

**The Abbott School Construction Program:
Report on the NJ Department of Education Proposed
Regulations on Long-Range Facilities Plans**

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Joan Ponessa, Director of Research

**Education Law Center
60 Park Place, Suite 300
Newark, New Jersey 07102
973.624.1815 #23
www.edlawcenter.org**

**A BEST Project Report
(Building Educational Success Together)**

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About Education Law Center

Education Law Center (ELC) was established in 1973 to advocate on behalf of New Jersey's public school children for access to an equal and adequate education under state and federal laws through litigation, policy initiatives, constituency building and action research.

ELC serves as counsel to the plaintiffs in the *Abbott v. Burke* case— more than 350,000 preschool and school-age children in 30 urban school districts across the state. The NY Times has said that *Abbott* “may be the most significant education case” since *Brown v. Board of Education*, and New Jersey lawyers have designated *Abbott* the most important court ruling in the State in the 20th century (*NJ Lawyer*, 2000).

The landmark *Abbott IV* (1997) and *Abbott V* (1998) rulings directed the State to implement a comprehensive set of remedies to improve education in the Abbott districts, including universal preschool, standards based education, adequate K-12 foundational funding, supplemental or “at risk” programs, and adequate school facilities. ELC works to hold the State and districts accountable for effective and timely implementation of these remedies.

About BEST

ELC is a partner in the BEST (Building Educational Success Together) Initiative. BEST advocates for safe and adequate school facilities in poor school districts, with an emphasis on making schools centers of high poverty communities. Led by the 21st Century School Fund, BEST advocates through constituency building, research and communications, and policy reform in Washington DC, Chicago IL, NJ's Abbott districts, Cleveland, Columbus and Cincinnati, OH.

For more information about this report or BEST, please contact:

Joan Ponessa, Research Director
Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102
973-624-1815 #23
Url: www.edlawcenter.org

Mary Filardo, BEST Project Director
21st Century School Fund
2814 Adams Mill Road, NW
Washington D.C. 20009-2204
Url: www.21csf.org

Purpose of the Report

This report on LRFPs analyzes regulations proposed by the New Jersey Department of Education (NJDOE) to implement the Educational Facilities Construction and Financing Act. (EFCFA).¹ EFCFA, which authorizes and governs New Jersey's public school construction program, was enacted in July 2000 to implement the State Supreme Court's landmark 1998 ruling in *Abbott v. Burke* (*Abbott V*).²

Specifically, this report examines NJDOE's proposed regulations, N.J. Admin. Code 6A:26-2, requiring the preparation of five-year, district wide facilities plans. The proposal is evaluated for compliance with the mandate in *Abbott V* for safe and educationally adequate school facilities. This mandate is one of the remedies ordered by the Supreme Court to ensure a "thorough and efficient" education for urban students under the State Constitution. The *Abbott* ruling applies to 30 urban or "Abbott districts," which serve 25 percent of New Jersey's public school students.³

The 2004-2005 school year marks the end of the first five years of implementation of the Abbott school construction program. Both *Abbott V* and EFCFA require the Abbott districts to "prepare and submit" to the NJDOE new LRFPs by the end of the 2005 school year, or by October 2005. These new LRFPs will replace the current (1999-2004) plans, providing the blueprint for each district's school construction program for the next five-year construction cycle, extending through 2010. EFCFA also requires the NJDOE to establish, by regulation, the "guidelines, criteria and format" for the district LRFPs.⁴

As discussed in this report, the current LRFPs were hastily prepared in 1999, with little input from local educators, parents and community leaders. Existing facilities were assessed for educational adequacy using a set of one-size-fits-all "facilities efficiency standards" (FES) established by the NJDOE. Scant consideration was given to surrounding community needs, and the critical role new or renovated schools can play in addressing those needs. Finally, the LRFPs failed to address preschool facilities needs altogether.⁵

The preparation of new district LRFPs in 2004-05 offers an important opportunity to address these and other deficiencies, and improve overall planning, over the next five years.

