roads, drop-off areas and 18-foot-wide fire lanes, and 30-foot-wide access around the entire building; (b) proof of submission of the project to the local planning board; (c) prior approval or review by the NJDEP; and (d) documentation that the soil conditions have been reviewed and the determination made that they are sufficient for intended use. The project applicant

(NJEDA-NJSCC) must present material to the approving authority (NJDOE) for approval. The applicant must address every element of the checklist in order to receive approval for the site. All elements of the State's checklist must be answered in the affirmative before the school facility project can proceed. Therefore, advocates of the project often bend the answers to fit the reality and, with the acquiescence of the Department, waivers are issued to allow flexibility in the process.

Although the process seems to be strict and highly accountable, following a formal checklist, there appears to be significant discretion in how these criteria are evaluated. Some observers would find this phenomenon similar to that termed as "pencil whipping." This expression is meant to describe the meaningless review of a checklist in which the focus is on process and procedure rather than content. For example, an advocate or promoter of a chosen site may choose to "whip through" the boxes of the checklist, checking them off, meeting the need to comply with the checklist process but not focusing on content. In other words, the letter of the regulation is followed and declarations are made that the site meets the administrative requirements but qualitative considerations are omitted from the process. This arrangement allows projects to seek the lowest threshold: a minimal level of acceptance. For example, although the items on the Department's checklist were checked in the affirmative, somehow the 30-foot-wide access on all sides of the building shrank to 15 feet.

For example, the administrative code questions whether the school site has sufficient acreage for:

4. Multipurpose physical education field(s) and, for pre-school through grade five school facilities, a playground required to support the achievement of the Core Curriculum Content Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities

efficiency standards and the approved programmatic model. (New Jersey Board of Education, 2007, NJAC 6A:26-7.1(e)4)

Many times a terse compliant response was provided along the lines of the following: *The school site includes sufficient acreage for physical education facilities for both the elementary school and the early childhood center.* This sort of response is indicative of compliance with administrative requirements while perhaps entirely skirting the issue, for example, of providing a reasonable amount of outdoor physical education space for a new inner city elementary school. In fact, in many situations several of the schools provided the most minimal of playgrounds<sup>59</sup> (Carter, 2010a).

One of the earliest indications of NJEDA activity is found in a *Star Ledger* interview with Newark school district facility consultant and architect Corwin Frost (DeJesus, 2001). DeJesus's article described a tour with NJEDA representatives to several school sites.<sup>60</sup> The article reported that in the previous month the city's planning board had given approval for construction of 40 two-family homes on the parcel designated as the future site of the First Avenue School. DeJesus observed that Newark's efforts to redevelop its neighborhoods had "resulted in fierce battles for scarce land that has pitted school advocates against city officials" (p. 25). This is an example of a failure in civic capacity. The City of Newark, its Mayor, and its state-managed School District Superintendent and Advisory Board were rarely in harmony, consensus, or agreement on new school sites for Newark. Therefore, Newark's school building program, in contrast with those of the other 30 SNDs, never reached its proportional share.

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<sup>59</sup> Speedway Elementary School in Newark

<sup>60</sup> The sites on this early tour were among the first and only projects to be built in Newark: First Avenue, Central High School, and Science Park High School, among a few others.

The NJEDA highlighted in its 2001 annual report a milestone: the very first land acquisition for the new program (p. 18). A 63,120-square-foot Wheaton Village building had been acquired on behalf of the Millville School District (NJEDA, 2001a).

This difficulty in finding land for new schools in the 30 *Abbott* districts is best and most briefly summarized in the testimony of Assistant Commissioner of Education MacInnes to the Assembly Education Committee on July 31, 2002. He explained to the legislators that the NJEDA was working in New Jersey's most developed urban areas. MacInnes contrasted assembling a site with multiple residential, industrial, and commercial owners and tenants with the suburban or rural solution of buying a farm, a "green-field."

If you listen to the names of the larger Abbott districts: Newark, Paterson, Jersey City—consider the other Hudson Abbott districts: Union City, West New York, Harrison, Hoboken, Passaic, Paterson and Elizabeth, you're describing places where they are very densely developed. Therefore site acquisition is particularly troublesome. You can't go out and buy a tomato farm and put your new high school up on 120 acre. You have to, instead, painfully assemble tracts of land, be able to compare alternative sites. That kind of work, presently, is slowing the process down because without a site, we can't of course, design the school. It has to be designed for a specific site. Anybody involved in this process knows that site acquisition can be very slow, very painful, involve eminent domain, frequently, litigation extends its. But with all of those barriers, I think that we have to be realistic about what's going to be required IN [sic] densely populated Abbott districts. (New Jersey State Assembly, 2002, p. 16)

MacInnes's words, spoken 2 years after Whitman had signed the EFCFA and 6 months after McGreevey had entered office, are a realistic appraisal of the work that faced the leaders and staff of the NJEDA and NJSCC.

Deciding on the best site does not create the site. The land must be acquired through negotiation or condemnation or eminent domain. As these actions are where private property, persons' livelihoods, places of residence, and public expenditure cross,

they are subject to high levels of scrutiny, checks, balances, and review. This would be another task of the new school construction program.

The NJEDA's real estate program was composed of several phases: site selection, site acquisition, and site remediation. The program's residential relocation policy is traced to the first days immediately after the enactment of the EFCFA (2000), when the nascent school program was administered by the NJEDA. The decision was made by the NJEDA that residential relocations would follow the policy of the federal government as implemented by New Jersey's Department of Transportation (Federal Highway Administration, 2005). This was critical because it facilitated the relocation of over 800 family units and 115 businesses by the program (Tanger, 2008a).

The federal policy is based on the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (Code of Federal Regulations, Title 49, Part 24) that is implemented by all state departments of transportation (using federal funds). This Act requires the relocating agency to "make whole" (Daniel, 2008a; Tanger, 2008a, 2008b) any residential relocation to a comparable replacement dwelling that is decent, safe, and sanitary (DSS). Considering the magnitude of relocations executed in this program and the influence of these regulations on the decisions by local elected officials, this carried implications for the process of locating sites for new schools in old cities.

It is important in adopting the requirement that all replacement dwellings be comparable and DSS. For most of the homeowners and tenants in low-income, blighted neighborhoods of New Jersey's inner cities, these concepts are the basis for their being moved out of homes that are not DSS. The new homes that are offered to families to be

displaced must be “comparable” as detailed in the regulations, as specified in the following: (a) adequate in size to accommodate the occupants (whereas presently many more occupants are living in rooms than should be), (b) located in an area that is not subject to unreasonable adverse environmental conditions (whereas presently this may be the case), (c) located in an area that is not less desirable than the present location with respect to public utilities and commercial and public facilities (some areas of the inner cities are devoid of public and commercial facilities), (d) reasonably accessible to residents’ places of employment, and (e) located on a site that is typical in size for residential development with normal site improvements (many of these underinvested, blighted, older homes are on the smallest of lots, without any site improvements; Federal Highway Administration, 2005).

Relocating these inner city homeowners and tenants to housing that is DSS provided these families with the opportunity to move out of their deteriorated homes. For residents of disinvested and blighted slum housing, this mandate to relocate to DSS replacement dwellings meant that the replacement dwellings would most certainly be an upgrade from their existing conditions. This mandate to upgrade the tenants of all degraded housing to DSS dwelling units provided a rationale for local politicians to support the relocations necessary to create sites for new schools on the foundations of their oldest, underinvested blocks of houses.

Again citing from the regulations that provided minimum definitions of DSS replacement housing for those being relocated, the replacement dwelling had to (a) be structurally sound, weather tight, and in good repair; (b) contain a safe electrical wiring system adequate for lighting and other devices; (c) contain a heating system capable of

sustaining a healthful temperature of 70 degrees Fahrenheit; (d) be adequate in size with respect to the number of rooms and the area of living space to accommodate the displaced person(s); (e) contain a well-lighted and ventilated bathroom, all in good working order and properly connected to appropriate sources of water and sewerage drainage system; and (f) contain a kitchen area with a fully usable sink, properly connected to potable hot and cold water connections for a stove and refrigerator (Federal Highway Administration, 2005, p. 13)

The relocation program included reimbursement of the cost of moving, paid either on the basis of actual reasonable moving costs (by a professional mover) and related expenses or according to a fixed moving cost schedule for those who chose to move on their own. All costs involving packing and unpacking personal property, disconnecting and reconnecting appliances, insurance, storage, and transfer of utilities were included. For many of the people in these blighted areas, this lump sum payment was a bonus of the relocation by the government. If they had moved on their own, they would have had to pay these costs themselves.

As these school sites and the homes are usually in some of the most blighted, disinvested, and unattractive neighborhoods of these municipalities, there is virtually no market, no resale value, for some of these homes. Even when the real estate boom was at its height in the 2000s, these areas were overlooked by developers and remained untouched. There were more attractive, prime properties to be found elsewhere in these municipalities and counties and in the metropolis.

Thus, the school program was perceived by some mayors as a tool for redeveloping blighted residential areas far away from the reaches of any private sector

gentrification or commercial redevelopment. In these blighted and disinvested inner city neighborhoods, the State of New Jersey's decision to embrace the federal relocation guidelines was a "blessing" leveraged into a tool for residential redevelopment and the removal of blight. As most of the dwelling units identified for demolition were suffering from years of disinvestment and many were far from being DSS homes, all of the relocated families moved to better circumstances.

### **Conclusion: The Program Under an Acting Governor**

Fears of corruption stemming from episodes in the not-too-distant past had influenced New Jersey's legislators as they crafted the legislation that created the construction program. With a reputation for corruption at the state, municipal, and school district levels, there had been an atmosphere of concern surrounding the prospect of school districts handling the large sums of money necessary to improve facilities in the 30 *Abbott* districts.

This linkage between school districts—construction, poor maintenance, and corruption—was confirmed in hearings and reports about roofing replacement projects in 12 districts (Commission of Investigation, 2000). The 2 days of hearing in December 1999, along with a sensational report released in September 2000, were undoubtedly in the minds of the state's leadership as the EFCFA was promulgated that summer. The NJDOE's CCI reports from Jersey City (1988), Paterson (1991), and Newark (1994), followed by takeovers of each district by the State of New Jersey, reinforced the notion that this billion-dollar mega-project would have to be centrally managed from Trenton. Consequently, as the program was set up, among its first steps was incorporation of the

IG function, an extensive prequalification procedure for contractors and consultants, and other measures later criticized as “red tape.”

This chapter recounted the program’s birth on July 18, 2000, through the end of July 2002, when Governor McGreevey, frustrated and anxious to get the moribund program moving forward, issued Executive Order No. 24 and created the NJSCC. Chapter 7 focuses on how McGreevey increased the pace of the program and then set off a course of events that eventually brought a collision of a limited budget with the larger-than-life vision of many, many new schools in the low-wealth districts after his unanticipated departure.

## CHAPTER 7

### **Shifting Into High Gear: McGreevey (2002–2004)**

Entering office in January 2002, McGreevey found a school building program perceived by frustrated urban constituencies as moving too slowly, if moving at all. Grievances about the nonadvancement of the program under the previous Republican administrations of Whitman and DiFrancesco were surfacing in the legislature and the news media. It was time for McGreevey's administration (Democrat) to respond to its supporters: cities, labor unions, environmentalists, and minorities. Great expectations had been fostered by approval of the EFCFA in July 2000. Evidence of implementation was hard to find. Momentum was nonexistent.

This chapter describes the difficulty faced by the program's administrators to absorb the pressures of the political level to accelerate the pace of building schools. The work was executed inside the NJEDA, and then the NJSCC. The political level--governors, legislators, and mayors—can set the tone and exert pressures but the day-to-day operation and execution are performed by civil servants, public administrators, and consultants or managers.

McGreevey's administration must have been under pressure to get the moribund school program moving forward. Clearly, an impression could be made if the new Governor got this program accelerated, in contrast to the sluggish, apathetic performance of his two predecessors. However, his frustrations were not without parallel. Payne, in his 2008 book *So Much Reform, So Little Change: The Persistence of Failure in Urban Schools*, described the situation facing the ambitious LAUSD Superintendent of Schools Roy Romer in 2000. Payne's snapshot of Romer's dilemma captured the essence of the

problem facing New Jersey's program as it began its work in the summer of 2000. The overcrowding in LAUSD was so desperate when Superintendent Romer arrived in 2000 that he wanted to begin a mammoth capital construction program immediately. He was informed by staff that this would be impossible. From the time a site was identified to the time ground was broken might be 2.5 years, and actually bringing a new building online was likely to take a full 5 years (Payne, 2008, p. 135).

McGreevey, Payne, Romer, and others, intent on improving their district's school buildings immediately, were thwarted by the reality of the urban school-building process. There are no instant, easy and quick solutions in Los Angeles, Chicago or New Jersey.

McGreevey's search for instant acceleration had deep and extensive long-term consequences. Although the acceleration was well intentioned, to make up for years of neglect under previous Governors, the consequences led to the quick unraveling of the program. The program would be unable to meet the expectations of the children, parents, teachers, school administrators, the ELC, and the state's political leadership.

Although the ELC had won the victory in the Supreme Court in 1998 and the legislation was approved in 2000, the implementation of the school building program was falling woefully short of expectations when McGreevey took office in January 2002. This ambitious program, with its \$6 billion allocated for construction in 30 *Abbott* districts set in motion several dynamics: intended and unintended consequences. In retrospect, were the dollars spent on adequate spaces for the children or on interest groups of adults? Several of these questions and issues surfaced as McGreevey accelerated the program's pace.

Two words—*implementation* and *accountability*—represent seminal concepts to the school construction program as it shifted from its slumbering status under a caretaker Acting Republican Governor to a driven, hyperactive Democrat. How are the legal statutes and administrative code sections interpreted by an activist leadership anxious to press the program forward?

Citizens, legislators, and lobbyists ask, if the law says that “such and such is to happen” then why has it not happened? Why is the government not implementing or enforcing its own laws? Are government officials accountable to anyone for their decisions to implement or partially implement portions of the Legislature’s intended program?

Insight on accountability and implementation in New Jersey’s school construction program’s ability to construct schools rapidly was reflected in the words of William M. Connolly, the Director of the Division of Codes and Standards, on July 31, 2002. Connolly described that his agency acted as the building inspector under the Uniform Construction Code Act when the State undertakes construction. He informed legislators that the new buildings were to be “done in full compliance with our very high health and safety standards that are incorporated in our State’s construction code and that all work is done to the level of quality that code demands” (New Jersey State Assembly Education Committee, 2002, p. 115). He described how his agency was staffed for the workload of school projects in the summer months and noted that the schools were a management priority for the DCA. A veteran of state service, he shared his observations with the Committee. He pointed out that the NJEDA had been asked to create a program and to implement it at the same time.

As you know, as we heard today, this law is a difficult one. It was initially implemented in a climate of distrust for the very people it was intended to help. In the last six months, that climate has changed tremendously and dramatically. I think what the Economic Development Authority was asked to do was build a ship at sea. And now they have done that. (New Jersey State Assembly Education Committee, p. 116)

In New York City a commission in the late 1990s examined problems of implementation and accountability in their school building program. They found that New York City's Board of Education was ignoring its own regulations and guidelines. Published in 2000, *Building a New Foundation: The Need for Critical Reform of the Board of Education's Planning for School Construction* (Moreland Act Commission on New York City Schools, 2000) reflected on the reliability of regulation and legislative mandates. How do regulations fare in the face of the constraints of politics and the tendency of salaried administrators to execute the policies of elected politicians that may not coincide with existing law? Upon examination by the State Commission, the New York City Board of Education was found to be ignoring its regulatory framework.

Shifting back to New Jersey, David Sciarra questioned precisely this same phenomenon. Responding to Assemblyman Stanley's question about the problems encountered while implementing the *Abbott* facility program at a hearing of the Assembly Education Committee on July 30, 2002, Sciarra provided an important perspective:

We are in a different phase of *Abbott v. Burke*. What I'd like to say is that we won. Most of the funding, not all, but most of the funding is there or it's been authorized, as in the case of the school construction program. The Court has said repeatedly now it's done all that it's going to do. It's now up to the agencies, the State and the districts to implement *Abbott*. (New Jersey State Assembly, 2002, p. 36)

Sciarra emphasized that New Jersey faced a test of implementing this program.

We are in a new phase which is about—how do we take these court orders, which have given us the opportunity that no other state in the nation has had, which is to implement a series of programs at very high quality standards. . . . So the issue

really has to be is—we want implementation. As we get into implementation, what we're going to find is there are a lot of barriers, capacity barriers at the State level, at the district level . . . that we're going to confront. Expertise that we need that we don't have. The State is not organized in the right way so forth, and so on. (p. 37)

How does New Jersey or any other organization that has never undertaken a task like this mobilize for such a program? Sciarra continued,

We have to learn as we go, because we're into a lot of areas that no other state has gone before, a lot of policy areas that, as I said, are uncharted, breaking new ground. A lot of capacity problems that we face. Organizational problems that we face. We've got to be honest about these failures and learn as we go. So I guess that's how I'd answer your question. Now in terms of our work with the State, we've had some difficult – it's a day to day. It's day to day. [sic]We work every day. We keep pushing them along. They've been responsive so far. Things are moving along. People are working hard as best they can. There are a lot of capacity problems that the State agencies have, as you well know. They don't have enough talented people, the right people in place. They're not organized in the right ways. So it's a day-to-day thing. We just have to keep pushing. (pp. 36–38)

Birthdays provided reporters an opportunity to measure progress and highlight the disparity between suburb and city. June 2003, well into Governor McGreevey's term, marked nearly 3 years since approval of the EFCFA (July 18, 2000) and 5 years after the *Abbott V* decision (May 21, 1998). Although nominal dollar values are one indicator of progress, their geographic distribution must be understood as discussed in an article by McNichol and Chambers (2003). The two reporters highlighted the dramatic difference between the pace of work in the suburbs and that in the low-wealth *Abbott* districts. They were returning to a theme that McNichol had identified as early as November 2000 [McNichol, 2000e] when he observed that the first contractors to be working with school construction funding would be in the state's most affluent communities that could afford bond issues that would leverage the 40% minimum being offered. In fact, as of June 2003, the program's accomplishments were very limited. Only one addition of an early

childhood center to an existing elementary school had been finished in the Burlington City *Abbott* district (NJSDA 2005x). Only 15 projects within the 30 *Abbotts* were under construction, while in the suburbs 140 new schools were open or under construction.

Hanover, another prolific reporter on the subject, reflected on this situation over a year later (Hanover, 2004). He observed that, although construction in the *Abbott* districts had accelerated (from a virtual standstill) since the NJSCC was created in 2002, there was still a disparity. He found that suburban districts had received aid for almost six times as many school projects as the *Abbott* districts had received. Although, statistically, there are many more non-*Abbott* districts than *Abbott* districts, this imbalance concerned the advocates of the low-wealth districts because so much work was ahead of them.

Hanover reported that Trenton School District, one of the *Abbott* districts, was far ahead of other districts. It had seven schools under construction and six more in the pipeline. By contrast, school districts such as Camden and Newark, also *Abbott* districts, had scarcely progressed relative to the size of their planned programs.

Newark's Assemblyman Craig Stanley expressed his frustration with the disparity between the *Abbott* districts and non-*Abbott* districts in terms of the pace of design, construction, and grants. This is highlighted in Stanley's exchange with NJSCC CEO John Spencer at the Joint Committee on Public Schools hearing of March 22, 2004. Disappointed by the number of schools completed in the *Abbott* districts, Stanley stated,

One of the things that I say, wherever I go, is that *Abbott* has been the non-*Abbott* district's best friend. Because as a result of the *Abbott* decision, we've been able to do some very innovative things in the State of New Jersey that have not just benefited the *Abbott* districts, but the non-*Abbott* districts alike. I think that's a good thing. I think that laudable. (New Jersey State Assembly and State Senate, 2004, p. 17)

The Assemblyman, emphasizing his own and his constituent's frustration explained that the different rates of progress made it seem that the urban program had been taken over by suburban interests. The state's RODs were getting their projects into construction while the 30 *Abbott* and their projects were languishing.

But I just want to make sure that we address the needs of those in the *Abbott* districts, as well as the non-*Abbotts*, because sometimes, and for a long period of time, we had been in a situation where non-*Abbott* districts' projects were moving along at a much rapid rate than *Abbott* districts, and that seemed almost contradictory to what our initial mission was, dictated by the initial mandate of the court. But again, as I say, I think it's very positive that it has had that effect. We knew it would, and we expect it to continue. (New Jersey State Assembly and State Senate, 2004, pp. 17–18)

Mayor Douglas Palmer of Trenton, on July 30, 2002, provided detailed testimony regarding the pace of the program in his *Abbott* district (New Jersey State Assembly, 2002). In 1998 in anticipation of the legislation, the City of Trenton developed a school facilities plan. By December 2001, the Mayor stated that predevelopment work for 10 new schools or major renovations was complete and would be submitted to the NJDOE, approved by the NJDOE, and transmitted to the NJEDA in February 2002.

Palmer expressed concern over the length of time involved in the process. Predevelopment work on a new school generally takes 200 days. The City of Trenton could have had several projects under way on its own in this amount of time. In his analysis, predevelopment work for the Trenton *Abbott* school district had taken twice as long as customary. At the current rate it would take more than 5 years to build each school in Trenton. By contrast, Palmer noted to the committee members that suburban school districts did not face the same hurdles as the *Abbott* schools. Many more suburban schools than the *Abbott* schools had taken advantage of school facilities funding. Cities such as Trenton had fallen behind their suburban counterparts. Mayor Palmer observed in

2002 that an entire high school freshman class of 1998 had graduated since the *Abbott V* decision had mandated new facilities. The Mayor asked the Assembly committee what could be done to accelerate this process.

Because laws are implemented through administrative rules, interested organizations have an additional opportunity to wield their influence. The process of taking a statute (NJSAA) and transforming it into NJAC is one that only lobbyists (on behalf of their corporate or organized labor clients) and advocacy groups have the resources to monitor and the expertise to intervene and influence. Salmore and Salmore (2008) quoted one lobbyist discussing the effect of regulations:

A department is likely to take the bare bones of a bill and put meat, gristle and fat on it. As a result, you may be faced with something completely different than what the legislature intended, and that's a tough fight in itself. That's why it's important to develop a good relationship with people in the executive branch. (p. 116)

The final form of the EFCFA legislation reflected the multiple constituencies that had pressed for its approval. Its attributes and blemishes corresponded with the pressures from those interest groups who had pressed their desires through the courts, the media, and their lobbyists. Salmore and Salmore (2008) discussed lobbies and their power in New Jersey's capital, Trenton. First among these groups, for this program especially, were the construction labor unions. Salmore and Salmore identified the aggressiveness of labor unions (Democrats) that elect their own members to serve in public office by referring to Philip H. Burch's 1979 research on interest groups (pp. 114–115). Their influence is so strong that Governor Whitman (Republican) accepted the PLA sections (a theme favored by Democrats) in the EFCFA legislation.

One of Governor McGreevey's most effective tools to push this program forward was the use of the Executive Order (EO). This allowed him to exercise his gubernatorial

authority in EO moves that began within days of taking office. Evidence of the influence of interest groups on the program is reflected in the series of EOs issued by the new Governor. Although every EO was issued with its announced and transparent goal, each was somewhat tangential to the primary goal of building new school buildings for children of color and low-wealth families.

Within 2 days of entering office (on January 17, 2002) McGreevey signed EO No. 1, which allowed reinstatement of PLA on state construction projects (Governor of the State of New Jersey, 2002a). Seven months later, the Project Labor Agreement Act was signed into law on July 25, 2002 (P.L. 2002, Chapter 44). This provided a firmer and longer-lasting foundation for the use of the PLA than any EO by the Governor. A PLA<sup>61</sup> is a prenegotiated agreement between a project owner and local labor unions that sets the rules for work on a project. It may be an agreement that all workers will be union members and that, if nonunion members are hired, they will pay union dues while at work on the project.

There is an historic “ping pong” of sorts between the Republican and Democratic parties on the PLA issue, which was concluded with the approval of the law in July 2002. McGreevey’s EO No. 1 rescinded Whitman’s EO No.11, which had reversed predecessor Governor Florio’s EO No.99, removing any requirement for a PLA. Florio, a Democrat like McGreevey, had required PLAs on state-sponsored construction projects.

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<sup>61</sup> The first PLAs in the United States originated in the large public works projects of the Great Depression in the 1930s. The Grand Coulee Dam in Washington and Shasta Dam in California were among the first projects with PLAs in the nation (Bachman, Chisholm, Haughton, & Tuerck, 2003). They continued during World War II and included construction of Cape Canaveral in Florida, Boston’s “Big Dig,” Disneyworld in Florida, subways in New York, and stadiums, airports, and highways in New Jersey.

McGreevey's January 2002 EO No.1 directed state departments and authorities to include PLAs in public works agreements "where it has been determined that such an agreement advances the state's interests of cost, efficiency, quality, safety, timelines, skilled labor force, labor stability and the state's policy to advance minority and woman owned businesses" (Governor of the State of New Jersey, 2002a, p. 1).

McGreevey's first EO specifically mentioned the large scope of the upcoming school construction projects as an example of a project that would benefit from this PLA. A decision to use a PLA for a public works project by a state agency was to be supported by a written, publically disclosed finding detailing the justification for use of the PLA.

Within this sidebar description of McGreevey's first EO and the nuances of the PLA, it is important to remember first and foremost that this was a program to build schools in the state's low-wealth school districts. Therefore, if the insertion of the PLA into the school construction program brought benefits to the school children, it could be viewed as a positive influence. If the PLA resulted in higher costs and therefore less square footage of construction, it would be a negative.

In this context Hill International was engaged by the NJSCC to assist with management of the PLAs. According to the NJSDA website, the overall PLA between the NJSCC and the New Jersey Building and Construction Trades Council and several trade unions reached agreement on February 28, 2003 (New Jersey Department of Labor and Workforce Development, 2010). Indicative of the coalition of interests on this issue, Hill International sponsored a session as a forum of the New Jersey Institute of Continuing Education in April 2003. Speaking at this session was Albert Kroll, the Commissioner of the New Jersey Department of Labor; Alfred McNeil, the CEO of the

NJSCC; and Thomas P. Foy, Vice President of Hill International. A breakfast session was held to discuss “The Make or Break Power of Project Labor Agreements” (Hill International, 2003). One of the participants, Foy of Hill International, subsequently emerged as a key figure in an investigation and allegations by IG Cooper regarding the behavior of a senior member of the NJSDA<sup>62</sup> (Cooper, M. J., 2010).

The PLA itself is the subject of controversy between liberals and conservatives—Democrats and Republicans. The Democratic party is aligned with labor unions, the Republican party is not. That is the basic demarcation at the state and national levels. Advocates of the PLA argue that its establishment provides for open communication, reduces disputes and delays, ensures fair pay, and reduces costs. They contend that it provide for harmonious work conditions and guarantees wage costs for the life of the contract. They contend further that work rules and agreements that prohibit strikes, slowdowns, and lockouts contribute to keeping the project on time and on budget. They claim that union rules, training, and involvement on the job site increase safety, which reduces accidents and workmen’s compensation claims (Bachman, Chisholm, Haughton, & Tuerck, 2003; Bachman & Tuerck, 2006).

Testifying to the Assembly Education Committee in 2002, Steven Gardner, Assistant Director of the New Jersey Laborers Employers Cooperation and Education Trust, expressed his organization’s concern that good quality contractors might not be able to bid on school construction work and receive projects. He assured the legislators that good contractors would employ local residents. “You have good safe work sites.

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<sup>62</sup> Due to the evolving name and location of the school program, Foy’s activities took place while in the employ of the NJEDA. The investigation occurred after the program and Foy had been moved to the NJSDA.

Prevailing wages are paid to workers, so you're not fighting to make sure that the contractor is paying the right wage rate. Overall, you get a much better project with good quality contractors" (New Jersey State Assembly Education Committee, 2002, p. 105).

Opponents of the PLA argue that it discourages nonunion contractors from bidding, results in increased project costs, and is a cumbersome requirement. One contractor was quoted in an analysis of PLAs in New York State as stating that "PLAs are absolutely necessary for organized labor to survive. There are too many costly, inefficient practices" (Bachman & Tuerck, 2006, p. 7). Testifying before New Jersey's Assembly Education Committee on July 31, 2002, Arthur J. Maurice, Vice President of New Jersey Business and Industry Association, voiced his group's opposition to the school construction program's PLA:

I'm here to urge you . . . to not allow project labor agreements on these school construction projects. Now why is that? Because if you limit the number of contractors who can submit proposals, you will clearly have an impact on the work that can get done. A PLA will not improve the quality the school construction work. We've already heard about the prequalification standards, the classification standards. We have over 13 prequalification standards right now. Secondly, a PLA will not increase the use of the minority, female contractors. And finally, PLAs will not help hold down the cost of these projects. How can that be if you're limiting the number of contractors? (New Jersey State Assembly Education Committee, 2002, p. 133)

One of the features of the PLA is that it requires labor unions to set up apprenticeship programs. Assemblyman Malone asked NJEDA CEO Franzini about 0.5% of the program being spent on apprenticeships. She responded that the NJEDA decided to set aside the funds at the beginning of the program.

Our feeling is, why wait and put the money at the end? Let's put the money at the very beginning before we fail and do something about it in a proactive fashion. The key to it, and one of the reasons we wanted to bring Gerry Murphy on board, to be quite honest, is our biggest concern would be to have a pre-apprenticeship program and the people who graduate have no place to go. (New Jersey State Assembly Education Committee, 2002, p. 85)

The NJEDA's decision to "front-load" its investment in this program with \$30,000,000 (0.5% of \$6 billion) would seem to be an unusual priority for a school construction program, especially since the state's Department of Labor was asked by the NJEDA to issue the RFPs. This decision is clearly indicative of the powerful influence of the labor unions in the state and the program at the time. Although this was a program set up to renovate school facilities in 30 low-wealth school districts, among its first expenditures was a program involving labor unions. Malone questioned why the NJEDA and the Department of Labor were creating a new apprenticeship training program when county vocational schools already had such programs in place. He emphasized that county programs cost one tenth those of proprietary schools. He concluded by suggesting that the NJEDA and the Department of Labor re-examine their approach.

Concluding this discussion of EO No. 1 and the school construction program, it should be noted that the PLA may have been yet another necessary burden placed on the school construction program. Although this may have been one of the compromises that was necessary to gather the momentum to propel this massive program forward, it appears to have added costs and possibly reduced the number of schools built.

Within 2 months of entering office (February 19, 2002) Governor McGreevey signed EO No. 6, establishing the Abbott Implementation and Coordinating Council (Governor of the State of New Jersey, 2002b; McNichol, 2002). This council gathered representatives from the NJDOE, the State Attorney General, the Department of Human Services, NJEDA, and several others with the objective of meeting monthly to implement the *Abbott* program. Sciarra, representing the ELC and to be a member of this Council, stated, "With a stroke of the pen, cooperation replaces distrust, collaboration replaces

control and consensus building replaces unilateral action by the state" (McNichol, 2002, p. 9).

In retrospect, it is not clear what role the Council actually played in the *Abbott* program in general and the facilities aspect specifically. Perhaps its true significance was in the Governor's recognizing the importance of the issue and providing a platform and framework for discussions and coordination. By placing his signature on EO No. 24, Governor McGreevey accelerated school construction and created the NJSCC (New Jersey State Assembly, 2002). Creighton Drury, Esq., of Paterson described the scene at Paterson's East Side High School to legislators at the Assembly Education Committee hearing on July 30, 2002.

It was very fitting, if not poetic, that Governor McGreevey made his announcement yesterday from the sweltering hallways of East Side High School in Paterson—fitting for a couple of reasons. One being . . . for boldly recognizing that the system is broken. Like other *Abbott* districts, there's been no construction in Paterson. (p. 111)

Frustrated at the lack of progress at the NJEDA under the previous Republican administrations and eager to make progress, McGreevey ordered creation of a subsidiary corporation to the NJEDA. The new NJSCC would focus on construction implementation and the NJEDA would retain responsibility for issuing the bonds. Ponessa of the ELC, in a telephone interview with Greif (2004) on May 19, 2003, stated that the NJSCC made more progress in its first 6 months than the State, through the NJEDA, had made in the 24 months after approval of the EFCFA.

While on the one hand EO No. 24 created the NJSCC (Governor of the State of New Jersey, 2002c), on the other hand it added complexity, mission creep, and encumbrances. All of these additional tasks, while perhaps notable and important, were

distractions from the essential mission of building new schools and upgrading existing buildings for children who needed to learn in better school buildings.

The EO stated that the Governor “does hereby ORDER and DIRECT,” among several things, that

2. The NJEDA and all school districts developing school facilities projects to be funded under the Act should attempt to incorporate community design features to maximize public access to the building and enhance the utility of the building to the needs of the community.
4. All new school designs shall incorporate the guidelines developed by the United States Green Building Council known as “Leadership in Energy & Environmental Design (“LEED”), Version 2.0 to achieve maximum energy efficiency and environmental sustainability in the design of schools. (Governor of the State of New Jersey, 2002c, pp. 2–3)

In fact, several interest groups and lobbies were able to add their own agendas to the school construction program. Each one of these, by itself—community design, LEED and energy efficiency, and Homeland Security was a justifiable requirement. Together, they made managing the program exceedingly difficult and added to its spiraling costs.

However, issuance of the EO and the press conference in Paterson may have been orchestrated for Monday, July 29, to divert some of the energy and fury that was building in anticipation of the 2 days<sup>63</sup> of hearings scheduled by the Assembly Education Committee in Trenton for Tuesday, July 30, and Wednesday, July 31.

Chairman of the Assembly Education Committee Joseph Doria announced to those assembled that he had received a telephone call<sup>64</sup> from Governor McGreevey the

<sup>63</sup> The 2 days of hearings, 6 months into McGreevey’s term, were extensively discussed in the previous chapter. They provided an opportunity for legislators and staff members of the executive branch to discuss issues that had emerged during the Whitman and DiFrancesco administrations.

<sup>64</sup> McGreevey made sure not to insult the Chairman of the Education Committee, although deliberately holding a press conference announcing the creation of the NJSCC and signing EO

previous day. McGreevey informed Doria of his intentions to solve many of the problems that his committee would be discussing by creating a new corporation as a subsidiary of the NJEDA (Governor of the State of New Jersey, 2002c; New Jersey Office of the Governor, 2002). Al McNeill, an experienced construction CEO, would be appointed as Executive Director of this new corporation and charged to propel the work.

Hence, the mixed messages of hope and anger from legislators and advocacy groups during these hearings. Assemblyman Craig A. Stanley, Vice Chairman representing Essex County and portions of the City of Newark, was favorably impressed but cautious.

I really applaud, as many have already, the Governor's move to try to streamline the process. The only thing I have to say is that we heard testimony yesterday about laboratories—labs in Irvington High School, which have not been built and can't be built again this summer because proper approvals weren't put in place before. They weren't given the go-ahead before now. So now it's a 10- or 12—8-week process, and it can't be done before September.

Now, since those labs have been down, a whole group—a whole—there's been a class that has never been inside a lab. We cannot afford that. Again, I think the Governor's intentions are very laudable, but we don't have time to wait for a year for this corporation to get off the ground. We've got to understand that. Every time we make massive movement with regard to a commissioner or with regard to anything, we constantly find ourselves back at square one. (New Jersey State Assembly Education Committee [July 31, 2002], 2002, pp. 17–18)

State Assemblyman Malone, one of the sponsors of the EFCFA legislation in 2000, was outspoken in his comments to Education Commissioner Librera on July 31. Despite the Governor's announcement of the creation of the NJSCC on the 29, he stated

No. 24 made Doria's 2 days of hearings seem without purpose. Therefore, the Governor personally called Doria so the Chairman could announce to the Committee that he had received this information in a personal telephone call.

that “my face is on this piece of legislation. . . . I fought for that legislation. . . . If this thing is a failure, my fingerprints are all over it” (p. 38).

So, there is some concern here about where we are going to be a year from now. I can assure you from the looks on the faces of people in this audience, they will not tolerate the kinds of answers that are being said today about confusion, concern, lack of action. They’re going to go half crazy.

Let’s put a face and let’s put a projection and let’s hold somebody accountable. And in this particular case, Commissioner—And I’ve commented to you, that you seem like a shaker and a mover. Let’s put a face and a commitment to say this time next year, I will have accomplished this amount of work in the *Abbott* districts, period. I think that’s what everybody in this room wants to hear, what you as the Commissioner of Education can say to the public of this state, and particularly to the *Abbott* school district, “I will have this done, come hell or high water.” (pp. 32–33)

A heated exchange continued between the Assemblyman and the Commissioner of Education in which Malone was looking for a commitment and the Commissioner was unwilling to commit. Commissioner Librera said,

First, we fully expect to be held accountable for what it is that will happen 12 months from now. We will be as angry and as upset as everybody in the audience if what we’ve said today that will make a difference does not. That’s the ultimate form of public accountability—that people remember what you say. (p. 33)

Assemblyman Malone responded to Librera that he was dodging the question. “You have the mechanisms. Now we want to see the beef, and we want to see the action” (p. 34). This exchange culminated in the Education Commissioner summoning NJEDA CEO Caren Franzini to the table to provide a concrete response to Malone’s questioning. She answered,

We’ll have all the health and safety work done this time next year. Right now, we have—because we took the assignment of architects’ contracts from the districts, we have 51 approximately approved by our board. So we’ll have shovels in the ground, work being done, in the 51 schools where the design has been completed. (p. 35)

With Perth Amboy school district within her Assembly district, Assemblywoman Arline M. Friscia expressed frustration over her constituents' inability to advance any of their school construction projects under the NJEDA's management. Building on the testimony of Superintendent Clausell the day before, she stated,

The underlying theme through all that testimony was the frustration of the local school districts with their inability to move. After listening to that for all those hours yesterday, I'm personally on a mission to find out where the logjam is. There are people in the local administration, local employees of boards of education who are very competent to do this kind of work. They don't have to wait for DOE or the EDA to come up and say, "Okay. This is what we're going to do. You have to wait until we do it." (p. 39)

Looking retrospectively at July 2002, Assemblyman Malone, at an October 2005 legislative hearing, expressed regrets about removing the school program from the supervision of Caren Franzini at the NJEDA in summer 2002. Speaking to NJSCC Chairman Koeppe and CEO Maricondo, he stated:

I have been a big fan of Caren Franzini, when she was at EDA—and still is. I just regret, in hindsight, that we just didn't leave it. As you say, this thing was like a runaway train after the last three years, with the spigots being opened as wide as they could be, just hoping—As you said, we should never, ever move forward again with that kind of largess being thrown out on the table. Because it just creates the kind of situation and debacle. And I will honestly say, knowing the members of the Legislature over the years I've been there, I think all of us, on the bipartisan way, are just astonished and appalled by this debacle. And none of us would ever want to ever vote for a situation that could turn into this kind of a monster again, and rob school children of the opportunity to have the appropriate school building and the facilities they need to get a good education.

