

October 29, 2015

John Hoffman, Attorney General  
Office of the Attorney General  
Hughes Justice Complex  
P.O. Box 080  
Trenton, NJ 08625

Re: Abbott v. Burke: School Construction Funding

Dear Attorney General Hoffman:

Education Law Center (ELC) is writing to bring to your attention the immediate need for the Commissioner of Education (Commissioner) and the Chief Executive Officer (CEO) of the Schools Development Authority (SDA) to seek additional school construction bonding authority from the Legislature. Without such authority, the State cannot meet its constitutional obligation to commence and complete construction of needed major capital, capital maintenance and emergent repair projects for poorer urban or "SDA districts" in a timely manner, as mandated by the rulings in Abbott v. Burke.

Many school facilities in the SDA districts remain in an extremely deplorable, even dangerous condition. As a consequence, thousands of children in these districts continue to attend school in facilities that are unsafe, overcrowded and educationally inadequate, the very conditions that the New Jersey Supreme Court found to violate the Education Clause of the New Jersey Constitution nearly 20 years ago. Abbott v. Burke, 149 N.J. 145, 186-87 (1997) ("Abbott IV"); Abbott v. Burke, 153 N.J. 480, 519 (1998) ("Abbott V"). Given the Supreme Court's clear and unambiguous mandate that the State remediate these conditions to ensure a constitutional "thorough and efficient" education to children in those districts – a mandate effectuated by the Legislature in the Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 et seq. (EFCFA) -- it is incumbent upon the State to seek Legislative authorization for additional funding to advance urgently needed school construction projects within a reasonable time frame.

#### The Status of the SDA District School Construction Program

It is now clear that the SDA is without funding to complete more than half of the major capital projects the agency itself identified in 2011 as "highest priority," let alone any of the additional major capital projects more recently identified by the SDA districts. In January 2010, Governor Chris Christie directed the SDA to halt further activity on all pending projects in which actual building construction had not commenced, until such time as the agency could "review" the capital plan. For over a year, no new construction projects were moved into the

predevelopment phase. The review was finalized in March 2011, when the SDA issued a strategic plan with a list of 110 major capital projects in the SDA districts “comprising the highest priority needs of the state...”

Over the last four years, the SDA has allocated funding to complete 40 of those projects. However, a Funding Summary document issued by the SDA on December 1, 2014 shows that it has spent or committed nearly all available funding, leaving it without the necessary resources to undertake any of the additional priority projects that remain in the 2011 strategic plan. The SDA districts also recently identified hundreds of additional projects—all of which the DOE and SDA are legally required to rank and prioritize—in their amended Long-Range Facilities Plans.

Further, it has been four years since the DOE last surveyed districts about needed emergent projects, which are defined as "capital project(s) necessitating expedited review and, if applicable, approval, 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." N.J.A.C. 6A:26-1.2 In 2011, only 76 out of the 716 potential emergent projects identified by the districts were advanced under the SDA program, and the \$100 million allocated for funding has been committed or expended, leaving no resources to identify or address additional projects.

Thus, the State has depleted all available funds to undertake priority major capital projects beyond the 40 projects in the construction pipeline, and for capital maintenance and emergent repairs to existing school facilities. As a result, there is urgent and pressing need to replenish the funding for school construction projects of all types in the SDA districts.

### Legal Mandates

The State is required to fully fund and ensure adequate school facilities for all students as a critical component of its responsibility to ensure students in SDA districts a constitutional "thorough and efficient" education under the Education Clause. Specifically, the Court found that “adequate physical facilities are an essential component of [the] constitutional mandate [for a thorough and efficient education].” Abbott v. Burke, 149 N.J. 145, 186 (1997) (“Abbott IV”). The Court has reaffirmed that “[t]he State’s constitutional obligation under the thorough and efficient clause, N.J. Const. Art. VIII, §4, includes the provision of adequate school facilities.” Abbott v. Burke, 153 N.J. 480, 519-20 (1998) (“Abbott V”). Moreover, the Court has explicitly directed the State to fund “the complete cost” of “remediating the infrastructure and life cycle deficiencies that have been identified in the Abbott districts,” as well as “the construction of any new classrooms needed to correct capacity deficiencies.” Id. at 524.

In Abbott V, the Court recognized that prompt construction and completion of needed capital projects is a central element of the constitutional mandate to provide adequate facilities. Thus, the Court explicitly expected “good faith” implementation of “facilities improvement.” Id. at 525. More specifically, the Court required the State to “promptly initiate effective managerial responsibility over school construction.” Id. at 527. The Court’s mandates could not be clearer: timely construction and completion of needed school facilities is a fundamental component of the State’s constitutional obligation to provide adequate facilities to students in SDA districts.

In implementing the Court's decrees, the Legislature delegated the responsibility to the DOE and SDA to take appropriate steps in a timely fashion to provide safe, secure and educationally adequate facilities for students in SDA districts. In light of these constitutional and statutory obligations, the DOE and SDA must act in a timely fashion to ensure the construction and completion of approved school facilities in the SDA districts. The State's failure to commence construction on numerous approved capital projects, and to complete those projects in a timely fashion, is a violation of the State's constitutional responsibilities under the Abbott rulings, as implemented by the Legislature in the EFCFA.

Action Needed and Next Steps

The students, teachers and staff who are consigned to learn and work in substandard, inadequate and even dangerous school facilities cannot wait any longer for the State to undertake construction and complete priority major capital projects, capital maintenance and emergent repairs in existing school buildings. It is essential, therefore, that the State provide specific and firm assurances that it will seek additional bonding authority from the Legislature during the FY 2017 budget cycle to ensure that construction will commence, and projects will be completed, in a prompt and timely manner.

On behalf of the students in SDA districts -- members of the Plaintiff class in the Abbott v. Burke litigation -- we are ready to work with you in a collaborative fashion to accomplish this task expeditiously. Accordingly, we will contact you in the next few days to schedule a meeting in early November to discuss how the State intends to fulfill its constitutional and statutory responsibilities, as set forth above. We are anxious to secure appropriate assurances and plans for action to resolve this matter as quickly as possible. Of course, if such action is not forthcoming, we will have no alternative but to seek appropriate judicial relief.

Thank you for your prompt attention to this matter.

Sincerely,



David Sciarra, Esq.  
Executive Director

cc: David Hesper, Commissioner, New Jersey Department of Education

Charles McKenna, Chief Executive Officer, New Jersey Schools Development Authority

Senate President Stephen Sweeney

Assembly Speaker Vincent Prieto

Paul, Weiss, Rifkind, Wharton & Garrison LLP, Pro Bono Counsel