This report contains: (1) a summary of key findings and recommendations; (2) background on the Abbott school construction program and deficiencies in the current LRFPs; and (3) an analysis of the proposed NJDOE regulations and recommendations for improvement. The report makes clear that substantial revisions are needed to improve the quality of districts' facilities planning over the next five-year construction cycle. ELC seeks to enlist the support of the NJDOE, and the State Commissioner and Board of Education in making these essential improvements.

¹ NJ Stat. Ann. 18A:7G-4.

² 153 N.J. 480 (1998). More information on *Abbott v. Burke* is available at www.edlawcenter.org.

³ *Abbott V* required the State to address the facilities needs in urban school districts. Under EFCFA, the State has also assumed responsibility to "identify" facilities needs in all other districts, and to "contribute" to the cost meeting such needs. NJ Stat. Ann. 18A:7G-2c.

⁴ NJ Stat. Ann. 18A:7G-4 and 26

⁵ ELC has issued a report on the sections of the NJDOE proposed regulations relating to preschool. "NJDOE Proposed Facilities Regulations: Analysis of Preschool Issues," January 2004. The report is available at: www.edlawcenter.org/ELCPublic/elcnews_040109_PreschoolFacilitiesStory.htm

Summary

1. Findings

- The current district LRFP's were hastily prepared in 1999, with minimal input from local educators and community representatives. The NJDOE required districts to use a set of one-size-fits-all standards for facilities planning in the LRFPs, which severely restricted districts' consideration of best practices and research to enhance the learning environment for teachers and students. The LRFPs also did not address preschool facilities; and failed to consider opportunities to include community features in facilities.

- Since 1999, districts have proposed, and NJDOE has approved, amendments that have substantially altered school size, grade configurations and other critical elements of the LRFP without input from educators, parents and other stakeholders.

- NJDOE maintains no publicly accessible database on the current LRFPs, facility project approvals, and plan amendments. This absence of reliable data deters public engagement in the local facility planning process, and makes it impossible hold NJDOE and local districts accountable for timely and effective program implementation.

2. Recommendations

The NJDOE has proposed regulations to govern the preparation of new LRFPs for the next five-year (2005-2010) construction cycle. These regulations fail to address the numerous deficiencies in the current LRFPs, and fail to meet the explicit requirements *Abbott V*, EFCFA and Executive Order No. 24.⁶ The proposal must be amended to:

- Require districts to conduct a thorough re-assessment of their education program as the foundation for planning and designing facilities in the new LRFPs;

- Require districts to adopt a schedule and budget to ensure completion of the LRFP process by October 2005, and to maximize participation of educators and community stakeholders in the district wide LRFP process;

- Require the Commissioner to develop and adopt facilities efficiency standards backed by evidence of the educational adequacy of those standards, as required by EFCFA, the Administrative Procedure Act and *Abbott V*;

- Prohibit the use of the facilities efficiency standards as construction design standards, and provide guidance on using best practices to ensure enhanced learning environments in the planning and design of facilities, as required by Executive Order No. 24;

- Provide standards and guidelines to districts on planning facilities to include community features, as required by Executive Order No. 24; and

- Require the NJDOE to maintain a publicly accessible database on approved LRFPs and their projected costs, amendments to the LRFPs, and specific project approvals.

⁶ This Executive Order restructuring the Abbott school construction program was issued July 2002. See <http://www.state.nj.us/infobank/circular/eom24.htm>

Background

1. The Requirement for Long-Range Facilities Plans

Abbott V affirmed that adequate school facilities are an essential component of a “thorough and efficient” education in New Jersey. To ensure compliance with this mandate in the Abbott districts, the Supreme Court directed the State to implement a comprehensive program of school facilities improvements, including long range district-wide facilities planning under state standards; project approvals for repair, new construction and renovation consistent with the district-wide plans; priority for safety repairs; sufficient classrooms to eliminate overcrowding and to implement universal preschool; and 100% State financing and construction management of all projects. These directives were enacted by the Legislature in EFCFA.⁷