I just think it's—as somebody who's been in education myself for over 30 years, it just cries out for leadership like the two of you are providing. And I know it's a yeoman's task, but I just urge you to be as tenacious—and if there's corruption or if there's mismanagement, throw the bums under the bus and just move on, so that the school children and the people in this state can have an education. [applause] (New York State Assembly, Joint Committee on Public Schools [October 3], 2005, pp. 40–41)

Later in the same October 2005 hearing State Senator Doria agreed with Assemblyman Malone that the program should have stayed under Franzini's management

at the NJEDA. To summarize, Governor McGreevey issued EO No. 24, creating the NJSCC to jump start the slow-moving program. His action was applauded at the time, as it was clear that this school construction program was being handled too slowly at the NJEDA. With the new NJSCC, the pendulum swung in the opposite direction, resulting in Doria's and Malone's fond memories of Franzini in October 2005.

### **Schools as Centers for the Community**

In New Jersey an EO can be a strong tool, providing direction to units in the executive branch of the government because the Governor, "by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT" various things to happen (Governor of the State of New Jersey, 2002c). However; strong tools can cut both ways, with intended and unintended consequences. Parts of the EO may be administered completely, other sections partially, and portions ignored. Not all sections of EO No. 24, for example were implemented with equal intent by the administrators of the new NJSCC and the existing NJDOE. Several sections of the EO, however well intentioned, became distractions for an already overtaxed group of administrators who were trying to build new schools in New Jersey. Administrators often implement programs in a manner different from the intentions of the legislators and the Governor (McLaughlin, 2005; Pressman & Wildavsky, 1984).

As noted, EO No. 24 contained directives other than just the creation of a new corporation. Adding to the encumbrances was the concept of community involvement in the design process. Creighton Drury, in his testimony before the Assembly Education Committee on July 30, quoted from EO No. 24:

The NJEDA . . . and all school districts developing school facilities projects are strongly encouraged to provide opportunity for the community at large to have

meaningful participation in the site selection process for schools facilities projects and in the design of school facilities. (New Jersey State Assembly, 2002, 2002, p. 112)

Drury commented that it made sense to involve the community in the process of school construction, including site acquisition, school and community design elements, and neighborhood economic development. Drury's testimony on July 30 was followed by the NJDOE's Director of School Facilities Planning on July 31. Bernard Piaia stated,

We should think about schools as an essential component of good community building, and that we should use schools as a means by which we stimulate all things that are important in communities. When we did that we made the school construction process even more complicated. (New Jersey State Assembly, 2002, p. 7)

Piaia, a key person at NJDOE for this program throughout this period, is one of the few in the state government who, quite early (July 2002), recognized that this good idea (schools as centers of the community) would be difficult to implement and would become an encumbrance on the program.

The root of several community schools built by the program is found in the sixth section of the EFCFA. Labeled "demonstration projects," these school projects were exceptions in their magnitude, cost, and procurement process. The first draft of the EFCFA legislation, introduced in November 1999, already included a section for "community development school projects" (New Jersey State Legislature, 1999b). By summer 2000, in the final version of the approved EFCFA, that section allowed the State Treasurer to designate six "demonstration projects" to be delivered through "design build."

A "demonstration project" is a project that provides for coordination of local economic development, redevelopment, or community development with a school facilities project (NJSA 18A:7G-6-b). The demonstration project concept allows the

addition of community design features to a school facility on the condition that these features would be useful to the school's students and that they would always be accessible for educational purposes (NJSA 18A:7G-6-e). The costs of these features could be absorbed by the state with the approval of the Commissioner of Education and eventually included in the school facility project's FEC.

The location of the six demonstration projects among the 30 *Abbott* districts (at the time) was to be made in accordance with a defined list of subjective criteria. The selection of the demonstration projects was determined not by Whitman or DiFrancesco but by Governor McGreevey. Larger in scale than a typical school, these projects were meant to bypass the "checks and balances" of the state-run school construction administration.

Unmistakably, the legislative intent was that these Demonstration projects would not be built by the NJEDA; they were to be built "pursuant to an agreement" by a redevelopment entity selected by the State Treasurer after some sort of competitive process held during the "initial three full fiscal years" following approval of the EFCFA in 2000 (NJSA 18A:7G-6.a). In late October 2003 the NJSCC's Board of Directors approved six projects where, in accordance with the EFCFA, both the State and NJEDA-NJSCC management were held at a distance from their design and construction.

It is not clear exactly why the demonstration project program concept entered the EFCFA legislation in 1999 and whether it was contained in the initial draft submitted by Governor Whitman to the Legislature. However, this program within the overall program became a distraction and a detriment to the entire program's future. Nearly every one of these projects became an example of "excess," a "lack-of-control," "grandiose" design,

and a target for negative press reports (Bischoff, 2011a, 2011b; McNichol & Chambers, 2005a, 2005b; O'Connor, 2011a, 2011b).

Was this a case of good intentions gone awry? The wisdom of depositing the largest school projects in the hands of those same local entities that were not to be trusted to build smaller schools is questionable. Was this another gesture by the legislature to provide select legislators space to maneuver and spread more of the program's largesse? Through this subsection of the EFCFA the State of New Jersey paid for six demonstration/community school projects, including the following: (a) Performing Arts School, East Orange, at a total project cost of \$142,970,533 (Cicely L. Tyson Community School of Performing and Fine Arts, East Orange, New Jersey, 2010; Dilworth, 2007); (b) Union City High School and Athletic Complex, Union City, at a total project cost of \$176,808,735 ("Top New York Projects," 2008); (c) New Brunswick High School, New Brunswick, at a total project cost of \$185,241,035 (NJSCC, 2007b; O'Connor, 2011b); (d) Daylight/ Twilight Alternative High School, Trenton, at a total project cost of \$40,716,635; and (e) Octavius V. Catto Community School, Camden, at a total project cost of \$77,006,172.

Building on the testimony of the official from the NJDOE, State Assemblyman Malone used the term *mission creep* in the context of community center (demonstration project) schools.

That was one of the issues I think we originally discussed in the original piece of legislation—the project creep and the amount of money that will be necessary to incorporate the community aspect of this. This is something, I think, that everybody ought to go into with their eyes wide open that they don't think, "Oh my god," afterwards it's another \$5 billion we've got to go into the school construction project. (New Jersey State Assembly [July 31], 2002, p. 83)

The concept of equipping an existing school with a health clinic had to address issues of space allocation and how to provide an independently controlled entry to the clinic within an existing school building. These same issues applied to proposals for community libraries and sports facilities in schools. The community school archetype was mentioned repeatedly by New Jersey's governors as among the program's goals at various events and was also discussed in academic literature and in several reports (Cicely L. Tyson Community School of Performing and Fine Arts, East Orange, New Jersey, 2010; Cutchin, 1995; Filardo, Vincent, Allen, & Franklin, 2010; McDonald, 2010; New Jersey Office of the Governor, 2003; New Jersey State Assembly, 2003; Vincent, 2006).

Irene Sterling, President of the Paterson Education Fund, in her testimony to the Joint Committee on Public Schools, asked the committee to push for a definition of the concept of the "community school" (New Jersey State Assembly and State Senate, 2003). Sterling remarked that she had received all sorts of literature about community schools but contended that the State of New Jersey needed a programmatic definition. Probably having read *Inside Full-Service Community Schools* (Dryfoos & Maguire, 2002), Sterling asked: What is a full-service community school in New Jersey? Does it include youth development, family services, family engagement, and health clinics? Sterling urged that regulations be written to ensure that these would be built.

Clearly, there were pressures for adding this function to the new schools being designed, as an entire day long event was held at Rutgers University in New Brunswick on May 16, 2003, to discuss *Abbott School Construction as a Catalyst for Community Development* (Community Development Institute, 2003). Also speaking at this event

were Joseph Della Fave of the Ironbound Community Corporation, Irene Sterling of the Paterson Education Fund, several representatives from Trenton (including the Superintendent of Schools), and the Mayor of New Brunswick and its Superintendent of Schools.

### **Advancing Education Through the EFCFA**

Although the education of students in low-wealth districts drove the *Abbott V* decision and the EFCFA legislation and subsequently the creation of the NJSCC, it played only a small role in the implementation of this construction program. Education was the spark, the catalyst, of the activity and the content in the buildings that were to be built. However, this study focuses on the staff in the school districts and how they addressed the state's program.

Analyzing *Abbott V* implementation; Greif (2004) described the importance of local support to state-level reform efforts.

Even if lawmakers are dedicated to helping low-income communities, reform is a complex, time-consuming process. It requires coordination and cooperation among different schools, agencies and levels of government. Finally, successful implementation depends upon the participation of capable district leaders as well as the dedication of state actors. (p. 656)

Greif observed that some school districts had more successful construction programs than others. The importance of school district leadership resonates strongly, especially when the odds for successful implementation are so small (Daniel, 2008; personal communication, Paul Hamilton, April 23, 2008; personal communication, Paul Hamilton and Ron Carper, 2008; Greif, 2004).

The importance of being aggressive was explained by Attorney Richard Shapiro: "It's just a matter of the squeaky wheel. Whoever kept pushing the bar might be able to get through" (as cited in Greif, 2004, p. 652). Aggressive district leadership also helped

to overcome obstacles put in place by the NJEDA. Joan Ponessa of the ELC, in her conversation with Greif, mentioned that certain district leaders refused to let bureaucratic inaction impede the pace of facilities improvement. These districts were the first to succeed in getting construction projects for their districts, according to Ponessa. She described how the successful leaders “pushed ahead and didn’t stand for any nonsense. They hired consultants or they had a superintendent who stayed totally on top of it. If a form wasn’t Okayed they’d walk it over to the agency themselves” (as cited in Greif, 2004, p. 652).

An example of the behavior that Ponessa and Shapiro described is found in the aggressive school district leadership highlighted in an article about Long Branch’s new \$58 million middle school that was nearing completion in December 2005. State Senator Joseph A. Palaia (Republican, Monmouth), a former school administrator, said,

Schools Superintendent Joseph M. Ferraina was widely credited Wednesday with having the vision to move forward to seize the aid, while other districts wavered and were left wanting when the money dried up. . . . Every time I turn around, I’m cutting some ribbon or digging some dirt or doing something for Long Branch’s school construction program. (as cited in Williams, 2005, p. 1)

Congressman Frank Pallone credited Long Branch’s Superintendent with taking advantage of all state aid that was available. Superintendent Ferraina was quoted in the NJSCC’s press release: “This is an amazing time in the history of the Long Branch Public Schools. This year we opened two new schools and will have two more new schools opening within two years” (NJSCC, 2005a, p. 1). The new middle school will be Long Branch’s largest ever. It contains 247,000 square feet in three stories housing 1,100 in sixth to eighth grades (NJSCC, 2005a). For Long Branch to reach these achievements in 2005, its leadership undoubtedly took full advantage of the McGreevey Administration’s push. With a measure of civic maturity between municipality and school district and an

aggressive leadership, they got buildings into design and construction while other districts searched endlessly for sites and hesitated.

The importance of local government and school boards collaborating on the location of school building projects was the subject of a research project at the University of North Carolina at Chapel Hill.

School boards often make facility decisions with little or no collaboration with local government. Similarly, local governments typically make land use decisions, such as approving a new subdivision, without consulting the school board. . . . As a result, school boards, planners and local elected officials sometimes work at cross purposes. Under our current system, one institution controls choices about school location while another controls choices about houses and neighborhoods. (Salvesen, Sachs, & Engelbrecht, 2006, p. iv)

Although set in a rural and suburban area, the North Carolina researcher's findings resonate strongly for the New Jersey program, where cooperation was the exception.

Tanner (2010), of the University of Georgia College of Education, noted how little influence educators have over the design of schools because the field is dominated by professionals from the field of architecture and construction. Tanner found that taxpayers had allowed a "horrible planning process to evolve in the name of expediency, which includes prototype schools . . . and rapid, substandard construction processes" (p. 38). Tanner noted that many construction professionals intimidate educators by stating, "Let us tell you what you need, because we can save you money, and we know because we do this for a living." Tanner cited multiple high-level educational administrators rationalizing the outcomes by summarizing to parents and taxpayers that they got the best deal they could and saved money because they got a discount on the architectural and design fees.

## Money

As the 21st century dawned and the ravages of globalization began to de-industrialize vast sections of America's cities and suburbs, the optimism that had supported long-term capital improvement programs was waning (Alm, Holman, & Neumann, 2003; Sjoquist, 2003). New Jersey's school construction program, initiated in the prosperous, optimistic period of 1999–2000, under a Republican Governor followed by a Democrat in 2002, began to absorb increasing criticism about its costliness, extravagance, and affordability as earlier optimism faded.

New Jersey's school building program must be placed in the context of the nation's and state's economic cycles. Greif (2004) was one of the few researchers to analyze this linkage. She began by observing that Governor McGreevey's inauguration in January 2002 coincided with a nationwide economic downturn that was deepening because of the terrorist attacks in New York City and Washington, DC on September 11, 2001 (less than 2 months before New Jersey's gubernatorial election). Greif noted the irony in the arrival of the New Jersey's governor's interest in investing in urban education just as America's economy was declining. She contrasted this with Republican Governor Whitman (followed by Acting Governor Donald DiFrancesco), who chose to spend New Jersey's surplus budgets on other priorities. McGreevey entered with determination to do the opposite of his Republican predecessors. Greif cited the Vice Chairman of the ELC (December 18, 2002), "It's one of the cruelest ironies of Abbott that finally at the time when we got to the stage where implementation really was in sight, that the economy turned down and the dollars dried up" (p. 643).

The overall cost of the school construction program did not appear to be of much concern during McGreevey's term, as his focus was on accelerating the slumbering NJEDA and then shaping an accelerating NJSCC. Architects, engineers, and environmental experts were hired to search for sites and design schools. Contractors were hired to begin the urgently awaited and expanding universe of health and safety projects. Contracts were to be signed, funds encumbered, and money spent on building schools. This was in strong contrast to the preceding years under Whitman and DiFrancesco.

Certainly, as the funds were encumbered and work was initiated on more and more school sites, the estimated cost of the program would need to be adjusted, updated, and addressed. However, this was not of immediate concern to the McGreevey Administration nor to administrators at the NJSCC. There was a sense of dramatic urgency radiated from the Governor's office through his newly appointed CEO McNeil to get this moribund program moving forward.

One example of how costs increased was the addition of one small rural district to the program in 2004. Salem City became the 31 *Abbott* district when the Legislature amended the CEIFA in a vote of 26 to 8. This act brought closure to the goal of one major political player, Assembly Speaker Collins. Apparently, Collins succeeded in single-handedly delaying approval of the EFCFA because he was disappointed that Salem City was not one of the districts receiving the *Abbott* classification (Cannon, 2000a; "Education's Foundation," 2000; Halbfinger, 2000; McNichol, 2000b, 2000d; New Jersey General Assembly News, 2000; Schuppe, 2000).

From a formal, legal perspective, the concept of the *Abbott* district was defined in 1996. The CEIFA contained the precise quantitative thresholds of *Abbott* districts, so it

had to be altered to allow entrance of another district. The legislature's action in 2004 was in response to the *Bacon* case, which had asked the State of New Jersey to add five southern school districts to the 30 districts already in this category. In the end, only one (Salem City) entered. However, when Salem City (5,857 persons according to U.S. of Census 2000) was added to the group of *Abbott* districts, its enabling legislation did not add funding to the EFCFA.

The changing economic climate, along with the construction program's poor approach to managing its finances, was one of the reasons it unraveled after McGreevey's departure. Nonetheless, it is important to recognize that there was an initial deception, or fundamental flaw, in the cost estimates prepared for *Abbott V* and then for the EFCFA. There would not be enough money to finish the school construction program, but that would not be discussed during McGreevey's term, as the program was in full acceleration.

### **Administering an Accelerating Program**

With a Governor intent on accelerating the school construction program, responsibility for increasing its speed was placed on the staff of the NJEDA. Concepts of implementation, execution, and accountability, along with fundamental principles of public administration and state laws for procurement, come to the foreground as this new organization rolled out the massive program of school design and construction in 30 school districts.

This would be the key test of the power of the new Governor and his ability to execute, to govern, and to administer the affairs of the State. Could McGreevey extend his command, his will, and his directives into the depths of the moribund school

construction department within the NJEDA and get long-languishing school projects moving? Once the Governor's power was felt in the offices of the NJEDA and then through the newly created NJSCC, constraints and controls on the program were released and projects advanced rapidly. Once these constraints and controls were gone, the program rapidly spun out of control, with the most significant consequences.

Payne (2008) presented an analysis of the dysfunctional activities in school district central offices, weaving Max Weber's studies of bureaucracy with the writings of sociologist Robert Jackall and David Rogers (*110 Livingston Street*). Payne's perspective provides insight into how a procurement system that is meant to provide a school system with the best possible vendors, the highest quality materials, and the lowest cost possible can produce the worst of all outcomes. Even if each part of the bureaucratic machinery is performing its role to script, the outcome can be misdirected and unfortunate. Payne observed that bureaucracies "create neutralized vocabularies to describe their work, thereby removing the emotional content of more accurate language" (p. 151). Resting on Roger's observations in New York, Payne noted that the staff in the central office were separated from the consequences of their decisions, both physically and by task segmentation and role specialization.

However, this study is analyzing the work of the NJSCC, a state corporation, created specifically by Governor McGreevey for the task of speeding up the process of building school buildings in the state's 30 *Abbott* districts. By the first anniversary of the signing of the EFCFA, July/August 2001, rumblings about administrative problems were already being heard (Siegel, R., 2001). Some school officials observed that the NJEDA had collapsed completely, becoming dysfunctional and unable to move projects forward.

The NJEDA was criticized for moving slowly in planning and getting work done. Very little work had in fact been advanced through the bureaucracy into construction contracts, with tangible results felt in the state's school buildings.

The problems that the NJSCC encountered with increasing the scale of its program were similar to those experienced in Great Britain. Auditors, examining the Building Schools for the Future (BSF) program, described difficulties in "scaling up" a project to deliver the promised upgrades to 3,500 secondary schools. Many of the patterns that emerged in Britain were also found in New Jersey, as evident in reports by the IG (Cooper, M. J., 2005a, 2006), before committees of the legislature, and in the press (McNichol, 2006a, 2006d; McNichol & Chambers, 2005a, 2005b; New Jersey State Assembly and State Senate 88, 2005; New Jersey State Legislature, Joint Committee on the Public Schools, 2005). The British auditors claimed that, to meet their program's goals, the number of schools in procurement and construction would need to double between 2009 and 2012 and they predicted an increase in the availability of staff with procurement and project management skills, which were in short supply at the time of the audit (late 2008). Statements were made in the early 2000s that New Jersey would face shortages of skilled construction workers and materials as it built its projected program of new schools. Eventually, the ambitions of both programs, Britain's and New Jersey's, fell dramatically short of expectations.

One of the common threads found when examining a large school infrastructure improvement programs is that the basic challenge is how to organize the work, remain on target, and move the program forward. For example, the Miami-Dade school district in Florida, similar to New Jersey, encountered significant turbulence in its \$1 billion

program. Here again one finds similarities shared by Miami, the United Kingdom, and New Jersey. Cenziper found the Miami-Dade school facility program to be a rich subject that eventually contributed to her being awarded a Pulitzer Prize in 2007 for her series of articles in the *Miami Herald* (Cenziper, 2003a, 2003b, 2003c; Cenziper & Grotto, 2003a, 2003b, 2003c; Pulitzer Organization, 2007).

Another American city, Detroit, in the late 1990s encountered serious difficulties in the implementation stage of its school facility program. A series of articles by two reporters, Claxton and Hurt of the *Detroit News*, described serious issues involving the engagement and performance of the program management firm for Detroit's \$1.5 billion bond construction program (Claxton & Hurt, 1999a, 1999b, 1999c, 1999d, 1999e, 1999f, 1999g, 1999h, 1999i, 1999j). The issues were so significant that they jeopardized the entire program and eventually led to the Detroit school program's early and unsuccessful termination.

Many of the insights into the issues encountered by the NJSCC during McGreevey's term were provided after McGreevey had departed Trenton.<sup>65</sup> One example is the testimony of Acting CEO Peter Maricondo to a subcommittee of the Joint Committee on the Public Schools on October 3, 2005.<sup>66</sup> Maricondo presented a realistic retroactive assessment of the program's basic problem. In his view, its attempt to work on five billion dollars worth of school projects all at once could never succeed.

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<sup>65</sup> One of the limitations of any public sector study is that senior government officials are reluctant to speak freely about situations as they evolve (i.e., in "real time"). Therefore the richer, more meaningful testimony is provided only retrospectively after a change in political leadership.

<sup>66</sup> At this point New Jersey's program had already begun to move into an extended hibernation, which began with Governor McGreevey's departure from office in November 2004.

Speed doesn't necessarily get you efficiency. And there's where I think, potentially the waste aspect of this all comes in. There needs to be an order, a process. I mean, let's just pick a number. Let's say all of a sudden, 5 billion more dollars became available, and I have no idea how much it's going to cost. I'm just picking a number out of the sky. You can't manage that \$5 billion all at one time. New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 28)

Maricondo was trying to explain the possibility of splitting the overall program into slices, "tranches" of work of approximately a billion dollars each. He proposed a volume of work which could be approached and managed properly and successfully by spacing out and phasing the program over several years. He continued.

You have to take a traunch [sic], a piece of that 5 billion – let's call it a billion – and manage that billion first. Get the projects that are associated to be built next with that billion. Do that. Move down the path. Get to a point where it's then appropriate to take the next billion and manage that billion to a plan of 50 schools, let's say. It can't be done – you just can't throw 5 billion into a pipeline and all at once expect to build 300 schools. It's not going to happen. You're going to have to do it piece by piece by piece, layered in, and that [sic] the only way I think you can do it. (p. 28)

McGreevey's announcement creating the NJSCC on July 29, 2002, included recruitment of Alfred T. "Al" MacNeil, retired Chairman and CEO of the renowned Turner Construction Company. Experienced in construction since graduating college in 1958, MacNeil had led Turner for 11 years until his departure in 1996. In his obituary it was written, "He was a tough guy to work for but his heart and soul were in it 100%. Al never took on an easy assignment. . . . McNeill was credited with streamlining bureaucracy in the agency's procurement procedures and instilling a construction culture, but he clashed with agency and state politicians. He was replaced in that post in 2003" (Rubin, 2008, p. 23). McNeill's tenure as CEO lasted about 14 months, until October 2003, when John (Jack) Spencer was brought in from the Port Authority of New York and New Jersey.

The consequences of the NJSCC's inadequate management during its period of rapid acceleration under Governor McGreevey emerged in stark relief in November 2004 after his abrupt departure from office. NJSCC chairman Alfred Koeppe, in yet another retrospective testimony to the Joint Committee on the Public Schools on October 3, 2005, characterized the NJSCC as a "broken corporation" with employees "trying hard to navigate through a process and a system that was clearly off course" (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 12).

NJSCC CEO Peter Maricondo followed Koeppe, describing how the construction program operated for several years without a chief financial officer. It had no internal controls "to ensure the proper stewardship of the public's dollars" (p. 13). One example was how NJSCC management distributed bonuses to its senior staff in 2003 and 2004. Their existence was unveiled by Auditor Cooper.

Questionable personnel practices include in addition to regular salaries and raises, bonus payments for certain employees—a highly unusual perk for government entities. . . . For calendar year 2003, \$113,500 in bonuses was paid to 43 staff. Of that amount \$32,000 was split between the Chief Operating Officer (COO) and two managing directors. For calendar year 2004 essentially the same amount of bonus money was dispersed but the amount of bonuses was lowered and bonuses were dispensed more widely: 68 staff received . . . . (Cooper, M. J., 2005a, p. 2)

The rapid pace of the program under Governor McGreevey's leadership was proudly highlighted by the NJSCC's CEO John Spencer in testimony on March 22, 2004:

We've procured almost 300 design awards for 513 schools. These are renovation and new construction projects worth approximately \$2.8 billion in construction. . . . New design contracts, 2003, 135 awards. That equated to projected payments to those consultants, valued at \$203 million. More important, though, is that the value of that work, when it goes into construction, will be worth \$1.9 billion. This year, we intend to award 98 design agreements, architectural agreements for new construction valued at \$146 million. We're not going down. The 135 million included numerous jobs to health and safety work last year. The 98 is a new record in new awards for new major additions, renovations and new schools. (New Jersey State Assembly and State Senate, 2004, pp. 4, 8)

Reading Spencer's remarks of March 2004 in the context of audits, criticisms, and events that followed, it is reasonable to question how the staff of the NJSCC was managing the acceleration of design awards. Spencer discussed 135 awards in 2003 (\$203 million in fees) followed by 98 in 2004 (\$98 million in fees). As this contract award process was accelerating, the head count at the NJSCC was rapidly increasing as more staff members were hired. In September 2003 there were 178 employees (Bell, 2003) and 13 months later there were 266 (Hanover, 2004).

While McGreevey was Governor, the NJSCC's primary objective had been to get the school construction work started. Spencer described how his organization dealt with the geographic expanse of the 31 *Abbott* districts.

One way we accomplished this work, and something that was very significant this year is, we created regional offices throughout the state. As you can see, most of the work in the *Abbott* districts is up north. As opposed to having staff spend a lot of time driving on the Turnpike from Trenton up to Elizabeth, up to Newark, out to Plainfield, we decided to put offices where the work actually will take place. This way staff has the ability to interact with the districts, to understand their requirements, to be out there, work with the contractors who are actually doing the work, the better to monitor it, to be there to answer questions, to move projects to completion. (New Jersey State Assembly and State Senate, 2004, p. 12)

The NJSCC project organization pipeline had two fundamental subunits primarily concerned with building schools. One was charged with designing schools and the other with buying the land on which the schools would stand. For some projects the design was dominant and ran forward on the assumption that the land acquisition would catch up. On other projects the evaluation of alternative sites, the purchase of the site preceded the design. In the words of a veteran NJSCC-NJSDA staff member, "The construction group was king. Land could "be had" because of eminent domain. The true cost of land was not

contemplated, until some the relocation and cleanup costs on some properties began to mushroom” (personal communication, Theresa Dunn Egan, November 23, 2011).

Contractual frameworks were developed and revised to facilitate advancement of these tasks. These contracts were managed by an organizational structure that evolved continuously over this 10-year study period. For example, the name of the group concerned with designing and constructing schools was called Design and Construction from 2002 to 2006, Project Management from 2006 to 2010, and Program Operations from 2010 through the writing of this dissertation (fall 2013). In parallel, the real estate and environmental functions that were gaining in importance were also constantly changing. Initially called “Land Acquisition Group” and placed in the “Design and Construction” department, this function was broken free by CEO McNeil as he reorganized the NJEDA school group into the NJSCC in fall 2002 (Daniel, 2012). Recognizing the halt in land purchases and site remediation, the real estate function was completely closed in 2010 and merged into Program Operations.

The NJSCC tried an assortment of contractual vehicles to get projects defined and consultants to work. Eventually, the site feasibility work was split apart from the design work through the issuance of “task order” contracts. This was done to improve process, save time, improve site selection outcomes, and reflect the logical sequence of work where site selection and evaluation preceded school design.

These task orders were also apparently initiated as a response to strong criticism from legislators, for example Assemblyman Patrick J. Diegnan, at the July 31, 2002, hearing by the Assembly Education Committee. Diegnan took NJEDA CEO Franzini

through a series of questions and answers that culminated in a very forceful statement by Diegnan:

You [Franzini]’re a very nice person. Obviously, you know your job. But you’ve got to streamline this thing. I mean, this is ridiculous.

In the process you’re talking about, in the best case scenario, it’s going to take you a year to get this process done. It’s usually done in three or four months. I mean, you reinvent the wheel in every particular one. I hope this new process – and I know you were burdened with something without guidelines, and you have to create the wheel and all the rest, but there’s got to be a better way. I mean, I can understand the frustration in that Newark situation. And it’s not your fault. I’m not blaming you. But there’s got to be a better way. (New Jersey State Assembly, [July 31, 2002], 2002, p. 109)

These site feasibility “task order” contracts were followed by larger contracts for pure architectural design services that picked up where the feasibility contract concluded. This is a contract with an architectural firm to design a school and provide construction administration and some supervision during the construction. The scope of the larger contract included all of the basic design tasks necessary for a school building. Specifically, among these tasks would be coordinating and finalizing educational specifications and programming, along with detailing the furnishings, which involves the school district and the NJDOE. Within this contract, typically valued at several hundred thousand or millions of dollars, depending on the estimated cost of building the school, the task of designing the building is performed. The visions and decisions of the owners are transformed into detailed drawings and specifications ready to guide the contractor.

NJSCC leadership thought that time could be saved by skipping the second round of procurement between the feasibility consultant and the design consultant. In theory, and in reality, this should have saved time if the site feasibility portion of these projects had gone smoothly and swiftly. However, quite often, the site feasibility segment of the project was in need of genuine evaluation and the sites identified by municipal leaders

were not easily adaptable to a school project (because they were too small, had irregular boundaries, or were environmentally impacted). To force the site feasibility stage to a premature conclusion without genuine resolution of the underlying problems did not bring these projects to any genuine advancement. Therefore, with time, many of these comprehensive contracts and their projects collapsed and were terminated.

As the program accelerated during McGreevey's term, the Real Estate Department issued the first round of "task order" consultant contracts for site feasibility work. Building on a firmly established scope of work, a Request for Qualifications (RFQ) was issued early in 2003, and several firms received contracts (with the suffix "L" for land) by August 2003. The establishment of this pool of consultants, readily available to take on the assignment of tasks, was a more efficient method of procuring services at a rapid pace. This vehicle also provided the real estate staff with the ability to evaluate sites for possible school buildings quickly. The NJDOE regulations required alternative sites to be evaluated for each new school project (NJAC 6A:26-7.2) and, if a new building was to replace an existing school, a detailed analysis of the feasibility of renovating the existing structure had to be prepared (NJAC 6A:26-3.3(l)).

Projects ("tasks") were delegated to the task order consultants on a blind, rotating basis to assure equitable distribution. A senior staff officer recalled that, at the peak (2003 to 2004), more than 100 site feasibility studies were going on simultaneously (Daniel, 2012). While the Real Estate Services Department (formerly Land Acquisition Group) was racing ahead to evaluate sites, the Design and Construction side of the NJSCC was surging forward. Throughout McGreevey's term, Design and Construction was issuing contracts to design schools on sites that had not been thoroughly evaluated or had been

only partially acquired. The NJEDA and NJSCC's two departments, Real Estate and Design and Construction, were never coordinated during the program's birth or its acceleration, 2000 through 2005. When the pace accelerated, their problems exacerbated, as they were never in synchrony, as evidenced by projects that were in design and/or construction without all of the necessary land. Alternatively, there were sites where land had been bought but construction would never start.

The design staff and their consultants were designing schools on sites that were only beginning to be evaluated by real estate consultants. This may have pressured the outcomes of some site evaluations to be less than objective. One NJSCC staff member remembered that the Department of Design and Construction led the program and Real Estate followed and bought the sites that it was told to buy (personal communication, Theresa Dunn Egan, November 23, 2011). By the first quarter of 2005, the NJSCC's land acquisition department was closing, on average, one property per day (Daniel, 2012).

In the Assembly Education Committee meeting of July 31, 2002, CEO Franzini's testimony provided insight into how land was being bought before designs were completed. Discussing Block 1968, the site of Newark's future New First Avenue School, she described that offers were made to property owners in September 2002. She informed the Committee that environmental investigations had just been completed and that everyone wanted this to be the site.

We're all pretty much sure that site is the right site—the community has bought into it, everyone wants it, it's Block 1968, there's no question—why don't we start the architectural process of hiring the full-fledged architect that can take 90 days to do? So we're not getting the site acquired at the very end and then start a process that we move that up. (New Jersey State Assembly Education Committee [July 31], 2002, pp. 104–105)

The pressures that were forcing Franzini to begin purchasing the land for the New First Avenue School in Newark were the same as those that were forcing the NJEDA to recruit staff and engage external construction management firms quickly. As discussed earlier, the NJEDA, under pressure to respond to the New Jersey Supreme Court and the approval of the EFCFA in July 2000 had to find staff quickly. There were two choices. In testimony to the Legislature at several opportunities in 2005, NJSCC CEO John Spencer addressed the question of why the NJEDA had initially engaged PMFs.<sup>67</sup> The NJEDA could hire all of these necessary people internally with all the obligations and encumbrances of additional permanent, staff or it could hire them through outside companies as temporary, supplemental personnel (outsourcing). This determination had been already made by the Whitman Administration, as expressed by Treasurer Machold in November 1999, to bring in expertise through the use of construction management firms to perform program management and limit the number of people employed directly by the State (New Jersey State Senate Education Committee, 1999a).

Garcia, already in 2001, had highlighted the cost of PMFs being engaged by the NJEDA to run the soon-to-be rapidly expanding program. He observed that the State was speaking about efficiency but creating an added layer of bureaucracy (Garcia, 2001). Specifically, within the first year, the NJEDA awarded a \$1million, 1-year consulting contract for a general PM to oversee building projects (Heery). It quickly proceeded to hire five firms to oversee work in Camden, Elizabeth, Jersey City, Newark, and Paterson

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<sup>67</sup> The author began work in this program in a PMF (URS Corporation in a joint venture with Turner Construction Company) in January 2003 and shifted to the NJSDA in July 2009.

(NJEDA, 2001a). These firms were to “maintain a daily presence over construction projects, and serve as an immediate contact point for school officials” (p. 18).

While the New Jersey program was in its earliest stages of formation, approximately 18 months after Governor Whitman had signed the legislation in July 2000, the Los Angeles school construction program was already in the throes of an audit (LAUSD, 2002). It should be noted that, as the NJEDA was wrestling with staffing dilemmas in 2000 on the East Coast, their colleagues in Los Angeles, apparently unknown to them in New Jersey, were confronted with the consequences of their choices on precisely the same issues (Mullinax, 2000). Many of the private sector construction management firms who were responding to the New Jersey RFP for Program Managers at the time (URS Corporation, 2001) were involved in the Los Angeles program but is not clear whether the owners, NJEDA and LAUSD, were sharing information or were in touch with each other. Many of the specific problems identified by the IG in Los Angeles, which surfaced in the minutes of the Blue Ribbon Committee (LAUSD, 2002), subsequently emerged in the New Jersey program hat had embraced the same project management approach. Among them: (a) By December 1999, \$74 million had been spent on program and project management, representing 19% of total bond expenditures; (b) poor initial scope, out-of-date and incomplete contracts; (c) lack of adequate financial controls; (d) lack of continuity due to high turnover in key positions; and (e) multiple changes in structure of program administration.

Much of the auditor’s criticism was aimed at how program management contracts were administered by LAUSD, not at the PMs themselves. Again, this echoes New Jersey IG Cooper’s reports of 2005; however, this criticism emerges from the essential decision

by the LAUSD (like the State of New Jersey) to outsource the project management function to external staff. Placing major resources of the construction program in external hands led to difficulties in supervision while the district's own supervisory staff was understaffed, underqualified, and struggling with a series of changes in the program's structure over time. The Los Angeles IG (Mullinax) and the Oversight Committee both suggested improvements in the areas of project scheduling, contractor billing and procedures, change orders, claims, contractor performance evaluations, and cost controls. Their recommendations all foreshadowed the New Jersey program by several years.

One measure of any program's achievements is the number of buildings completed or in construction at any point in time. By that measure, McGreevey's tenure was quite successful. Jack Spencer, the NJSCC's CEO, at the March 22, 2004, hearing before the Joint Committee, described its projected acceleration and its shift from health and safety repairs to the task of building new buildings. He informed the Committee that the NJSCC had completed \$660 million of vital health and safety projects at 344 schools, including replacing roofs, boilers, and windows and repairing parapets.

Our program now is really focused on that type of construction [new schools], as opposed to the triage health and safety work that was accomplished in 2003. The designs, ultimately, lead to construction contracts. In 2003, we had 67 construction awards for major renovations, additions or new construction, valued at \$644 million. That's a commitment, not paid out. That will be paid out in 2003 and 2004. This year we're looking at 88 awards, valued at over 1.2 billion. The year 2005, we're looking at 132 awards, valued at \$2 billion in new construction. (New Jersey State Assembly and State Senate, 2004, pp. 8–9)

The volume of design work described by Spencer would lead to construction packages that could be advertised for bids. In turn, this would lead to the award of contracts for the construction of the anxiously awaited new school buildings. The majority of school projects built through July 2010 and many of those in the years after

(as this dissertation was being completed) had their genesis during the McGreevey period. Their land was purchased, preliminary design was initiated, or site feasibility work was performed. The “seeds” were planted during this period. Some bloomed immediately; the majority went into a prolonged hibernation. Others emerged in the interim.

Spencer described to the Joint Committee how the Corporation had succeeded in accelerating the program’s pace as measured by its increased spending.

Overall capital expenditures to date – in 2003, we’ve reached a milestone—\$1.1 billion in capital expenditures were paid out: \$550 million for construction, \$300 million in grants, \$70 million in project management fees, \$16 million for architectural fees to design those schools, and land acquisition costs at \$110 million. This year we looked to increase that level of spending to 1.6 billion. In the year 2005, we’ll hit \$2 billion in spending. What does that all translate into? What that translates into is the opening of new schools. Last year we opened five schools. This year we intend to open 27 schools. That escalates to 41 schools in the year 2005. In 2004, we’ll have openings all over the state—Union City, West New York, Orange, Paterson, Perth Amboy, just to name a few.

