



# State of New Jersey

DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

DAVID C. HESPE  
Commissioner

January 13, 2015

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Dear Parties:

EDUCATION LAW CENTER, on behalf of ABBOTT V. BURKE PLAINTIFF SCHOOL CHILDREN  
V. NEW JERSEY STATE DEPARTMENT OF EDUCATION, OFFICE OF SCHOOL FACILITIES,  
AGENCY DKT NO. 30-2/14, OAL DKT NO. EDU 04670-14, COMMISSIONER DECISION NO. 16-  
15

We are enclosing a copy of the decision of the Commissioner of Education dated January 13, 2015 in the above-captioned matter. Appeals of Commissioner decisions may be filed with the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.

Additionally, please note that, pursuant to *N.J.A.C. 6A:3-1.14(c)*, the Commissioner's decision is mailed to the parties three days prior to the date it is deemed officially filed. This provides counsel and *pro se* litigants with the decision before it is made public by the Department. Parties and counsel are requested to refrain from making Commissioner decisions public prior to the filing date. Your cooperation is appreciated.

Very truly yours,

M. Kathleen Duncan, Director  
Bureau of Controversies and Disputes

MKD/JKH/pp:o/dec ltr/edlawcenter-16-15  
Enclosure  
c: State Law Library



EDUCATION LAW CENTER ON	:	
BEHALF OF ABBOTT V. BURKE	:	
PLAINTIFF SCHOOL CHILDREN,	:	COMMISSIONER OF EDUCATION
	:	
PETITIONER,	:	DECISION
	:	
V.	:	
	:	
NEW JERSEY STATE DEPARTMENT	:	
OF EDUCATION, OFFICE OF SCHOOL	:	
FACILITIES,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

The petitioner, on behalf of the “Abbott v. Burke” school children of New Jersey, alleged that the respondent Office of School Facilities (OSF) failed to ensure the timely submission and approval of updated long range facilities plans (LRFP) for New Jersey’s low income school districts (SDA districts) as required by the Educational Facilities Construction and Financing Act (EFCFA), *N.J.S.A. 18A:7G-4(a)*. The OSF asserted that it has substantially complied with its statutory and regulatory obligations; that the failure to timely update LRFPs has not been detrimental to the SDA districts or their students; and that accordingly, the petition should be dismissed. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the case is ripe for summary decision; in November 2013, the Education Law Center (ELC) notified the Commissioner and the OSF Director that updated LRFPs were more than five years overdue in all 31 SDA districts; the within petition of appeal was filed after the ELC received no response to its notification letter; analysis of whether the OSF has complied with the requirements of the EFCFA, *N.J.S.A. 18A:7G-2 et seq.*, and its implementing regulations relative to the timely updating of LRFPs in the SDA districts leads to the conclusion that the OSF is not in compliance with its obligations under the law; OSF’s argument that there is no harm caused by its failure to compel SDA districts to timely file updated LRFPs is unavailing, as the laws are clear that facilities projects cannot be undertaken unless they are consistent with the LRFP. The ALJ concluded that the OSF is noncompliant with *N.J.S.A. 18A:7G-2 et seq.*, and ordered that the OSF direct those SDA districts without up-to-date LRFP to submit same within 60 days of the date of the order. Further, the ALJ ordered the OSF to adhere to specific timelines for development of needs assessments and educational priority rankings in order to ensure that students in the SDA districts “...are educated in physical facilities that are safe, healthy and conducive to learning.” *N.J.S.A. 18A:7G-2(a)*.

Upon full consideration, the Commissioner, *inter alia*, concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision with modification to the timelines for completion of the LRFP approval process. The SDA districts were directed to file up-to-date LRFPs within 90 days of the date of this final decision; after submission of the LRFPs, the OSF was directed to comply with the timeframes outlined in *N.J.S.A. 18A:7G-4(i)*.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

OAL DKT. NO. EDU 4670-14  
AGENCY DKT. NO. 30-2/14

EDUCATION LAW CENTER ON	:	
BEHALF OF ABBOTT V. BURKE	:	
PLAINTIFF SCHOOL CHILDREN,	:	COMMISSIONER OF EDUCATION
	:	
PETITIONER,	:	DECISION
	:	
V.	:	
	:	
NEW JERSEY STATE DEPARTMENT	:	
OF EDUCATION, OFFICE OF SCHOOL	:	
FACILITIES,	:	
	:	
RESPONDENT.	:	