Abbott V

Long-range, or district-wide, facilities plans are central to the school construction mandate in *Abbott V*. At the heart of the ruling is the Supreme Court’s insistence that program implementation must drive facilities’ needs. To effectuate this requirement, *Abbott V* specifically directed districts to complete a comprehensive five-year plan to guide the district and the NJDOE in making necessary facilities improvements. The Court also specified that these plans must address three basic components:

- **Safety:** Schools must be safe, in good repair, and meet fire, health and construction codes.
- **Reasonable Class Size:** Current and future overcrowding must be eliminated by reducing – and maintaining – class sizes at 15 children in preschool, 21 children in kindergarten to third grade, 23 children in grades four through eight, and 24 students in high school.
- **Educationally Adequate:** Schools must have adequate space to deliver a rigorous curriculum based on New Jersey’s curriculum content standards, special education programs, and Abbott K-12 supplemental programs. The Court accepted a set of “minimum standards for instructional areas” recommended by the State as the baseline for educational adequacy. However, the Court authorized districts to “demonstrate the need for additional, specialized spaces” beyond the minimum standards, and ordered the State to fund the construction of such additional spaces “whenever such a need is demonstrated.”⁸

The Court directed that the five-year plans serve as the framework for the district and the State to “work together” to reach critical decisions about the scope of the district’s facilities improvement program. The Court identified the full range of issues that must be addressed in the plans, including: “how to make the ‘best use’ of existing space;” “grade configurations, school sending areas, school size, and each district’s individualized need for instructional space;” and the “site sensitive decision of whether to renovate existing buildings or to construct new ones.”⁹ Thus, the plans are the point when the most critical decisions about the district’s

⁷ EFCFA directs all school districts in the state to prepare an LRFP as a prerequisite to seeking state funding for specific facilities projects. EFCFA authorizes funding for all school districts, with the level determined by community income and property wealth. State funding ranges from 40% in high wealth districts to 100% in the Abbott districts. NJ Stat. Ann. 18A:7G-4 and 5.

⁸ 153 N.J. 521.

⁹ 153 N.J. 521.

facilities are made: the extent of building repairs or renovations, along with preliminary determinations for the construction of new schools.

EFCFA

EFCFA, in implementing *Abbott V*, reaffirms the Court requirements for a planning process to assess districts' school facilities needs and the preparation of a five-year facilities plan to address those needs. Under EFCFA, LRFPs must "conform" to the "guidelines, criteria and format" prescribed by the State, and must include:

- Enrollment projections completed by a qualified demographer to serve as the basis for identifying capacity and program needs;
- An educational adequacy inventory of all existing schools in the district, the identification of all deficiencies in the current inventory of buildings and proposed plans for future construction and renovation;
- A determination of the number of "unhoused students" for the next five years, or the number of full time students in all categories – preschool, K-12, special education -- who are projected to be enrolled within the next five years in excess of the "functional capacity" of the district's school buildings to deliver educationally adequate programs and services. "Functional capacity" is "determined by dividing the existing square footage of a school building by the minimum area allowance per FTE (full time equivalent) student;"¹⁰
- A determination of "the minimum area allowance per FTE student" is made by using "facilities efficiencies standards," or FES. In developing the FES, the Commissioner must determine the "instructional spaces, specialized instructional areas, and administrative spaces" that are "educationally adequate" to support delivery of the State's academic content standards and the "required programs in Abbott districts." The FES however, are to be used solely for the purpose of fixing the minimum amount of space per student that the state will support financially, and are not to be used as "construction design standards;"¹¹ and
- Review of the LRFP by the municipal planning board before submission to the NJDOE.¹²

Also under EFCFA, an application for a school facilities project cannot be approved unless the district has filed a LRFP, and the NJDOE has approved it. A district can submit an amendment to the LRFP at any time to the NJDOE for review and approval.¹³

Executive Order No. 24

In July 2002, Governor James McGreevey issued Executive Order No. 24 creating the Schools Construction Corporation (SCC) to oversee the design and construction of facilities projects.¹⁴ This Order also established several critical standards for the planning of facilities, also known as "high performance" standards, and directed adherence to these standards in implementing the

¹⁰ N.J. Stat. Ann. 18A:7G-3, 4 and 8.