New design contracts, 2003, 135 awards. That’s the top graph. That equated to projected payments to those consultants, valued at \$203 million. More important, though, is that the value of that work, when it goes into construction, will be worth \$1.9 billion. This year, we intend to award 98 design agreements, architectural agreements for new construction valued at \$146 million. We’re not going down. The 135 million included numerous jobs to health and safety work last year. The 98 is a new record in new awards for new major additions, renovations and new schools. (New Jersey State Assembly and State Senate, 2004, p. 8)

Discussing the pace of acquiring land for the new schools, Spencer reported that the NJSCC had acquired 40 properties in 2003 and anticipated acquiring 378 properties in 2004. Within the 378 properties would be relocation of 200 families and 40 businesses.

The first wave of the New Jersey program’s schools could be considered in a category of its own. Subsequently criticized in 2005 and 2011 as overdesigned, these first buildings made it difficult for the program to restrain features and costs in the buildings

that followed (Bischoff, 2011b; McNichol, 2005a, 2005m; McNichol & Chambers, 2005a, 2005b; O'Connor, 2011a, 2011b).

For example, Long Branch's middle school, accommodating 1,100 students, which neared completion in December 2005 (Williams, 2005) with 247,2000 square feet on three stories, cost \$58,000,000 to construct, according to the information available at that time (contract ET-0003-A01, design; contract ET-0003-C01, construction). A data query through the NJSDA website showed that the project's total cost, inclusive of "soft costs" involving relocation and furnishings and technology equipment, amounted to \$62,154,677 as of September 18, 2011. With a total cost per student of approximately \$56,500, the school has 68 classrooms, a media center (library), 12 science labs, two cafeterias, a gymnasium, and an auditorium (NJSDA, 2005a). To be energy efficient, the building has a state-of-the-art geothermal heating and cooling system, according to the Williams.

### **Designing New School Buildings Within a Construction Program**

Many of the program's buildings entered the design stage during McGreevey's tenure as Governor. Designing a school in a large urban school district is a process that involves more actors than a commercial or residential building design project. In the New Jersey program the basic parties in determining a school's site and the extent of land that it would occupy were the school district, the NJEDA-NJSCC, and the NJDOE.

As discussed in other sections, the involvement of the municipalities in choosing the site was inconsistent across the program and varied by school district and mayor. Once the site is determined, a design consultant and the PMF, this new ad-hoc group of actors with representatives from each of these stakeholders, begin the design process.

These roles have evolved over the 10-year period of study but it remains clear that the State of New Jersey, through the NJEDA-NJSCC-NJSDA or its agent, the PMF, were in charge of the process: administratively, financially, and politically. The program, the “model” of the school building, as determined by the school district, was approved by the NJDOE.

Aesthetics were generally the purview of the school district and sometimes the local municipality but were constrained by the budgetary limitations set by the state. All of the design work was performed by the architect, who was under contract with the NJSCC-NJSDA. The architect (“design consultant” in NJSCC contracts) was the leader of a large team of subconsultants covering the entire range of design disciplines. The size and layout of the school was guided by state regulation and based on the FES.

Ponessa, in a statement to the state legislature on March 25, 2003 described the difficulty that school districts had with the FES (New Jersey State Assembly and State Senate, 2003). The FES assigned a square footage per student based on grade level and classroom types for elementary, middle, and high schools. According to Ponessa, the FES square footage standards were developed in 1998, roughly at the same time as the *Abbott V* decisions; therefore, many people thought that they were part of the court decisions. Ponessa reminded the committee members that EFCFA required the Commissioner of Education to review the FES every few years to determine continued consistency with the Core Curriculum standards. Ponessa stated in March 2003 that they were to have been reviewed in March 2002 but had not been.

The fundamental dimension of school design is the basic classroom module. This begins with the numbers of pupils and the corresponding regulation detailing the

minimum or maximum allocation of square footage per student. In New Jersey, the *Abbott* regulations prescribed approximately 40 square foot per student in Grades Kindergarten to 5, 34.7 square feet per student in Grades 6 to 8, and 31.25 square feet per student for Grades 9 to 12 (NJDOE, 2005a). These figures drive the size of New Jersey's classrooms.

As the school's structural system and column distances (length and depth of the proposed beams) must correspond to the classroom width, most architects begin by considering a double-loaded corridor design flanked with classrooms. In order to develop a cost-efficient classroom wing, the design must mesh the appropriate classroom and hallway width with structural spans.

The teacher, school district, and architect would term the penetration of a structural column into a standard classroom space as a design failure, especially if this were replicated in every classroom on every floor in a school's wing. These issues are discussed at length in textbooks and early analyses of school buildings of the pre-World War II period that focus on the architecture of the school building and gaining maximal efficiencies in design (Harrison & Dobbin, 1931; New York City Board of Education Architectural Commission, 1938; Strayer & Engelhardt, 1927).

The height of the classroom's ceiling also brings cost consequences. Increased height requires larger windows and incrementally more materials for interior and exterior walls. Stairs must go higher and all electrical and plumbing systems are extended. Changes in ventilation technology and understanding of acoustical impacts have led to increasingly lower ceilings in modern buildings, corresponding to the influence of the so-called International Style in America's postwar schools. While the control of the architect

and therefore the ultimate design of the school were of direct concern to the end user, the school district and the state's administrators were being buffeted, or distracted, by other concerns handed down through the EO<sup>s</sup> discussed earlier.

### **Acquiring Land at a Fast Pace**

Without additional land, new schools could not be built. Therefore, CEO McNeil set this among his first priorities upon arriving at the newly forming NJSCC, making the land acquisition department report directly to him (Daniel, 2012). The NJSCC paid the salaries of two Deputy Attorney Generals from the Office of the Attorney General to sit full time at the NJSCC and review all land purchases. In parallel, the NJSCC engaged 13 outside law firms to perform the work on its behalf, negotiating with property owners and condemning lands. By June-July 2005, the land acquisition and environmental staff included 54 internal staff members and 19 contract employees.

Immediately, NJSCC staff faced the reality of searching for developable land in the "urban crust" of New Jersey: Newark, Paterson, Union City, and the other *Abbott* districts (Gale, 2006). These pressures, described in this subsection and elsewhere in this dissertation, drove the land acquisition group of New Jersey's school construction program toward more undesirable sites in each of the *Abbott* districts. Also, pressure by the McGreevey Administration to get the program moving forward pressed NJEDA-NJSCC staff to purchase suboptimal, marginal, or less-than-desirable sites for new school buildings. Many of the sites, of questionable provenance, would prove to be costly albatrosses on the program's reputation and future.

The urban *Abbott* districts are characterized by scattered presence of former industrial and commercial properties that are found in residential neighborhoods of

America's older "rust belt" cities. Although not recognized as "brownfields" because they are still occupied by commercial or industrial uses, these properties are old, deteriorated, and detrimental to their neighborhoods. The purchase and redevelopment of these properties by the private sector is slow, due in part to fears of environmental liability associated with clearing site contamination from past industrial and commercial activities. This is especially problematic in large areas of New Jersey's cities that are burdened with a rich historical and chemical legacy from previous waves of industrialization.

Municipal officials in New Jersey's "urban crust" face an extensive local inventory of deteriorating commercial and industrial properties, as well as gasoline stations constructed in the 1940s to 1960s that have been converted to ubiquitous used car lots. For various reasons—location, size, configuration, current use, and possible contamination—these properties were not targeted as investment opportunities by real estate developers or by public redevelopment agencies. However, with the state providing 100% funding for school construction in *Abbott* districts in 2001 to acquire and remediate sites for new schools, these derelict sites in blighted neighborhoods suddenly became potential sites for schools and early childhood centers.

With site assessments and cleanup costs fully funded by the state school construction program, school districts and municipal officials were unintentionally given strong incentives to consider long-out-of-bounds brownfields sites as locations for new schools. Specifically, the school construction program was seen at the municipal level not simply as a way to build new schools to improve the educational opportunities for disadvantaged children but as a lever for local economic development (Jud, 1985).

Frequently, the only lands available for redevelopment in these older, dense, school districts are the described lands with an industrial provenance and a questionable legacy of uses. Therefore, absent a strict restriction, a school program, as did New Jersey's, may demolish former industrial buildings and remediate brownfields. Alternatively, under a system that would ban building on a former gasoline station, dry cleaner, or other expensive-to-remediate site, a school program may expropriate residential housing units. However, there is importance in striking a delicate balance between strictly placing specific former land uses off limits and the need to find new sites for new schools.

Recognizing the overall impact that the environmental condition of available land had on New Jersey's ability to implement its school building program in the 31 *Abbott* districts, B. S. Cooper and Nisonoff (2009) wrote that the poorer districts found that construction funds alone were not enough.

(1) That they had little or no available land to construct new schools. (2) That some of the "free" land was contaminated with pesticides and other chemicals from nearby refineries, waste disposal and dumping, and manufacturing plants, making the sites unfit for building school. (p. 54)

NJSCC personnel reported tension between real estate and design staff over the pace of land acquisitions and noted that this increased the school program's overall costs (personal communication, Paul Hamilton, 2008; personal communication, Paul Hamilton and Ron Carper, 2008; personal communication, Theresa Dunn Egan, 2011). The Design and Construction group was always at odds with Real Estate for moving too slowly on condemning or purchasing the necessary parcels. Project schedules were calling for sites to be cleared in few months, which would not be possible considering the state's laws,

the magnitude of the relocations, and the legal process of condemnation. There was pressure from the Governor's office to move projects forward.

According to a NJSCC staff member at the time, this was the first time the State of New Jersey had endeavored to undertake acquiring so much land in so many cities in such a short span of time (personal communication, Theresa Dunn Egan, 2011). However, by contrast, the NJSCC's organizational drive and primary emphasis on designing the new schools was leapfrogging ahead of the land acquisition process (personal communication, Theresa Dunn Egan, 2011). Therefore, the real estate and environmental staff that dealt with site feasibility, environmental investigations, topographic surveys, and environmental issues was always perceived as lagging behind the builders and delaying the building of schools.

Many tasks to ensure compatibility of the proposed school and the proper fit of the planned school project were the responsibilities of the real estate team. The culmination of their work was recorded in a series of reports that contained an evaluation of the site's feasibility and the cost of developing it as a school. However, because the design group was pressing ahead with developing drawings, several schools were placed on sites where environmental problems were uncovered only during excavation. This subsequently led to delays, unanticipated remediation, and more uncontrollable costs.

Detailed testimony about delays in acquiring the land for Newark's future First Avenue School was presented to legislators at a hearing in 2002 by an eighth-grade student attending the existing First Avenue School (New Jersey State Assembly Education Committee, 2002). First Avenue School is the previously discussed project where NJEDA CEO Franzini had promised to begin to make offers to property owners in

September 2002. He described a school with room for 500 children but accommodating 800, a school where the gym was also the cafeteria and the auditorium was used for storage and classes. Nearly the entire playground was taken up by temporary classroom units, trailers, and parking for teachers. Manuel Antunes informed the legislators that Block 1968 had been identified by both the school district and the community as the site for the new school more than 2 years earlier. The citizens were testifying that they were upset that nothing had yet been done to evaluate, investigate, or appraise this land. They were fearful because the entire parcel had been sold by its owner to a private developer to become another housing development. Assemblyman Doria asked whether eminent domain had been exercised by the school district or the city and asked citizens for details about the precise location of the proposed site, presumably to follow up in some manner.

Competition over land for schools in New Jersey's cities is illustrated through an article reporting about a site in Newark's Ironbound neighborhood. Chambers (2003) wrote that, despite the parcels being identified by the Newark School District for an elementary school, Newark's Planning Board had approved plans for a 49-unit apartment building on the school site. The Planning Board members claimed that they were in an awkward position because, although the school board had discussed the parcels as a potential school site, the State (NJSCC) had not yet acted on it. Therefore, in their formalistic, legal perspective, the property owners had a legal right to develop their property. One school board member was quoted by Chambers (2003) as stating that, whatever the State pays developers comes out of the pool of money that was meant for building schools. Paying more money for land because some developers are smart and can identify lots where schools will be placed would mean less money for new buildings.

Chambers also cited that NJSCC CEO McNeill had hoped to acquire 40 sites for schools in 2003 but anticipated buying only 20 or 25.

Wielding the federal relocation guidelines (Federal Highway Administration, 2005), backed by an enthusiastic Governor through November 15, 2004, the NJEDA and NJSCC created school sites by purchasing strips of residential housing in blighted areas. Guided by their municipal leaderships, several school districts formally identified swaths of homes—entire streets and whole blocks—in 2002 to 2004 for acquisition by the State of New Jersey.

In a process that remained quiet, the NJEDA-NJSCC created sites for new schools in residential neighborhoods of Camden, Irvington, Gloucester City (73 homes), and Newark (60 homes). Relatively large numbers of homes were acquired in specific blocks and lots designated by local elected officials and school districts in New Jersey's largest cities. In the words of NJEDA-NJSCC-NJSDA staff, “Only local [municipal and school district] officials have the insight, the understanding of their constituent neighborhoods in order to maximize the common good. They understand the needs of the community as they attempt to balance education, commerce, housing and industry” (personal communication, Paul Hamilton, 2008).

Local political leadership, recognizing the State's ability to relocate homeowners and tenants easily, predictably and conveniently designated tracts of blighted homes to be the sites for schools. In one sense, these observations about local officials are profound. However, in the context of a statewide program of school facility improvements, this insight was tempered by the potential cost of remediating a site selected by local officials.

The calculus of local officials, the “moral hazard” of acting without any cost constraints, drives most of them to select a heavily impacted site for a new school. They do this even if less impacted sites can be found, if their paramount objective is to preserve taxpaying property and not to reduce the state’s expenditures on site remediation and school construction. This dilemma was expressed by the NJSCC’s CEO Weiner in testimony to the Legislature on February 6, 2007 (NJSCC, 2007c).

In summary, the residential relocation package policy allowed the NJEDA-NJSCC, in several circumstances, to assemble several environmentally clean tracts for new schools that were not brownfields. Because the provenance of today’s obsolescent and deteriorated residential tract housing in America’s cities is most probably directly from agricultural land, it is environmentally clean in contrast with industrial tracts. Much of this cheap “balloon” frame construction, built at the turn of the past century and before World War II, was quickly built as housing for workers in nearby factories. This housing stock, much dating back to the 1920s, was already beyond its useful life as America’s suburbs began to attract the middle class in the late 1940s and mid-1950s (Jackson, 1985). Today, the land beneath those old houses is “clean” by comparison with the land beneath abandoned factories.

Sadly, it was many of the residents of the neighborhoods designated to become sites for new schools who eventually paid the highest personal toll as the program was halted and descended into chaos under Acting Governor Codey. This story is told in Chapter 8.

### **Conclusion: Reckless Speed Led to Implosion**

All of the pressures driving the school building program combined into a “perfect storm” toward the end of McGreevey’s aborted tenure as New Jersey’s Governor. The rapid increase in scale, scope, and speed brought on a series of difficulties in the face of regulations on procurement, recruitment, and disbursement of funds.

The addition of three school districts to the program, an absence of capital planning and budgeting, and manipulation of the \$125 per square foot figure from 1997 contributed to the misery. Inflation in construction costs and the omission of the cost of acquiring and remediating the land to be purchased compounded the program’s financial chaos and reputation for being out of control.

Flyvbjerg proposed that project advocates present inaccurate estimates in order to get their projects built. This is precisely what had happened in the years leading to the program’s implosion. The deception began with intentionally using the figure of \$125 as an all-encompassing cost per square foot when in fact it accounted for only part of the cost of erecting new schools. Several elected officials, including professional administrators at the NJDOE, NJEDA, and then the NJSSC, allowed themselves to be “anchored” by that \$125 figure. Although Vitetta’s 1997 report was clear about what the \$125 did not include, as was the finding of Remand Judge King in what became the appendix to the *Abbott V* decision, the State’s leadership allowed this \$125 figure to continue to skew the calculations and cost estimates downward.

Thus, deceptive practices such as those described by Flyvbjerg are the most probable explanation for the systematic understatement of the growing fiscal gap by the program’s leadership. Financial reality could never sustain the dreams that were being

fostered by McGreevey's NJSCC as the land acquisition and design teams were working with school districts on projects that most probably would never be built.

Governor McGreevey's response to the red tape that had been put in place to prevent corruption was slashing it away. He appointed a renowned construction executive from the private sector, Al McNeil, to head the NJSCC. McNeil swung the pendulum of the new NJSCC from the dormant NJEDA under DiFrancesco to the opposite side, following his sponsor's lead. McNeil increased the volume and velocity of spending dramatically by cutting red tape, removing rules, and urgently pressing the Governor's agenda. After years of languishing under Whitman and then DiFrancesco, McNeil took the moribund bureaucracy of the NJEDA and transformed it into a corporation (the NJSCC), pushing it forward with all his might.

The repercussions of this overreaction to the years of inactivity would be felt for many years. Many of these projects could never be completed properly because they were never designed or started properly. The cost of building schools increased because, over all else, time was of the essence during McGreevey's term as his passion and urgency was to open new schools during his term as Governor. Nonetheless, his wishes were trumped by his personal actions and his decision to cut his term as Governor 14 months short.

## CHAPTER 8

### **Codey Is Acting Governor**

It is doubtful that Sciarra and his colleagues at the ELC thought that the battle for improved school facilities in New Jersey's low-wealth school districts concluded with the *Abbott V* decision in May 1998 or the approval of the EFCFA in July 2000. However, it is also doubtful that they predicted that the program for which they had worked so hard would be so dependent on the will and the fate of any one Governor.

As shown in Chapter 6, the program was dormant, perhaps awakening, under Republicans Whitman and DiFrancesco. Then under McGreevey it went into hyperactivity as the pendulum swung in the other direction. After McGreevey's departure the program began an immediate deceleration with dramatic and traumatic repercussions, the theme of this chapter. Corzine's tenure, discussed in Chapter 9, focused on renewal, reconfiguration, rebranding, and rebuilding the organization's reputation. By the time Corzine's team work was complete, he had lost his bid for re-election. The program's loss of momentum that began early in 2005 continued into Governor Christie's term in 2010.

Consistent instability was perhaps the only persistent theme throughout the program's 10 years between July 2000 and July 2010. Sixty-six new school buildings were built over 10 years, for an average of 6.5 new school buildings per year. It is doubtful that this is what the judges, the legislators, the ELC, or Governor Whitman had envisioned in 1998 or 2000.

Finally accelerated by a hyperactive Democratic Governor, New Jersey's school construction program was in "high gear" in early August 2004. Several buildings across

the state were in construction and nearly two billion dollars in over 400 construction contracts were active by the end of July 2004 (NJSCC, 2004).

Three groundbreakings for new schools were held in the City of Elizabeth, New Jersey, over 2 days (July 28 and 29, 2004): School # 29, School # 30, and School # 31. The estimated cost of the three schools at the time was \$94 million. When Jack Spencer became the CEO in fall 2003, replacing Al MacNeil, he found a program making up for lost time, racing to build schools and buy land for more schools. Perhaps because this program is one of the few areas where a Governor has discretionary control, through the use of EOs, McGreevey's influence was felt directly. He had this program at full speed in a forward direction.

Then on August 12, 2004, the landscape changed dramatically. McGreevey's sudden announcement on a hot Thursday afternoon triggered a series of unforeseen events and changes in the fate of New Jersey's school program. This was the second significant transition<sup>68</sup> in the school program's political surroundings. McGreevey's involvement with Mr. Golan Cipel, his Homeland Security Advisor, early in 2002, eventually led to the unraveling of his entire political career. Cipel's "scant qualification for the job brought a barrage of critical media coverage and persistent—but uncorroborated—rumors that Mr. Cipel and Mr. McGreevey might be involved in an intimate personal relationship" (Kocieniewski, 2004, p. 35).

However, although McGreevey announced his intentions on August 12, he deliberately held office through November 15, long enough to prevent an immediate election. This gave him 35 months in office instead of the full 48. State Senate President

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<sup>68</sup> The first was Christie Whitman's departure for the EPA in January 2001.

Richard J. Codey became Acting Governor for the remaining 14 months of McGreevey's term, until Jon Corzine entered office January 17, 2006.

This unexpected change of events highlights the important role of the Governor in setting the tone for New Jersey's school construction program, notwithstanding its foundation in *Abbott V* and the EFCFA legislation. In a metaphorical sense one can envision several of them sitting next to a spigot that they throttle on and off. One Governor has the valve shut tight, while another Governor has it wide open. Another may choose to tell everyone that the spigot is somewhat open when in fact it is virtually shut, while another has an IG issuing reports, proclaiming his disappointment with the program but behind a curtain the spigot is widest open.

McGreevey's unexpected resignation thrust Senate President Richard Codey of Essex County into the role of Acting Governor on November 15, 2004. Codey, like DiFrancesco before him, would fill this role for 14 months of great turbulence and change in leadership, constituencies, and staff of the NJSCC.

It is important to understand the nuances of the transition between McGreevey and Codey, once McGreevey concluded that he must leave office. Codey, in his autobiography, provides an explanation for the 3-month delay between McGreevey's announcement and his actual resignation. According to Codey, McGreevey deliberately did not make his resignation effective immediately in a move to prevent a special gubernatorial election being placed on the ballot in the upcoming November 2 election (Codey & Seplow, 2011).

November 2004 was a Presidential election year between a standing President, George W. Bush (Republican), and John Kerry (Democrat). New Jersey law requires that

if a resignation occurs more than 60 days before the next scheduled election, the election is held on the closest date. The *New York Times* captured the intensity of Thursday August 12.

As of Thursday morning, the speech called for Mr. McGreevey to announce that he would complete his term, which ends in January 2006, but would not seek re-election. . . After another round of discussions, the word went out at 1 p.m. that Mr. McGreevey would make a major announcement at a 4 p.m. news conference. Even then, the furious discussions continued, his aides said. Party leaders wanted Mr. McGreevey to wait until after Sept. 2 to leave office so that his successor, Senate President Richard J. Codey, would not have to face a special election this November. The Governor said he would stay until Nov. 15 because he could not ask his wife and young daughter to leave the governor's mansion – their home – on any shorter notice. (Kocieniewski, 2004, p. 35)

Therefore, if McGreevey had actually resigned from office in August 2004, Codey would have held office for 2 months, not 14, and New Jersey would have been faced with a hastily organized gubernatorial campaign in the same year as a Presidential race. Fearful of the unknown, the Democratic leadership preferred the safety of an Acting Governor from their party for 14 months over the possibility of a Republican Governor.

McGreevey was the polar opposite of Whitman and DiFrancesco as he was determined to accelerate the school construction program. By contrast, his successor, Codey, did not concur with McGreevey's policy and appeared intent on slowing the program. Taking office November 15, 2004, Acting Governor Codey found a school program that was racing at a breakneck pace. Where DiFrancesco appeared indifferent or apathetic, McGreevey driven and passionate, Codey was skeptical and cautious. It is not clear what the Acting Governor's initial approach to the program was; however, the highly critical articles published in the *Sunday Star Ledger* on February 13, 2005, forced his hand (McNichol, 2005p).

On February 14, 2005, Codey charged his new IG, Mary Jane Cooper, to “determine the reason for hundreds of millions of dollars in cost overruns and excessive professional fees” (McNichol, 2005e, p. 1). She was directed to conduct a review of the school construction program to determine whether the \$6 billion of funding was disbursed in an efficient and appropriate manner and to make recommendations that could result in efficient use of the remaining funds. According to McNichol, the Governor was reacting to his article in *Sunday Star Ledger* published on February 13 (McNichol, 2005p). McNichol’s article described a school program that was paying architect’s “double the standard rate” and “13 major construction firms have collected about \$216 million in project management fees – about four times the rate local districts paid their construction managers” (McNichol, 2005e, p. 1).

A little over two months later, on 21 April 2005, Codey’s IG issued her first report. In response Governor Codey issued Executive Order (EO) No. 32 which added two additional public members with financial management background and no personal or financial interests in either the education or the construction community to the NJSCC’s Board of Directors. The EO also directed the NJSCC to establish an Office of Chief Financial Officer (CFO) to implement adequate internal financial controls (New Jersey Office of the Governor, 2005b).

Abuse and waste that thrive under mismanagement was one of the main themes that emerged when New Jersey’s IG examined the NJSCC after McGreevey’s sudden departure (Cooper, M. J., 2005a, 2005b, 2006, 2010). In her book *Battling Corruption in America’s Public Schools* (2004), Segal distinguished between the concepts of *abuse* and *gross waste* and their link to legal and illegal conduct. According to Segal, behavior that

can be perceived as abusing the system is conduct that recklessly advances personal interests at the expense of the agency's primary, formal goals. In contrast with corruption, abuse and gross waste are not illegal.

To contrast with Segal's observations, and the findings in New York City, Cooper did not uncover corruption in New Jersey; instead, she found abuse, disarray, gross waste, and inefficiency. These are the shared themes between Segal's book and reports of corruption in New York City (New York State Organized Crime Task Force, 1988, 1990). Published in 2004, Segal's book describing corruption in American public school districts in the 1990s may have provided some of the scholarly support for the skeptical positions of the ELC and the IG toward the program in February 2005.

Recognizing the "handwriting on the wall" and the sheer reality of arithmetic and budgets, several legislators and lobbyists began to mobilize for the anticipated battle over additional funding. There appeared to have been some difficulty among lobbyists and legislators in understanding, or wanting to comprehend, the conceptual difference between funds encumbered to a specific project and unspent bonding capacity. Therefore, in 2005 the NJSCC leadership found itself explaining that all of the EFCFA's funds had already been allocated (encumbered) to specific school building projects that were not yet in construction and that there were was no money left for added school building projects, although currently (at that point in time, early 2005), bonding capacity remained unused.

Governor Codey, after reviewing IG Cooper's report, called a halt to the NJSCC's issuance of new contracts so NJSCC's executives could provide him a clear picture of precisely how many schools were being designed and how many could be built within the EFCFA's bonding cap. This pause provided the opportunity for several legislators to

propose an immediate additional amount of bonding capacity. Others proposed to restart the program, as the halt was perceived as doing more harm than good.

Assemblyman Craig Stanley in comments to the Joint Committee on the Public Schools on August 11, 2005, suggested that the publicity about the construction program's mismanagement was being used by some people as a way to stop future projects from going forward. He reminded those attending the hearing of the *Abbott V* decision and the State's obligation to build these schools. Stanley attempted to reset the focus of the hearing, reinforcing the message that the school projects were halted temporarily, not stopped.

No, it's not that the school projects are stopped. They may be halted, temporarily, while people get their little acts together, but that's why we're having this hearing here. We want to make sure that we do get our acts together sooner rather than later so that we don't lose six months or lose a year on projects that should be going forward. (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 28)

Responding to a statement by a Paterson community leader, Quincy Battis, at the Joint Committee hearings on August 11, 2005, Assemblyman Stanley addressed the vilification of the NJSCC, stating that the \$8.6 billion had not been misappropriated. He recognized some mismanagement at the NJSCC claimed that most of the money had been used for what it was supposed to be used for. Stanley placed as an objective to ensure that the projects that citizens believed were shelved or would not happen would indeed happen. "See, I think it's wrong also to vilify the SCC too much. You can't vilify the SCC too much in that they don't control the purse strings" (p. 53).

Reinforcing his remarks from August, Assemblyman Stanley, at the Joint Committee hearing on October 3, 2005, stated,

Now, we can't say that until the SCC gets its act together that we're not going to fund the rest of these school projects. We can't afford to do that. What we have to

say is the SCC has got to get its act together, and we're going to be holding SCC's feet to the fire to do that. And I think they're on the right road, and I think we'll continue to make sure they're on the right road. The SCC is a going concern. We are not out of money. However, we understand as a legislative body, sworn to uphold the Constitution, it's our constitutional obligation to fund these schools, so that we can, in fact, say, "Okay, SCC, you continue to go on building." (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 119)

Flyvbjerg's analysis of mega-project failures echoes in the Assemblyman's statements. Flyvbjerg, who focused on the reasons for failure in large projects, found that repetitive failure is "deeply problematic" (Flyvbjerg, 2011, p. 322) as it affects the disadvantaged on two levels. First, the politicians and taxpayers become reluctant to fund large, expensive long-term projects that are needed. Second, when delivered, some projects do not deliver the promised benefits. Stanley was the sole speaker to address the long-term structural and policy issues, finding it difficult to allow the failure of the program's management to become punishment of the children who would never learn in proper facilities.

At the hearing on August 11, 2005, Assemblyman Stanley asked NJSCC Chief Operating Officer Jerry Murphy for his outlook on the NJSCC's prospects. Murphy responded by referring to the April report by the State's IG (Cooper, M. J., 2005a).

At this point, by the end of this month, we will have implemented everything—every recommendation in her implementation plan. In addition, as you know, there's 59 projects that are about to go forward. We're developing a business plan and a schedule from them, from start to finish, for when those projects will start, which we expect—obviously, one already in Newark. First Avenue is already being awarded. So that will be starting. But we will have a complete schedule of those 59 projects going forward.

Murphy informed the legislators that the NJSCC was not halting the design work immediately but bringing it to the conclusion of its current stage.

In addition, what we're doing—You've heard about the designs and things. We're carrying the designs from the architects to the next possible stage—to schematics or whatever—and then stopping them there, and then putting them on the shelf at

that point to see whether—when the additional dollars come through, that we can pick them up at that point and then go forward with them from there.

He then proceeded to detail how the organization was continuing to work on the projects that are within the “list of 59.”

But we’re moving forward. We haven’t stopped. There were 43 current projects that were ongoing. They’re still continuing to go, so they’re not in limbo. We are continuing with those projects. As you see, some of them here in Newark are moving, moving forward. And we’re doing the rest of the projects across the state that are in the process of construction or design. (New Jersey State Senate and State Assembly, Joint Committee on the Public Schools [August 11], 2005, pp. 76–78)

Sciarra, at the October 3, 2005, hearing of the Joint Committee on the Public Schools, described his vision for the second tranche of funding.

We should put the SCC on a very short leash. We should not do what we did back in 2000, which was to appropriate \$8.6 billion and let them get off, and then four or five years later, find out that we’re having problems. (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 90)

Sciarra asked for a bill that would require plans detailing how funds were being dispersed project by project, with cost estimates and comparisons. He asked the legislators why the NJSCC was allowed to function by executive order and why authorizing legislation had not been initiated to place the SCC on a firm foundation and determine the issues of “governance, management and oversight” (p. 91).

Gazing into the future on October 3, Sciarra spoke of the new legislature and the Governor who would be elected in November 2005 and enter office in January 2006. He asked the legislators, “What do we need to get SCC straightened out, short-term? What kind of controls do we need to put in place on an emergency basis to give us all the kinds of assurances that we need and get some additional money appropriated?” (p. 95).

The wish to estimate school project budgets accurately by reducing change orders to zero emerged in a legislative committee hearing in 2005. Responding to NJSCC

Chairman Koeppe's promise of absolute accuracy in budget projections, Senator Doria declared, "But we all know that any construction project usually goes over. There wouldn't be construction projects in the State if there weren't change orders, unfortunately" (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 65).

### **Accountability and Implementation**

Concluding this overview of the political scene after McGreevey's departure and the shock waves it sent through the program, the analysis now focuses on the subject of program and policy administration. Why are there differences between policy as planned and policy as implemented in the field? What happens during implementation as a program is rolled out across several levels of government and a geographic expanse? Milbrey W. McLaughlin, writing about implementing educational policy changes at the school district and classroom level, provided insight into the difficulties faced by New Jersey's facilities program (McLaughlin, 2005).

### **Program Administration**

Referring to the work by Pressman and Wildavsky (1984), McLaughlin described how the staff responsible for implementation at the various levels of a bureaucracy and administration did whatever they wanted in many instances. They responded to policies, guidance, rules, and memoranda in ways that were quite idiosyncratic, quite unpredictable, and sometimes completely resistant and counterproductive. McLaughlin, as well as her predecessors, Pressman and Wildavsky, found that this caused program outcomes to fall short of expectations. This generated tremendous variability in the

program's results. Her analysis links directly to that about accountability and implementation, discussed previously.

McLaughlin (2005) highlighted the importance of local capacity and "will" or intent to supporting changes in policy outcome. Local expertise, organizational routines, and resources are necessary to generate the fundamental differences in the ability of practitioners to plan, execute, and sustain an innovative effort. These observations are especially salient to the New Jersey program's fate both at the state level within the administering agencies and in the local school districts. Again, this corresponds with concepts of civic capacity (Jones, Portiz, & Stein, 1997; Stone et al., 2001; Stone & Sanders, 1987) and notions of accountability and implementation.

There is great importance to how the process of building schools was administered. For example, the consequences of buying land for schools that would never be designed nor ever built had far-reaching, long-term implications. The consequences of designing schools for sites that were never purchased would also affect the school construction program's reputation deeply. Subsequent restructurings of the NJSCC and then the NJSDA's focus on process and procedure were responses to the frenetic pace and the achievements (or lack thereof) of the first 5 years of the program. These errors of administration and judgment would slow down and essentially halt the program for several years.

Planning and designing new school buildings is not a linear process. Several iterations are necessary until all architectural issues are resolved. Experienced facility planners and architects are essential to the flow and success of this process. Project leadership and program administrators should be aware that programming and planning

must be completed before the architectural design work begins. If this progression is not followed, the work of the architect and the engineer's services most certainly will be wasted. NJSCC CEO Spencer discussed this issue at a legislative hearing on April 11, 2005 (New Jersey State Assembly and State Senate, Joint Committee on the Public Schools, 2005).

On the other hand, regulations regarding the behavior of the state's procurement personnel (regarding ethics and conflict of interest) are strictly followed (NJAC 19:38, 19:38A, 38C, 38D) and assure bidders of proper, fair, clean practices. As public monies are involved, records are open to public inspection. The entire bidding and award process must be thoroughly documented and completely transparent. However, procurement of suppliers, contractors, vendors and architects is only one component of a large-scale school building program. What could be the justification for procuring services, per regulation, for evaluating a site if it would never become a school in the foreseeable future? This question is a proper frame for the countless difficulties faced by Acting Governor Codey as he began to reach inside the NJSCC.

John (Jack) Spencer's term as the NJSCC's CEO spanned 2 years and two Governors, through September 2005 (McNichol, 2005f). He faced the sudden departure of McGreevey, the arrival of Codey, and the spotlight of an IG, along with the need to deal with the organization's over-ambitious goals, inability to execute projects, and lack of funds.

Taking control, Codey appointed a caretaker CEO, Peter Maricondo, as its financial officer from within the senior ranks of NJSCC staff as Acting CEO as Spencer's replacement on September 7, 2005 (NJSCC, 2005b). Maricondo, who had arrived at the

NJSCC in May 2005, as one answer to IG Cooper's reports, remained Acting CEO until the arrival of the appointee of the next Governor, to be elected in November 2005 and to take office in January 2006.

As New Jersey's school construction program slowed, specific components of it became the focus of feature articles in the *Star Ledger* several months after IG Cooper's April 2005 report (McNichol & Chambers, 2005a, 2005b). One group of contracts that came into sharper focus was the operations of the PMFs that was highlighted in Cooper's report, *Operations Review*, issued December 21, 2005 (Cooper, M. J., 2005b), possibly in response to comments made by legislators at the hearings of the Joint Committee on the Public Schools in October 2005.

Senator Kean brought up the topic of the PMFs at the Joint Committee's hearing on October 3, 2005. He positioned his question regarding the NJSCC's progress on reducing the responsibilities of the external management firms and relying on internal construction managers and in-house staff. Kean asked about the fate of reform and whether the organization had begun hiring its own staff. NJSCC Chairman Koeppe replied that the NJSCC was currently 20 to 25 persons short of budget and that from May to October 2005 the NJSCC had lost 25 persons. Koeppe continued:

There is an issue with the PMFs. The diminishment of PMF responsibility makes sense, but there's a tradeoff when you do that. Not all project management firms are suboptimal. Some of them do a very good job. So it's not one brush that can paint the entire process. In terms of removing PMFs, you need somebody to be a ramrod inside the business that can run those projects. There's no question about it. Do we have that level of competency and do we have enough of it on the property? Design and construction is the heart of the business. We have some very talented people in the organization. We have some people that I think can improve their work effort.

Frankly, Senator, a tough situation on the personnel side for this organization. It's the same thing for the Board of Directors by the way. This is not necessarily a place that people are lining up outside to get into the front door. [laughter] That's

the fact of the matter. Its reputation has been tarnished. It's got a noble purpose – it's got a noble purpose—but it's a noble purpose whose—and an organization whose reputation—it still has to be rebuilt. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, pp. 50-51)

Cooper, in her December 2005 *Operations Review* (Cooper, M. J., 2005b)

reported that the PMFs were given the broadest of responsibilities in making decisions on behalf of the NJEDA and NJSCC. They were able to affect the cost of projects by reviewing and recommending progress payments and change orders for contractors and invoices and amendments for design consultants. The IG observed a direct linkage between the fees paid to the PMF and the fees paid to the contractors and consultants. The NJEDA agreements with the PMFs compensated them based on a percentage of payments to contractors and consultants. Therefore, she found a conflict of interest detrimental to the State in that the more fees the PMFs approved to be paid to their subordinate contractors and consultants, the higher the compensation received by the PMFs for managing their work.

The IG detailed that at the height of the program there were 13 PMFs assigned to manage the NJSCC's projects in the SNDs. Many PMFs were assigned contracts for several school buildings whose total construction cost estimate (CCE) was between \$300,000,000 and \$500,000,000. As the program unfolded and the LRFPs were approved by the NJDOE, these PMF contracts and their CCEs were amended by the NJEDA (until July 2002 and then by the NJSCC after July 2002), adding schools with their respective estimated costs.

