



**New Jersey Judiciary  
Superior Court - Appellate Division  
NOTICE OF APPEAL**

Type or clearly print all information. Attach additional sheets if necessary.		ATTORNEY / LAW FIRM / PRO SE LITIGANT				
TITLE IN FULL (AS CAPTIONED BELOW): EDUCATION LAW CENTER, on behalf of Abbott v. Burke Plaintiff School Children, Appellant, vs. NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Respondent.		NAME Stephen R. Buckingham, LOWENSTEIN SANDLER, PC				
		STREET ADDRESS 65 Livingston Avenue				
		CITY Roseland	STATE NJ	ZIP 07068	PHONE NUMBER 973-597-2500	
		EMAIL ADDRESS sbuckingham@lowenstein.com				

ON APPEAL FROM		
TRIAL COURT JUDGE	TRIAL COURT OR STATE AGENCY New Jersey Schools Development Authority	TRIAL COURT OR AGENCY NUMBER

Notice is hereby given that Education Law Center appeals to the Appellate Division from a  Judgment or  Order entered on \_\_\_\_\_ in the  Civil  Criminal or  Family Part of the Superior Court or from a  State Agency decision entered on 5/21/12(regs.adopted).

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

Appeal is from the Agency's adoption of regulations, NJAC 19:34B-1 et seq, effective May 21, 2012, that are inconsistent with the enabling statute, and improperly prohibit the delegation of management responsibility to SDA school districts of the design, development and land acquisition functions of a school facilities project, as required by NJSA 18A:7G-13 (2). Plaintiff reserves the right to seek attorney's fees pursuant to NJSA 10:6-2 should it prevail on this appeal.

Have all issues, as to all parties in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.)  Yes  No

If not, has the order been properly certified as final pursuant to R. 4:42-2?  Yes  No

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a  conviction  post judgment motion  post-conviction relief.

If post-conviction relief, is it the  1st  2nd  other \_\_\_\_\_  
specify

Is defendant incarcerated?  Yes  No

Was bail granted or the sentence or disposition stayed?  Yes  No

If in custody, name the place of confinement:

Defendant was represented below by:

Public Defender  self  private counsel \_\_\_\_\_  
specify

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	Marc D. Larkins, CEO of NJSDA	May 25, 2012
Attorney General or Attorney for other Governmental body pursuant to <u>R. 2:5-1(a), (e) or (h)</u>	Christopher Huber, Asst. Attorney General	May 25, 2012
Other parties in this action:		

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
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Attached transcript request form has been served where applicable on the following:


	Name	Date of Service	Amount of Deposit
Trial Court Transcript Office			
Court Reporter (if applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

Exempt from submitting the transcript request form due to the following:

- No verbatim record.
- Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).  
List the date(s) of the trial or hearing:
- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22A:2 has been paid.

May 25, 2012  
DATE

  
SIGNATURE OF ATTORNEY OR PRO SE LITIGANT



**New Jersey Judiciary  
Superior Court - Appellate Division  
CIVIL CASE INFORMATION STATEMENT**

Please type or clearly print all information.

TITLE IN FULL  EDUCATION LAW CENTER, on behalf of Abbott v. Burke Plaintiff School Children, Appellant, vs. NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, Respondent.	TRIAL COURT OR AGENCY DOCKET NUMBER  N/A
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■ Attach additional sheets as necessary for any information below.

**APPELLANT'S ATTORNEY**      EMAIL ADDRESS: sbuckingham@lowenstein.com

PLAINTIFF     DEFENDANT     OTHER (SPECIFY)

NAME Stephen R. Buckingham, Lowenstein Sandler, PC				CLIENT EDUCATION LAW CENTER	
STREET ADDRESS 65 Livingston Avenue	CITY Roseland	STATE NJ	ZIP 07068	TELEPHONE NUMBER 973-597-2326	

**RESPONDENT'S ATTORNEY \***      EMAIL ADDRESS:

NAME Christopher Huber, Deputy Atty. General, Office of the Attorney General				CLIENT NJSDA	
STREET ADDRESS 25 Market Street, PO Box 112	CITY Trenton	STATE NJ	ZIP 08625	TELEPHONE NUMBER 609-777-4891	

\* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

**GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:**  
Appeal from State Agency failure to adopt rules and regulations consistent with NJSA 18A:7G-13(2). The regulations adopted effective as of May 21, 2012 improperly restrict the scope of responsibilities that are delegable to qualified SDA districts, contrary to the enabling statute. There is no decision to attach.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?       YES     NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6)       YES     NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Were any claims dismissed without prejudice?       YES     NO

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h))       YES     NO

**GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:**

NJSA 18A:7G-13(2) required the Schools Development Authority (SDA) to adopt rules and regulations under which it shall determine the capacity of an SDA district to manage a "schools facilities project." As defined by statute, "schools facilities project" means "the planning acquisition, demolition, construction, improvement, alteration ... of all or any part of a schools facility ... and shall also include ... site acquisition, site development, the services of design professionals, such as engineers and architects [etc.]." The SDA failed to adopt any rules or regulations under NJSA 18A:7G-13(2) for more than 3.5 years. After being ordered by this Court to do so in a decision dated April 3, 2012 (Docket No. A-5191-09T3), the SDA adopted regulations, effective May 21, 2012, that are inconsistent with the enabling statute because they restrict the delegation of management responsibility construction, construction administration, and demolition, and fail to the delegation of management responsibility for other aspects of a school facilities project, as contemplated by the Legislature and as required by NJSA 18A:7G-13(2).

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):

I. THE REGULATIONS ADOPTED BY THE SDA PURSUANT TO 18A:7G-13(e)(2) ARE UNDULY NARROW AND INCONSISTENT WITH THE ENABLING STATUTE, AND SHOULD THEREFORE BE INVALIDATED.

II. THE SDA IS IN VIOLATION OF N.J.S.A. 18A:7G-13(e)(2) DUE TO ITS FAILURE TO ADOPT RULES AND REGULATIONS REGARDING DELEGATION OF MANAGEMENT OVER DESIGN, DEVELOPMENT, LAND ACQUISITION, AND OTHER FUNCTIONS TO THE SDA SCHOOL DISTRICTS.

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? \_\_\_\_\_  YES  NO
2. Did the trial judge issue written findings or an opinion? If so, on what date? \_\_\_\_\_  YES  NO
3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)?  YES  NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: \_\_\_\_\_

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as this appeal?  YES  NO
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal?  YES  NO

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY?  YES  NO

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:

Education Law Center v. New Jersey Department of Education, et al.

Appellate Division Docket Number:

A-5191-09T3

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference.

YES  NO

Explain your answer:

The Education Law center has a long history of dealings with the Attorney General's Office, and this matter is one of public importance that does not seek money damages, but simply requires the state agencies to adopt the rules and regulations that the Legislature legally-mandated to be adopted.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

EDUCATION LAW CENTER, Appellant

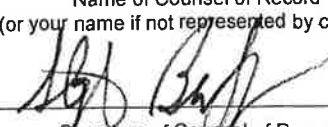
Name of Appellant or Respondent

May 25, 2012

Date

Stephen R. Buckingham

Name of Counsel of Record  
(or your name if not represented by counsel)

  
Signature of Counsel of Record  
(or your signature if not represented by counsel)