¹¹ N.J. Stat. Ann. 18A:7G-4h and 8.

¹² N.J. Stat. Ann. 18A:7G-4.

¹³ N.J. Stat. Ann. 18A:7G-4b and c.

¹⁴ Executive Order No. 24 is referenced in footnote 6.

school construction program. Specifically, the Order directed the SCC, the NJDOE and the school districts to:

- “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;”
- “provide opportunity for the community at large to have meaningful participation in the site selection process...and in the design of school facilities;” and
- incorporate guidelines “to achieve maximum energy efficiency and environmental sustainability in the design of schools.”

In addition, the Order prohibits the NJDOE from approving any school facilities project “unless the project is designed using best practices to create space that enhances the learning process and accommodates modern teaching techniques.” Finally, the Order requires the NJDOE to adopt regulations that contain standards and criteria governing the use of community provider facilities to provide preschool education.

2. The Current (1999-2004) Long Range Facilities Plans

The current LRFPs are based on guidelines established by the NJDOE in September 1998.¹⁵ The process, initially scheduled for completion by January 1999, was extended to March 1999. To prepare the plans, most Abbott districts hired outside planning consultants, at an estimated statewide cost of over \$5 million.¹⁶

The LRFPs were completed by the Abbott districts in early 1999 and submitted to the NJDOE. In 2001, the NJDOE completed the review process and approved the plans for all districts. From 2000 through 2003, most districts have proposed, and the NJDOE has approved, amendments to the original LRFPs.

The NJDOE does not maintain any database on the current LRFPs, as amended since 1999. Accordingly, the NJDOE cannot identify the precise number and scope of projects in the current LRFPs, nor is it possible to ascertain how these plans have been amended.

The Abbott LRFPs contain approximately 532 approved facilities projects, both renovations and new construction.¹⁷ In 2000, the total preliminary cost of the NJDOE-approved LRFPs was \$7.4 billion. However, this estimate was based on a construction cost of \$125 per square-foot, without accounting for inflation. In addition, classroom space for full-day preschool was not included in the current LRFPs. Construction costs are currently running closer to \$200 per square foot, resulting in a revised cost estimate of around \$12 billion.¹⁸ At present, EFCFA authorizes only \$6 billion for the Abbott construction program.¹⁹

¹⁵ NJDOE, “Facilities Management Planning Guidelines,” September 22, 1998. This document is available from ELC upon request.

¹⁶ Data from ELC survey of Abbott districts completed in 1999 after completion of the LRFPs.

¹⁷ Data from ELC review of the approved LRFPs.

¹⁸ ELC cost estimate based on typical 2003 costs and including space for full-time preschool.

¹⁹ N.J. Stat. Ann. 18A:7G-14a. While EFCFA currently authorizes the State to issue \$6 billion in bonds to finance the Abbott school construction program, *Abbott V* requires the State to fully fund the cost of all

Deficiencies in the Current Long Range Facilities Plans

The deadlines established in *Abbott V* only allowed the districts a few months to develop the current LRFPs in 1999. The short time frame resulted in a process that was seriously flawed, creating plans with significant deficiencies. Some of the deficiencies, both procedural and substantive are highlighted below.