McNichol (2005n) observed that PMF fees accounted for \$231 million of the \$2 billion the State had spent so far in the *Abbott* districts. He emphasized how much more expensive the schools being built by the NJSCC were in comparison to those built

directly by the local school districts (McNichol, 2005p). He wrote that the state was paying its project management firms an average of 9.5% of the cost of building a school, in comparison with local school districts paying 3% or less.

Responding to McNichol's implications of waste, CEO Spencer explained that the NJSCC required its PMFs to perform far more extensive work than a typical school construction project. He explained that the NJSCC's contract with the PMFs required that they furnish their primary office at their own expense. The same contract allowed the PMFs to include the trailer and the equipment to supervise a construction project through the construction bid.

Through M. J. Cooper's (2005a) report the collective position of the PMFs in the New Jersey program was quite prominent. Her report, along with McNichol's article of April 17 (2005n) describing their fees and accouterments, marked the turning point. Positioned throughout the state and granted large contracts with key roles, the PMFs were running, perhaps dominating, the program on a daily basis on the NJSCC's behalf.

McNichol's article and M. J. Cooper's report forced a sharp spotlight on the extent of these firm's activities, contracts, and effectiveness. This was a pivotal moment that marked the beginning of the end (McNichol, 2005n; McNichol & Chambers, 2005, 2005b). McNichol's April 17 article (2005n), published just days before IG Cooper's report on April 21 (Cooper, M. J., 2005a; McNichol, 2005g), described how the PMF's were profiting from the program:

The contracting firms helping New Jersey rebuild its decrepit inner-city public schools plan to use funds earmarked for those schools to buy thousands of dollars in top-of-the-line office equipment, electronic devices and executive furnishings, state records obtained by the Star-Ledger show. The project management firms propose stocking construction trailers . . . with . . . a \$15,000 copier, \$7,200-a-year nationwide cell phone contracts and \$300 personal digital assistant devices

that can play electronic games and movies. On jobs in Paterson . . . Virginia-based Jacobs Facilities has directed bidders to outfit its site trailer with more than 200 specific items, including three \$250 high-back executive chairs, four IBM Thinkpad laptop computers, and array of computers, printers, fax machines and telephones with a total price tag of more than \$25,000. Jacobs is scheduled to collect \$4.7 million in fees and expenses for managing school construction work in Paterson. (McNichol, 2005n, p. 1)

The PMF contracts were ended slowly as a response to criticism from state legislators and after in-depth articles in the state's leading newspaper, *The Star Ledger*, in November 2005 (McNichol & Chambers, 2005a, 2005b). The process of winding down these contracts extended through Acting Governor Codey's term and well into Governor Corzine's term, which began in January 2006.

Addressing the legislator's concerns at the October 3, 2005, hearing and those that emerged in the earlier report of the IG (Cooper, M. J., 2005a), Chairman Koeppe detailed the administrative changes that were being made in the NJSCC. Among them were improvements in financial oversight, ethical business practices, internal controls, and operational improvements. The legislators were told that both a corporate code of conduct and a code of ethics had recently been approved by the NJSCC's board and that the staff was being trained and monitored in these procedures. A whistleblower process had been established. Chairman Koeppe described a process of institutionalizing and regularizing financial controls, internal management controls, and accounting procedures, all of which were predicted to lead to efficient operations, reliable financial reporting, and full compliance with laws and regulations. He summarized, "There'll be more to come. This organization clearly needs belt-tightening in terms of efficiencies, and that's an ongoing process" (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 8).

One consequence of the unrelenting media exposure, newspaper editorials, and hearings by the Legislature was the tightening of administrative procedures in the NJSCC (“Asleep on School Expenses,” 2005; McNichol, 2005b, 2005c, 2005d, 2005e, 2005g, 2005h, 2005i, 2005k, 2005l, 2005n, 2005p; New Jersey State Assembly and State Senate, 2005; New Jersey State Legislature, Joint Committee on the Public Schools, 2005; New Jersey State Senate and State Assembly, 2005; “School Daze,” 2005; “A School Program Hiatus,” 2005; “School Upgrades Need New Managers,” 2005; “Schools Corp. Doesn’t Learn, 2005).

Another theme that concerned legislators and NJSCC administrators was unanticipated changes to the designs of new schools. Distress over NJDOE model changes during the design process was discussed by Spencer in his testimony to the legislators at the October 2005 hearing. To bring some order to this, Spencer explained that the NJSCC had reached an agreement with the NJDOE to end these midstream changes to school design. Although the EFCFA allowed school districts to initiate changes, even during construction, the current agreement (spring 2005) froze changes at the schematic design stage. The NJSCC, Spencer described, was in the process of freezing project scope at its conceptual initiation in order to save money on unwarranted changes. The frustration over midstream design changes had been expressed by several legislators during hearings held in April 2005, including Malone, who observed a lack of communication between the NJSCC and the NJDOE. The Assemblyman proposed that legislative changes be made so that educational determinations could be made by the NJSCC instead of the NJDOE. The NJDOE’s relaxed approach, allowing these changes

at various phases and in a range of magnitudes, was perceived as impeding the construction of schools.

The October 3 testimony by Acting CEO Maricondo provides a concrete expression of the conceptual shift in how Acting Governor Codey was approaching the school building program. Maricondo used terse accounting jargon to describe how the changes were a “fundamental, philosophical shift for the corporation.”

Most corporations are run on what’s called a *going concern* [italics in original] basis. The assumption is, is that the corporation, will continue forever. We are running the corporation within the constraints of \$8.6 billion. We’re not going to make any decisions outside of the \$8.6 billion. We’re not going to buy land that we know we can’t build a school on. We’re not going to do design plans where we know we’re not going to build a school within that \$8.6 billion. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, p. 14)

Assemblyman Stanley took issue with Maricondo’s concept that the NJSCC’s role would be concluded when the \$8.6 billion was depleted. Stanley understood that eventually the Legislature would be asked for additional bonding capacity. Recognizing that projects were being delayed, he inquired as to the cost of this delay. Koeppe responded that the NJSCC was deliberately not looking at all of the approved plans because the NJDOE was currently (October 2005) evaluating the hierarchy of every district’s new LRFP.

### **Land Acquisition**

Another critical intersection encountered by the New Jersey construction program’s staff was coordination of environmental due diligence with the acquisition of land by the NJSCC. The purchase of land for a school may seem like yet another “sidebar” or digression in the midst of the larger challenges faced by New Jersey’s program. As mentioned earlier, this issue became one of the more difficult issues that it

faced. Within the process of buying land for a new school building, or land to expand an existing school, all of the challenges, actors, and issues emerged and conflated.

In a project such as this, consultants from multiple disciplines must be managed, monitored, and coordinated in synchrony with attorneys and real estate managers. Visions of educators for a well-planned and properly designed school building, properly placed on a site with adequate space for physical education and perhaps some parking for teacher's cars, must be translated into an architectural design. Several design alternatives must fit within the boundaries of the site that is being considered for acquisition, with due consideration for the political consequences of whose land will be taken and what type of land is involved.

As discussed earlier, land with environmental liabilities can be purchased, encumbering the school district with long-term remedies and costs stretching into perpetuity. However, "cleaner" land may or may not be politically or financially acceptable or possible. Therefore, the entire process of land purchase is fraught with political, financial, and managerial decisions, each of which could easily endanger the project's future or severely undermine its success.

The details of this were unveiled by Acting CEO Maricondo, who was asked to discuss the problem of timing environmental studies and land acquisition at a hearing of the Joint Committee on the Public Schools held October 3, 2005. He described the lack of coordination between land acquisition, design, and project budgeting.

Decisions were previously made to acquire potential school sites for future construction without having the money secured in a budget to build on those sites. Similarly, the agency had design plans prepared by architects for schools that it did not have the money to build. All this resulting from the fact that there was no plan. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, p. 13)

Insights into the mechanics and the flow of the program's processes are found in an exchange between Assemblywoman Joan M. Voss (Democrat, Borough of Fort Lee), with a doctorate in education and a background in school district management, and Gerry Murphy at the August 11, 2005, hearings of the Joint Committee on the Public Schools. Voss probed several of Murphy's statements, particularly those regarding the notion of taking architectural plans and placing them on a shelf. In addition, Voss was skeptical of the feasibility studies that had been prepared by the NJSCC. She said,

Let me ask you a question. Before you buy a piece of property, or before—I mean, you're dispossessing people from their homes, so obviously the property that you're going to develop must be a prime piece of property. So obviously, if somebody is living there for 50 years, there hasn't been any factory or anything like that. So you don't have to spend a million dollars remediating toxic waste, because people don't generate toxic waste. So I don't understand why every single project has all these studies involved with it. (New Jersey State Senate and State Assembly, Joint Committee on the Public Schools [August 11], 2005, p. 79)

Murphy responded that the NJSCC had to do feasibility studies on all its projects to make sure that the school sites did not need remediation. He referred to a recent project in which, for lack of a study, the state had incurred an extra \$5 million in remediation costs.

In October 2005, Senator Kean referred to an earlier comment by Assemblyman Malone and observed that he too found the NJSCC's site selection process to be a problem. He described it as

horribly broken; in that individuals in the past may have selected the hardest to clean up selections. And they, all the time, put their school on there and then allow for development to occur for other public uses in other areas of the municipality. And that's just wrong." (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, pp. 48–49)

NJSCC Chairman Koeppe responded to Senator Kean that the NJSCC was well aware of these situations and that the Board of Directors had approved new land acquisition guidelines that directly addressed these issues. Koeppe assured the Senator that, in the

longer term, there would be a need to change some of the legislation of the NJSCC but assured him that the guidelines would be changed immediately.

### **Education, Costs, and Building School Buildings**

Education, the focus of this school building program, returns to the center of this chapter. The New York City experience parallels that of New Jersey, but it is a more accessible program because of its problems and the subsequent publicly accessible audit reports that those problems spawned.

A striking similarity can be found when comparing descriptions of the actions of the New York City Board of Education in the Moreland Commission's report and the patterns of the NJDOE between 2000 and 2005 (Moreland Act Commission on New York City Schools, 2000; New York City Independent Budget Office, 2005, 2008; Office of the New York City Comptroller, 2008). The Commission identified a pattern in which the Board of Education had essentially abdicated its leadership role on facilities. The Commission observed that, when the State of New York created the SCA in 1988 to assist the Board of Education in building schools, it had expected the Board remain responsible for planning and monitoring construction. The SCA would be concerned with construction and the Board would lead and plan. The Commission concluded that the Board had failed in filling even its most limited of roles in capital planning: identifying needs and prioritizing projects.

Addressing governance and the legislative intent, the Commission concluded that the Board of Education had directly violated and ignored statutory requirements promulgated by the state legislature. These were statutory requirements intended to impose accountability and effectiveness and to ensure governmental oversight and

approval. The Commission's findings strongly resonate with the relationships found in New Jersey by the ELC and others in several evaluations of the school program (ELC, 2000a, 2000c, 2005b, 2005e, 2008; ELC & Center for Architecture and Building Science Research, 2004; Ponessa, 2004).

The relationship between the NJSCC and the NJDOE was discussed by Senator Doria at the Joint Committee for the Public Schools hearing on October 3, 2005. He made a salient observation regarding the program after an intense exchange with NJSCC Chairman Koeppe and Acting CEO Maricondo concerning the fact that the NJDOE was approving educational facility projects irrespective of the State's ability to finance construction. Their exchange shifts (p. 61) to how this disparity had led to the "building of expectations" (in the words of Koeppe) and "the problem of expectations" (in the words of Senator Doria). Doria expressed the need, endorsed by Koeppe and Maricondo, for better coordination and cooperation between the NJDOE and the NJSCC.

Earlier Doria had asked,

Who actually evaluates the project to determine that the project needs to be built the way it's going to be built? First the evaluation: Do we need to do building, or can we do a renovation or an addition? Is it educationally adequate? And then, how do we go about the building process? How does that coordinate? (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 57)

Basing his questions on his deep personal experience as a school administrator and a municipal official, Doria continued by driving to the essence of the evaluation process.

Who is making the decision? Who is determining priorities? I know DOE reviews projects for educational adequacy, but does anybody look at the buildings themselves and determine, "Okay, this building is 75 years old and it should be torn down because it has a wooden staircase, but this other building is 70 years old, and actually if we do some renovations to it and we add an addition," like I've done in Bayonne with a number of schools, "Can we keep that school, rather than build a new one?" Has anybody sat down and actually done that? And then the prioritizing of the projects: Who actually prioritizes them, DOE or the Schools

Construction Corporation? (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 57)

Koeppe responded to Doria by attempting to explain how the LRFP established the priorities within the district. However, the Senator, clearly more familiar with the program than the Chairman, pushed him into a corner.

Mr. Koeppe: That comes out of the long-range facility plans that are submitted to the DOE and—

Senator Doria: The five-year plans?

Mr. Koeppe: That's correct.

Senator Doria: So it's really based upon the five-year plans that the local districts set up, reviewed by DOE, and then—

Senator Doria: And that's obviously based on a district-by-district decision, because those plans are uniquely related to each specific district—that five year plan?

Mr. Koeppe: See, you're getting ahead of me, but it's project by project, essentially. When you're doing the construction, it's over a whole range of projects within a district and within a state.

Senator Doria: This is my question. Have we, in each district, prioritized so that we don't find ourselves trying to do too much at one time? (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, pp. 57–59)

Maricondo joined this exchange, trying to rescue the Chairman from Doria's intense questioning. He minimized the NJSCC's role to that of project management, noting that NJSCC did not set policy or priorities.

That's where—my words come in—you need a *plan* [italics in the transcript]. You have a fixed amount of money that you're working with. What's your plan? What are going to build with that fixed amount of money? The SCC is a project management firm. The SCC should not prioritize projects. They don't know what the educational requirements, and needs and facility requirements, and those sort of things are. It's outside of the scope of what we're tasked to do. (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 57)

Doria, synthesizing the responses of Maricondo and Koeppe, summarized his understanding. He concluded that there was a complete disconnect between the NJDOE

making recommendations and the NJSCC, which was responsible for financing and building the schools.

It shouldn't be as I understand it now, and you can correct me: DOE approves projects: you just then get them. Nobody sits down until this recent committee—and actually sits down and says, "Okay, this is what the priorities should be. This is how we should approach those priorities." It's basically two independent structures moving along parallel lines, one of whom just makes recommendations, and the other, unfortunately, takes much longer to do the construction, because construction takes longer than recommendations. (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 60)

Doria's observations are particularly relevant as they expressed an understanding of one of the program's fundamental flaws: its complete lack of a capital budget plan. The Chairman found NJDOE handing projects over to the NJSCC for implementation without any consideration of their cost. He also understood, within the current framework that the NJSCC would begin to implement (site feasibility, conceptual design, and land acquisition), nearly every one of the projects transmitted by the NJDOE. Chairman Doria had found one of the major problems at the boundary of educational policy and finance. His comments at this hearing are hitting the proverbial "nail on the head." This is the first and few moments of clarity in the program's history in which the essence of the problems is untangled in a public forum.

As discussed earlier in this chapter, the program's reputation had been tarnished by several revelations in the press and from the state's IG (Chambers, 2005c; Cooper, M. J., 2005a; McNichol, 2005a, 2005c, 2005d, 2005i, 2005j, 2005o; McNichol & Chambers, 2005a, 2005b). This bad publicity had a deep impact on public and legislative support for a program that had been designed to improve educational outcomes in part by improving school buildings in New Jersey's low-wealth school districts. At this point, during Acting Governor Codey's term, the program would not be seeking additional funding. It would

be struggling to survive, getting its house in order, and assuring everyone that it was a responsible recipient of the public's trust and its bond funds.

Before examining the program's finances, it is valuable to review the situation from a historical and geographical perspective. New Jersey's program was not alone in encountering criticism and turbulence. The criticism encountered by the New Jersey program in 2005–2006 (McNichol, 2005a, 2005m, 2005p, 2006b, 2006c) and again in 2011 (O'Connor, 2011a, 2011b) bears a strong similarity to the criticism that British school builders had met in the 1950s. Unfortunately, once the NJSCC's new buildings began to emerge from the ground, the basic human traits of jealousy and envy entered the picture. The new school buildings demanded by the *Abbott V* decision and funded by the EFCFA were no longer visions; they were now taking form in concrete, steel, and glass.

Regarding the influence of jealousy on Great Britain's post-World War II school building program, Maclure (1984) wrote that

their spaciousness and the extensive use of plate glass made them a natural target for those who were pre-disposed to attack any conspicuous educational spending which could in any sense be called a frill. Part of the jealousy of "luxurious glass palaces" sprang from the impatience with the unavoidable delay in spreading the benefits of the post-war school building through the country. (p. 78)

New Jersey's new school buildings in the low-wealth districts included features not found in schools of the state's non-*Abbott* districts. Jealousy intensified once it became apparent after McGreevey's departure that the extensive ambitions of the program would not become reality in the foreseeable future.

One measure taken by the NJSCC's leadership to address these perceptions of extravagance was cost reduction and "value engineering." Efforts were made to begin trimming features that could be perceived as unnecessary for educational purposes to reduce the cost of the new schools under construction and those to be built. Therefore, as

the program was at a standstill in spring 2005, every school project went through a value engineering review.

The representative of Trenton School District Facility Advisory Board expressed a jaded outlook on the NJSCC's value engineering efforts at the August 11, 2005, legislative hearing of the Joint Committee on the Public Schools:

SCC came in and told us, now they're going to that value engineering. That means . . . "Forget all that was agreed to in contracts and stuff. We're going back in and changing the material you're using in your buildings." (New Jersey State Senate and State Assembly, Joint Committee on the Public Schools, 2005, p. 99)

At the October 3, 2005, hearings held by the Joint Committee on the Public Schools, John M. Rodecker, Superintendent of Schools for Perth Amboy Public Schools, also criticized the NJSCC's efforts to change the materials to be used in the building of its new schools.

Two of our schools currently in the design phase will be constructed with downgraded material. The Board has had to make concessions regarding the use of construction materials in these two facilities in the interest of achieving economies. Material such as drywall will replace block and ceramic tile in interior rooms, corridors and bathrooms; opaque fiberglass will replace glass in curtain walls; and cheaper material will replace exterior brick and block. I believe this to be shortsighted. (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, pp. 179–180)

Ponessa, in an internal ELC memorandum, expressed serious concerns about the NJSCC cutting the quality of the school buildings to be constructed in order to keep projects within their budgets (Ponessa, 2005). The ELC, receiving reports and complaints from school districts about changes to designs, found, for example, that substantial changes were being made that would increase energy costs during a school building's entire lifespan. She pointed out that both the EFCFA (NJSIA 18A:7G-2d) and McGreevey's EO No.24 (Governor of the State of New Jersey, 2002c) directed all new construction to be "high performance" and as energy efficient as possible. School designs

were to incorporate guidelines of the U.S. Green Building Council (LEED) to achieve energy efficiency and environmental sustainability.

Contrary to official statements from the NJSCC, Ponessa's memorandum emphasized that significant changes were being made under the slogan of "value engineering" that would result in buildings that would cost the districts and the State "significantly more long-term in maintenance and repair" (Ponessa, 2005, p. 3).

The literature review for this study showed that discussions surrounding the topic of cutting the costs of building schools were one of the few persistent themes in the academic and professional literature on school construction and management. There should be no surprise that this theme emerged when New Jersey's program was being audited, discussed, and reviewed from nearly every conceivable aspect. Thus, there is significance in considering the criticisms faced by the NJSCC's leadership in 2005 in the context of those faced by Strayer and his colleagues more than 75 years earlier.

Strayer was familiar with the criticism aimed at the perceived extravagance and ornamentation of new school buildings. He responded that the ornamentation on a school's façade is a comparatively small factor in the overall cost of the structure because 90% of a building's costs are in the foundations, walls, floors, columns, beams, and plumbing and electrical systems. Therefore, he argued, the only practical way to reduce costs of new schools without lowering the standards of construction would be to reduce their size (Strayer & Engelhardt, 1927).

Although much discussion focuses on how money can be saved through economical school design, the consequences of these design decisions are felt by generations of future users. Paterson's recently completed (2004) Panther High School

(NJSDA, 2004) was described at a hearing of the Joint Committee on the Public Schools. The high school's building was designed without a cafeteria, gymnasium, or auditorium. There was no place for students to congregate.

The issue of which spaces were included in a new high school building surfaced in testimony by Ann Taliaferro, President of the New Jersey Association of Parent Coordination, on August 11, 2005 (New Jersey State Senate and State Assembly, 2005). She asked how a school facility could have been built in the 21st century without such basic spaces.

Another component of the price of building schools is the cost of labor. Greenberg (Rutgers University) analyzed the concept of paying "prevailing wages" on public works projects and the New Jersey school program between 2000 and 2005. As noted earlier, this subject is quite controversial, as it has a direct impact on the livelihoods of labor union members, and the outcome of each objective analysis seems to depend on the analyst's sponsor and respective goals. One conclusion of Greenberg's analysis was that more schools could have been built if lower wages had been paid to construction workers. This is another example of the budgetary impacts of an EO, specifically McGreevey's EO No.1, which actually reduced the number of schools built.

Greenberg found that nearly 80% of construction labor in New Jersey was not being paid a prevailing wage or working on a prevailing-wage-required project (Greenberg et al., 2005). Greenberg's analysis examined the school construction program as a vehicle for job creation in New Jersey; therefore, he did not address the influence of the prevailing wage on the number of schools built. The average market wage rate for nonprevailing wage rate work was approximately 73% to 70% of the prevailing wage

rate. He concluded that a million-dollar prevailing wage bill would be \$700,000 if the contractor did not pay prevailing wages. He found that complete compliance with the prevailing wage leads to lower levels of job creation than partial compliance. In other words, partial compliance with the prevailing wage could lead to 67% more jobs for construction workers.

*Trenton Times* reporter Larry Hanover, in fall 2004, described the basic financial issues facing the program. Hanover emphasized two points. While McGreevey was in power and the program was rolling forward intensively, no one asked these questions. Now, with McGreevey powerless, with 1 month remaining in office and Codey to take over on November 15, Hanover began to ask the difficult questions. He probably knew that there would not be adequate responses and that front-page headlines were to be made. First, he asked whether the bill passed in 2000 contained enough money to pay for the entire program. Second, he expressed concern that the basic cost estimate of \$125 per square foot was too low. John Spencer, CEO of the NJSCC was quoted in Hanover's front-page story (Sunday, October 17, 2004) as stating that the costs had increased as of October 2004 up to \$218 per square foot for a high school in northern New Jersey. "The estimate of \$125 per square foot used to determine how much the legislature would provide the *Abbotts* in 2000 was a myth. "One hundred and twenty-five per square foot? You couldn't build your own house for that price per square foot" (New Jersey Department of Education, 1997, n.p.).

Hanover recalled that the \$125 per square foot cost estimate had initially been calculated by the Vitetta Group and published in *A Study of School Facilities and*

*Recommendations for the Abbott Districts* (NJDOE, 1997). The report, issued in November 1997 explained,

Costs for new construction are based on a value of \$122 per square foot for new building construction budgets plus an allowance of \$3 per square foot for site development costs. The resulting total cost of \$125 per square foot is held to represent average quality construction on an average site. Extended unit costs include overhead and profit, but no allowance has been made for general conditions of construction contracts, such as performance bonds and insurance, temporary facilities and other special project requirements. These costs could vary from about 5 to 25 percent depending on field conditions, phasing requirements and project size. Construction budgets included in this report also do include “soft costs,” such as design and engineering expenses, site acquisition costs, legal and administrative expense, or any special project requirements. (as cited in Hanover, 2004, p. 1)

Joan Ponessa, Research Director at the ELC, informed Hanover that the \$125 figure should be converted to \$200 per square foot in order to get an accurate budget figure in 2004. Hanover continued, without substantiating or providing sources, “Though legislators say they knew at the time they’d have to come back for more money, the fallacy still evolved that they wouldn’t need to” (Hanover, 2004, p. A1).

Hanover (2004) cited Alfred McNeill, the former CEO of the NJSCC, who had observed that, once the program had begun, it would be difficult to stop.

The people who wrote the bill were a bunch of cowards. At the end of the day, they have to go back and get more money. How could you stop the program midstream and say “Good, the people in Trenton and Neptune are lucky. It’s too bad people in (other districts) were too stupid to stop arguing with each other only get one school.” (as cited in Hanover, 2004, p. A1)

Assemblyman Malone, responding to McNeill through Hanover, strongly disagreed, stating that McNeill had not been a participant in the legislative negotiations between 1998 and 2000. Malone concluded that the bill was the best possible compromise of the urban and suburban interests.

Did we believe \$6 billion to be enough to cure that? Absolutely not. I don’t think anybody in their right mind would say that. But just the monumental effort to get

school construction through based on the Supreme Court mandates, then to get everyone on board to do it, it was like an incredible experience. (as cited in Hanover, 2004, p. A1)

Even so, this was not a new issue when Hanover wrote about it in October 2004.

The cost per square foot had been a point of discussion on March 22, 2004, when Assemblyman David Wolfe questioned CEO Spencer at the Joint Committee hearing about the average cost of a new high school in an Abbott district (New Jersey State Assembly and State Senate, 2004). Spencer stated that the current cost per square foot to build a school was approximately \$195. Replying to Wolfe's repeated questions, Spencer answered that the NJSSC had just awarded two major high schools in Newark (Science Park and Central) and one in Long Branch and that all three were in the range of \$65 million. Wolfe was under the impression that each high school was in the range of \$100 million.

The issue of spiraling costs and control of program parameters is another theme that was consistent throughout the program's history. The ability of districts to add features and costs to school projects was always a problematic issue for the New Jersey program and was extensively discussed in several legislative hearings, among them one in April 2005 (New Jersey State Assembly and State Senate, 2005). At that hearing, CEO John Spencer informed the Joint Committee on Public Schools that changes to educational models or the addition of information technology had cost the NJSDA approximately \$48 million (current to April 2005). Many of these added costs had been driven by changed regulatory requirements of the NJDOE.

Mary T. Stansky, Superintendent of the Gloucester City School District, expressed her district's frustration over the State's calculation of the construction

program's budget at a hearing of the Joint Committee on Public Schools on August 11, 2005.

Everyone knew, when you bonded the original amount of money, that it wasn't going to be enough. You didn't factor in an acquisition of sites, you didn't factor in the acquisition—or the building of early childhood sites. And you knew early on. Even the cost per square foot to build it was way lower than anybody—any construction firm would tell you. (New Jersey State Senate and State Assembly, 2005, p. 26)

Responding to Stansky, Assemblyman Craig Stanley of Essex County said,

Many of us, we voted for the initial legislation, knew that the \$8.6 billion was not going to be enough to handle all the school construction that needed to be done in the state. We also knew that \$6 billion would never be enough to handle the *Abbott* district requirements. So that doesn't come really—or should not come as a shock to anyone. And if anyone has been under the misconception that the Legislature thought, in any way, that that was going to be enough to handle all the projects in the *Abbott* districts, then they're under a failed assumption. They're working under the wrong information. (p. 27)

At the hearing of the Joint Committee on Public Schools on October 3, 2005, David Sciarra of the ELC testified that it should come as no surprise that the initial allocation of \$8.6 billion would fall far short of what was needed to modernize the state's K–12 schools.

When we debated this bill back in 2000, those of us who were here understood that 8.6 billion was really a down payment to get the program started. And we knew that at some future point we'd have to come together and figure out how to look back on the program and see how it's been performing and then to allocate more funding to keep it going. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, p. 89).

The ELC's spokesman urged approval of Senate Bill 2294, which authorized \$2 billion for the *Abbott* districts and \$1 billion for projects statewide as "stopgap funding to keep projects already in the pipeline moving forward, while giving the new Legislature and administration time to consider permanent financing solutions and program reforms" (ELC, 2005e, p. 2).

Chairman Koeppé provided the Joint Committee an updated status of school construction projects and available funding. He expressed disappointment about the way projects continued to proceed despite projected shortfalls that would leave many projects never to be completed.

In early June of this year [2005], the SCC testified—Mr. Spencer testified that \$1.6 billion remained out of the \$6 billion allocated for the Abbott projects. In other words, 4.4 billion was either already spent or was committed to projects in construction. That was bad news. Bad news to be sure. But there was actually a more serious problem here. And that is that [sic], because while there was no way for the organization to complete all of the projects approved by the Department of Education, the SCC had also not altered its construction activities. It's a serious issue. Land acquisition, architectural renderings, etc., were proceeding unabated across the state. It's an obviously intolerable situation with a declining amount of funds. You can't blink that away. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, pp. 8–9)

Koeppé reported that he had had to halt the chaotic situation that he found at the Corporation. A Special Committee of the Board of Directors was formed to recommend to the Board which projects could be completed with the remaining funds.

[The Committee took] into account this arrhythmic pattern of construction activity, and architectural work, and design work have been going on across the state unabated. An extremely difficult decision, but frankly an important turning point in the organization because failure to address this would have resulted in a multitude of half-completed schools across the state with no funds remaining. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, p. 9)

At the same hearing, State Senator Ronald Rice reminded his colleagues and attendees that he and Assemblyman Stanley (both of Essex County and representing *Abbott* districts of Irvington and Newark) had sponsored a bill for an additional \$3 billion. They recognized that \$3 billion more would not complete the school program but would keep it moving.

The idea of the \$3 billion was to actually get us through 2006 so we could analyze the whole process, as well as the number of schools. Right now we're looking at 3 billion. You tell me it's 3.5 then we're going to fight that battle. If you tell me it's

5 billion, we're going to fight that battle, win or lose it. And all those have a righteous, vested interest in seeing that these schools get built, the ones that's ready to go, whether they're in the East Ward of Newark or the South Ward of Newark or the North Ward, or whether it's in Burlington County or Cumberland County, whether it's Paterson. [applause] (New Jersey State Legislature, Joint Committee on the Public Schools {October 3], 2005, pp. 42–43)

Two *Star Ledger* reporters tabulated the proposals for school construction in 11 of the state's 31 *Abbott* districts in a November 2005 article. Referring to the 2005 updates to each district's LRFP, the reporters found that 11 districts were adding up to a projected price tag of \$6.5 billion. The requests for these districts, including Newark, Jersey City, and Camden, would cost more than the \$6 billion allocated in the 2000 EFCFA. The reporters projected that, once the other 20 *Abbott* districts, including Elizabeth and Paterson, were accounted for, the program's second round would cost more than \$14 billion. Therefore, they estimated that the entire program would cost \$20 billion (McNichol & Chambers, 2005b).

McNichol and Chambers (2005b) quoted officials who said that the new projections were soaring because the initial program estimates on which the EFCFA was based had not included the cost of buying land for new schools. Average costs per square foot were assumed to be \$125 (NJDOE, 1997) but the current LRFPs (2005) were being estimated at more than \$210 per square foot when the cost of acquiring property was included. Assemblyman Stanley stated to reporters, "It's better to work with the real numbers" as he advanced a bill for \$2 billion for funding the building program.

McNichol and Chambers (2005b) concluded, "Since 2000, Newark has received \$741 million of the \$1.57 billion it requested. In its new plan, officials said the city needs an additional \$3.2 billion—more than the combined domestic product of Aruba and Greenland" (p. 1).

Greenberg of Rutgers wrote the sole academic journal article examining the fiscal assumptions of the New Jersey program. He wrote that the program would eventually cost more than the approved EFCFA funding level of \$8.6 billion but he was unable to project how much it would ultimately cost. However, his high estimate reached the \$20 billion mentioned by Chambers and McNichol.

Construction costs have risen in New Jersey. . . . Indeed, the districts may not know the real costs for a few years. Yet there is no funding mechanism for anything beyond the \$8.6 billion, and hence to assume that New Jersey might spend \$12 billion, \$15 billion or \$20 billion or more might be overly speculative. (Greenberg et al., 2005, p. 36)

### **A “List of 59” School Building Projects**

This brief discussion of finances concludes by shifting to the school buildings themselves. Problems surfaced immediately as Governor Codey tried to get this program under control. What happened as the flow of new contracts was halted? This had a variety of impacts on homeowners, school districts, and eventually the school children themselves.

July 27, 2005, marked a pivotal moment for New Jersey’s program. Until that point the wishful thinking and hopes of school districts were that some, all, or many of the needed buildings would continue to advance into construction. On the 27th, the NJSSC’s Board of Directors unveiled its plan: a “list of 59 schools” (projects to be continued in the 31 *Abbott* districts). This indicated that only a small number of each district’s schools would be built in the foreseeable future. This list triggered several responses, among them the immediate initiation of a midsummer legislative hearing of the School Facilities and Construction Subcommittee of the Joint Committee on the Public Schools.

An invitation was issued quickly by the Committee staff, dated August 3, 2005, less than 5 business days after the NJSCC board meeting on July 27, for a meeting to be held on Thursday, August 11,. The meeting opened with statements by Assemblyman Stanley explaining that meetings were rarely held in the summer or in election years before November. The meeting was held at Essex County College, in downtown Newark, a convenient and accessible location for many of the 31 *Abbott* districts and their constituents affected by the cessation of projects.

The *New York Times*, reporting on the dramatic NJSCC board of directors meeting of July 27 wrote, “Acknowledging flaws in its management and spending habits,” the NJSCC announced that it would be able to complete only an eighth of its proposed projects (Chen, D. W., 2005). Only 59 of the 400 projects being handled by the corporation would be completed with its remaining \$1.4 billion dollars.

In parallel with the hearing (discussed below) of the Joint Committee, the ELC quickly submitted a request to the New Jersey Supreme Court on August 11, 2005, to force the Legislature to allocate additional funds for school construction (ELC, 2005c). The responding decision, issued by the Court in the form of what would be known as *Abbott XIV* on December 19, 2005, contained three components (*Abbott v. Burke XIV*, 2005, 185 N.J., pp. 5–6).

First, the NJDOE would provide its annual report (a statutory mandate per NJSA 18A:7G-24) for the 2005 fiscal year no later than February 15, 2006. Second, the school districts’ 2005–2010 LRFP that were to be prepared and submitted by the *Abbott* districts on October 3, 2005, were to be submitted to the NJDOE no later than January 15, 2006. This second section of the court’s order was directed to the school districts. Third,

directed at the NJDOE and the NJSCC, their February 15, 2006, annual report was to include estimates for school facilities projects included in the 2000–2005 group that had been submitted to the NJSCC for development. The Court decision was precise:

Specifically, estimates shall be submitted for the projects approved by the NJDOE and under design by the SCC, the projects approved by the DOE on which some preliminary pre-development has been completed; and the projects approved by the DOE that are awaiting predevelopment work by the SCC. (*Abbott v. Burke XIV*, 2005, pp. 5–6)

As the program ground to a halt in summer 2005, its progress was summarized by the NJSCC's Chairman (New Jersey State Legislature, Joint Committee on the Public Schools, 2005,). Thirty new schools and major renovations had been completed and 43 major school facilities and 26 smaller rehabilitations were in construction. Koeppe noted that on July 27 the Board of Directors had given approval for the construction of an additional 59 school projects. He reported to the Joint Committee that this left 336 school projects approved by the NJDOE without funding.

However, the ELC's expert of school facilities, Ponessa, voiced skepticism about the financial estimates and the actual ability of the SCC to complete even this shorter list of projects with the available budget (Ponessa, 2005). Her doubts about the viability of the list of 59 projects approved in July 2005 proved prescient.

The hearings held by the Joint Committee on the Public Schools provide an excellent snapshot of the actors and their positions at a point in time. The hearings on August 11, 2005 were another pivotal moment for the program, providing a platform for the constituencies affected by this shift in fortunes. Just a few days beyond the fifth anniversary of Whitman's July 18 signature on the EFCFA, school districts and state and local officials were reeling from the consequences of the “list of 59.” There were

political, financial, emotional, logistical, and educational implications to the decisions of which schools to build and which to postpone.

Disappointment was expressed with eloquence by Chauncey I. Brown, III, President of the Paterson Board of Education, in his statement that captured the frustration in the *Abbott* districts in summer 2005.

In Paterson the gap between promise and reality is even greater. The so-called SCC priority list for Paterson includes the completion of four new schools and the rehabilitation of three other schools. These seven schools enroll 3,371 of 29,362 – or 11 percent of our students. (p. 44)

Addressing the predicted shortfall in funding and the poor performance of the NJEDA, he continued:

No doubt agree [sic], failing to remedy facilities' deficiencies for 25,991 of our students hardly translates into constitutional compliance. The funds originally identified by the Whitman administration have proven to be far less than what is needed, and the administration of those funds by the McGreevey administration has apparently been inept or worse—only continues to prove that both major parties in New Jersey have been unable, thus far to meet the constitutional requirements set down seven years ago by our State Supreme Court.

The Court expected, in the *Abbott V 1998* ruling, that planning would conclude expeditiously, and that construction would begin by the spring of 2000. That timetable was never met. And as events have shown, each year of delay and poor implementation has put the State of New Jersey in a greater fiscal hole, and delayed further the fulfillment of the constitutional finding that the State's constitutional educational obligation to the Abbott children includes the provision of adequate school facilities. (New Jersey State Senate and State Assembly, Joint Committee on Public Schools [August 11], 2005, p. 44)

A few months later, again to the Joint Committee, Pablo Munoz, Acting Superintendent of the Elizabeth Public Schools, noted a crisis of confidence and conscience:

It is true, the generosity of this State never fails to amaze me, especially when that generosity is mandated by the Supreme Court. The compact between our government and its responsibility to our children seems to have changed. We are now faced with a new crisis of conscience, which has led to a total impasse on Abbott school funding. Now the so called wisdom from some is to avoid making any

decision at all. The sound educational planning, the millions of dollars already spent, the completed designs of new schools, the active negotiations with property owners, not to forget the hopes of our children, are all sacrificed in the interest of postponing the decision for another year or even another day. We cannot afford to delay a decision as important as this one. We have the moral obligation as adults to care for our children's lives, education and future. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, p. 172)

The immediate halt to the execution of new contractual engagements or actions by the NJSCC had serious implications on several levels. Among them, homeowners were involved in property transactions, school districts were left with abandoned projects, and contractors were waiting for change orders in the midst of ongoing construction projects. According to a senior NJSCC staff member at the time, nearly 98 architectural design contracts were suspended in fall 2005, along with roughly 30 site feasibility contracts (Daniel, 2012). However, this still left 59 projects proceeding, as decided by the Board of Directors on July 27 (NJSCC, 2005c).