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In this matter the petitioner, the Education Law Center (ELC) on behalf of the “Abbott v. Burke” school children of New Jersey, alleges that the respondent Office of School Facilities of the Department of Education (OSF) has failed to ensure the timely submission and approval of updated long range facilities plans (LRFP) for New Jersey’s low income school districts (SDA districts), as required by *N.J.S.A.* 18A:7G-4(a). The Administrative Law Judge (ALJ) found that OSF was not in compliance with the Educational Facilities Construction and Financing Act (EFCFA), *N.J.S.A.* 18A: 7G-1 *et seq.*, and with the regulations relative to the approval of LPFPs for the SDA districts. The ALJ granted the petitioner’s motion for summary decision and ordered time frames for the completion of the LRFP approval process.

In its exceptions, OSF maintains that the Initial Decision should be rejected because the ALJ failed to recognize that OSF has taken substantial steps to ensure the submission and approval of amended LRFPs by the SDA districts. The OSF also takes exception to the timeline that the ALJ recommended for the completion of the approval process. First, OSF maintains that the strict 60-day timeline set by the ALJ for the SDA districts to amend their LRFPs is not feasible because the amount of time required to complete an LRFP amendment

varies depending upon the size of the district, the degree of change from existing conditions and the previously approved LRFP, required field survey work, and the amount of consensus-building needed for board of education endorsement. The OSF asserts that such a truncated timeline could result in many of the submissions being incomplete or inaccurate. The OSF also argues that the ALJ's directive that the OSF not only review the submitted LRFP amendments, but approve the LRFPs within 90 days is improper as there can be no guarantee that the submitted LRFP amendments will warrant approval by the OSF. The OSF points out that the direction to "review and approve" the LRFPs is contrary to the applicable procedures contained in *N.J.S.A. 18A:7G-4(i)*. Finally, the OSF contends that the ALJ failed to recognize that the Educational Facilities Needs Assessment and Educational Priority Ranking (Needs Assessment) is up to date. The OSF notes that the Needs Assessment was last completed in 2013, based upon then-current information and within the timeframes established by the EFCFA. Therefore, the OSF requests that the Initial Decision be rejected and that summary decision be granted in its favor.

In reply, the petitioner urges the Commissioner to reject the OSF's exceptions and to adopt the Initial Decision as the final decision in this matter. With respect to the OSF's challenge to the timelines recommended by the ALJ, the petitioner stresses that the OSF simply contends the timeline recommended by the ALJ for the submission of the LRFPs is not feasible, yet the OSF offered no alternative timeline for the competition of the LRFP amendment process. The petitioner argues that the establishment of a 90 day time limit for the approval of all the LRFPs is well within the Commissioner's equitable authority to remediate the violation that has occurred. Additionally, the petitioner contends that the EFCFA requires that the Needs Assessment occur only after the approval of an SDA district's long range facilities plan and – as a result – once the submitted LRFPs are approved by the OSF, the Needs Assessment will not be

up to date. Therefore, petitioners argue that the ALJ's order requiring the completion of an updated Needs Assessment and priority ranking must be affirmed.

The Commissioner recognizes that OSF has made substantial efforts toward approving amended LRFPs for the SDA districts. Nevertheless, after consideration of the record, the Commissioner is in accord with the ALJ's determination – for the reasons stated in the Initial Decision – that the OSF has not yet fully complied with the EFCFA in this regard. The Commissioner notes, however, that the ALJ recommended that the OSF order the SDA districts to file an up-to-date LRFP within 60 days of the date of the October 16, 2014 Initial Decision. This date has preceded the consideration of the Initial Decision by the Commissioner and shall be modified as follows.

The SDA districts are directed to file an up-to-date LRFP within 90 days from the date of the final decision. The 90 day timeframe for the approval of the LRFPs recommended by the ALJ is inconsistent with the procedures contained in *N.J.S.A.* 18A:7G-4(i), and is therefore rejected. After the submission of the LRFPs, the OSF shall comply with the timeframes outlined in *N.J.S.A.* 18A:7G-4(i) in connection with the review and approval of LRFPs. Additionally, to the extent that the Needs Assessment must be updated following the approval of an SDA district's LRFP, OSF shall do so in accordance with *N.J.S.A.* 18A:7G-5m(2).

Accordingly, the Initial Decision in this matter is adopted as the final decision as modified with respect to the timelines for the completion of the LRFP approval process.

IT IS SO ORDERED.\*



COMMISSIONER OF EDUCATION

Date of Decision: 1/13/15

Date of Mailing: 1/13/15

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\* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).