- The NJDOE attempted to use a web-based electronic format for districts to prepare and submit the LRFPs. However, the system was not fully operational when the process began. When districts confronted ongoing problems with the system, many opted to submit reports in other formats. The software was never used to track changes or amendments to the LRFPs.²⁰
- The NJDOE required districts to develop an educational program summary, including an inventory of all existing or proposed programs, within one month. Thus, districts did not have the time to allow curriculum experts, principals, teachers, parents or school management teams to assist in developing a comprehensive program assessment or a vision of how the educational programs might change in the future. In addition, the educational program summaries were not included in the DOE web-based system. As a result, districts had inadequate time to complete one of the key components of the LRFP and, even after the summaries were completed, they were never made part of the approved plans.
- The NJDOE required districts to develop a model school design using State facilities efficiency standards (FES).²¹ As developed by NJDOE, the FES are prototypical buildings based upon an assigned square footage amount per student, with differentials for elementary, middle, and high schools.²² The FES also specify the number of classrooms, auxiliary spaces and administrative spaces with corresponding square footages for each type of space. The use of the FES limited districts' consideration of altering classroom and school sizes to address local needs. Further, because the educational summary reports were done in haste, districts did not seriously analyze current teaching methods, research on best practices, or other facilities modifications that could change or improve program delivery within the district. Thus, in many districts, the FES became the default approach to school facilities planning and design.
- The NJDOE did not give districts clear guidance on their authority under *Abbott V* to demonstrate individual need for additional or specialized spaces, space different from -- or beyond -- what is contained in the FES prototype schools.
- The NJDOE required districts to establish a Facilities Advisory Board (FAB) to guide the long range planning process.²³ However, most of the FABs were not up and running until late in

facilities improvements in those districts, even if the cost exceeds the amount of current bonding authority under EFCFA. 153 N.J. 521.

²⁰ The 1999 NJDOE guidelines, referenced in footnote 15, promised that the web-based system would extend beyond the initial development of the LRFPs to track progress towards completion of the projects and to effectively manage the renewed Abbott facilities going well beyond the five-year project duration. The system has not been used to track upgrades in buildings during the last five years

²¹ NJDOE, Facilities Efficiency Standards, <http://www.state.nj.us/njded/facilities/over/faq.shtml>

²² The NJDOE FES used in 1999 for the current LRFPs provided for a square footage allowance of 125 square feet for preschool-5; 134 square feet for grades 6-8; and 151 square feet for grades 9-12.

²³ The 1999 NJDOE guidelines, referenced in footnote 15, recommend that each district establish a Facilities Advisory Board, comprised of administrators, parents, teachers, principals, community

1998, only a few months before the LRFP had to be submitted to the NJDOE. The Board's meetings were not required to be open to the public and there were no public hearings for broader community input. Most of the FABs did not continue to meet after the LRFP was submitted.

- The NJDOE provided no guidance to districts on assessing community and neighborhood needs, and for planning and designing “community centered” schools, where feasible. For example, districts were not required to analyze the need for social and health services, recreational facilities, libraries, adult education, and higher education. The LRFP only had to be “reviewed” by the municipal planning board prior to submission to the NJDOE.
- There was no transparency in the LRFP process at either the district or state levels. Districts were not required to make the LRFPs available to the public, and the NJDOE failed to produce any analysis of the plans following approval. In addition, NJDOE did not require proposed plan amendments be presented to the community for input and review, and, as discussed above, has provided no public information on those amendments.
- NJDOE did not require districts to develop a comprehensive implementation plan as a component of the LRFP. Consequently, only a few districts developed plans that set priorities for projects, identified interim spaces for continuing the educational program during construction (swing space), and developed plans for selecting sites that were potentially viable and/or available for school buildings.

The Proposed NJDOE Regulations

As discussed above, EFCFA requires districts to prepare and submit new LRFPs by October 2005. The Act also requires the NJDOE to establish, by regulation, guidelines and criteria for this process. In anticipation of this statutory deadline, the NJDOE has proposed regulations to govern the LRFP process. NJ Admin. Code 6A:26.²⁴ These proposed facilities regulations are currently under review by the State Board of Education.

Analysis of Proposed Regulations

1. Timetable for Preparation and Review of LRFPs

Under EFCFA, the districts must submit the new LRFPs to the NJDOE “no later than” October 2005. N.J. Stat. Ann. 18A:7G-4. The regulations, however, state that districts “shall submit” the LRFP “in every school year ending in a ‘0’ or ‘5.’” N.J. Admin. Code 6A:26-2.1(a). Thus the regulations do not clearly specify the statutorily required deadline of October 2005.

Further, the regulations do not require the districts to establish a schedule for the local LRFP development process. Nor do they require dissemination of that schedule to the public. It is essential that each district have a “plan for planning,” that gives the district sufficient time to undertake all the essential elements of the process and create a facilities advisory board to oversee the process. Among the essential elements are the collection and analysis of data,

representatives, NJDOE staff and a licensed architect. The FAB was directed to hold public meetings to allow for periodic review of the plan. Minutes had to be included in the final plan submission.