Ray Lindgren, Executive Assistant to Newark's Superintendent of Schools, testifying on August 11, 2005, reported that Newark had 70 projects in its LRFP and 47 projects approved by the NJDOE that were transmitted to the NJSCC (New Jersey State Senate and State Assembly, Joint Committee on the Public Schools [August 11], 2005). Currently (August 2005), there were two schools built and the list of projects approved by the NJSCC's Board of Directors on July 27 contained another three new schools with renovations and two others with additions. Lindgren summarized that, if all seven were completed, it would represent one tenth of the plan (the approved LRFP) with a total value of \$748 million. Lindgren described the impact of the current halt. Eleven schools were in the active design phase after completing their initial feasibility work. He informed the legislators that the designs for Oliver Street and South Street schools were basically complete. Land acquisition had begun and land was available for some schools.

Lindgren highlighted University High School in Newark's South Ward, where the NJSCC has already acquired over 80% of the future school's land. Because the school was in a residential neighborhood, several acquired buildings were boarded up and interspersed among homes where families were still living (Chambers, 2005a, 2005b; McNichol, 2005d). Because the NJSCC's work had been completely halted, the NJSCC was not being allowed to move forward with demolishing buildings and clearing the land.

Lindgren expressed disappointment regarding the 11 schools that were postponed and bewilderment regarding the five Newark projects that had been selected for advancement, as they were not well balanced within the city's wards. He described his district's diminished expectations and reported that in August 2004 he had informed school administrators about all of the plans for new schools; now they were left with five to be built and two under construction (Science Park High School and Central High School).

State Senator Ronald Rice also focused on the impact of the halt on the lives of his constituents. He described situations in which the NJSCC had begun negotiations with homeowners. In several circumstances the NJSCC had been discussing relocation with a homeowner's tenants and had already moved several of them. In other situations a few remaining tenants were left behind in partially emptied buildings. Some homeowners or tenants were in the midst of being relocated when their preparations were suddenly suspended by the State.

When you board up buildings in these communities, you're not just boarding up buildings, interrupting people's lives, you're creating a significant impact on the local government. Because if the SCC does not demolish those buildings, what in fact you have – you have a trickledown effect on the quality of life in those communities from rodents to everything else; the probability, G-d forbid, of young people being molested, or older people being molested; you've got the probability

of insurance dropping, you can't get insurance when you have these buildings; you have all these different scenarios that cost dollars, and the city has to respond. (New Jersey State Legislature, Joint Committee on the Public Schools [August 11], 2005, p. 20)

Senator Rice explained to his colleagues that it is frightening to be the sole remaining resident on a block where all other homes are boarded up. This was reinforced by the testimony of School Superintendent Mary T. Stansky, who illustrated a similar situation in Gloucester City in southern New Jersey:

We have four residents in an area where 70 homes were taken that are still sitting there. They are on hold. We have boarded up homes, as the gentleman spoke before. We have been told they're going to be demolished, but we still don't have that happening. Our small district of two-and-a-half square miles has had to put a fire watch because we did have one of those buildings burn down—one of those houses burn down. We've had two more fires. People are—it's become a drug-selling place. There are people there breaking things and damaging things. And the people that still live there are quite fearful. So we want to make sure that happens. (New Jersey State Legislature, Joint Committee on the Public Schools [August 11], 2005, p. 24)

Barbara Philip, a 70-year-old homeowner from 21st Street in Irvington, reported to the Committee that she was in the midst of being relocated by the NJSCC for a middle school. As she was placing bids on other homes, she was informed that her entire process was frozen. She was unable to move. Surrounded by empty lots and a vacant house inhabited by trespassers and vagrants, she was fearful for her safety and aggravated. Complaining of the injustice, of the vagrants, and of the activities in her neighborhood, she pleaded for her legislator's and Mayor's assistance.

Irvington Mayor Wayne Smith informed the attendees that the same neighborhood was also home to a soldier who had returned home from Iraq to find his property in limbo (Chambers, 2005d; McNichol, 2005o). The Mayor referred to several residents who had received mortgage commitments and were ready to move on, only to

be told by the NJSCC that the school project that would fund their relocation was on hold.

When residents of Newark's Dewey Street appeared at the August 11 hearing, Assemblyman Stanley addressed them:

Ms. Searcy, you're about one of five or six people that are left. Actually, Senator Rice and myself were over there yesterday. . . . And it's almost as though it's a ghost town. It's almost a ghost town in the middle of the city. And I can imagine what happens at night when the sun goes down. I can only imagine that. (p. 60)

Mr. Searcy added that he was afraid to leave home and afraid to stay there. "You don't know if someone is going to come and burn your house down" (p. 60).

Stansky of Gloucester relayed to the Joint Committee on August 11 her district's disappointment at the limited number of projects included in the NJSCC's list of 59 projects.

You need to provide us with some sort of plan. Our impression has been, "Oh well. We're out of money. That's the end of it." Well, that is certainly not okay. And the children of New Jersey certainly shouldn't have to suffer for the mismanagement of the funds at the State level. So knowing early on, why wasn't something done early on to start to fix that, revise that, knowing that down the line you were going to have all these projects started? We're ready to go to construction for our middle school. It's on hold. Over \$20 million—EPA, federal money came in to clean up the site. The district was proactive, and went to the Federal government and asked for the money so we wouldn't have to add that on to the cost of the SCC and the State of New Jersey.

They did come in, because we said there will be a school there. They are done. They came in and did their thing. They promised it, they did it, they're leaving. Ten million dollars was spent so far, to buy the homes, relocate all the homeowners, except for the four that are still there. Over \$1 million to design the school, so what happens to all that money? And the longer we wait, the more costly it is to build the school. And our children still sit, waiting for facilities. (pp. 25–26)

Additional hearings were held by the Joint Committee on October 3, 2005, when Sciarra of the ELC provided updates on the status of school projects when the program was halted. In the previous week (late September 2005) he had received the NJSCC's

response to the Supreme Court responding to the ELC's motion for relief on August 11. The NJSCC had reported to the Court, according to Sciarra, that it had begun design work on approximately 110 projects, preliminary development had begun on another 97 projects, and an additional 134 projects had been approved by the State NJDOE and sent to the NJSCC but were as yet untouched. Therefore, Sciarra stated that the magnitude of the project pipeline was now known and a cost estimate should be available from the NJSCC.

Stansky of Gloucester City returned to the Joint Committee in October 2005 to reinforce remarks made in August in Newark. She reminded the Joint Committee that Gloucester City had been working on their middle School project for 5 years but it was off the list of 59 projects.<sup>69</sup> She reported collective investment in this project of \$31 million at the state and federal levels. The EPA had expedited site remediation at a cost of more than \$20 million and the NJSCC had spent more than \$10 million to acquire properties and relocate residents; \$1.2 million had been spent on designing the school.

The Superintendent informed the hearing that the project awaited construction. All of Gloucester City's schools were old and overcrowded and the middle school was needed to solve the problem. The Mayor of Gloucester City, also in attendance at this October 2005 hearing, stated:

The announcement by the SCC that the middle school construction project in Gloucester City is no longer funded is beyond dismaying; it is unconscionable. The money is already spent by the State for property acquisition, architects, engineers, lawyers and PMs may well surpass \$11 million; and would draw the ire from many, if not most persons, when told the project is no longer funded. (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 100)

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<sup>69</sup> The Gloucester City New Middle School was included as part of the NJSDA's 2012 Capital Program approved by its Board of Directors on March 7, 2012 (NJSDA, 2012).

Gloucester City's facilities director provided details about the project located between Fifth and Sixth Streets and Market and Jersey Avenues in downtown Gloucester City. The "design development" stage of the design process, by Gruzen Samton Architects, was 90% complete and the next stage would be the preparation of "construction documents," which would have made this project ready for construction in the next 6 to 9 months (as of October 2005).

### **Preparing Land for Building Schools: Site Remediation**

A perfect storm of negative circumstances buffeted the New Jersey school construction program after McGreevey's sudden departure. Its political champion had resigned, it was under investigation, funding was running short, and environmental problems at new school sites were continuing to emerge. The remediation of land and the proper handling of the removal of contaminated material became yet another difficulty facing the challenged school program.

As discussed in preceding sections, the choice of a school site must be done carefully. Proper due diligence and review of prior environmental uses must be examined before a decision is made to purchase land. Sloppy due diligence, politically driven decisions, and poor controls over the decision-making process brought the program to several difficult situations. In several situations the NJSCC found that it was building a new school on a brownfield that needed much more remediation than anticipated. The term *brownfield* carries significant heavier environmental, public health, geotechnical, financial, and political consequences in New Jersey due to the pattern, concentration, and type of chemical industries that developed in its cities during the period leading to and through World War II (NJDEP, 2006).

Gerald Murphy, Chief Operating Officer of the NJSCC, in his testimony to the Joint Committee on the Public Schools on August 11, 2005, described the importance of early feasibility studies:

So I think the upfront feasibility studies are very important to make that, one—first and most important is you’re putting a child in a safe environment and secondly, that it’s a cost effective site. In watching the dollars, you have to make sure that the site is cost effective for you to build a school on. Especially when you get—it’s nice to have a big, open ground to build schools on. I wish that’s all we had. But you don’t. You get in the North, and you have highly populated cities like Union City, West New York. It’s really tough configuring schools and fitting them in sites. So you buy a combination of residential and commercial properties for that. (New Jersey State Legislature, Joint Committee on the Public Schools [August 11], 2005, p. 80)

Assemblyman Joseph Malone of Bordentown asked Koeppe and Maricondo about the NJSCC’s approach to acquiring contaminated brownfields for schools. Malone expressed his personal and the public’s anxiety about placing a school on a former Superfund site or a brownfield.

Rhetorically, why would we even want to think . . . about putting a school . . . on a site that has been contaminated or is—I don’t care how much you clean it up. Twenty years from now, we’re going to find out that we have problems. I just find that to be serious, serious [applause] thought process in its proficiency, either at the Department or the SCC, that needs to be cleaned up before we dare put children in harm’s way like that. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, p. 38)

Jersey City Superintendent of Schools Dr. Charles Epps also testified to the Committee on October 3, providing his perspective on the NJSCC’s approach to selecting school sites in Jersey City. “Vacant land, when you can find it, is expensive, because it’s scarce. And often it can be contaminated with environmental pollutants, which also cost money to address to make it safe for school purposes” (New Jersey State Legislature, Joint Committee on the Public Schools, 2005, p. 85).

Epps's frustration concerned the NJSCC's decision-making process and why certain sites that his school district had proposed were not being advanced. Among the primary concerns of municipal officials was the direct property tax revenue lost when specific properties were expropriated by the state for a school.

I guess my point is this: When we find the vacant land, SCC deems it necessary not to get that vacant land because of city politicians, or because they say they don't want to take that particular land. They'd rather put a ShopRite there<sup>70</sup> or they'd rather put a food market there, as opposed to a school. So those issues we need to talk about. (p. 85)

All of the NJSCC's environmental, managerial, and political problems conflated into one very difficult situation at the MLK-Jefferson school site in Trenton, less than a mile and a half from the New Jersey State House. Environmental failures cascaded into construction delays measured in years. Contracts were terminated and monies were spent to demolish the skeleton of a newly constructed building and then remove tons of contaminated earth. What was happening at this site only highlighted the Corporation's internal problems.

Fears of contamination from the soil at the adjacent MLK-Jefferson school construction site caused Trenton's Board of Education to vote unanimously to close its adjacent Jefferson Elementary school in late August 2005 (Hanover, 2005a). In the same meeting the Board also decided to sue the NJSCC to force it to remove all contaminated fill. Acknowledging that they had no plan for relocating or transporting the students, the Board of Education decided to remove the children before the 2005–2006 school year

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<sup>70</sup> Shoprite is a New Jersey supermarket chain; however, Epps was probably referring to the "Stop & Shop" site at Laidlaw Avenue in the Heights neighborhood, site of a future elementary school. This project would be included in the NJSDA's 2011 Capital Program approved by its board on March 2, 2011 (NJSDA, 2011e).

began. The Board linked its sudden decision to the receipt of the NJSCC's response to their Open Public Records Act (OPRA) request that indicated that the situation was significantly more serious than had been portrayed by the NJSCC. Trenton's Superintendent and its Board Chairman accused the NJSCC of a "cover up." "The SCC has put financial and legal issues before the health of children and staff," said Superintendent Lytle (p. A3).

Emerson Simmons, a member of the Trenton Board of Education's Facility Advisory Board, testified to the Joint Committee on the Public Schools on August 11, 2005, complaining that the school district had to made a formal OPRA request to the State to receive basic environmental information about the soil contamination on a school site being developed within their school district (New Jersey State Senate and State Assembly Joint Committee [August 11], 2005). These records indicated that fill material had been brought onto the school site because the original soil was not firm enough to support the weight of the new building. The material that was to be brought was supposed to be recycled concrete; however, what was delivered was crushed roadway asphalt. Asphalt is not considered a "clean" substance and therefore the NJDEP does not allow it to be imported to a construction site for fill beneath a new building. Apparently, requests had been made of Turner Construction (the building contractor) to produce certifications of the quality of the imported fill. The *Times of Trenton* learned that, despite the contractor's failure to submit certifications about the origin of the fill (certifications that the material was clean), work on the site was allowed to proceed.

After the Trenton school board vote on August 29, the school district had to move quickly to set up an alternative location in a parochial school in nearby Hamilton

Township (Hanover, 2005c). The Holy Angels School was leased for \$660,000 from the Diocese of Trenton for the 2005-2006 school year, delaying the start of school for students of Jefferson Elementary by a week.

The NJDEP ordered the NJSCC on September 21, 2005, to control the dust on the contaminated MLK-Jefferson school site immediately (Hanover, 2005b). The same notice gave the NJSCC 2 weeks to find a permanent measure to be in place 3 weeks after receiving NJDEP approval. In parallel, the NJDEP told the NJSCC to study the impact of the potential spread of dust into the school and the surrounding community.

Trenton school district leaders expressed fears that students may have already ingested lead from the contaminated dust. The article (Hanover, 2005b) quoted an environmental expert who observed that long-term exposure to these contaminants would be a concern. The same expert observed that the situation was at a stalemate because the contractor, Turner Construction, found the source in the existing soils at the site, while the NJSCC found the source in the recycled concrete and asphalt brought as fill to the site by Turner.

Hanover (2005d) recounts that the NJSCC halted construction on the school site in May 2005, three months after reports of its contamination were revealed. The site had been idle for more than 7 months while the NJSCC and Turner Construction “battle over who will pay to address contamination from petroleum products, PCBs and lead” (p. A3).

The controversy between the school district and the NJSCC exacerbated when the Trenton School District announced, in August 2005, it was removing the children from the adjacent Jefferson Elementary School due to the hazards of the contaminated soil. Superintendent Lytle informed the reporter that the NJDEP would soon be ordering the

NJSCC to cover the contaminated soil to control dust and drainage issues. Lytle urged site remediation to begin immediately, fearing that it would be postponed due to legal battles. “We’ll be sitting there with a partly completed school building and an abandoned 100-year old building with playing fields gone and drainage problems” Lytle stated (Hanover, 2005d, p. A3).

In March 2008 a final report was issued to the NJDEP by scientists at the Environmental and Occupational Health Sciences Institute, evaluating the “potential exposure to contaminants originating from the site and potential health risks” (NJDEP, 2005, p. 1). The report, initially issued in 2005, stated, “The measurements of lead and PAHs made on the soil indicated that minimal risk would be presented to the community from these agents from soil that had blown off-site” (p. 1). The study indicated that much of the lead found in dust in these homes came from historical lead deposited from leaded gasoline used decades ago. The school, which had been scheduled to open in September 2006, was finally dedicated on its intended site on March 3, 2010 (NJSDA, 2010f).

In the course of the Joint Committee hearing on October 3, 2005, Assemblyman Patrick J. Diegnan took the opportunity to explore a school district’s site selection processes. Gloucester City was complaining (see Superintendent Stansky’s earlier testimony) about the postponement of its middle school project after a \$26 million investment by the EPA in site remediation (U.S. EPA, 1996).<sup>71</sup> Assemblyman Diegnan asked how the site chosen had been chosen. The district’s representative answered.

The site was chosen—We had a committee several years ago—We have a Facilities Advisory Committee that was established. We actually came up with eight differ-

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<sup>71</sup> The Gloucester City New Middle School was included as part of the NJSDA’s 2012 capital program approved by its Board of Directors on March 7, 2012 (NJSDA, 2012).

ent sites. Gloucester City is an urban, old industrial town—2.2 miles—so no matter where we go looking for eight acres, we’re going to have some kind of issue. So we came up with eight sites, and for various reasons, sites were eliminated. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, pp. 109–110)

Inquiring further, Deignan was informed that part of the new school’s site had been a Superfund site and had been the location of the Welsbach Gas Mantle factory in the early 1900s. Deignan asked the Gloucester City School District’s Director of Facilities, “You’re saying of the eight potential sites, this was the best?” Responding, the Director stated,

Well, when we looked all around, for many factors—central location—Obviously, the children’s needs are number one. We want it to be a safe school no matter what, that’s obviously number one. But the central location, the least amount of houses that had to be taken, not crossing major highways, not near high tension wires or railroads. There were many factors looked at. Every site we look—again, we’re an old industrial town—had environmental issues. (pp. 111–112)

Building on his colleague’s line of inquiry and evidently possessing knowledge of the issue, Assemblyman Bill Baroni asked about the eight sites considered by Gloucester City’s Site Selection Committee. “How many of the eight sites were designated under the CERCLA<sup>72</sup>, which is the Superfund Law, as a Superfund site?” (p. 113). The Facility Director responded, “Just this one.” Baroni asked, “So you had eight sites, and you chose the Superfund site to put your school?”

Addressing the Mayor of Gloucester City, Assemblyman Baroni asked, “Mayor, does it trouble you at all that of the eight sites in your city, the one that was chosen by the Site Selection was a Superfund site?” The Gloucester City Facilities Manager responded, describing the NJSCC’s procedures.

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<sup>72</sup> Comprehensive Environmental Response, Compensation and Liability Act, federal law, 1980.

But just so you know, before we even started the process, the SCC commissioned an environmental firm to do an extensive study of this site before anything even went forward. That study lasted about six months. A detailed report was given to the NJSCC, as well as the DOE, before the approval was given. Obviously, we weren't going to go forward with this without any kind of backup. That came back that if the site was remediated, there would be no problem. And that's why we went forward with it. (p. 114)

Method, a reporter writing for the *Asbury Park Press*, linked the questioning by Assemblymen Diegnan and Baroni and the responses by Gloucester City staff with national research reports regarding placing new schools near or on brownfields.

A national environmental activist group said New Jersey had used its \$8.6 billion school construction program as a hidden way to clean up contaminated sites. The state has built in a de facto incentive for municipal and education officials to build schools on polluted land. Cities and towns got stuck with this land through tax foreclosures; they can't clean up the sites and they can't find developers to clean them up so they look to the state to reimburse them for school sites. (Method, 2005, p. 17)

The *Asbury Park Press* reporter was quoting an extensive report prepared by Steven Fishbach, a lawyer working with the Center for Health, Environment and Justice (CHEJ) based in Falls Church, Virginia (Fishbach, 2005). Method was discussing the same \$30-million, 800-student Gloucester City middle school advocated by Superintendent Stansky. This Superfund site (Welsbach Gas Mantle) included "hot spots" of radioactive soil and a former coal-to-gas plant with contaminated ground water. As of the writing of the dissertation in fall 2013, the project, initially identified by the NJEDA-NJSCC-NJSDA as "Gloucester City MS" (ST-0014), was to be advanced as part of the 2012 Capital Program.

### **Halting Hundreds of Land Purchases: Breaking Deals**

When Governor Codey decided to slow the breakneck pace of the school construction program, his appointees had to address two types of uncompleted property acquisitions. First, there were parcels of land that had been bought for schools that would

be postponed indefinitely. In most cases, sites were partially assembled, leaving existing homeowners in the midst of boarded-up buildings destined for demolition. Second, there were homeowners and commercial and industrial tenants and owners who were in the midst of negotiating relocations or perhaps the purchase of alternative property. All of this was halted midstream by the Governor's blanket order to halt all new contracts.

One consequence of the halt, which generated complaints to legislators, was that the State's approach to buying homes was immediately placed under the proverbial microscope at legislative hearings in summer 2005. Gerald Murphy, the NJSCC's Chief Operating Officer, explained the State's approach to buying a house. The NJSCC had exceeded state laws by offering fair market value plus 20%. Then the NJSCC offered a comparable or equal house—not a better home. The NJSCC also paid the homeowners 20% more than what it would cost them to buy a comparable home.

Murphy acknowledged that many homeowners involved in this process thought that their home was worth more than its appraised value plus 20%, but that was the State's guidelines. He explained to the legislators that the majority of property owners understood this. Murphy also addressed the legislators' concerns over safety and security in neighborhoods with vacant houses and informed them that the NJSCC was working to secure these structures and then demolish them.

As the program came to a halt in spring and summer 2005, officials at the NJSCC found themselves in the midst of hundreds of real estate transactions with homeowners. The profound personal impact of this situation was described in an article published in the *Star Ledger* in September. "The troubled New Jersey Schools Construction Corporation has sent out hundreds of letters to property owners whose land it previously

intended to buy. This time the message was simple and jarring. Never mind" (Chambers & McNichol, 2005, p. 13).

The reporters stated that 344 "notices of revocation" were being sent to property owners who had been living under the cloud of condemnation or eviction for months. The NJSCC's spokesman stated that property purchases would continue on some projects outside the list of 59 if they had caused the owner hardship. However, that left many sites with homeowners, factory owners, and tenants and their personal problems throughout the state. These problems are described in the next sections.

Sometimes, the American news media is able to influence the outcome of events or change the course of programs and policies. This may be especially true when a reporter is passionate about a subject or a newspaper is ready to dedicate extensive resources to a theme. McNichol, with his laser-like focus on New Jersey's school program, was possibly quite influential in the downturn of the program's fortunes. He seemed determined to leave no stone unturned and tenaciously pursued this subject.

Only Cenziper's articles about the Miami-Dade school district in the *Miami Herald* in the winter of 2003 came close to those by McNichol, but Cenziper's efforts were limited in duration. McNichol in New Jersey, reporting over a nearly 10-year period for the *Star Ledger*, focused on policy, finance, and real estate issues. Cenziper, because of Miami's recently completed and rapidly and noticeably failing buildings, focused on construction-related issues. For this reason, her articles about Miami-Dade, America's fourth-largest school district (Kennedy, 2011), provide a rich insight into the workings of architects and construction managers and the problems of contractual compliance, as well as issues of design and building quality.

McNichol, in New Jersey, focusing on policy and the State House, never addressed these subjects. Perhaps Miami-Dade's buildings were of poorer construction than New Jersey's or perhaps Cenziper's interests were different. McNichol focused on land, people, and the program's impact on people's lives, which made for rich, engaging narrative.

An example of an influential piece was McNichol's three-page article describing the acquisition of land for a high school site in Newark, New Jersey. Beginning on the front page of the state's leading daily newspaper, *The Star Ledger*, this article, published in July 2005, included maps and detailed photographs of the land acquired and the families displaced along Dewey Street for the University High School project. Being journalism, not research, despite its length and detail, the article was a one-time zoom into one element of the program, with no attempt to provide program analysis. The article shared the stories of nearly every family involved and detailed the prices offered by the NJSSC. McNichol highlighted that many of them were left in limbo in a style that was destined to inflame an already outraged readership (McNichol, 2005d).

McNichol's article (2005d) played into the criticism of the program, which was reaching a crescendo in summer 2005. The distance between plans and expectations for new and improved school buildings met with the reality of limited resources and a changed administration. The *Star Ledger* reporter examined the details of the proposed University High School project, which involved two nearby elementary schools, Bragaw Avenue and Hawthorne Avenue, as well as the existing University High School building. Upon completion of the replacement University High School building, the vacated high school building would then be renovated to replace Bragaw and Hawthorne. In turn,

Hawthorne would be demolished to become part of the lands of the new University High School. This complex, multiyear scheme was dependent on acquisition of the land for a new University High School that would enable the entire process to begin. Corwin Frost, the school district's architect, explained that the existing University High School's spaces, while no longer adequate for a high school curriculum, were suitable for an elementary school.

McNichol's article (2005d) detailed how this site had been selected for the new high school 5 years earlier, in the first round of *Abbott* facility planning (1999-2000), in anticipation of the promised EFCFA. McNichol wrote that land acquisition had begun 3 years earlier, in 2002. He forecasted that in a few days the NJSCC would publish its list (the "list of 59") identifying which of its roughly 270 school projects would go forward with the money that remained, noting that University High School's cost was estimated at \$27 million.

Introducing incendiary information into the public discussion, McNichol (2005d) unveiled financial details of the land acquisition process that was occurring at the University High School site. As the process began, speculators "swept into the neighborhood scooping up rundown properties and foreclosures" McNichol wrote (pp. 16-17). One example described by the reporter was the house at 15 Dewey Street, which was purchased for \$19,000 in 2002 by a real estate firm. Later in 2002 it was sold to a person who had made several deals with this real estate firm. In March 2005 the property was acquired by the NJSCC for \$222,117—eleven times its value less than 3 years earlier (McNichol, 2005d; NJSDA, 2011d). This phenomenon of artificial escalation of prices was repeated on six properties on this future school site, where developers snapped up

properties at sheriff's foreclosure sales that were held after the school project had been announced.

The residents who were being relocated complained about being unable to find comparable new homes. Many of the Dewey Street homeowners left Newark or the state because they were unable to afford a comparable home in a comparable neighborhood with the money offered by the NJSCC. Ernestine Jackson of 17-19 Dewey Street testified to the Joint Committee on August 11, 2005 (New Jersey State Senate and State Assembly, Joint Committee on the Public Schools, 2005) about the inequality that she perceived in the NJSCC's land acquisition policy. Jackson was upset because the owner of 31 Dewey Street was about to begin building a new two-and-a-half-family house in the midst of the NJSCC's school site with the sole objective of receiving a higher level of compensation. A review of the NJSDA's records of properties owned and cost and dates of acquisition, released in 2011 (NJSDA, 2011d), indicated that Ms. Jackson's distress may have been justified. The table shows that she received \$300,000 on November 3, 2005, while the owner of 31 Dewey Street received \$420,000 on January 9, 2007.

Difficult even under ideal circumstances, the acquisition of industrial lands also came under the searing spotlight of legislators and journalists. These newspaper reports, as well as legislative testimony, provide rich insights into the real estate program during the early 2000s. Capital program financing, land acquisition, project management, and site selection intersected in the chronicle of the South Street School in Newark's Ironbound neighborhood and the necessary relocation of Ruggiero Seafood, a domestic processor of seafood specializing in squid. By 2005, when its acquisition was being negotiated with the NJSCC, it was processing 20 million pounds of squid annually and

employing 163 persons (Chambers, 2005e). As these negotiations were reaching their conclusion, the state's funding for building the new school was postponed indefinitely and the South Street School did not make the list of 59 projects (NJSCC, 2005c; New Jersey Office of the Governor, 2005a).

However, local activists and politicians were not pleased by the efforts being made by the NJSCC to rush this employer out of the neighborhood for a school that was not being built in the near future. In an editorial the *Star Ledger* observed, "Work on the school meant for the Ruggiero site [South Street School] could not begin before June [2006] if the SCC had the money, which it doesn't. So why play hardball on the rent?" ("Schools Corp. Doesn't Learn," 2005, p. 14). The property owner was paid more than \$5 million to relocate his factory to another site in Newark but was unable to prepare the new site quickly enough to meet the NJSCC's demanding schedule. Total expenditures for the relocation of Ruggiero (December 2011) were \$4,557,795.16 in direct payments to the property owner. Total expenditures on South Street School project as of December 2011 were \$11,695,750.38 (NJSDA, 2011b).<sup>73</sup>

The site for a new East Side High School for Newark also became snarled in the limited pool of available funds. The NJSCC sent the owner of this large retail property a letter on July 24, 2003, stating its intent to condemn the building and its land on Christie Street in Newark (Wang, 2005). The building was rented by its owner to the New York Folding Box Company, which had been given \$5 million by the NJSCC to relocate to suburban Mount Olive, New Jersey. Once the company departed, the owner was left with

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<sup>73</sup> In March 2012 the South Street School was included in the NJSDA's 2012 Capital Plan (NJSDA, 2012b).

a building without a tenant. The East Side High School site was the highlight of an editorial in the *Sunday Star Ledger* on March 7, 2004.

New Jersey's Schools Construction Corp. plans to spend a whopping \$36 million to buy and clear a single 14-acre tract of Newark land for the new East Side High School in the Ironbound section. That is more than \$2.5 million an acre just for land acquisition. That is an inflation factor the state's \$6 billion school construction program cannot long afford. . . Given \$66 million in construction costs for the new East Side High, the SCC will spend more than \$100 million for just one school. ("School Construction Requires More Smarts," 2004, p. 2)

The NJSCC deliberately relocated tenants as it negotiated with property owners. In many cases, tenants were relocated and buildings emptied long before agreements were reached with property owners. In the Newark Christie Street situation, the removal of the large tenant left the property owner without income.

As the overall cost of the land acquisition for the East Side High School project soared, the NJSCC halted the project through a letter to the owner on April 4, 2004. This withdrawal of the State's intent, compounded by the vacancy left by the tenant's move financed by the NJSCC, left the property owner without rental income. The property owner filed suit, accusing the NJSCC of renegeing on its intent to condemn its land. This was the highlight of Wang's *Star Ledger* article featuring another failure of the NJSCC (Wang, 2005).

### **Conclusion: The End of an Acting Governor's Term**

Richard Codey arrived as Acting Governor after the program's activity had been greatly accelerated under Governor James McGreevey. As extensively discussed in this chapter, among his first acts regarding the school program was to cease all new contractual activity as quickly as possible. Newspaper articles featuring extensive administrative waste, extravagance, and mismanagement in the program forced Codey to order his newly appointed IG to probe the Corporation and subsequently to issue an EO.

McGreevey's successor was forced to address several issues that had been plaguing it since its inception in summer 2000. First among them was the need to get the program under control, in terms of finance and management. A disconnect between the quantity of projects in design and the approved bonding capacity had begun to surface in the months before McGreevey's unexpected announcement in August 2004.

Nonetheless, the trajectory of new commitments and expenditures continued without change. At the macro level, an apparent complete absence of financial controls or capital planning and programming also emerged, leading to an obvious incongruity between site acquisition activities, design contracts, and the NJSCC's financial capacity. In real terms, land was being bought for schools that would not be designed or built; schools were being designed for sites where land was not being bought; and money was running short for those few schools that were actually being built. At the micro level, the NJSCC was not following proper accounting practices, document filing, or project tracking. These were the proficiencies necessary to allow it to manage the large number of design and construction contracts efficiently and evaluate, compare, track, and pay invoices in a systematic and auditable manner.

The overoptimistic projections and expectations fostered during the terms of Whitman, DiFrancesco, and McGreevey were all turned 180 degrees as Codey realized the depth of the problems with the NJSCC. Many of those schools would not be built in the foreseeable future. Antiquated school buildings slated for replacement would continue in service for several more years. It would take the school program several years to recover from the unbridled acceleration by McGreevey and the sharp halt by Codey.

In summary, Acting Governor Codey found his state's school building program operating without controls or constraints. Absent a capital program that would have balanced the number of schools being designed with the limited funds that the Legislature had allocated in the EFCFA, McGreevey's NJSCC was on a collision course with an inevitable budgetary shortfall. Codey's intuitive reaction was to stop everything, everywhere. However instinctive, this halt wrought chaos. For school districts, long-awaited projects were placed on lists and others were left adrift, not even on a list. Elections were to be held in November 2005 and, for many involved, the only salvation would be in the election of the Democratic candidate, Jon Corzine.

## CHAPTER 9

### Corzine

Whereas under McGreevey the pendulum had swung into a nearly unrestrained engagement of architects to design buildings and large-scale acquisition of lands for new schools, under Codey the pendulum swung the other way. The construction program's leadership was eventually completely replaced and all new work, contracts, amendments, and changes were halted. Whatever money was spent under Codey was consumed solely to fulfill commitments made under McGreevey. The tone and pace of the program had changed completely.

Subsequently, advocates of New Jersey's school construction program anxiously awaited the arrival of newly elected Governor Corzine in January 2006. Acting Governor Codey's term compensated for McGreevey's ambitions, but any change in policy beyond "cease new contractual obligations" would have to await the incoming Governor.

In the broadest sense, the primary accomplishments during Corzine's term were setting the foundation for the future of the program. He reshaped the NJSCC's management in his own image and prepared it for a resumption of work. In summer 2007 the NJSDA replaced the NJSCC and in summer 2008 the Legislature approved additional bonding capacity for the school building program. These were major accomplishments, considering the program's poor reputation engendered by McGreevey's acceleration.

New Jersey's School Board Association, in a letter to the editor of the *Philadelphia Inquirer*, urged Governor Corzine to restart the school construction program. The Association cited the increased enrollments projected for New Jersey's

schools through 2013 and declared that the need to improve school facilities had not diminished (“School Construction Work Should Be a Priority,” 2005).

Less than three weeks after entering office on February 7, 2006, Corzine issued EO No. 3, in which he set his tone for handling school construction. This EO set up an Interagency Working Group and a Special Counsel who would also hold the dual role of a Special Assistant Attorney General (Governor of the State of New Jersey, 2006). On the same date the Governor appointed Scott A. Weiner as this Special Counsel and Barry L. Zubrow, his acquaintance from Goldman Sachs, as Chairman of the NJSCC’s Board of Directors (NJSDA, n.d.).

Measuring from the perspective of placing “children in seats in new buildings,” Corzine’s term could be characterized as “treading water.” It featured two major achievements, mentioned above, that laid the foundation for the program’s future. It could not have been easy to create the NJSDA to replace the NJSCC in 2007 nor to receive approval for an additional \$3.9 billion for school construction projects in June 2008 (New Jersey State Legislature, 2008).

Nonetheless, one car accident affected the entire State and its school program. Governor Corzine, being sped down the Garden State Parkway toward Atlantic City on Wednesday, April 12, 2007, was severely injured in the accident; he suffered a broken left leg, sternum, collarbone, and six ribs on each side (Chen, D. W., & Kocieniewski, 2007). His doctors stated that he was lucky to be alive. Richard J. Codey, the State Senate President, again stepped in as Acting Governor. Codey held office until May 7; however, the true ability of Corzine to function as the State’s chief executive after the accident was discretely obscured.

Upon taking over the office of Governor, Corzine understood that the state was facing a serious deficit. Whelan, covering Corzine's upcoming inauguration, observed that the incoming Governor would be facing a budget gap forecasted at approximately \$5 billion and a "transportation system that's going broke and a school construction program plagued by scandal and short billions of dollars needed to achieve its mission" (Whelan 2006, p. 1). Another reporter noted that the state's finances would be the "first item on Corzine's menu." Corzine was quoted: "As we rededicate ourselves to a new beginning and a better New Jersey, we also owe ourselves an honest accounting of where we stand. It's time to balance the books" (Howlett, 2006, p. 1).

Therefore, it was not surprising for him to take issue with the cost of the *Abbott v. Burke* remedies that mandated funding for the state's lowest-wealth districts. Citing the state's fiscal emergency, his proposed budget for fiscal year 2007 decreased funding for several of the largest *Abbott* districts. Corzine had mobilized a multipronged effort through the media, the Supreme Court, and the Legislature to decrease the mandated spending in the state's lowest-wealth districts. Although Corzine framed this within the endeavor to shrink New Jersey's deficits, advocates of urban districts immediately took note of how this would not only shrink state funding for education but would reduce the percentage of state education funds directed to the lowest-wealth districts.

In April 2006, after having presented his FY 2007 budget to the Legislature in March, his Attorney General, Zulima V. Farber, initiated a lawsuit in the NJ Supreme Court asking for its support of the state's FY 2007 budget for school aid to *Abbott* districts (Farber, 2006). Farber explained that, due to

dire fiscal circumstances of the State and the high per-pupil spending already in existence in the *Abbott* districts, the Governor could not permit another year of

open ended increases for Abbott districts. Each year, spending requests for supplemental funding have gone up exponentially in Abbott districts. However, we have not seen a corresponding increase, or even a significant increase, in educational achievement. (Farber, 2006, p. 5)

This need to decrease spending was emphasized in the testimony of Corzine's State Treasurer and his Commissioner of Education to the State Assembly Budget Committee during its hearings on the FY 2007 budget. State Treasurer Abelow delivered this message explicitly:

We must stop spending more than we take in;

We must stop borrowing to pay today's bills;

We must rely much more heavily on spending cuts and savings than on new revenues to balance our books; . . .

The budget contains \$2.5 billion in constrained growth and spending cuts. This budget eliminates 75 programs entirely . . . and reduces the rate of growth in FY 2007 for approximately 30 programs.

Despite these far reaching actions, total appropriations are still projected to rise by more than nine percent, from \$28 billion to \$30.9 billion. . . .

The cost drivers in our spending plan are dramatic, the fiscal trap doors are copious and the perils they pose to the State's fiscal solvency are real and immediate. (Abelow, 2006, pp. 1-2)

Acting Education Commissioner Davy explained her department's budget proposal to the State Assembly Budget Committee on May 9, 2006, highlighting the need to cut spending on education. She began by describing how in the 1980s the NJDOE had twice as many staff as currently (2006). By contrast, state- and federally mandated responsibilities had doubled. "There is one DOE employee for every 1,740 students in this state. There are 1.25 DOE employees per school district" (Davy, 2006, p. 2). Discussing the state's 31 *Abbott* districts, Davy reminded the Committee that the

Governor, through the Attorney General, had returned to the Supreme Court in April asking for

relief on *Abbott* increases mandated by the original Supreme Court order. CEIFA is overdue for a complete review. The Bacon cases are pending. Abbott district status must be re-evaluated. CEIFA is ten years old and it has inequities that must be addressed. (Davy, 2006, p. 9)

Corzine's approach to education should be viewed in the perspective of his image as a former businessman. A *Star Ledger* columnist, Paul Mulshine, summarized in December 2006,

In his run for governor last year, his campaign bragged that "as a former businessman, Corzine has never seen a budget he couldn't cut, and that experience will allow him to scrub the state budget line by line and use the savings for property tax relief." Then, in his first budget address after taking office, Corzine told legislators, "If you don't like the taxes, give me more cuts." (Mulshine, 2006, p. 21)

Prodded by the Governor, the Legislature quickly enacted the third fundamental revision to the state's school funding law since 1990, in January 2008.<sup>74</sup> The bill, introduced January 3, 2008, was approved by the State Assembly and the State Senate on January 7, 2008. On January 13, 2008, Governor Corzine signed the bill into law, enacting the School Funding Reform Act (SFRA, P.L. 2007, Chapter 260).

McNichol, present for the bill signing on January 13, noted that the state's current budget included "\$4.4 billion for the so-called Abbott districts covered by the court order, while providing only \$3.3 billion for the balance of the state's 518 school districts" (McNichol, 2008, p. 13). Projections by the NJDOE for aid under the new formula indicated that 20 of the 31 *Abbott* districts would not increase, effectively forcing them to

<sup>74</sup> The first was the Quality Education Act (QEA) in 1990, the second was the Comprehensive Educational Improvement and Financing Act (CEIFA) in 1996, and the third was the SFRA in January 2008.

scale back reforms funded by the court-ordered aid. According to McNichol, the SFRA bill “squeaked through the Assembly with the minimum 41 votes needed” (p. 18). In the State Senate the 21st vote would was won over only “after Corzine agreed to add \$20 million in extra funding for students with autism and other special needs.” (McNichol, 2008, p. 18).

This would be the first change to the formulas that had governed school funding since the *Abbott V* decisions of May 1998 had directed the State of New Jersey to fund specific programs in the 31 SNDs. The *Abbott V* decision, beyond school facilities, had an added layer, a supplement to the CEIFA, but did not replace the state’s basic funding formulae. This remedy was a Court-ordered parity that linked the funding of the state’s lowest-wealth districts (the *Abbots*) with the average of the two wealthiest subgroups.<sup>75</sup> From the historic perspective, this would be yet another skirmish in the decades-long battle over allocation of state resources to New Jersey’s urban and suburban municipalities.

SFRA was to be the a new formula for funding all of New Jersey’s school districts. It was thoroughly researched (according to its advocates) and not fully understood (according to its detractors, including the highly proactive ELC). The ELC, responding to this existential threat to its long-sought-after *Abbott v. Burke* remedies, argued before the New Jersey Supreme Court on September 22, 2008, that “the State bases its claims for SFRA on sweeping unsupported assertions lacking any solid

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<sup>75</sup> New Jersey’s school districts are categorized into “District Factor Groups” by the NJDOE in order to represent approximately a community’s socioeconomic status (SES). They were arranged on a scale of A through J, with A representing the lowest-wealth *Abbott* districts and J representing the highest-wealth districts (NJDOE ,2004).

evidentiary foundation, and on formulaic approaches predicated on assumptions that are at odds with the realities faced by the Abbott children (ELC, 2008b, p. 1). In addition, the ELC argued that the state should not be allowed to jettison the Court-approved remedies from 10 years earlier (*Abbott V*), based on the assertion that, because the supplemental funding process “does not work” or was “no longer appropriate or constitutionally warranted” (ELC, 2008b, p. 58).

The State contended, in its defense, that the SFRA responded to all of the Court’s earlier remedial orders and that it was providing a “thorough and efficient” education in the *Abbott* districts. Thus, the State’s primary argument was that the additional remedial funding directed toward the *Abbott* districts was “no longer necessary” under SFRA. The question before the Court was whether the SFRA was constitutional as applied to the *Abbott* districts in light of the “thorough and efficient” clause in the Constitution and the previous 18 *Abbott* decisions.

The court’s opinion, known as *Abbott XIX*, issued on November 18, 2008, sent the entire question to another remand process. This meant that a Remand Judge would hear testimony, examine evidence, and issue a report to the Supreme Court. Subsequently, in *Abbott XX*, it reviewed the Remand Judge’s report of March 23, 2009, and concluded that the SFRA and its formula for school funding were constitutional. Simultaneously, the Court removed the parity and supplemental funding that had been in place since *Abbott V* (May 1998) and allowed SFRA’s new formula to be implemented. Nonetheless, the Court set two conditions. First, the SFRA had to be fully funded for each of its first 3 years; second, it had to be thoroughly reviewed to determine whether the formula was working

correctly. The Court required that, if changes were needed, they be made to the SFRA based on that review.

It is important to underscore that these efforts of the Corzine Administration, initiating and then defending the new SFRA, left unchanged the *Abbott V* remedies regarding school facilities (the focus of this dissertation).

### **Corzine's Interagency Working Groups: Treading Water**

Over a period of 9 months, pursuant to Corzine's EO No. 3, the Special Counsel and the Interagency Working Group examined the entire school construction program (Governor of the State of New Jersey, 2006). Meanwhile, the NJSCC and its staff, the school building projects, and the students and teachers waited patiently for the outcome. This Group issued three reports during 2006: March, May and September. It was composed of Cabinet-level and Assistant Commissioners from all of the involved state agencies: Treasury, Education, Community Affairs, and NJSCC. It also included a Citizens Advisory Panel with superintendents from two school districts, a labor union representative, and a representative of the ELC.<sup>76</sup>

Sending the entire program for a 9-month evaluation by the Interagency Working Group provided the incoming Corzine Administration time to absorb the issues involved with the school construction program. Corzine, Weiner, and Zubrow were working on two levels. As Special Counsel for NJSCC, Weiner was already making changes from within. From the outside, the Interagency Working Group was examining policy, budget, process, structure, and potential legislative changes. Therefore, change was proceeding on both the external "big picture" and the internal intra-organizational level. By March 9,

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<sup>76</sup> Joan Ponessa, a member of the dissertation committee was the ELC's expert on facilities.

2006, within a month of becoming Special Counsel, Weiner was named SCC Transitional Chief Executive Officer, succeeding Peter Maricondo. Maricondo returned to his previous role as Chief Financial Officer (NJSCC, 2006).

The first Interagency Working Group report was issued March 15, 2006. This report recognized that the SCC was “currently managing \$3 billion in ongoing work” which included “69 projects currently in construction” and “a group of 59 projects that were included in the capital plan of the SCC in July 2005” (Interagency Working Group for School Construction, 2006a, p. 2). The report, in straightforward language, blamed McGreevey’s focus on speed as the cause of many of the NJSCC’s problems.

The speed with which a project could be constructed became the primary driver for the Corporation’s activities. Management, accountability, reporting, cost control and transparency all took a secondary priority, if recognized at all, to speed. The result is also well known. (p. 2)

Echoing Ponessa’s predictions in her memo of December 2005 (Ponessa, 2005), the Working Group’s report in March 2006 projected a “shortfall of as much as \$300 to \$400 million in funds to finish all the projects in the current capital plan” (p. 3) [the “list of 59”]. It also recommended enhancement of project information systems to “provide meaningful and timely budget and construction status reports” along with a more robust internal legal staff within the NJSCC to “assure proper execution and monitoring of contractual relationships” (p. 5). Reinforcing IG Cooper’s conclusions, the Group was beginning to shape direction for the new administration.

Nearly 2 months later, the second Interagency Working Group report was presented on May 17, 2006. Five months into Governor Corzine’s term, this report described the initiatives taking place within the NJSCC and the NJDOE (Interagency Working Group for School Construction, 2006b). Among the Group’s findings was the

identification of “numerous Abbott district projects that were not included in the 2005 Capital Plan of the SCC that should be restarted as soon as possible” (p. 1). The report identified reform efforts at the SCC focused on improving its management structure and its accountability, including new budget, planning, and project control functions with a formal Capital Planning Group.

Nine months into Governor Corzine’s term the third Interagency Working Group report was issued on September 14, 2006. This final report stated that the Group had “the basis to recommend new funding of \$3.25 billion, to be allocated \$2.5 billion for *Abbott* Districts and \$750 million for Regular Operating Districts” (Interagency Working Group for School Construction, 2006c, p. 1).

A subcommittee of the Working Group, the Prioritization Task Force, developed a methodology for determining which projects would move forward based on a multilayered series of criteria. This would assist the NJSCC in determining which schools would move into construction in the near term and how the next tranche of funding would be utilized.

In an editorial written after the September 2006 Working Group report, the *Star Ledger* urged the Legislature to begin reconsidering restarting a reformed program in order not only to build schools in the poorer districts but to maintain school buildings throughout the state (“Caution on School Projects,” 2006).

### **A List of Fewer Than 59 Schools to Be Built**

Between the third report in September 2006 and April 2007 (7 months), the recommendations of 9 months of working group activity awaited action by the NJSCC’s Board of Directors. The NJSCC acted to trim Codey’s “list of 59” to a more realistic and

achievable number of school projects that could be built in preparation for its evolution into an Authority (Daniel, 2012). At the NJSCC Board of Directors meeting held April 25, 2007<sup>77</sup> the Capital Deferral Plan and Project Sequencing Strategy was approved (NJSCC, 2007a). The “list of 59” would cease to exist and would be split into two pieces. First would be a group of 32 “fully funded” schools that would proceed into construction. Second would be a group of “phase funded” schools that would continue into final design and preparation of bid documents. Those projects would enter construction when future funding became available.

These actions represented official recognition, by Governor Corzine’s office and the NJSCC that it had a “structural deficit” of \$600 million in the program. In other words, in spring 2007 it was already forecasting a cost overrun because of either overpromising or lacking accurate cost projections when the “list of 59” had been prepared in July 2005. Facing the situation predicted by Flyvbjerg (Flyvbjerg, 2005, 2011; Flyvbjerg et al., 2002; Flyvbjerg et al., 2003; Flyvbjerg et al., 2009), Corzine’s leadership team was faced with either asking for additional money or scaling back the program, or both.

The Corzine Administration used the prioritization methodology prepared by the Interagency Working Group in 2006, for the first time, to develop a comprehensive series of lists addressing all the school projects in the 31 *Abbott* districts. Beyond the “list of 59,” which was broken into 32 fully funded and 27 phase funded projects, there were three more significant categories (NJSCC, 2007a). For the first time since New Jersey’s

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<sup>77</sup> Thirteen days after Governor Corzine’s nearly fatal accident on the Garden State Parkway, while Codey was Acting Governor. It is not clear whether this had been on the Board’s agenda before the Governor’s accident.

program began, an attempt was made by the State's leadership to gauge accurately the overall dimensions of the entire program.

The importance of this step cannot be overemphasized, as it was the first realistic analysis of the overall magnitude of the entire program, once the NJSCC staff had begun to encounter the reality of site acquisition and building schools. Through this process, 84 projects with "preliminary predevelopment" were listed as "outside the Capital Plan" with an estimated construction cost of \$4.3 billion in 2006 dollars; 134 projects were "awaiting predevelopment" and listed as "outside the Capital Plan" with an estimated construction cost of \$3.1 billion in 2006 dollars; and 96 projects with "design suspended" and "outside the Capital Plan" with an estimated construction cost of \$5.2 billion in 2006 dollars.

### **An Authority to Build Schools Is Created**

One of the Corzine Administration's major accomplishments was creating an Authority for building schools. The NJSDA was signed into law by Governor Corzine on August 6, 2007. It was intended to replace completely the NJSCC in accordance with P.L. 2007 Chapter 137 (New Jersey State Legislature, 2007a). "The SCC was dissolved, and its functions, powers, duties and employees were transferred to the SDA. Organizationally the Authority is situated in but not of, the New Jersey Department of Treasury" (Ernst & Young, 2011, p. 2).

The NJSDA is governed by a Board of Directors with 11 public members and four ex-officio members. Members are appointed by the Governor and approved by the Senate (NJSDA, 2007a). In an interesting twist, state ethics regulations prevent interested

school district officials or educators from becoming members of the NJSDA's Board of Directors.

This new law included several elements, each gesturing to an important "power" within the State of New Jersey. Although the existing NJEDA and its CEO Franzini would be losing the burden of running the NJSCC, they would continue to "provide the financing for school facilities projects" (New Jersey State Legislature, 2007b, p. 87). Thus, the NJEDA would be dealing with Wall Street, law firms, and financiers on behalf of the construction program without having to deal with what had obviously become quite a difficult challenge: building schools. In addition, the 2007 legislation emphasized that all prevailing wage and affirmative action requirements found in the EFCFA would continue in the new program. This included 0.5% for "financing of minority and women worker outreach and training programs" (p. 88). Thus, the labor unions and those interested in apprenticeship programs were taken care of.

One among the many issues that the new law addressed was shifting the responsibility for issuance of a biannual report on the school facilities construction program. Previously, it was a joint responsibility of the NJDOE and the NJSCC to prepare the annual analysis to be presented to the Legislature and the Governor. This was altered by placing the responsibility solely on the shoulders of the new Authority.

In summer 2008, the Legislature approved Public Law 2008, Chapter 39, adding \$3.9 billion dollars to the program: \$1 billion for non-*Abbott* districts and \$2.9 for *Abbott* districts. They simply increased the dollar value of bonding allowed for the program from \$8.6 billion to \$12.5 billion. Bundled into this law was a new requirement that all school facilities projects with a value greater than \$10 million be audited.

A primary concern to Governor Corzine was to bring “order” to this school program in order to show the Legislature that it had been changed. It would be shaped into a mature, ready, and rebranded organization capable of handling the additional round of funding needed to complete these schools.

Scott Weiner, initially appointed to the NJSCC in February 2006, quickly took over. He arrived at the NJSCC as a Special Counsel early in February 2006. By March 9, Weiner was named SCC Transitional Chief Executive Officer and Maricondo was to return to his previous role as Chief Financial Officer (NJSCC, 2006). By April 7, 2006, Maricondo had left the NJSCC.

While the Working Group continued reviewing, meeting, and preparing reports, the NJSCC, led by Weiner, following recommendations of the IG and of the earlier Working Group reports, had already begun to reorganize. The Design and Construction Division became Project Management with new leadership and Land Acquisition was merged with environmental specialists into the Real Estate Services Division.

Until 2005 the Land Acquisition function had encompassed the closely linked environmental issues until its environmental specialists were removed and placed with Design and Construction. However, in 2006, with the arrival of Corzine’s new management, this was reversed: Environmental and land acquisition staff was reunited under the Real Estate Services division, which included a community relations group.

While the NJSCC was reorganizing internally, it was also shedding its external service providers, the PMFs. The NJSCC management, in several of its presentations to the Joint Committee on Public Schools, informed the Legislature that it would begin to shift much of this work from the external and costly PM staff. The PMF bundle would be

broken down and specific professional services would be procured as needed (NJSCC, 2007c).

After 30 months at the NJSCC, Weiner abruptly departed in November 2008. Kris Kolluri, the State Commissioner of Transportation, took his place December 1, 2008. Kolluri managed the NJSDA for 14 months until January 19, 2010, three months beyond the November 2009 elections, again leading to a shift in the NJSDA's leadership awaiting incoming Governor Christie's nominee to head the Authority.

Corzine faced a problem. He wanted to continue to build schools; however, the State's existing debt service was weighing heavily on the Treasury and the taxpayers. The pace of building public schools should reflect the dynamics of demographic and financial change. However, this is tempered by a growing or shrinking economy, which always influences the ability of government to initiate capital improvement programs.

Anticipating the new Governor's arrival, Tractenberg (Rutgers University) prepared a significant policy report on school financing and taxation outlining the predicament facing the State's leadership (Tractenberg, 2006). Although the State's involvement in the operating costs of 31 *Abbott* school districts was seemingly firm, there would be a need for additional funds to complete the school building project, as the initial \$6 billion was clearly not enough.

The annual cost of New Jersey's capital construction program is approximately 7% of the state's overall allocation to education of more than \$10 billion per year in funding to school districts across the state (New Jersey Office of Management and Budget, 2009). The *State of New Jersey Debt Report* for 2009 projected that the EFCFA would be paid for over the next 28 years until 2038, at a cost of roughly \$777 million per

year at its peak in 2011 (New Jersey Office of Public Finance, 2009). For example, debt service on the EFCFA in 2009 was \$378,449,000 and in 2010 was planned to be \$343,033,000. Under the Christie Administration, the debt service payments would be reduced to \$301 million in 2011 and projected to increase to over \$841 million per year in 2017 (New Jersey Office of Public Finance, 2011).

Corzine's record on beginning new school building projects was overshadowed by his accomplishments in the legislature. Nonetheless, the construction of several schools began during his term, including Elizabeth's No. 21 (Mravlag) and No. 28, Newark's Park Street and Speedway Avenue, Paterson's International High School, Camden's H. B. Wilson, and West New York's PS No. 3.

However, Corzine and Weiner benefited from the many construction starts initiated during McGreevey's term and the peak of spending during Acting Governor Codey's period. Thus school openings were at their all-time height during Corzine's term. A senior NJSCC staff member recalled that the "fruits" of the large number of construction starts under Governor McGreevey were finally ripening in fall 2007 with 22 schools projected to open (NJSDA, 2007b) and fall 2008 with 15 schools projected to open (Daniel, 2012; NJSDA, 2008b).

Returning to the earlier theme of audits and auditors, the report of the New Jersey State Auditor was issued March 8, 2006 (New Jersey Office of the State Auditor, 2006). The report emphasized that much of their effort was directed at preventing infiltration by organized crime into the state school construction program, which over the 5-year audit period (2000–2005) had been nonexistent. The Auditor emphasized that the Auditor's

scope was not to audit the program's function but only to monitor compliance with the contractor screening elements of the EFCFA statutes.

Again, New Jersey could be compared with New York, where less than 10 years after IG Thacher reported his successes in removing corruption from New York City's school construction program, signs were found that it was re-emerging. In November 2005 six officials of the New York City SCA were charged with accepting money from contractors in exchange for increasing the cost of the school projects ("Construction Officials Indicted," 2005; Sullivan, 2005). The employees had also demanded bribes in cash before approving payments to contractors for work that they performed or cash in return for inside information about bids on projects. By contrast, New Jersey's program had been free of corruption for the entire period.

Corzine's staff undoubtedly inherited a difficult mixture of construction projects. Several had serious cost overruns; others had been delayed due to disputes with contractors or arguments with architects and engineers. The speed of the McGreevey era, compounded by the slowdown of the Codey term, had taken its toll on contractors, consultants, managers, and projects.

Managing the design process and scoping the extent of a building project is especially difficult when a large-scale renovation is contemplated, as was the case of the Elizabeth, New Jersey, Victor Mravlag Public School No. 21. This example highlights the capability of an organization to run a highly centralized program of multiple school projects within a larger mega-project. Had the organization delegated responsibility for design and construction decision to staff? Could the organization make decisions regarding unanticipated conditions in a timely fashion? How did the organization address

the need to change direction? This project, which began with Perkins Eastman Architects in March 2003, contained a case study of architectural, conceptual, managerial, and educational challenges, all within one site. Nearly 10 years later, the replacement building was finally opened for students in September 2013.

Attempting to reconstruct, renovate, and double the size of a school built in the 1930s is difficult. Compounding this challenge are issues of negotiating contractual changes with a design consultant and with a contractor once significant differences are found in the condition of the structure being renovated. The Mravlag School in Elizabeth was one such situation, where a project with an estimated cost of \$18 million in 2006 increased to \$40 million by 2011 before construction was under way (Braun, 2011). The concept of preserving the school's distinctively designed, old English, castle-like front façade proved difficult if not impossible to implement. According to the NJSDA's spokeswoman in June 2011, "structural problems" were discovered that required more extensive demolition than the engineer had initially envisioned. These problems necessitated a serious design change, triggering a significant contractual change for the contractor.

Although construction on the project began in March 2007, it quickly stalled and then stopped. This significant change in scope, as it evolved from an "addition and renovation" to "full new construction," was described by NJSDA CEO Marc Larkins<sup>78</sup> to the NJSDA Board of Directors in January 2011 (NJSDA, 2011c), nearly 4 years after the project had begun under Corzine. As approval was being requested from the NJSDA Board of Directors (January 2011) for another \$650,000 amendment to the architect for

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<sup>78</sup> Larkins was appointed NJSDA CEO by Governor Christie in March 2010.

additional design services, occupancy of the school was being projected for September 2012. One of the Board members asked whether this project had been delayed by 4 years because of these issues. He was answered in the affirmative. The same January 5 meeting approved an additional \$3,100,000 for the contractor to pay for the changes to the school project. Clearly, the ability to guide a project's design or steer away from problematic if not impossible tasks was one of the many challenges facing those staff members charged with managing the design of new schools within the New Jersey program.

Newark's Central High School was slowly advancing toward completion since its groundbreaking in June 2004 by Governor McGreevey. On seven acres of land, much previously owned by the City of Newark, the school had capacity for 1,200 students in Grades 9 through 12 in a three-story academic wing designed to be split into three academies (NJSDA, 2008c). It was the task of Corzine's leaders at the NJSDA to bring this large, elaborate, and important project, started under McGreevey and slowed by Codey, to its completion after 4 long years of construction. This was not an easy task for the new Authority. Central High School finally opened in September 2008, midway through Governor Corzine's term (Addison, 2006; Chambers, 2006; "Crucial Test for School Agency," 2008; ELC, 2005d). The high school, at 259,640 square feet, under construction in November 2006, included community features that were described by a *Sunday Star-Ledger* reporter as a direct manifestation of McGreevey's EO No. 24, which directed all designs to include these enhancements (Governor of the State of New Jersey, 2002c). "Attached to the academic wing by a long hallway will be a community wing housing the auditorium, gym, a health care facility and child care area for use by students and area residents" (Addison, 2006, p. 49).

Although Newark's Central High School contained all of the features of a comparable suburban high school, its cost has surged beyond its initial estimates. All told, it cost the state more than \$88,700,000, including soft costs, hard costs, land acquisition, furnishings, and technology (NJSDA, 2013b). The cost of building and equipping nearby New Science Park High School, which opened in November 2006 and also contained a full augment of community features, including a swimming pool, gymnasiums, auditorium, and the ability to accommodate public events without opening the entire school building, was more than \$94,600,000 (NJSDA, 2013c),. The above costs excluded supervision of the two projects by the firm PB+3D/I, the program management firm that was staffed by architects, schedulers, construction managers, clerical staff, and site superintendents for several years.

The pressures for and against using "design build" delivery of school projects was a constant theme during the first 10 years of New Jersey's school construction program. The Assembly Appropriations Committee, in its summary of amendments to the EFCFA on June 1, 2000 (New Jersey State Assembly Appropriations Committee, 2000) included an explicit exclusion on this subject as its 15th item:

eliminate the building authority's authorization to enter into design/build contracts for the construction of school facilities projects and provide that, except as otherwise provided in the bill, the building authority will be subject to the rules and regulations of the Division of Property Management and Construction. (p. 9)

This amendment was apparently a deliberate gesture toward the lobbyists on behalf of the contractor's associations and architects, who feared a disadvantage if school projects were delivered in an alternative and what was perceived by some to be a more efficient manner (AIA and Associated General Contractors of America, 2004; Visledo, 1997).

The NJSDA in 2007 enacted regulations establishing requirements and procedures for a design-build pilot program for up to six school facilities projects (NJSDA, 2007c). These regulations were based on Section 4 of the revisions to the EFCFA approved in 2007 (New Jersey State Legislature, 2007a), which gave the newly formed NJSDA the power to enter contracts for the planning and design of school facilities. The NJSCC's attempts, followed by the NJSDA's to advance this delivery vehicle (NJSDA, dated 2003 but probably from after summer 2007) under the Corzine Administration, were subsequently frustrated by a court case that succeeded in halting the entire design build process, including one of the organization's most urgent projects: Elliott Street School in Newark.

By fall 2013, only Summerfield Elementary School in Neptune had been constructed using the design build<sup>79</sup> method within the framework of the New Jersey program. This project, awarded in July 2004, was completed in spring 2006—a span of about 22 months (NJSDA, 2006).

Continuing a theme from the Codey Administration, the drumbeat of “value engineering” resumed under Corzine and Weiner. In order to save money, design standards were developed by the NJSCC to bring order and standards to the buildings being designed. Many of these standards were problematic as they affected construction; others deleted features that the NJDOE had deemed necessary, others considered only the immediate upfront costs of construction and ignored long-term maintenance issues and costs.

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<sup>79</sup> The NJSDA resumed using the design build method of procurement in 2012.

Responding to this endeavor, the ELC expressed concerns about “design standards” that apparently had never been approved by the NJSCC’s Board of Directors. Ponessa (2006a) noted that the previous Board Chairman (Koeppe) had ordered the NJSCC’s Design and Construction Division to cease using the standards. She observed that, despite the chairman’s directive, the staff was continuing to use the design standards under the term of “value engineering.”

The ELC’s February 2006 report provided a list of 11 cost-cutting measures being used to reduce costs per square foot. Among them were reducing corridor widths to 8 feet and shrinking lobbies to 1,000 square feet or 1% of a building’s square footage. Mechanical equipment was to be placed on rooftops, with difficult access for maintenance or little protection. Another issue that the ELC addressed was the NJSCC’s cancellation of building “commissioning”<sup>80</sup> of the heating and cooling systems in these new school buildings (Ponessa, 2006a).

As Corzine’s staff was focused on both restarting the program and cutting the costs of building new schools, one of the popular ways to save money was designing a multipurpose “cafetorium.” Merging the cafeteria and auditorium functions into a “cafetorium” had been implemented in several schools built in the New Jersey program. Understanding that neither the cafeteria nor the auditorium was being used throughout the day, they could be combined if the paramount objective was to lower costs. Scheduling conflicts were certain to occur, because the shared space could be scheduled for auditorium use before, during, or after lunchtime (Engelhardt, Engelhardt, & Leggett,

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<sup>80</sup> Commissioning is the process of verifying that all building systems are performing properly and interacting in accordance with the designer’s intent and the owner’s needs.

1953). The tiered flooring and theatrical rigging found in an auditorium could not be built in a cafeteria, which by necessity required a flat floor.

In a discussion of capital construction savings, McQuade (1958) made important observations regarding the popularity of multipurpose rooms in the late 1950s. These operational analyses were as relevant to the NJSCC staff during Corzine's term as they were when written by McQuade and the Engelhardts 50 years earlier. McQuade observed that it had become common place to economize and combine the cafeteria and the gymnasium into one room or the gymnasium into the auditorium. In an anecdotal example in his book, McQuade observed that a grease spot left from lunch on the floor of the cafeteria had led more than once to a broken limb during gym classes in the afternoon.

Another factor that is often not taken into account is the high and perpetual cost of custodial staff that must be constantly involved, several times a day, in setting up and removing the furnishings in the multipurpose room to facilitate this dual functionality and save on capital costs. Using the same room for lunch and for schoolwide gatherings forces the gatherings to occur at the beginning or end of the school day because lunch must be served mid-day. Another consideration is whether the school has a breakfast program, which requires the cafeteria to be used for food services in the early morning.

In response to issues involving the quality and quantity of land selected for schools, the NJSDA, in December 2008, altered the State's administrative regulations (NJAC 19:34) governing preconstruction activity (NJSDA, 2009). For all intents and purposes, during the Codey period and well into the Corzine period, land acquisition had slowed significantly. Only parcels that were absolutely necessary to complete selected

school sites or involving situations of extreme hardship from earlier initiatives were to be acquired.

One of the primary activities of the NJSCC during Corzine's term was preparing itself for future activity. As mentioned in the preceding section, the NJSDA, in summer 2008, began to revise the State's regulations governing preconstruction activity in accordance with the August 2007 legislation (New Jersey State Legislature, 2007a; P.L. 2007, c. 137).

There is a belief in American government that good decisions and common sense in government can be advanced through specific and highly detailed administrative regulations. These regulations attempt to encompass every possible permutation and every conceivable situation. Another approach would have been to regulate a higher level of transparency and involvement in the hope that opening the process to the public would assure smarter school location decisions.

There are three major themes within the changes to the NJSCC's approach to selecting land for schools. First, only the local level of government (the municipality or school district) could bring proposed sites for evaluation. However, the regulation also made clear that only the state level could approve any of these sites for further evaluation and eventual acquisition. Second, the power to make the final decision resided with the Commissioner of Education, either independently or in consultation with the NJSDA. The NJSDA recommended and consulted with the Commissioner or the Department but the determination to proceed with evaluating a specific site or to purchase a specific site lay with the NJDOE (NJAC 19:34-3.5(b)). Third, the proposed regulations made it clear that several alternative sites were under consideration for a school project. The

regulations addressed multiple sites until the filtering and analysis had occurred at the local and state levels.

These new regulations brought the site selection process out into the metaphorical sunlight. In contrast with the previously discussed “black box” of intimate conversations between municipal and school district leadership, this process included alternatives, public input, public meetings, transparency, and an iterative evaluation process. The need to propose alternatives systematically and to filter the advantages and disadvantages of multiple sites transparently was intended to provide an objective standard for determining which parcels would become sites for new schools in the 31 *Abbott* districts.

Another indication of the school construction program’s progress can be measured through the lens of the LRFP. These planning documents, approved by the NJDOE, are meant to reflect the end state or the maximal build out of a particular school district. The EFCFA (P.L. 2000, Chapter 72), as approved in 2000, initially required that the LRFP be updated in every school year ending in a 0 or 5. In practice, the cycle slowed, as the following description highlights. The NJDOE issued its guidelines for the 2005 update on January 28, 2005 (NJDOE, 2005a, 2005b), in effect delaying the start of the intended cycle.

Ponessa of the ELC commented about the NJDOE and the LRFPs (Ponessa, 2006b). Monitoring the pace of the review and approval of the 2005 cycle of LRFPs (submitted in October 2005) for the 31 *Abbott* districts, she observed that the approvals were to be completed in early 2006. At the time of her writing in spring 2006 (undated), she noted that the reviews were being postponed until “later in the spring, now later in the fall” (2006b, p. 1).

Evidently, the pace of this process was a consequence of the shifts at the political level. The coincidence of the LRFP cycle with the gubernatorial election cycle delayed the approval of the long-range plans. This made Codey's leadership of the NJDOE hesitant to take any action until the election was held and the new administration had arrived. For example, Newark submitted its 2005 LRFP to the NJDOE in January 2006, the month in which Governor Corzine took office. It was approved by the NJDOE on September 12, 2007 (Davy, 2007), 20 months into Governor Corzine's term.

Addressing the NJDOE's ability to complete reviews of school district LRFPs in spring 2006, Ponessa analyzed the staffing levels and financial arrangements of the NJDOE (Ponessa, 2006b). She observed that the NJDOE's Division of School Facilities had been funded through fees paid by school districts and the NJSSCC for the review of LRFPs and school projects. The review of Health and Safety projects, although time consuming, were not reimbursable to the NJDOE. As the flow of projects toward the NJDOE began to slow in 2005, the reimbursements declined, leading to a reduction in staff at the Division of Facilities.

As noted earlier, the master planning effort that was accelerated and intensified with the *Abbott V* decision was envisioned as a continuous process paced on a 5-year cycle. This master planning effort was directed through the regulations that required each of New Jersey's school districts (not only the 31 *Abbott* districts) to prepare a LRFP. However, for each of the 31 *Abbott* SNDs, this plan carries heightened significance as it is the key to receiving 100% state funding for any capital construction project.

It is important to distinguish that the LRFP is clearly defined by its regulation as a "plan." Each LRFP approval notice clearly states that approval of the LRFP does not

represent a financial commitment by the State of New Jersey to fund the plan and build it in its entirety. This was underscored in the New Jersey Superior Court (Appellate Division) response to an appeal by the East Orange School District (Larini, 2009; "East Orange BoE," 2009).

Therefore, operating in parallel to the LRFP process is a funding and prioritization process that determines which school building projects move into design and eventually into construction. As such, each LRFP is reviewed jointly by the NJDOE and each of the 31 districts. Funding priorities are discussed and negotiated by the NJSDA, the school district, and the NJDOE. In accordance with statute, the NJDOE has the final formal approval authority. Eventually, a determination has to be made as to which projects move forward into design and construction in a given wave of construction funding.

Changes involving educational adequacy were made to the statute as the construction program was shifted from the NJEDA (NJSCC) to the new NJSDA in late summer 2007. In a passage understood only by a few experts in school education facility policy, the 2007 law that had created the NJSDA removed the requirement to revise the FES, which could drive an increase in school construction costs. The implication of this change as that the Commissioner would change the FES (discussed in great detail in earlier chapters) only "periodically," not on every second year.

The bill also provides that the Commissioner of Education revise the FES periodically through publication in the *New Jersey Register*. Under current law, the facilities efficiency standards are to be revised in the Biennial Report on the Cost of

Providing a Thorough and Efficient Education (New Jersey State Legislature, 2007b, p. 88).

### **Conclusion: Limited Achievements**

The arrival of Governor Corzine in January 2006 was anticipated, by advocates of the school building program, to bring the program's reactivation. After being frozen in place by Acting Governor Codey, the program could have been immediately revitalized and energized by Corzine. It was not. Contrary to hopes and expectations of the ELC and New Jersey's 31 *Abbott* districts, many months and several years of Corzine's 4 years were spent in reworking the administrative functioning of the NJSSC, culminating in creation of the NJSDA. This was a significant task but it moved the improvement of the school facilities into a place of secondary importance. After all is said, the administrative alignment of agencies and staff and the control of budgets is about adults, while finishing a new or improved classroom is an improvement that students can experience.

Thus, while the program was examined by its Interagency Working Group, followed by a period of legislative enactments in 2007 and 2008, yet another cohort of New Jersey's low-wealth students went to school in less-than-adequate facilities. Corzine's successes were of ultimate importance: creation of the NJSDA and approval of an additional \$3.9 billion in bond capacity. Yet this must be contrasted with the near-complete lack of momentum in starting new school projects during his term.

The theme of politics—especially that all-important suburban-rural-urban compromise used by Whitman in 2000—must be underscored here. Corzine had to return to the Legislature in 2008 for additional funding to continue work in the 31 *Abbott* districts. When the approved bill emerged from the closing session of the Legislature on

June 23, 2008, it contained even more money than Corzine had requested. The influence of the state's suburban and rural legislators was felt as the dollar value was increased by hundreds of millions.

Corzine's 4 years as Governor placed the school construction program on a firm foundation for advancement. Clearly, the overoptimistic approach that had characterized the operation of the program during the tenure of previous governors was gone and had been replaced by realism and transparency. Corzine's pace seemed to be governed by his team's certainty of a second Corzine term; there was no urgency to their work. His accomplishments in creating the Authority and gaining additional bonding capacity would have allowed a second-term Corzine to shape the school building program in his image. However, the citizens of New Jersey had a different vision in November 2009, when they elected Republican Chris Christie succeed Corzine.

## CHAPTER 10

### Coda: Christie

None of New Jersey's governors have had the opportunity to be in office for both the groundbreaking and ribbon cutting for any one school building project. The pace of designing and building a school building places its completion beyond the reach of a single-term Governor. Chris Christie, the fourth elected and sixth Governor to hold office between July 2000 and July 2010, would be no exception. After McGreevey, all of New Jersey's Governors (Codey, Corzine, and Christie), immediately upon entering office, halted the construction program in order to examine its operation. None allowed the program to proceed without a pause.

Governor Christie received an organization that was charged with buildings schools in 31 School Development Authority Districts (SDA Districts, previously known as *Abbott* districts) and distributing grants to RODs. He appointed Marc Larkins from the Office of the U.S. Attorney for the District of New Jersey to be the CEO of the NJSDA. Larkins's objective was to undertake a structural overhaul and make improvements in "handling change orders, with renewed emphasis on protecting state resources" (NJSDA, 2011a, p. 7).

Christie, like his predecessors, basically placed the program on hold upon entering office. This was an unfamiliar territory for all incoming Governors, apparently quite difficult, as they could remember from McGreevey and Codey's terms. The NJSDA was clearly a place to tread carefully. As much as it provided the potential to be a positive program by improving and building schools, it involved money, contractors, municipalities, construction, potential corruption, and negative headlines.

Within days of entering office on January 19, 2010, Governor Christie set his tone by sending a sharp message to the NJSDA. On January 27 he vetoed a \$1.2 million change order approved by the Board of Directors at its meeting on January 6 (NJSDA, 2010c). The initial contract for Burlington City's High School (WT-0013-C01) was for \$28,723,000. Change orders, including the amount vetoed by Christie amounted to 66% of the initial value, more than \$18,825,000. The message from the new Governor was that business at the NJSDA would not continue as usual.

At its Board of Directors meeting—the final one held during Corzine's last days as Governor—Board Member Perez asked why the General Contractor (Ernest Bock) had encountered environmental conditions that should have been identified earlier, when the school was being designed. The NJSDA's staff representative, Bleck, explained that the notice to proceed for construction of the project had been issued in 2004. She continued, “The architect was hired by the school district prior to the Authority taking over the project and the construction began with only 60% of the drawings completed, a practice now unacceptable to the Authority” (NJSDA, 2010c, p. 8). Although the incoming Governor wanted to put a halt to these practices, the Board's final action under Corzine was to resolve errors with their genesis in McGreevey's haste to get projects into construction.

By contrast, one of the first actions by the Christie Administration, after vetoing that Burlington High School change order on January 27, was to allow the NJEDA to proceed in April 2010 with the sale of an additional \$500 million in new bonds on behalf of the school construction program.

It is important for these school projects to move forward with state financial support. My administration is committed to providing exemplary educational

facilities for our students in all school districts across New Jersey. The sale of these bonds is a fiscally responsible way to continue to address the school construction needs of New Jersey's public schools. (Governor of the State of New Jersey, 2010, p. 1)

The text of the decision by the NJEDA Board of Directors<sup>81</sup> in April 2010 approving the issuance of the 25th cycle of school construction financing, restructuring, refunding, and repaying earlier bonds detailed the formal legal relationships between the parties to the instrument (Franzini, 2010). The debt obligations were secured by a state contract between the NJEDA, the future bondholders, and the State Treasurer. Payments were to be remitted by the State Treasurer to pay the debt service on the bonds subject to appropriation by the Legislature for this purpose. This is an interesting juxtaposition of events. First, Governor Christie vetoed approval of meeting minutes containing a change order; then, within 90 days, he approved issuance of \$500 million in new bonds (although the majority of the funds were to refinance older issuances).