²⁴ The regulations are available at: www.nj.gov/njded/code/title6a/chap26/amendment2/

opportunities for review by educators and school leadership councils, conduct of public hearings, solicitation of input from a wide-range of community stakeholders, and consideration of critical issues such as preschool and land acquisition.

Recommendation:

NJDOE must incorporate the EFCFA deadline of October 2005 for submission of LRFPs in the proposed regulations. The NJDOE must also require each district to identify all of the essential components of the LRFP process and adopt a schedule for completing the LRFP by October 2005. The NJDOE should review and approve the schedules, and disseminate those schedules publicly through its website and other means.

2. Stakeholder Involvement in the LRFP Process

The proposed rules do not require any parent, educator, community or other stakeholder involvement in the LRFP process other than review of the plan and submission of findings by the district's local planning board. NJ Admin. Code 6A:26-2.2(c).

Recommendation:

NJDOE must amend the proposed rules to require that districts form a Facilities Advisory Board (FAB) to oversee the LRFP process, modeled on the recommendations in the NJDOE 1998 Guidelines.²⁵ The amendment should ensure participation of all key stakeholders – teachers, principals, parents, community members, municipal and redevelopment officials and others. The FAB should review proposals and recommendations from district staff, and conduct public hearings on the plans to maximize community input. The NJDOE should require the district to demonstrate compliance with this requirement as a prerequisite to obtaining plan approval. Such provisions will ensure community stakeholders the opportunity for “meaningful participation” in the planning and design of school facilities, and will help ensure facilities planning “using best design practices,” as required by Executive Order No. 24.

3. Districts' Need for Technical Assistance and Funding

The LRFP process will require districts to secure technical assistance from planners, architects, demographers and other experts. Most districts, at present, do not have professional facilities planners or architects on staff to provide the technical assistance required to complete the new LRFPs. The regulations fail to recognize this need.

Recommendation:

NJDOE must authorize districts to develop a budget for the LRFP process, including any expert technical assistance that may be needed from outside consultants. The regulations should require the NJDOE to review the budgets, and include all approved expenditures in their 2004-

²⁵ ELC also recommends that the districts' Early Childhood Education Advisory Council be assigned the responsibility to oversee the development of the preschool facilities component of the new LRFPs. See ELC's report on preschool facilities, referenced in footnote 9.

05 annual district budget. This will ensure districts can secure additional funding, if needed, to properly prepare and complete their LRFPs.

4. NJDOE Plan Format Must Be Operational and Transparent

The NJDOE proposed regulations simply require that the districts submit the new LRFPs on “software made available by the Commissioner.” N.J. Admin. Code 6A:26-2.1(a). As discussed in this report, the web-based software used by the NJDOE for the current LRFPs was not fully functional at the time the plans were initially prepared and has not been utilized to track plan amendments and project approvals. At present, the NJDOE has no software that is appropriate for the process that has been fully tested and proven reliable to handle the plan submissions.

Recommendations:

The regulations must be amended to require NJDOE to demonstrate that a reliable software system for the LRFPs has been put in place. The software must be comprehensive, so as to include all plan elements, including community features. It must also be flexible enough to allow submission of plans based on particularized needs under *Abbott V*, and to accommodate districts that have completed a major portion of the work laid out in the 1999 LRFPP.

5. The Regulations Must Require a District Wide Educational Assessment

The proposed regulations fail to provide direction to districts to complete an educational adequacy assessment, including an inventory of existing and proposed programs, school grade structure, school size, special education delivery, and Abbott required programs. In addition, the proposed regulations fail to address the directive in Executive Order No. 24 prohibiting the NJDOE from approving any school facility project not designed by the district “using best practices to create space that enhances the learning process and accommodates modern teaching techniques.”