One of NJSDA CEO Larkin's first publicized visits to an *Abbott* district was to Jersey City, where he was brought to Public School No. 20, which had been built in 1899 (Mooney, 2010a). Marking 110 years of use in June 2010, the school had been slated for replacement since the start of the New Jersey program in 2000. (As of fall 2013, construction had not yet begun on the replacement school building.) Several months later, the same school was quietly visited by Governor Christie on December 14, 2010 (Strain, 2010) and included in the 2011 Capital Program that was reviewed and approved by the NJSDA's Board of Directors on March 2, 2011.

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<sup>81</sup> Both EO No. 24 under McGreevey and the 2007 legislation creating the NJSDA had left the bonding function with the NJEDA.

Larkins was being introduced to a district with one of the sharpest examples of New Jersey's school facility policy conundrum. In 2001, for example, the average age of Jersey City's 38 schools was 75 years, with one school (the previously mentioned PS No. 20) nearly 100 years old at that point (NJDOE, 2001). Jersey City's 2011 financial report to the State Board of Education detailed that it operated 45 school buildings "ranging in age from two to one hundred twenty-four years old" (Jersey City Public Schools, 2011, p. 3). However, a retrieval of data and analysis performed in the summer of 2010 based on facility information contained in the Department's internal database calculated the average age of the schools in Jersey City to be 76 years, with the oldest (PS 20) being 110 years old (NJDOE, 2010a). By contrast, the same database showed the average age of the Irvington school district's buildings to be 64 years in 2010 (NJDOE, 2010b).

Sent to cover Governor Christie's announcement of "transformation schools" being planned for the Camden School District, *Philadelphia Inquirer* reporter Matt Katz examined the historical record. Christie's June 2011 announcement was made in front of Camden's 136-year-old former Fetters School building, which was currently part of the Lanning Square Elementary School. Katz (2011) reported that plans to hold the news conference inside the school were cancelled because it was cooler outside (90 degrees) than inside the building. Katz informed readers of his blog that Governor Corzine had visited the same Fetters School "two years and eleven months before Christie's visit" (p. 1) on July 19, 2008, the day he had signed the legislation authorizing \$3.9 billion for school construction (New Jersey Office of the Governor, 2008). According to Katz, the 2008 article had reported optimistically that the \$42.4-million Lanning Square School would be started in August 2010: "'We need to make sure that the Lanning Square

School is built, and it will be,’ Corzine told the crowd . . . he said it was ‘inconceivable’ that the state housed schools in buildings dating to the 1800s” (p. 1).

Katz (2011) wrote that the land for the Lanning Square School had been purchased and homes had been demolished, yet the project was not included in the NJSDA’s 2011 Capital Program (NJSDA, 2011e). He noted that, despite the project being in the planning stage since 2001 and meant to replace a school building dating to 1875 and having been the scene of several gubernatorial pronouncements, the students were still in the same old school building. Katz (2011) concluded that pronouncements and commitments made by one Governor may prove to have no influence on his or her successors.

### **Neptune Is the First District to Complete Its LRFP**

Stability, continuity, and civic capacity are important ingredients of a successful school facilities program. A discussion of New Jersey’s building program would be deficient without including insights that can be found by examining the success of the Neptune Township School District in completing its facility program. It is the sole district among the 31 that reached the goal of completing its LRFP. Neptune School District is a moderate-sized *Abbott* district with approximately 4,800 students. One frequently asked question is, why did Neptune succeed in building its entire facility program while other *Abbott* districts barely got started? What did Neptune do that the other school districts did not do?

NJSDA board minutes cited veteran board member Franzini, the NJEDA’s CEO, who stated,

Neptune Township School District was one of the most organized school districts in terms of knowing exactly what their school facilities needs were and bringing

them into fruition in their facilities plan. Ms. Franzini commended Neptune Township for the remarkable leadership and planning demonstrated by its school board and superintendent. (NJSDA, 2010b, p. 2)

Neptune Superintendent of Schools David Mooij provided the NJSDA's Board of Directors with a brief description of how Neptune had drafted its facilities plan in October 2000 and within 8 years had opened three new schools and completed five other expansions and renovations. Its success, celebrated during Governor Christie's term by CEO Larkins, had its roots at the beginning of the program in 2000. Mooij's testimony to the Joint Committee on Public Schools meeting on October 3, 2005, provides insight into the district's success. Because of its small size and probably because of its civic maturity, Neptune quickly mobilized for the new school program. In Superintendent Mooij's words,

Immediately upon notification of a need for a five-year, LRPF, the district contracted with an architectural firm that had successfully completed several large capital projects. Simultaneous to that, district administration began attending every in-service and workshop statewide to gain as much information and insight as possible on the rules, regulations, and requirements of the facility legislation. (New Jersey State Legislature, Joint Committee on the Public Schools [October 3], 2005, p. 187)

Mooij explained his district's productive and proactive relationship with state officials.

Throughout this entire process, the district Board of Education remained supportive, heartily endorsing the persistent efforts of administration. As land was needed for several projects, the district worked closely with the Land Acquisition Division at NJSCC to locate parcels that made good site sense. The DOE, SCC, and the Neptune Township School District, working in concert, made this process successful. Land was acquired; plans and specs went out to bid. SCC awarded contracts. Schools that were nothing more than designs on paper three years ago are now educating our students. These new facilities are providing the children of Neptune Township with the opportunity to learn in state-of-the-art schools designed for the 21st century. (p. 189)

Responding to Mooij's glowing description were the two legislators from Newark: Senator Rice and Assemblyman Stanley. Rice pointed out that the Neptune's entire

student population of 4,800 was about the size of one of Elizabeth's high schools. He compared a teacher's ability to manage a smaller classroom more successfully and a smaller district's ability to manage its affairs.

Assemblyman Stanley inquired about Neptune's success by asking whether the school district had really dedicated people who knew how to get through roadblocks. Superintendent Mooij responded that the staff was extremely important, as was their experience and continuity in the school district. He stated that he began teaching in the Neptune Township school district for 32 years, progressing through several positions to become Superintendent. By contrast, he had learned that the average duration of superintendents in urban school districts in New Jersey was approximately 2.7 years. Mooij's presence at the NJSDA's board meeting in December 2010 was evidence of his serving as superintendent of Neptune's schools for another 5 years, 2005 to 2010.

There is dual significance in this milestone moment on December 1, 2010, after the program's 10th year of existence. First, Neptune school district (one of the smallest in population and not among the original 28 SNDs) completed the reconstruction of its school facilities plan in accordance with the objectives of the *Abbott V* decision and the EFCFA legislation. Second, there was recognition by the leadership of the NJSDA that Neptune was a "success story" (p. 5). However, when would Neptune's success be matched by the next school district? How could the NJSDA and other SNDs take the lessons of Neptune's success and apply them to bring the other 30 districts closer to the goal of improved school buildings for as many students as possible?

## **Demographics: Student Populations**

The foundation of every school district's program was accurate demographic projections. For the Christie Administration to understand the source of the mismatch in demand and capacity between students and buildings, it would have to control demographic studies, as had been done in Massachusetts. The foundation of a school construction program rests on the accuracy of current student data and projections of future enrollments. These projections, as discussed in earlier chapters, are mapped out into existing facilities, generating a perfect match, a surplus, or a deficit of "housed" students. The demographic foundation for each of New Jersey's school districts is currently (2013) based on several sources, including the New Jersey Department of Health's "Birth by Municipality for 1998–2005 Based on Standardized Mailing Addresses" (New Jersey Department of Health, Center for Health Statistics, 2012) and the "Query Builder for New Jersey Birth Data: Count" (New Jersey Department of Health, 2012).

In New Jersey, given that each of the state's school districts prepares its own analysis, there is a potential conflict of interest because these population projections drive the size of future school buildings. If the school district has no risk from overly optimistic demographic projections, there is the possibility that the district may generate larger student enrollment estimates in order to receive larger buildings (at no cost) than actually warranted.

Sensing this inherent conflict of interest, when all of its school districts were preparing their own population projections without bearing the cost of the consequent capital construction projects, Massachusetts began to scrutinize demographic data,

enrollments, and enrollment projections (Massachusetts School Building Authority [MSBA], 2011). Massachusetts's *2010 Needs Survey* (MSBA, 2011) shows that, before the MSBA was created in 2004, all enrollment projections were generated by each school district in a completely locally controlled process. As in New Jersey, each school district in Massachusetts prepared projections in house or hired a consultant to do this work, perhaps on a multiyear contract. Analyzing earlier projections and comparing them with current enrollments, the Massachusetts study stated,

The former [pre-2004] school building assistance program lacked a process to formally verify the District's enrollment projections leading to school construction projects that were based on unrealistic design enrollments. A review of historic enrollment certification data revealed that more than three-quarters of school districts over-projected their long-term enrollment. *The average over-projection was approximately 25% of the student population. To phrase it another way, one out of every four seats in the state's public schools was built for a child that did not materialize* [emphasis added]. (MSBA, 2011, p. 41)

Based on this analysis the MSBA determined that the state would create a "standard online enrollment tool based on a uniform methodology that Districts can use" (p. 41). In addition, the MSBA independently verifies enrollment data and other information submitted by school districts to ensure accuracy of basic assumptions in order to make sure that projects are based on realistic enrollment projections.

As discussed earlier, until 2010 all of New Jersey's school districts, in unison, were systematically updating their long-range plans in each year ending in 5 or 0. This requirement was ended by a memorandum issued early in the Christie Administration in 2010 (NJDOE, 2010c). From that point forward they were updated on the fifth anniversary of their approval by the Department.

As of December 31, 2011, the school construction program had completed more than 600 projects in the 31 *Abbott* districts. Contained within the NJSDA *2011 Annual*

*Report* is a snapshot from the Authority's auditor, Ernst & Young, describing its financial condition and its activities as of December 31, 2010. The auditor detailed that the 628 projects completed included 63 new schools, including six demonstration projects; 42 extensive additions, renovations, and/or rehabilitations; 354 health and safety projects; and 143 "Section 13 grants" to SDA districts (the 31 *Abbott* districts) for self-managed projects valued at less than \$500,000 (NJSDA, 2012a, Ernst & Young's section, p. 3). In addition, approximately \$345 million had been spent on acquiring 650 parcels at 89 distinct project sites as of spring 2011 (Hamilton, 2011). School projects had been built on 26 of these sites.

On June 10, 2010, marking 6 months of Governor Christie's term, State Auditor Stephen Eells issued a report reviewing the Authority's activities under Governor Corzine (Eells, 2010). The report contains a summary of events and decisions, including the "list of 59" school projects from 2005 (Codey) through the 2008 New Funding Allocation and Capital Plan approved by the NJSDA board (Corzine) after the July 2008 legislation was approved (NJSDA, 2008a, 2008d). This report would be cited among the reasons for Christie's and Larkin's reevaluation of the Authority's capital program in 2010.

Although Auditor Eels also claimed that several change orders and amendments were lacking documentation and forms and described how prices were negotiated, the primary significance of this report was on broader policy issues.

A state audit has raised new questions about the 2008 master plan for the next phase of New Jersey's \$12 billion school construction program, saying it may not represent the greatest needs in the state, after all. In Elizabeth, for instance, where state officials said nearly 3,000 new primary grade seats are needed, a new elementary school was left off the list while a less critical project was included from Long Branch, where the deficit was only about 600 seats. (Mooney, 2010b, p. 1)

CEO Larkins focused on the notion that money could be saved by standardizing and developing common elements in buildings. As noted previously, this was a constant theme throughout the program's journey. It can be found in a report from 1992 during Governor Florio's term (New Jersey Quality Education Commission, 1992b), in the late 1990s in the NJDOE's early responses to *Abbott V*, and in the hearings leading to the EFCFA in 1999-2000.

As the construction program began, the drumbeat of prototypes and standardization had been heard at different times, frequencies, and intensities (McNichol, 2005a; New Jersey Quality Education Commission, 1992a; New Jersey State Assembly and State Senate 96, 2010; "School Construction Bill Costs Ballooning," 2000).

At the moment of crisis in 2005, when the fallout from the ostentatious designs of 2002-2003 became apparent, CEO Spencer brought forth promise of the possibility of developing standards (New Jersey State Assembly and State Senate, Joint Committee on the Public Schools [April 11], 2005).

CEO Larkins, addressing the Joint Committee on the Public Schools on May 12, 2010, alongside Education Commissioner Schundler, spoke about prototypes and standardization in response to Senator Diane Allen, who had why school districts were not being told to save money by reusing good designs.

This was one of our big issues over the last years, that every building has to be the Taj Mahal, and it doesn't. If somebody has started a building someplace else, and it's a good design, and it can be tweaked, why don't we go back to those architects and those engineers for a much smaller dollar amount to make it happen? (New Jersey State Assembly and State Senate, Joint Committee on the Public Schools [May 12], 2010, p. 27)

Larkins answered Allen, describing how the NJSDA was dealing with precisely this subject.

For instance, this idea of standardization, the idea of coming up with one model, or three models, five models, whatever it is, and then using them over and over – there are arguments against it in that it won't work because of issues specific to each district: land and other things.

But one of the fundamental problems is, the SDA doesn't own the design. So in terms of going back to the architect, it's theirs—as of today, right now, it's their intellectual property right. So certainly we can go back and attempt to pay them and turn to some other contract for another project. But I think one of the fundamental issues for our organization right now is, we don't own the design. (pp. 28–29)

Nearly a year later, before the Legislature in March 2011, discussing Christie's plan to move the program forward, Larkins is quoted by a reporter as favoring standardized plans for new schools, remarking that the desires of the school districts, which led to excesses in the past, would be restrained under the new administration. He noted, "Lofty atriums of the past will no longer be built in the future (as cited in O'Connor, 2011a, p. 4).

The reality that the Republican Governor was not going to cure the ills of his Democratic predecessor triggered two opinion pieces about Newark's newly opened Speedway Elementary School on South Orange Avenue. The school was completed but both the NJSSC and NJSDA under the Codey and Corzine Administrations did not purchase the necessary physical education area. Parking for teachers was built but promises to the school district to acquire additional adjacent parcels never materialized (Carter, 2010a, 2010b). This left the school with a smaller-than-usual playground.

Efforts to keep criminal activity away from New Jersey's program continued, as mandated, into Christie's term. However, in June 2010 the incoming Governor abolished the Office of the IG and transferred all of its functions to the Office of the State Comptroller (Ner Jersey State Assembly and State Senate, 2010). The Office of Fiscal Integrity, as administered by the IG from 2000 until June 30, 2010, had been dedicated

full time to maintain public confidence in the propriety of expenditures and implementation of the program.

The New Jersey program, as of spring 2013, continued to require all consultants, service providers, and contractors to respond to 19 questions as part of the prequalification process. After identifying the key personnel and if the “Applicant Business Concern” was doing business under another name during the past 10 years the respondent would need to answer, for example, the following question:

19. Agreed with another business concern or representative thereof to submit identical or complementary bids, prices or proposals or to otherwise not bid competitively or to withdraw or abstain from bidding or proposing? (If yes, give details, including the dates(s), location(s), description(s) of the contract(s) that were the subject of the bid(s), who put the contract(s) out to bid and the name(s) of the individual(s) with whom the Applicant Business Concern or any affiliated entity disclosed in this questionnaire agreed.) (NJSDA, 2010e, p. 3)

Any contractor working with the NJEDA-NJSCC-NJSDA continued to be required to submit sworn certifications regarding qualifications and credentials (NJSAC 18A:7G-37). The statute continues in Section 18A:7G-39 to place the burden and punishment clearly on the contractor regarding the accuracy of all certifications to the Authority:

Any contractor who will willfully makes . . . a false, deceptive or fraudulent statement in the certifications . . . shall be guilty of a crime of the fourth degree and shall be permanently disqualified from bidding on all school facilities projects. (p. 49)

The Authority’s *Annual Report* (NJSDA, 2011a) described how Larkins continuously sought efficiencies by reducing overhead costs on rental space, employee benefits, travel, and nonessential spending. He also lowered the monetary threshold that required approval by the NJSDA board for construction change orders and design

contract amendments, bringing more of the Authority's procurements into the public spotlight than ever before.

The number of employees and whether the numbers are trending upward or downward are good indicators of a government organization's pace and intent. CEO Larkins appeared to be determined to reduce the numbers of employees at the NJSDA after finding, upon arrival in March 2010, over 330 employees, an all-time high (Mooney, 2010c). After reviewing the organization's functioning and its staffing, a massive reorganization took place in June 2010. Larkins stated to the news media,

The new structure moves away from a departmental model for the delivery of school projects to a "team based" approach, involving appropriate staff in all aspects and phases of a construction project working as one unit. This structure will provide for greater continuity and better communication throughout the entire life cycle of a project, which will result in more cost-effective delivery of schools. (NJSDA, 2010d, p. 1)

Therefore, for example, in summer 2010, the Program Management and Environmental Services groups were united into Program Operations in a major reorganization into project-focused teams. In January 2011 more than 24 staff members were dismissed on a single day. The Authority's spokesman stated, "Staffing decisions—including those made today are intended to further the Authority's goal of increasing efficiencies as an organization and directing finite resources to as many school facilities projects as possible" (Mooney, 2011, p. 1).

The NJSDA, composed of non-civil service employees, is more easily shaped by the Governor and his appointed CEO than other state agencies. The number of staff members over the 10 years July 2000 to July 2010 clearly reflected the evolving program and the changing philosophies of its leadership. Whitman, for example, barely had a chance to place her imprint on the program after signing the legislation. DiFrancesco, as

Acting Governor, did not seem especially anxious to begin work on the program. Therefore, by July 2002, when Franzini testified, 7 months into McGreevey's term, the staff of the NJEDA working on schools numbered 68 (New Jersey State Assembly, 2002). Reflecting McGreevey's ambitions to accelerate the program, a report in the *Burlington County Times*, placed the number at 178 employees in September 2003 (Bell, 2003). Larry Hanover counted 266 a year later, after McGreevey had announced that he would leave office but before his departure (Hanover, 2004). These numbers dipped during Codey's term to 240 in December 2005 (NJSDA, 2010a) and then began to increase dramatically during Corzine's term when decisions were made to eliminate dependence on outside consultants and perform more work internally. One consequence of eliminating external consultants (by Weiner under Corzine) is an increase in an organization's internal "head count." This is what CEO Larkins found upon arriving in March 2010. However by the end of 2011, Larkin had reduced the Authority's staff to 255 through attrition (NJSDA, 2012b).

This study was concluded at the end of the 10-year span ending in July 2010. As expected, the Republican Christie Administration took a different approach to the program than had its Democratic predecessors. Ideology and financial pressures played a role in the Republican administration's initial moves with this school building program.

In a manner of a postscript, Governor Christie has not turned his back on building schools in the 31 SNDs. The program has continued, more slowly, with a smaller staff at the Authority, an intent focus on design build, a kit-of-parts approach to design, and pursuit of a lower cost for building schools. Two Capital Plans were initiated: one in March 2011 and a second in March 2012.

## **CHAPTER 11**

### **Learning From New Jersey About Improving School Facilities in the United States**

Improving school facilities in America's low-wealth school districts will not be an easy task. As shown by this 10-year history, New Jersey could not buy its way out of its facilities problem, even with six billion dollars. Implementing this program was more difficult than its advocates had anticipated. Designing schools, selecting and acquiring land, procuring engineers, architects, and contractors, and monitoring construction were all tasks to be executed by a centrally managed, state-run organization.

The political landscape in which this school program was created and functioned was rich in "quick sand" and "land mines." Among them were ineffective school districts, contractors with a tendency to seek added profit through fraudulent behavior, "tribal politics" based on race and class (Salmore & Salmore, 2008), brownfields, ascending real estate values, and declining tax bases. Centralization and control were key motifs of the New Jersey program, as legislators held a deep fear of corruption in the state's lowest-wealth school districts and cities.

This research has underscored the critical and seminal influence of New Jersey's Governor on the state's school construction program. The Governor's approach was consistently amplified, perhaps exaggerated, by the program's administrators. In 1947, New Jersey's Constitution was changed to allow a relatively powerful Governor. The Governor's powers provide the office with the laser-like ability to define legislation and budgets (line by line) before approval (N.J. Const. Art V § 1, ¶¶ 12, 14, 15). Another manner of wielding power is the Executive Order, several of which were issued directly

affecting the school construction program. McGreevey issued five (out of 139), Corzine four (of 167), and Acting Governors Codey and DiFrancesco one each (of 79; NJSDA, 2013d). Republicans Christine Whitman nor Chris Christie found no need to issue any Executive Orders regarding the program.

Noted at several points within this dissertation, New Jersey's Governor has the power to throttle this program's intensity. The ability to tinker with the spending on this program is unique; most other programs are linked to entitlements or are federally supported. The EFCFA program is fully funded by the state. It is not subject to the annual operating budget review and an approval cycle involving the Legislature because it was approved at the onset as a "capital" program, funded with its own approved funding source (bonds). Therefore, purse strings are in the Governor's office in Trenton.

Through his Treasurer and the Board of Directors of the NJEDA, the Governor can go to the financial markets to raise additional tranches of hundreds of millions of dollars. Once the Governor or his predecessor has received approval by the Legislature for bonding authority, he has no need to return to the Legislature. Over the course of this program (2000–2013), only Governors Whitman and Corzine had to ask for legislative approval. Whitman requested the initial \$8.6 billion, along with the EFCFA approval, in 2000 and Corzine sought an additional \$3.9 billion in 2008.

Once they have won election and reached their new office, Governors are faced with many constituencies that vie for their attention, as well as multiple problems that must be addressed quickly. In the overall perspective of state governance, they most probably begin with an ambivalent attitude toward the school construction program. What they discover is a platform that is extremely malleable and that can be easily

shaped to the image that they seek to project. They can call the head of the NJSCC/NJSDA to orchestrate a groundbreaking, beam signing, or ribbon cutting. A photo opportunity can be set up along with a press conference in synchrony with the political needs of state or municipal officials. Statements that are made at these public opportunities reflect on the Governor's leadership, policies in general, and specific aspirations for education.

Each Governor sets a personal tone. Whitman's primary concern was to get the legislation enacted and get funding in place. Almost as an afterthought, the program was sent to the NJEDA for implementation. Departing sooner than expected for Washington, she left the program in the hands of Acting Governor DiFrancesco, whose indifference and apathy led to heightened expectations that shattered the program under the Democratic Governors to follow.

The demand for school improvements became unbearable by the time McGreevey arrived in January 2002. In McGreevey's hands, responding to years of pent-up demand (as the Courts and then the Legislature deliberated), the program spiraled out of control as it attempted to build everything, anywhere, at any cost. Under Acting Governor Codey it nearly spiraled down the drain because New Jersey could never afford to build all of the schools that its 31 *Abbott* districts could wish for. Corzine spent his first term in office taking steps to recover from McGreevey's exuberance and Codey's slowdown. He expected a second term so that he could complete his work. Corzine's years of examination, reorganization, and new legislation were not followed by much building. The school construction organization, which changed from a corporation to an authority, failed to get on its feet before Corzine was replaced by Christie in the elections of

November 2009. In summary, New Jersey's Governors are key players in the building of schools in New Jersey. In the face of Supreme Court decisions and legislation, the executive branch can choose to execute legislation to build or it can decline to do so.

After 10 years of work and disbursement of \$5,768,831,989 in the *Abbott* (SDA) districts (through December 31, 2010; NJSDA, 2011a), the question arises: How much of the facilities problem in the low-wealth districts of New Jersey has been remedied? The May 1998 *Abbott V* ruling required that the state upgrade and rebuild its school buildings in its special needs (SND or *Abbott*) districts). In response, the Legislature provided six billion dollars in July 2000 and an additional \$2.9 billion in the summer of 2008, for a total of \$8.9 billion for the *Abbott* districts.

By December 2010, the program's accomplishments were 61 new schools; 42 extensive additions, renovations, and/or rehabilitations; 26 rehabilitations; 354 health and safety projects; and 6 demonstration projects (NJSDA, 2011a). From a financial perspective, the NJSDA and its predecessors had disbursed \$2,372,427,467 to New Jersey's non-*Abbott* RODs by distributing grants for over 2,600 school projects throughout the state's 21 counties. As the state's other 560 school districts are highly diverse, it is not clear how equitably these grants were distributed. It seems doubtful that the poorest districts, those on the cusp of the *Abbott* classification, had the ability to prepare applications and execute construction properly. On the other hand, wealthier districts, with smoothly functioning facilities departments and business administrators, would make timely applications and receive their (at minimum) 40% grants time and time again.

Returning to the low-wealth districts, the best information available about the gap between the planned projects and those that were built is contained in former CEO Weiner's testimony on May 25, May 2006 ("Scott Weiner, Transitional CEO," 2006). In his testimony to the Joint Committee on the Public Schools he noted that 315 *Abbott* projects were outside the 2005 Capital Plan were "presently unfunded." His figure of 315 included 134 projects awaiting predevelopment (i.e., completely untouched) and 84 projects where preliminary predevelopment had begun. His figures were reinforced in April 2007 by the Capital Deferral Plan and Project Sequencing Strategy (NJSCC, 2007a), which put a price tag on the "unfinished business" that lay ahead beyond the current (May 2006) Capital Plan: 84 projects stalled at "preliminary predevelopment" with an estimated construction cost of \$4.3 billion in 2006 dollars; 134 projects stalled at "awaiting pre-development" with an estimated construction cost of \$3.1 billion in 2006 dollars; and 96 projects with "design suspended" with an estimated construction cost of \$5.2 billion in 2006 dollars. Therefore, on April 25, 2007, the NJSCC confirmed its inability to complete 315 projects for the state's *Abbott* districts at an estimated additional cost of \$12.6 billion. In the summer of 2008 the Legislature approved an additional \$2.9 billion of bonding capacity, for a total of \$8.9 billion directed toward the *Abbott* districts.

As of the summer of 2013, work on executing the facilities element of *Abbott V* has continued, albeit at a pace slower than the ELC or the low-wealth districts desired. However, neither the Corzine or Christie administrations tried to "turn back the clock" on the state's requirement to improving school facilities in *Abbott V* or the EFCFA, as they have on other sections of the *Abbott* decisions.

Perhaps are two reasons why the program remains intact. First, it is a capital finance program, an “obligation subject to appropriation” through an Authority of the State; therefore, it is not discussed in the annual context of the state’s regular operating budget.<sup>82</sup>

Second, it represents the dependent bond linking the children of the suburbs and the children of the cities that was brokered in spring 2000. No matter what the Supreme Court required, a compromise was necessary to receive support from suburban legislators for a six-billion-dollar program that would fund 100% of the cost of school building in the state’s lowest-wealth districts. The compromise would be found in an enlarged program that would fund a minimum 40% of the construction costs for suburban schools. This program, catalyzed by the New Jersey Supreme Court to provide more equitable school facilities for children of low wealth, could garner needed votes only if it contained “something” for the legislators of every district to “bring home” to their constituents.

Looking to the future, it will probably be the interests of the state’s 560 non-*Abbott* districts that will drive the additional rounds of funding. The record indicates that the civic capacity and organizational ability of some (not all) of the RODs to receive their (at minimum) 40% grants far surpassed the pace of construction by the NJEDA-NJSCC-NJSDA in the *Abbott* districts. Thus, the State’s non-*Abbott* districts have been consuming their share of the statewide bond funds at a faster pace (75% RODs vs. 66.4% SDA Districts<sup>83</sup>; NJSDA, 2013a) than those districts targeted by the Supreme Court: the *Abbott* districts (SNDs). It is reasonable to assume that, in the future, when the funding

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<sup>82</sup> This was discussed in Chapter 5.

<sup>83</sup> See Monthly Financial Report within attachments to the NJSDA Board Agenda.

runs out (i.e., the bonding cap is reached) for the non-*Abbott* districts, as it did in 2008, additional bonding capacity will be approved for both groups.

Yet, it is not enough for any school construction program to receive a one-time appropriation of six billion dollars. The availability of funding is but one small part of the puzzle. At issue is not only the level of funding but also the capacity of the administrative system to receive the funds and spend it wisely.

This study of New Jersey and other comparable programs shows that any large-scale statewide school building program should not be a one-shot, short-term program. It is better to be a long-term, slower, steadier, continuing plan than an impulsive “boom” that is characteristically followed by the “bust.” Short-term fast-tracked school building programs appear ultimately to dissipate, disappoint, run off track, and terminate.

This dissertation highlights for the need for further research in several important directions: (a) a formal program evaluation of New Jersey program’s accomplishments measured against its goals; (b) a comparative evaluation of educational outcomes for students in new buildings versus those who are educated in older ones (How much are the new buildings in New Jersey contributing to the improvement of student’s education?); and (c) comparison and analysis of how other states and other nations manage (geographically and financially) large-scale school building improvement programs.

Based on this study, as reported herein, four recommendations are presented.

First, the State of New Jersey has made a tremendous investment in school buildings. Generations of taxpayers’ wealth has paid for existing buildings, many dating back to the 1920s. Future generations will be paying for the buildings constructed between 2000 and 2010. The current citizens are custodians of what previous generations

have bequeathed and must transfer these structures in the best possible condition for use by future citizens and their children. Therefore, the NJDOE must firmly ensure execution of proper school facility maintenance. The laws and regulations are all in place; only implementation and accountability are lacking.

Second, only qualified and trained personnel should be maintaining and operating school facilities. This applies at both the managerial and school building levels. A school district facilities department should be staffed by facilities professionals, not used as a convenient location to place district employees on the cusp of retirement. Again, the existing laws and regulations incorporated in the EFCFA should be implemented.

Third, there should be a firm core of properly trained staff at both the state level and the local school district level dedicated to continuing the work of building and upgrading school facilities. When a local school district's volume of work does not warrant full-time staff, the NJDOE should provide shared resources at the County Superintendent level.

Fourth, future tranches of statewide school facility funding should require (a) a rolling capital funding plan, revised annually, based on the accomplishments of the previous year; (b) tighter control by the NJDOE on district-supplied demographic data that exceed projections based on historic enrollment patterns; and (c) additional bonding capacity to be released annually. In one scenario, additional funding would be based on a 6-year plan. Six billion dollars of bonding capacity would be approved with a limit of one billion dollars of encumbrances (new projects) to start in each fiscal year.

This nation's system of governance requires that large infrastructure programs be crafted by political representatives. Nonetheless, it would be preferable to insulate New

Jersey's school children and their school buildings from the ceaseless cycle of gubernatorial election. This program and these buildings are too important and valuable to be throttled by the quadrennial shifting of power in Trenton.

Based on the reported research, although there were significant problems with the program and the number of new schools built in the *Abbott* districts fell short of the projections, the facilities program should be viewed as part of the overall *Abbott v. Burke* decisions. Despite failure to achieve all of the lofty goals set by the New Jersey Supreme Court, the program was part of one of the most progressive educational reforms in the nation and it has contributed to improvements in the state's poorest districts.

We are one nation, one state. Although at times we may think that we are looking at other people's schools, in fact they are all our schools and all our children.

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## Appendix A

### Acronyms

AP	Associated Press (news agency)
CCE	Construction Cost Estimate; the estimated cost of constructing the school or several schools
CEIFA	Comprehensive Educational Improvement and Financing Act of 1996 (P.L. 1996, Chapter 138)
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act. Commonly known as the “Superfund,” this legislation was enacted by the U.S. Congress on December 11, 1980.
DSS	Decent, safe and sanitary (see FHWA’s Federal Relocation Assistance Program)
EFCFA	Educational Facilities Construction Financing Act, Public Law 2000 Chapter 72
ELC	Education Law Center. Headed by David Sciarra from 1996 through the writing of this dissertation (2013), the ELC is the primary legal advocate for the <i>Abbott v. Burke</i> process.
FEC	Final Eligible Costs (see also PEC)
FES	Facilities Efficiency Standards
FMP	Facilities Management Plan
HVAC	Heating, ventilating, and air conditioning (a term used to define the mechanical systems that heat and cool a school facility)
IG	Inspector General. There is one in New York City’s School Construction Authority and there had been one in New Jersey’s Department of Law and Public Safety (Office of Attorney General) until reorganization under Governor Christie.
LAUSD	Los Angeles Unified School District, California, USA
LRFP	Long Range Facilities Plan
NJAC	New Jersey Administrative Code, which contains all of the regulations of the State of New Jersey; based on the NJSAA (New Jersey Statutes Annotated)

NJDCA	State of New Jersey, Department of Community Affairs
NJDOE	State of New Jersey, Department of Education
NJEDA	New Jersey Economic Development Authority (ran the program from the signing of the EFCFA by Governor Whitman on July 18, 2001, through enactment of Executive Order 24 on July 29, 2002)
NJSA	New Jersey Statutes Annotated; the laws of the State of New Jersey organized by section
NJSCC	New Jersey Schools Construction Corporation (ran the program from July 29, 2002, through August 15, 2007, through enactment of Executive Order 24 in 2002)
NJSDA	New Jersey Schools Development Authority (ran the program from August 15, 2007, through the writing of this dissertation in fall 2013; created by Public Law 2007, Chapter 137)
PEC	Preliminary Eligible Costs (see also FEC)
PLA	Project Labor Agreement
RFP	Request for proposal; a government agency requests proposals from architects or engineers for the performance of design work
ROD	Regular Operating [school] District
SCA	New York City's School Construction Authority, founded in 1988
SDA Districts	School Development Authority Districts
SFRA	School Funding Reform Act (P.L. 2007, Chapter 260)
SNDs	Special Needs Districts or <i>Abbott</i> District; criteria for the SNDs were determined in the 1996 CEIFA

The terms *School Business Administrators* and *Business Officials* are used interchangeably herein. The State of New Jersey uses the term School Business Administrator (SBA) in accordance with NJAC 6A:23A-1.2. At the national level, the literature discussing the role of the school district business staff is published for school business “officials.”

In this dissertation, the term *superintendent* is narrowly defined. The Superintendent is the sole Chief Executive Officer of the school district. Subordinate administrators involved in school facilities are referred to herein as *educational administrators* or *assistant superintendents*.

## APPENDIX B

### Timeline: Milestones in New Jersey's School Funding Battle

#### *TIMELINE: MILESTONES IN NEW JERSEY'S SCHOOL FUNDING BATTLE*

- 1970** January 15: Jersey City mayor announces plans to sue state over school funding  
February 13: *Robinson v. Cahill* filed  
October 26: Bateman school funding law enacted
- 1971** August 30: California Supreme Court rules in *Serrano v. Priest*  
November 1-9: Superior Court trial of *Robinson*
- 1972** January 19: Superior Court Judge Theodore Botter rules for plaintiffs in *Robinson*
- 1973** March 21: U.S. Supreme Court rules in *San Antonio v. Rodriguez*  
April 3: New Jersey Supreme Court rules for plaintiffs in *Robinson I*  
June 19: *Robinson II*
- 1975** January 23: *Robinson III*  
May 23: *Robinson IV*  
September 29: Public School Education Act ("T&E law") school funding law enacted
- 1976** January 30: *Robinson V*  
May 13: *Robinson VI*  
June 15: *Robinson VII*  
July 1: Schools close by order of state Supreme Court  
July 8: Income tax enacted  
July 9: Schools reopen
- 1977** November 8: Governor Brendan Byrne re-elected
- 1981** February 5: *Abbott v. Burke* filed by Education Law Center
- 1983** November 15: *Abbott v. Burke* dismissed from Superior Court
- 1985** July 23: New Jersey Supreme Court rules in *Abbott I* that case must be heard administratively
- 1986** September 29: *Abbott v. Burke* administrative hearing begins
- 1987** June 5: *Abbott v. Burke* administrative hearing ends
- 1988** August 25: Administrative Law Judge Steven Lefelt rules for plaintiffs in *Abbott*

- 1990** May 24: Quality Education Act (QEA) school funding law introduced  
 June 5: New Jersey Supreme Court rules for plaintiffs in *Abbott II*  
 July 3: Original QEA (QEA I) enacted  
 November 6: Democrats do poorly in elections
- 1991** March 14: Revised QEA (QEA II) enacted
- 1992** July 8: Superior Court trial begins in *Abbott v. Burke* challenge to QEA II  
 July 16: Education Law Center announces alliance with state's largest teachers union  
 November 18: *Abbott v. Burke* Superior Court trial ends
- 1993** August 31: Superior Court Judge Paul Levy rules for plaintiffs in *Abbott*  
 November 2: Governor Jim Florio defeated for re-election
- 1994** July 12: New Jersey Supreme Court rules for plaintiffs in *Abbott III*
- 1996** June 27: Comprehensive Educational Improvement and Financing Act (CEIFA) school funding law introduced  
 December 20: CEIFA enacted
- 1997** May 14: New Jersey Supreme Court rules for plaintiffs in *Abbott IV* challenge to CEIFA  
 November 17-December 22: Remand court holds hearing on programs required under *Abbott*
- 1998** May 21: New Jersey Supreme Court lays out required programs in *Abbott V*
- 2000** March 7: *Abbott VI*  
 May 25: *Abbott VII*  
 July 18: School construction law enacted
- 2002** February 19: Governor Jim McGreevey announces collaboration with *Abbott* plaintiffs  
 February 21: *Abbott VIII*  
 June 11: *Abbott IX*  
 June 24: *Abbott X*  
 July 23: *Abbott XI*
- 2004** June 7: *Abbott XII*  
 November 1: *Abbott XIII*
- 2005** December 19: *Abbott XIV*
- 2006** May 9: *Abbott XV*  
 May 22: *Abbott XVI*
- 2007** May 24: *Abbott XVII*  
 December 12: Governor Jon Corzine proposes School Funding Reform Act school aid law
- 2008** January 7: Legislature passes School Funding Reform Act (SFRA) school aid law  
 January 13: Governor Jon Corzine signs SFRA  
 February 19: *Abbott XVIII*  
 March 18: State asks New Jersey Supreme Court to uphold SFRA and end *Abbott* remedies  
 November 18: In *Abbott XIX*, New Jersey Supreme Court orders lower-court hearing on whether SFRA ensures a constitutional education in *Abbott* districts
- 2009** February 9-March 3: Remand court holds hearings on SFRA's constitutionality  
 March 25: Remand court finds SFRA constitutional  
 May 28: In *Abbott XX*, New Jersey Supreme Court finds SFRA constitutional if fully funded.
- 2010** June 8: Education Law Center asks New Jersey Supreme Court to find that underfunding of SFRA violates constitutional guarantee of a thorough and efficient education
- 2011** January 13: New Jersey Supreme Court orders lower-court hearing on whether SFRA, as funded, ensures a constitutional education for the state's children  
 February 14: Remand hearing begins  
 March 22: Remand court finds SFRA underfunding unconstitutional  
 May 24: In *Abbott XXI*, New Jersey Supreme Court finds SFRA underfunding unconstitutional and orders state to increase funding to 31 former *Abbott* districts by \$500 million

Source: *Other People's Children: The Battle for Justice and Equality in New Jersey's Schools*, by D. Yaffe, 2007, New Brunswick, NJ: Rivergate Books. Also accessible at <http://www.deborahyaffe.com/#/timeline/4573268944>. Reprinted by permission.