Recommendations:

The regulations must be amended to give districts sufficient guidance in reevaluating the current curriculum and instructional programs and to reassess the space requirements needed for each program. Regulations must assist districts in incorporating best design practices, as required by Executive Order No. 24.²⁶

6. Facilities Efficiencies Standards Must Be Properly Developed and Adopted

The proposed regulations simply state that the districts “shall incorporate the facilities efficiency standards in the LRFPP.” N.J. Admin. Code 6A: 26-2.1(e). There is no reference to any specific FES that districts should “incorporate,” nor do the regulations include for the adoption of FES developed by the Commissioner, as required by EFCFA. Further, there is no citation, reference or other evidence demonstrating that the NJDOE has published the FES in the New Jersey Register for public comment, and that the Commissioner and State Board have formally

²⁶ ELC recommends that the NJDOE utilize the standards for educational assessment set forth in the 1999 guidelines as a basis for amending the proposed regulations. See footnote 15.

adopted the FES, as required by EFCFA and the Administrative Procedure Act. N.J. Stat. Ann. 18A:7G-4h and 26. Finally, while the March 2002 “Biennial Report on the Cost of Providing a Thorough and Efficient Education” refers generally to the same FES districts were required to use in the 1999 LRFP process, there is no evidence in that report that these FES are “sufficient for the achievement of the core curriculum content standards, including the provision of required programs in the Abbott districts and early childhood programs,” as required by EFCFA. N.J. Stat. Ann. 18A:7G-h.²⁷

Recommendations:

Absent compliance with the Administrative Procedure Act (APA) and EFCFA, there are no FES currently in effect that can be applied to district LRFPs. The NJDOE must take immediate steps to develop proposed FES and, in so doing, offer specific evidence that the proposed FES are educationally adequate to deliver the state’s content standards and all required Abbott programs, including preschool, as required by EFCFA. The proposal must be published in the New Jersey Register for public comment, and formally adopted in regulation, required by the APA, EFCFA and *Abbott V*.²⁸

7. The Use of Facilities Efficiencies Standards Must Be Clarified

By “incorporating” the FES in the LRFPs, the proposed regulations require all proposed new construction and rehabilitation school facility projects to conform to the FES. N.J. Admin. Code 6A: 26-2.1(e). Indeed, districts must seek a waiver from the NJDOE for any proposed project in the LRFP “that does not meet” the FES. Thus, unless clarified, the regulations continue to impose the FES on the districts as a one-size-fits-all, cookie cutter project design standard, contrary to EFCFA. N.J. Stat. Ann. 18A:7G-4h.

Recommendations:

The regulations must be revised to make clear that the FES, as required by EFCFA, only represent the minimum square footage allowance per student necessary to ensure delivery of the state content standards, required Abbott programs and preschool. N.J. Stat. Ann. 18A:7G-4h. Further, the regulations must also specifically reference the explicit prohibition in EFCFA that the FES “shall not be construction design standards,” and that the specific design of a facility project – new school construction and rehabilitation of an existing school – is at the “discretion” of the district, provided the overall space allowance per student meets the FES, as adjusted for particularized need under *Abbott V*. N.J. Stat. Ann. 18A:7G-4h. Such clarifications are necessary not only to ensure compliance with EFCFA, but also with the *Abbott V* requirement that any NJDOE established space requirements serve as “minimum” allowances only, subject to revision based on districts’ particularized needs.

²⁷ The FES are referenced in the Biennial Report on page 5. See <http://www.nj.gov/njded/genfo/birep.htm>

²⁸ The NJDOE failure to propose for adoption FES for K-12 facilities is even more egregious given that the agency included FES for preschool facilities in its proposed regulations.

8. LRFPs Must Address Standards for Community Centered Schools

The regulations are silent on the directives to districts in Executive Order No. 24 that districts in their LRFP plan and design schools to incorporate wherever possible spaces and features responsive to community needs.

Recommendations:

The regulations must be amended to include sufficient guidance to the districts on how to incorporate community features, as expressly required by Executive Order No. 24, into the planning and design of schools in their LRFPs.²⁹

9. Abbott V Right to Additional, Needed Spaces Must be Effectuated

The regulations do not specify that Abbott districts have the right, under *Abbott V*, to demonstrate the need for spaces and facilities above any minimum area allowances or FES, adopted by the NJDOE. Thus, the regulations fail to “ensure that all programs necessary to comply with [*Abbott V*] are approved.” N.J. Stat. Ann. 18A:7G-26c. While the regulations authorize the Commissioner to approve “requests for additional or inconsistent space,” the specific provisions for Abbott instructional and supplemental programs are not referenced, including the “Chart of Supplemental Programs” set forth in the NJDOE Abbott regulations, N.J. Admin. Code 6A:10A-1 et. seq., and there are no standards or procedures established to guide districts in requesting additional space based on demonstrated need.

Recommendations:

The regulations must explicitly incorporate the districts’ right to seek approval for additional spaces above the FES based on demonstrated need, with appropriate standards and procedures to effectuate that right, including express incorporation of the instructional and supplemental programs set forth in the Abbott regulations.

10. Procedures Are Required for Plan Amendments

The regulations specify that districts can apply to amend the approved LRFP “at any time.” N.J. Admin. Code 6A:26-2.1(f). The regulations also require districts to “fully document” any proposed amendment that “affects the capacity of one or more of its school facilities, or the total number or grade alignment of school facilities in the district.” N.J. Admin. Code 6A:26-2.3(c)5.

²⁹ ELC strongly recommends that NJDOE incorporate the principles for high performance school buildings, as established at the Wingspread Symposium. See <http://www.21csf.org/csf-home/declaration/default.asp>. These high performance building principles mirror those in Executive Order No. 24.

Recommendations:

The regulations must require districts to adopt a policy for approving major plan amendments prior to submission to the NJDOE. Such policies must, at a minimum, require the participation of the FAB in the development of the proposed plan amendment, with sufficient public hearings and other opportunities for public input. Finally, the NJDOE must be required to issue a formal decision on the plan amendment, and maintain a database, readily accessible to the public, of all approved plan amendments.

11. NJDOE Must Report Publicly on the Approved LRFPs

The regulations require the NJDOE to provide districts with “the final determination of the LRFp,” setting forth the approved enrollments, facility inventory, proposed projects, and other components. N.J. Admin. Code6A:26-2.3(b). There is no requirement that the NJDOE provide the information on the LRFPs, as approved in the NJDOE final determination, in a publicly accessible database, report or other format, updated over time as specific projects and plan amendments are approved.

Recommendations:

The Abbott school construction program is having an enormous impact on the education of urban children, and on the economic revitalization of high poverty neighborhoods and communities. Local stakeholders must have access to reliable and up-to-date information on the status of the LRFPs, plan amendments and project approvals, in order to facilitate their active engagement in project planning and design, as required by Executive Order No. 24, and to work to hold local and state officials accountable for performance. The regulations must require the NJDOE to maintain a public database on the LRFPs and project approvals, and be required to keep the information on the database current.

12. NJDOE Must Report Publicly on the Projected Cost of the Approved LRFPs

There is no requirement in the regulations that the NJDOE provide the projected cost of the approved LRFp in the final determination, or in any other report or format.

Recommendations:

It is essential that the NJDOE provide projected estimates of the overall cost of the approved LRFPs. As discussed above, the \$6 billion authorized in EFCFA to date is approximately half of what is needed to finance the current LRFPs, based on recent cost estimates. The public and legislators must have accurate cost estimates in order to make informed and timely decisions to increase the level of financing to implement the approved new LRFPs, as required by *Abbott V*.

13. Implementation Plans Must Be Required

There is no requirement that districts also include an implementation plan, setting forth project priorities, timing and sequencing of site acquisition and construction projects, and addressing the impact of the construction activity on current educational programs. There is also no

requirement that the NJDOE develop a statewide timetable for project activity to ensure construction projects move forward equitably in all districts over the next five year cycle.

Recommendations:

The regulations must require district implementation plans, and a statewide “master implementation plan” prepared by the NJDOE to ensure equity across the Abbott districts in meeting the facilities needs of students.