## Appendix C

### Timeline: Milestones in New Jersey's School Construction Program

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
<b>Governor CAHILL</b>				
1/20/1970	1/15/1974	Governor William T. Cahill enters office (Republican)	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
2/13/1970		<i>Robinson v. Cahill</i> filed	Legal Process	See Yaffe's timeline
1/19/1971		NJ Superior Court Judge Botter rules for plaintiffs in <i>Robinson</i>	Legal Process	See Yaffe's timeline
3/21/1973		U.S. Supreme Court rules in <i>San Antonio v. Rodriguez</i>	Legal Process	See Yaffe's timeline
4/3/1973		NJ Supreme Court rules for plaintiffs in <i>Robinson I</i>	Legal Process	See Yaffe's timeline
6/19/1973		<i>Robinson II</i>	Legal Process	See Yaffe's timeline
<b>Governor BYRNE</b>				
1/15/1974	1/19/1982	Governor Brendan Byrne enters office (Democrat)	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
7/1/1974	3/31/1982	Education Commissioner Dr. Fred G. Burke takes office	Education	<i>Fitzgerald's New Jersey Legislative Manual</i>
1/23/1975		<i>Robinson III</i>	Legal Process	See Yaffe's timeline
5/23/1975		<i>Robinson IV</i>	Legal Process	See Yaffe's timeline
9/29/1975		Public School Education Act of 1975 (T&E law) enacted	Political	See Yaffe's timeline
2/5/1981		<i>Abbott v. Burke</i> filed by Education Law Center	Legal Process	See Yaffe's timeline
<b>Governor KEAN</b>				
1/19/1982	1/16/1990	Governor Thomas H. Kean enters office (Republican)	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
7/7/1982	6/30/1990	Education Commissioner Saul Cooperman enters office	Education	<i>Fitzgerald's New Jersey Legislative Manual</i>
11/15/1983		<i>Abbott v. Burke</i> dismissed from Superior Court	Legal Process	
7/23/1985		Supreme Court rules that <i>Abbott v. Burke I</i> must be heard administratively	Legal Process	
9/29/1986	6/5/1987	<i>Abbott v. Burke I</i> administrative hearings	Legal Process	
8/25/1988		<i>Abbott v. Burke I</i> administrative law judge Steven Lefelt rules for plaintiffs in <i>Abbott I</i>	Legal Process	
9/25/1989		<i>Abbott v. Burke II</i> argued at Supreme Court	Legal Process	
<b>Governor FLORIO</b>				
1/16/1990	1/18/1994	Governor James J. Florio enters office (Democrat)	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
6/5/1990		<i>Abbott v. Burke II</i> decision	Legal Process	<a href="http://www.edlawcenter.org/assets/files/pdfs/abott-v-burke/Abbott%20II.pdf">http://www.edlawcenter.org/assets/files/pdfs/abott-v-burke/Abbott%20II.pdf</a>
7/3/1990	12/31/1992	Education Commissioner John Ellis enters office	Education	<i>Fitzgerald's New Jersey Legislative Manual</i>
7/23/1990		Quality Education Act (QEA) signed	Political	<a href="http://law.njstatelib.org/law_files/njlh/lh1990/L1990c52.pdf">http://law.njstatelib.org/law_files/njlh/lh1990/L1990c52.pdf</a>
1991		Jonathon Kozol publishes <i>Savage Inequalities: Children in America's Schools</i>	Education	
11/6/1991		New Jersey Schools construction/maintenance tab nearly \$6 billion; State Department of Education press release; Commissioner John Ellis.	Education	NJDOE press release
1/4/1993	1/18/1994	Mary L. Fitzgerald takes office as Commissioner of Education	Education	<i>Fitzgerald's New Jersey Legislative Manual</i>
7/12/1994		<i>Abbott v. Burke III</i> decision	Legal Process	<a href="http://www.edlawcenter.org/assets/files/pdfs/abott-v-burke/Abbott%20III.pdf">http://www.edlawcenter.org/assets/files/pdfs/abott-v-burke/Abbott%20III.pdf</a>
<b>Governor WHITMAN</b>				
1/18/1994	1/31/2001	Governor Christine T. Whitman enters office (Republican)	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
2/23/1994	4/4/1999	Education Commissioner Leo F. Klagholt takes office	Education	<i>Fitzgerald's New Jersey Legislative Manual</i>
2/1/1995		<i>School Facilities: Condition of America's Schools</i> published	Education	<a href="http://www.gao.gov/assets/230/220864.pdf">http://www.gao.gov/assets/230/220864.pdf</a>
4/4/1995		<i>School Facilities: America's Schools Not Designed or Equipped for 21st Century</i>	Education	<a href="http://archive.gao.gov/t2pbat1/153956.pdf">http://archive.gao.gov/t2pbat1/153956.pdf</a>
5/1/1996		State Board of Education adopts Core Curriculum Standards	Education	

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
6/14/1996		<i>School Facilities: America's Schools Report Differing Conditions</i> published	Education	<a href="http://www.gao.gov/archive/1996/he96103.pdf">http://www.gao.gov/archive/1996/he96103.pdf</a>
12/19/1996		Comprehensive Educational Improvement and Financing Act (CEIFA) enacted	Political	
5/14/1997		<i>Abbott v. Burke IV</i> decision	Legal Process	<a href="http://www.edlawcenter.org/assets/files/pdfs/abott-v-burke/Abbott_IV.pdf">http://www.edlawcenter.org/assets/files/pdfs/abott-v-burke/Abbott_IV.pdf</a>
11/1997		<i>A Study of School Facilities and Recommendations for the Abbott Districts</i> (Vitetta Report)	Education	
5/21/1998		<i>Abbott v. Burke V</i> decision contains detailed prescriptive remedies, including school facilities	Legal Process	<a href="http://www.edlawcenter.org/assets/files/pdfs/abott-v-burke/Abbott_V.pdf">http://www.edlawcenter.org/assets/files/pdfs/abott-v-burke/Abbott_V.pdf</a>
5/21/1998		Cost estimate of program contained within Appendix to <i>Abbott V</i> decision is \$2.8 billion for special needs alone	Financial	Dunstan McNichol's article in <i>Star Ledger</i> , May 14, 2000
6/2/1998		U.S. Secretary of Education Richard Riley visits Public School No. 16 in Paterson (built in 1892)	Political	
10/6/1998		Governor Whitman's proposed statewide program: estimated cost \$5.3 billion	Financial	Dunstan McNichol's article in <i>Star Ledger</i> , May 14, 2000
4/5/1999	2/26/2001	Education Commissioner David Hespe takes office	Education	<i>Fitzgerald's New Jersey Legislative Manual</i>
5/10/1999		Governor Whitman's draft construction legislation is submitted to the Legislature: cost \$6 billion	Financial	Dunstan McNichol's article in <i>Star Ledger</i> , May 14, 2000
8/20/1999		SNDS submit plans costing \$7.3 billion; with suburban school districts, total cost for plan: \$10 billion	Financial	Dunstan McNichol's article in <i>Star Ledger</i> , May 14, 2000
9/9/1999		Education Commissioner Hespe authorizes design work on health & safety improvements in anticipation of Governor Whitman's school construction and renovation initiative	Education	NJDOE press release describes 200 health and safety projects in 17 districts.
11/18/1999		Estimated cost of program reaches \$11.5 billion; Legislature unveils first draft of construction legislation, including \$1 billion for wealthier communities	Financial	Dunstan McNichol's article in <i>Star Ledger</i> , May 14, 2000
11/29/1999		Public Hearing, Senate Bill No. 15, Educational Facilities Construction and Financing Act (EFCFA)	Political	
12/8/1999	12/15/1999	A2041 (EFCFA) introduced in State Assembly by Jack Collins (Report issued September 2000)	Political	<a href="http://www.state.nj.us/sci/pdf/roofrelease.pdf">http://www.state.nj.us/sci/pdf/roofrelease.pdf</a>
2/7/2000		A2041 (EFCFA) introduced in State Assembly by Jack Collins	Political	
2/17/2000		S200 (EFCFA) introduced in State Senate by William Gormley and referred to Senate Education Committee	Political	
3/7/2000		<i>Abbott v. Burke VI</i> decision	Legal Process	<a href="http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_IV.pdf">http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_IV.pdf</a>
3/9/2000		Public Hearing, Senate Education Committee, S200 (EFCFA)	Political	
4/1/2000		National Education Association publishes <i>Modernizing Our Schools: What Will It Cost?</i>	Education	
4/7/2000		Senate President DiFrancesco sets May 18 for vote on S200	Politics	
4/27/2000	5/27/2000	<i>Abbott VIII</i> (Collin's request for clarity) submitted and decided	Legal Process	<a href="http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_VII.pdf">http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_VII.pdf</a>
5/5/2000		Estimated cost of the program reaches \$15 billion and is amended to cover at least 40% of all construction costs in the non-Abbott districts; extends retroactivity to September 1998	Financial	Dunstan McNichol's article in <i>Star Ledger</i> , May 14, 2000
5/18/2000		S200 passed by Senate (36-1)	Political	

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
5/22/2000		S200 (EFCFA) received in State Assembly and referred to Appropriations Committee	Political	
6/5/2000		S200 (A2041; EFCFA) approved by the Assembly (41-29-5)	Political	
6/29/2000		S200 (EFCFA) passed by Senate (38-0)	Political	
7/13/2000		S200 (EFCFA) passed by the Assembly (66-8-1), concluding the process in both houses	Political	
7/18/2000		EFCFA signed by Governor Whitman (P.L. 2000, Ch. 72)	Political	<a href="http://www.nj.gov/education/facilities/laws/chap72.pdf">http://www.nj.gov/education/facilities/laws/chap72.pdf</a>
9/2000		State of NJ Commission of Investigation Issues report <i>Waste &amp; Abuse: Public School Roofing Projects</i>	Political	<a href="http://www.state.nj.us/sci/school.shtm">http://www.state.nj.us/sci/school.shtm</a>
10/12/2000		ELC releases <i>Abbott Implementation Report on School Facilities</i>	Education	
10/25/2000		Education Commissioner Hespe marks the 90 days since Whitman signed the EFCFA, stating that the Department of Education has given the green light for more than 400 projects totalling \$800 million	Education	NJDOE press release.
12/20/2000		NJDOE approves first LRFP for <i>Abbott</i> districts: Hoboken and Burlington City	Education	NJDOE press release and <i>iPhiladelphia Inquirer and Times of Trenton</i>
12/22/2000	6/6/2002	1st Request for proposal for architects issued by NJEDA for Health & Safety design work (HS-0001-A01), the beginning the massive procurement of design consultants for this work; this wave ends with HS-0115-A01 in June 2002	Construction	Print of original NJEDA webpage
12/27/2000		NJDOE issues list of "Pipeline Projects" carved out of LRFP process and targeted for fast track completion; all had design work under way before 18 July 2000 (date of EFCFA signature).	Education	NJDOE press release
1/10/2001		NJDOE approves LRFPs for five more <i>Abbott</i> districts: Trenton, Keansburg, Bridgeton, Harrison, Long Branch	Education	NJDOE press release
1/18/2001		NJDOE approves LRFPs for four more <i>Abbott</i> districts: Irvington, Perth Amboy, Plainfield, Vineland.	Education	NJDOE press release
1/31/2001		Governor Whitman becomes Administrator of U.S. Department of Environmental Protection, appointed by Republican George W. Bush	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
<b>Acting Governor DiFRANCESCO</b>				
1/31/2001	1/8/2002	Acting Governor Donald DiFrancesco takes office (Republican)	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
2/6/2001		NJDOE approves LRFPs for six <i>Abbott</i> districts: Newark, Paterson, Millville, Orange, Phillipsburg, Neptune	Education	NJDOE press release
2/22/2001		NJDOE announces approval of LRFPs for Union City, Garfield and Pemberton districts	Education	NJDOE press release and <i>Times of Trenton</i> .
2/26/2001	1/15/2002	Education Commissioner Vito A. Gagliardi takes office	Education	<i>Fitzgerald's New Jersey Legislative Manual</i>
3/1/2001		NJDOE Commissioner Gagliardi approves Jersey City's LRFP, noting the current average age of district's buildings is 75 years	Education	NJDOE press release
3/19/2001		NJDOE approves LRFPs for four <i>Abbott</i> districts: West New York, East Orange, Asbury Park, Passaic	Education	NJDOE press release
4/2/2001		NJEDA issues Series A Bonds of \$500,000,000	Financial	First bond issuance of the EFCFA. Source: <i>Biannual Report of New Jersey Schools Development Authority</i> . Appendix E

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
4/9/2001		NJDOE approves LRFP for Elizabeth; estimated cost \$523 million	Education	NJDOE press release
4/18/2001	10/24/2001	Procurement of Project Managers by NJEDA; first round of PMF contracts	Construction	NJEDA webpage
6/29/2001		NJEDA advertises for furniture for 300 early childhood temporary classroom units (TCU) throughout the state	Construction	NJEDA webpage
7/16/2001		NJDOE Commissioner Gagliardi announces approval of Gloucester City's LRFP costing approximately \$33 million	Education	NJDOE press release
7/26/2001		First representatives from NJEDA tour sites in Newark to begin work on program	Construction	<i>Star Ledger</i>
10/15/2001		State Auditor Richard Fair, Office of Legislative Services, completes audit of NJEDA: "No findings of significance"	Political	<a href="http://www.nileg.state.nj.us/legislativepub/auditor/90051.pdf">http://www.nileg.state.nj.us/legislativepub/auditor/90051.pdf</a>
11/2001		NJEDA hires PB+3D/I in fall 2001 to manage Newark's construction plans	Construction	<i>Star Ledger</i>
12/28/2001		NJEDA issues Series B Bonds of \$8,600,000; QZAB	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
1/1/2002		NJEDA December 2001 monthly report describes issuance of RFPs for health and safety projects at more than 40 schools in seven <i>Abbott</i> districts with a construction cost estimate of \$74 million.	Construction	December 2001 monthly report, NJEDA
1/8/2002	1/15/2002	John Farmer, John Bennett, Richard Codey, are each Acting Governor for a few days between DiFrancesco and McGreevey	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
<b>Governor MCGREEVEY</b>				
1/15/2002	11/15/2004	Governor James E. McGreevey takes office (Democrat)	Political	
1/17/2002		McGreevey signs Executive Order No. 1: Project Labor Agreements	Political	
1/15/2002	9/11/2005	Education Commissioner William B. Librera takes office	Education	<i>Fitzgerald's New Jersey Legislative Manual</i>
2/21/2002		<i>Abbott v. Burke VIII</i>	Legal Process	<a href="http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_VIII.pdf">http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_VIII.pdf</a>
2/21/2002		NJDOE approves LRFPs three <i>Abbott</i> districts: Union City, Pemberton, Garfield	Education	NJDOE press release
5/28/2002		Groundbreaking for first school built under court mandate; ECC classrooms at Samuel Smith Elementary School in Burlington	Construction	Associated Press
6/11/2002		<i>Abbott v. Burke IX</i>	Legal Process	<a href="http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_IX.pdf">http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_IX.pdf</a>
7/25/2002		Project Labor Agreement Act (P.L. 2002, Chapter 44) signed into law	Political	See also McGreevey's Executive Order No. 1 of July 17, 2002
7/29/2002		McGreevey issues Executive Order No. 24, creating NJSCC, with Alfred McNeill as CEO; announcement made at Paterson's East Side High School	Political	<a href="http://www.state.nj.us/infobank/circular/eom24.htm">http://www.state.nj.us/infobank/circular/eom24.htm</a>
7/30/2002		First day of hearings by Assembly Committee on Education (school districts and public activists)	Political	<a href="http://www.nileg.state.nj.us/legislativepub/pubhear/073002lb.PDF">http://www.nileg.state.nj.us/legislativepub/pubhear/073002lb.PDF</a>
7/31/2002		Second day of hearings by Assembly Committee on Education (NJDOE, NJEDA, and NJDCA staff)	Political	<a href="http://www.nileg.state.nj.us/legislativepub/pubhear/073102rs.PDF">http://www.nileg.state.nj.us/legislativepub/pubhear/073102rs.PDF</a>
8/1/2002		NJEDA Board of Directors meets about Union City (Middle School) and West New York (Middle School) projects; McNeill arrives as CEO of the new NJSCC	Administrative	<i>Trenton Times</i>
9/27/2002		First NJSCC Board of Directors meeting	Administrative	
10/6/2002		NJEDA issues series C Bonds for \$600,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
10/2002	5/2008	Land acquired for site of Harrison's new high school; ribbon cutting in May 2008	Construction	NJEDA monthly report (date is approximated) [Contract: HU-0001-C04]
10/2002		Land acquired for site of Neptune School District's new Midtown Community Elementary School	Construction	NJEDA monthly report (date is approximated)
10/18/2002		Contract awarded for \$8.9 million of construction at Passaic School District's PS No. 10 & PS No. 1 (Bergen Engineering: HS-0101-C01)	Construction	NJEDA monthly report
10/22/2002	9/9/2004	West New York's Middle School groundbreaking; ribbon cutting September 2004	Construction	NJEDA monthly report & NJSDA's "My school" tool
10/22/2002	9/28/2004	Union City's Middle School (Jose Marti) groundbreaking; ribbon cutting September 2004	Construction	NJEDA monthly report & NJSDA's "My school" tool
10/28/2002		Central Planning Board of City of Newark passes resolution providing blanket approval of all sites identified in school district's site acquisition plan (> 40 sites)	Political	NJEDA monthly report
11/2002	8/25/2004	NTP issued for K-8 Main Street Elementary School in Orange; \$17,294,000, 123,768 sf. ET-0002-C01; ribbon cutting August 25, 2004	Construction	NJSCC Monthly Report, November 2002. Date of ribbon cutting is from NJSDA website, 8/2009
11/30/2002		NJSCC reported that it had engaged design consultants on 111 contracts for health and safety design work on 352 schools; estimated construction cost \$51.4 million	Construction	NJSCC Monthly Report, November 2002.
12/30/2002		NJEDA issues series D bonds for \$29,400,000 (QZAB)	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
1/9/2003		Groundbreaking for Passaic City School District's MLK Jr. ES No. 6; 43,000 sf addition with renovation of existing school	Construction	NJSCC press release
1/14/2003	5/11/2005	Groundbreaking for Long Branch's Amerigo Anastasia Elementary School; \$16.6 million for 94,000 sf Pre-K to Grade 5; ribbon cutting May 11, 2005	Construction	NJSCC press release and NJSDA website
1/16/2003	10/1/2004	Construction of Ignacio Cruz Early Childhood Center in Perth Amboy; 67,000 sf, \$12.5 million	Construction	NJSCC press release & NJSDA's "My School" tool (websites for ET-0009-C01)
1/23/2003	10/15/2003	Vineland's addition to E.R. Johnstone Elementary School; \$3.9 million for 22,600 sf addition (ST-0008-C01)	Construction	NJSCC April 2003 Monthly Report. Construction award on January 23, 2003. (construction duration is very short)
3/12/2003		Governor announces "School Renaissance Zone Program," beginning with Roebling (Trenton)	Political	NJSCC monthly report, March 2003
3/12/2003	5/15/2004	Gloucester City's Cold Springs ECC contract ST-0002-C01 awarded (\$8.1 million); project was dedicated May 15, 2004	Construction	April 2000 NJSCC monthly report and NJSDA website
3/14/2003		NJEDA issues series E bonds for \$7,929,000 (QZAB)	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
3/27/2003		Public Hearing before Joint Committee on Public Schools School Facilities Subcommittee (CEO Alfred McNeil testifies)	Political	<a href="http://www.nileg.state.nj.us/legislativepub/PUBHEAR/032703rs.pdf">http://www.nileg.state.nj.us/legislativepub/PUBHEAR/032703rs.pdf</a>
4/28/2003		Construction kickoff of addition to E.R. Johnstone Elementary School in Vineland	Construction	Contract # ST-0008-C01 awarded January 23, 2003.; according to NJSCC monthly report, a "Kickoff" occurred April 28; finished October 2003. 22,600 sf addition to existing school, cost \$3.9 million; duration: 7 months of construction
5/28/2003		Al McNeill introduces Design Build project delivery to NJSCC Board of Directors	Administrative	NJSCC Board Agenda located in NJ State Government Archives box G-644
6/11/2003		NJSCC opens Jersey City Regional Office	Construction	NJSCC monthly report
6/13/2003		Design contract awarded to Gensler & Associates for Camden's H.B. Wilson Elementary School (CA-0009-A01)	Construction	Governor's press releases

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
6/29/2003		<i>Star Ledger's "Fixing Urban Schools Proves Painfully Slow," marking 3 years since approval of EFCFA</i>	Press	McNichols and Chambers's article in <i>Star Ledger</i>
8/7/2003		NJEDA issues series F bonds for \$600,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
8/20/2003		NJSCC opens Newark Regional Office	Construction	NJSCC monthly report
9/2003		Spencer appointed CEO of NJSCC	Construction	McNeill's status is not clear.
9/2/2003		New Jersey papers present extensive front-page coverage of flurry of suburban school construction, contrasted with sluggish pace in state-managed <i>Abbott</i> districts	Press	<i>Star Ledger</i>
9/29/2003		NJSCC has 178 employees	Construction	<i>Burlington County Times</i>
10/10/2003		NJSCC opens West Paterson Regional Office	Construction	NJSCC monthly report; McNeill apparently was retired and Spencer was in the process of arriving
1/23/2004		NJEDA issues series G bonds for \$650,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
5/5/2004		State Board of Education meets to discuss changes to NJAC 6A:26-School Construction	Education	This summarizes proposed changes to NJDOE regulations, State Board meeting December 3, 2003, and public testimony January 21, 2004
5/15/2004		Cold Springs ECC in Gloucester City dedicated	Construction	Data from ST-0002-C01, cost was \$8.1 million, contract awarded March 12, 2003
5/17/2004	11/2006	Groundbreaking for Newark's Science Park High School	Construction	From invitation to ceremony
5/18/2004		NJEDA issues series H bonds for \$300,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
6/15/2004		Groundbreaking for Newark's Central High School	Construction	NJSCC press release
8/13/2004		Governor announces that personal concerns compromise his ability to govern, intends to resign November 2004	Political	Televised press conference.
8/31/2004		NJEDA issues series I bonds for \$250,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
8/31/2004		NJEDA issues series J bonds for \$500,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
11/15/2004		Governor McGreevey formally resigns and leaves office	Political	Official resignation November 15, press conference August 13
<b>Acting Governor CODEY</b>				
11/15/2004	1/17/2006	Acting Governor Richard J. Codey (Democrat) enters office	Political	<i>Fitzgerald's New Jersey Legislative Manual</i>
1/19/2005	5/2008	Groundbreaking for Harrison's new high school building.	Construction	NJSCC contract HU-0001-C04
1/28/2005		Second cycle of LRFP begins with issuance of guidelines	Education	<a href="http://www.nj.gov/education/facilities/lrfp/guidelines.pdf">http://www.nj.gov/education/facilities/lrfp/guidelines.pdf</a>
4/6/2005		NJEDA issues series L bonds for \$150,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
4/6/2005		NJEDA issues series M bonds for \$500,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
4/21/2005		State Inspector General M.J. Cooper issues report on NJSCC performance	Political	<a href="http://nj.gov/comptroller/news/oig/pdf/niscc_preliminary_report.pdf">http://nj.gov/comptroller/news/oig/pdf/niscc_preliminary_report.pdf</a>
4/26/2005		Governor signs E.O. No. 32 changing composition of NJSCC Board of Directors and establishing office of Chief Financial Officer (CFO)	Political	<a href="http://www.nj.gov/infobank/circular/eoc32.htm">http://www.nj.gov/infobank/circular/eoc32.htm</a>
5/10/2005		Alfred C. Koeppe becomes Chairman of NJSCC	Political	
5/13/2005		NJSCC CEO Spencer appoints Peter E. Mariconda as CFO	Administrative	NJSCC press release
5/21/2005		State halts all site feasibility contracts for new sites; Spencer is interviewed; state shifts \$181 million of ongoing construction	Construction	<i>Star Ledger</i> article, McNichol
7/24/2005		McNichol writes <i>Chipping Away the Old Block: State School Project Lays Waste to Newark Neighborhood</i>	Press	<i>Star Ledger</i> article, McNichol
7/27/2005		NJSCC Board of Directors approves short list of 59 projects (July 2005 Capital Plan) with the remaining funds available for construction, thereby suspending 315 projects	Administrative	

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
7/29/2005		McNichol article: <i>\$178M Invested in Now-Shelved School Projects. Dried-Up Fund Angers Lawmakers; list of 59 unveiled</i>	Press	<i>Star Ledger</i> article, McNichol
8/11/2005		Hearing by Joint Committee on the Public Schools, School Facilities and Construction Subcommittee: "Testimony Concerning Relocation Issues of Residents and Postponing Projects"	Political	<a href="http://www.nileg.state.nj.us/legislativepub/pubhear/icps081105.pdf">http://www.nileg.state.nj.us/legislativepub/pubhear/icps081105.pdf</a>
8/11/2005		ELC asks Supreme Court to ask for more funding for school projects after July 27th decision by NJSCC to stop work on more than 200 projects; followed by Abbott XIV in December 2005	Legal Process	ELC press release
8/23/2005		NJSCC CEO John F. Spencer resigns	Administrative	<i>Courier Post</i>
9/7/2005		John F. Spencer's last day at NJSCC	Administrative	<i>Herald News</i> editorial, August 22, 2005
9/12/2005	10/15/2006	Acting Commissioner of Education Lucille Davy takes office	Education	
9/28/2005		NJSCC (Peter Maricondo) informs District Superintendents that all design work is suspended temporarily	Administrative	E-mail from NJSCC (distributed to Regional Directors by Donald Moore (thus filed under "M")
10/4/2005		NJEDA issues series O bonds for \$750,000,000	Financial	This was the largest single principal amount ever issued at one time during the course of the program as of October 2013 (Source: Biannual Report of New Jersey Schools Development Authority, Appendix E)
11/8/2005		Jon Corzine elected Governor	Political	
12/15/2005		NJEDA issues series P bonds for \$175,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
12/21/2005		NJEDA issues series Q bonds for \$500,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
<b>Governor CORZINE</b>				
1/17/2006		Governor Corzine takes office	Political	
2/7/2006		Barry Zubrow appointed Chair of NJSCC, Scott Weiner appointed Special Counsel to the Governor for oversight of the School Construction Program in accordance with Executive Order No. 3	Political	<a href="http://nj.gov/infobank/circular/eojsc3.htm">http://nj.gov/infobank/circular/eojsc3.htm</a>
2/8/2006		Zubrow attends first NJSCC Board meeting as Chairman	Political	
3/9/2006		NJSCC Acting CEO Maricondo resigns	Political	
3/13/2006		NJSCC Director of Design & Construction Donald Moore resigns	Construction	
3/15/2006		<i>Governor's Interagency Working Group 1st Report</i>	Political	<a href="http://www.njsda.gov/RP/March_15.html">http://www.njsda.gov/RP/March_15.html</a>
5/17/2006		<i>Governor's Interagency Working Group 2nd Report</i>	Political	<a href="http://www.njsda.gov/RP/THE_GOVERNOR/final_report.pdf">http://www.njsda.gov/RP/THE_GOVERNOR/final_report.pdf</a>
		Symposium on School Construction Program in Abbott Districts	Education	<a href="http://www.edlawcenter.org/news/archives/school-facilities/228.html">http://www.edlawcenter.org/news/archives/school-facilities/228.html</a>
9/14/2006		<i>Governor's Interagency Working Group 3rd Report: Prioritization Task Force</i>	Political	<a href="http://www.njsda.gov/RP/september_14.pdf">http://www.njsda.gov/RP/september_14.pdf</a>
10/16/2006		Acting Commissioner of Education Lucille Davy becomes Commissioner of Education	Administrative	
10/26/2006		Joint Committee on the Public Schools hearing on legislative initiatives emerging from 3rd Interagency Working Group Report	Political	<a href="http://www.nileg.state.nj.us/legislativepub/pubhear/icps102606.pdf">http://www.nileg.state.nj.us/legislativepub/pubhear/icps102606.pdf</a>
11/20/2006		NJEDA issues series R bonds for \$500,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
11/20/2006		NJEDA issues series S bonds for \$100,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
11/20/2006		Ribbon cutting, Newark's Science Park High School	Construction	School of 275,000 square feet. Groundbreaking May 2004
11/28/2006		NJSCC and NJDoE hold joint symposium on Land Acquisition in Jamesburg	Administrative	Found on NJSCC's monthly calendar.

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
2/7/2007		NJSCC files claim against Hunt Construction for \$749,000 damages due to late completion of Newark's Science Park High School	Administrative	NJSCC press release
4/25/2007		Approval of construction deferral plan by NJSCC Board of Directors	Administrative	
4/12/2007		Governor Corzine seriously injured in motorcade accident; Codey becomes Acting Governor	Administrative	Accident on Garden State Parkway, Corzine is hospitalized in critical condition
5/7/2007		Governor Corzine resumes takes executive powers	Administrative	
5/24/2007		Construction contract awarded to TAK Construction for ET-0024-C01 - ECC 2 (Hmielski) in Perth Amboy	Construction	NJSDA website data
5/28/2007		Construction contract awarded to Ernest Bock & Sons for Camden's H.B. Wilson Elementary School (CA-0009-C01) for \$21,943,000	Construction	NJSDA website data
6/20/2007		Groundbreaking at Camden's H.B. Wilson Elementary School	Construction	NJSDA website data
6/21/2007		A4336 and S2796 pass the State Assembly and Senate (50-30-0), establishing the New Jersey Schools Development Authority (NJSDA)	Legislative	
8/6/2007		NJSDA signed into law: P.L. 2007, Ch. 37	Legislative	<a href="http://www.njsda.gov/RP/PoliciesAndRegulations/pdfs/P.L.2007_ch_137.pdf">http://www.njsda.gov/RP/PoliciesAndRegulations/pdfs/P.L.2007_ch_137.pdf</a>
10/4/2007		NJEDA issues T series bonds for \$500,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
10/4/2007		NJEDA issues U series bonds for \$250,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
11/1/2007		Groundbreaking at Perth Amboy, ECC 2 (Hmielski), ET-0024-A01	Construction	NJSDA website
1/22/2008		NJ Attorney General pledges to State Supreme Court on behalf of Corzine Administration to seek funding for schools in SDA districts	Legal Process	
2/19/2008		<i>Abbott v. Burke XVIII</i> decision	Legal Process	<a href="http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_XVIII.pdf">http://www.edlawcenter.org/ELCPublic/Publications/PDF/Abbott_XVIII.pdf</a>
2/21/2008		Contractor, Architect agree to pay SDA settlement for mistakes on Neptune school project.	Administrative	From NJSDA website, press releases
5/10/2008		Ribbon cutting at Harrison High School (school opened September 2007)	Construction	From NJSDA website, press releases
6/3/2008		NJEDA issues series X bonds for \$250,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
6/3/2008		NJEDA issues series Y bonds for \$200,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
6/18/2008		Beam signing ceremony at Camden's H.B. Wilson Elementary School	Construction	NJSDA website
7/8/2008		NJSDA Board of Directors approves "New Funding Allocation and Capital Plan"	Administrative	<a href="http://www.njsda.gov/Archive/2008/07/07.08.08/PDF/Funding-Capital_Plan_2008.pdf">http://www.njsda.gov/Archive/2008/07/07.08.08/PDF/Funding-Capital_Plan_2008.pdf</a>
7/9/2008		Amendment to EFCFA, P.L. 2008, Ch. 39, adding \$3.9 billion in funding to the SDA (\$2.9 for "special needs districts" (SDA) signed by Governor Corzine	Legislative	<a href="http://www.njleg.state.nj.us/2008/Bills/AL08/39_.HTM">http://www.njleg.state.nj.us/2008/Bills/AL08/39_.HTM</a>
12/1/2008		Kris Kolluri appointed CEO of NJSDA	Administrative	<a href="http://www.njsda.gov/Archive/2008/11/11.06.08/nr_11.06.08.html">http://www.njsda.gov/Archive/2008/11/11.06.08/nr_11.06.08.html</a>
1/29/2009		NJEDA issues series Z bonds for \$175,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
2/11/2009		Hearing by Joint Committee on the Public Schools : update from CEO Kolluri; held at Paterson's new International High School.	Political	<a href="http://www.njleg.state.nj.us/legislativepub/pubhear/icps02112009.pdf">http://www.njleg.state.nj.us/legislativepub/pubhear/icps02112009.pdf</a>
6/13/2003	9/8/2009	Camden's H.B. Wilson Elementary: first day of classes in presence of Governor Corzine	Construction	Governor's press release (design awarded June 13, 2003, construction contract awarded May 28, 2007)
6/17/2003	9/9/2009	Perth Amboy's Edward Hmielewski Jr. ECC opens (ET-0024-A01)	Construction	Governor's press release (design awarded June 17, 2003, construction contract awarded to TAK Construction May 24, 2007)

Date start	Date end	Event	Type	Reference, source, hyperlink, comments
11/3/2009		Chris Christie wins gubernatorial election	Political	
<b>Governor CHRISTIE</b>				
1/19/2010		Chris Christie takes office	Political	
1/7/2010		Governor Christie appoints Bret Schundler as Commissioner of Education	Education	Governor's press release
1/19/2010		NJSDA CEO Kolluri resigns	Administrative	Began December 1, 2008, held position for less than 13 months
1/27/2010		Governor Christie nominates Attorney Marc Larkins as Executive Director of NJSDA	Administrative	
1/28/2010		Governor Christie vetos NJSDA Board of Directors January 6 meeting minutes, protesting the approval of a change order on Burlington City High School	Political	
2/26/2010		NJSDA Board of Directors elects Marc Larkins as new CEO	Administrative	
4/15/2010		NJEDA approves \$500,000,000 in bonding for NJSDA	Financial	<a href="http://www.njeda.com/web/pdf/eda/april152010boardagenda.pdf">http://www.njeda.com/web/pdf/eda/april152010boardagenda.pdf</a>
5/17/2010		NJEDA issues series CC-1, CC-2, and B Notes bonds for \$530,025,000 for school program	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E
8/27/2010		Governor Christie orders resignation of Education Commissioner Bret Schundler over "Race to the Top"	Political	
8/27/2010	1/18/2011	Rochelle Hendricks becomes Acting Commissioner of Education	Administrative	
2/2006	9/1/2010	Barry Zubrow resigns as Chairman of NJSDA	Political	Appointed by Corzine, began work in February 2006
7/18/2010		Tenth anniversary of signing of EFCFA observed by Governor		The date passes in silence.
9/7/2010		Lincoln Avenue Elementary School, Orange, opens expansion	Construction	Contract ES-0008-C01, Hall Building Corporation for \$28,965,000 awarded November 2007; PS&S Architects - ES-0008-A01 awarded February 2004
12/1/2010		Neptune Township Schools is celebrated at NJSDA Board of Directors for being the first district to complete its LRFP	Political	Press release and Board meeting minutes
1/18/2011		Christopher Cerf named Acting Commissioner of Education	Education	NJDOE website, January 29, 2011
10/13/2012		NJEDA issues series KK, G, and H Notes bonds for \$375,000,000	Financial	Biannual Report of New Jersey Schools Development Authority, Appendix E

## **Curriculum Vita**

### **Robert S. Daniel**

#### **Education and Certification**

Bachelor of Arts, Political Science, Queens College, City University of New York, 1978

Master of Urban Planning, Transportation Program, Princeton University, Princeton, NJ, 1980

American Institute of Certified Planners (AICP) # 018031, 2002

#### **Professional Employment**

New Jersey Schools Development Authority, Program Officer, 2009–present

URS Corporation, Pre-Construction Manager, New Jersey, 2001–2009

Yissum Consultants: Roadways\Environment Ltd., Director General, Jerusalem, Israel, 1995–2001

Cross Israel Highway Company Ltd.

Yissum Consultants & Cross Israel Highway Company, Tel Aviv, Israel, 1993–2001

Roadway & Highway Implementation Team, Jerusalem, Israel

Yoram Gadish Engineering Ltd, 1987–1993

Municipality of Jerusalem, Engineering Department, Jerusalem, Israel, 1983–1987

Atlantic County Division of Planning, Atlantic City, NJ, 1980–1982

#### **Publications**

Tel Aviv Fast Lanes: Implementing a Prototype “HOT” Lane in a Middle Eastern Metropolitan Area (TRB 11th International HOV Conference, Seattle, WA, October 2002)

From Mule Tracks to LRT Tracks: Integrating Modern Infrastructure Into an Ancient City: Jerusalem, Israel (Conference on Light Rail Transit, Portland, OR, November 2003)

From Concept to Reality: Building an Urban School (84th Annual International Conference, Council of Educational Facility Planners International (CEFPI), Toronto, Canada, October 2007; with Turner Construction)

Urban School Construction – A “Mega-Project”: A discussion of research in Project Delivery and Program Management, (Northeast Regional Conference, Council of Educational Facility Planners International, New Brunswick, New Jersey, May 2009).